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ACT

THE COMPANIES ACT, 2009

ARRANGEMENT OF SECTIONS

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- Interpretation. **1.** In this Act unless the context otherwise requires—
- “Attorney-General” means the Attorney-General and Minister of Justice.
- “Commission” means the Corporate Affairs Commission established by section 2;
- “debenture” includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not;
- “director” means a person by whatever name called duly appointed by a company to direct and manage the business of the company and includes a person held out by the company as a director;
- “document” includes summons, notice, order or other legal process and registers;
- “existing company” means a company incorporated under the repealed Act;
- “financial year” means the financial year of the Government;
- “manager” includes any person occupying the position of a manager by whatever name called and whether under a contract of service or not;
- “memorandum” means the memorandum of association of a company as originally formed or as altered;
- “Minister” means the Minister responsible for trade.
- “officer” includes a director, manager or secretary but does not include an auditor;

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 510. Interpretation as to statements in prospectus.

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(5) The quorum for a meeting of the Commission shall be four.

(6) The Registrar shall act as Secretary to the Commission.

Disclosure of interest.

- 7.** (1) A member of the Commission who is—
- (a) directly or indirectly interested in any company or enterprise the affairs of which the Commission is deliberating upon; or
 - (b) interested in any contract made or proposed to be made by the Commission,

shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Commission.

(2) A disclosure of an interest under subsection (1) shall be recorded in the minutes of the Commission, and the member shall—

- (a) not take part after such disclosure, in any deliberation or decision of the Commission with regard to the subject matter in respect of which his interest is thus disclosed;
- (b) be excluded for the purpose of constituting a quorum of the Commission for such deliberation or decision.

(3) A decision of the Commission shall not be invalidated by the failure of a member to disclose his interest in any matter being deliberated on by the Commission.

Functions of Commission.

- 8.** The functions of the Commission are to—
- (a) administer this Act including the regulation and supervision of the incorporation and registration, of companies under or pursuant to this Act;

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

“Registrar” means the Registrar appointed under section 9;

“security” includes shares and debentures;

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

PART II – CORPORATE AFFAIRS COMMISSION

2. (1) There is hereby established a body to be known as the Corporate Affairs Commission. Establishment of Corporate Affairs Commission.

(2) The Commission shall be—

- (a) a body corporate with perpetual succession and a common seal;
- (b) capable of suing and being sued in its corporate name; and
- (c) capable of acquiring, holding or disposing of any property, whether movable or immovable, for the purpose of carrying out its functions.

3. (1) The Commission shall consist of the following:- Membership of the Commission.

- (a) a chairman who shall be an accountant or a legal practitioner having not less than ten years’ practice in his profession;

- (b) one representative each of the following bodies or organisations–
 - (i) the Sierra Leone Chamber of Commerce, Industry and Agriculture;
 - (ii) the Sierra Leone Labour Congress;
 - (iii) the Sierra Leone Bar Association;
 - (iv) the Institute of Chartered Accountants of Sierra Leone; and
- (c) a representative of the Ministry responsible for trade, industry and state enterprises;
- (d) two persons, one of whom shall be a woman, who at the time of their appointment work principally in the private sector; and
- (e) the Registrar.

(2) The Chairman and other members of the Commission excepting the Registrar, shall be appointed by the President subject to the approval of Parliament.

Tenure of office of members of Commission.

4. (1) A person appointed as a member of the Commission (other than an ex-officio member) shall hold office for three years and shall be eligible for re-appointment for not more than two terms.

(2) Any member of the Commission shall cease to hold office if –

- (a) he resigns his office by written notice to the President;
- (b) he becomes unsound of mind or is incapable of carrying out his duties;

- (c) he is convicted of or any offence involving fraud or dishonesty;
- (d) he is guilty of serious misconduct relating to his duties;
- (e) he is an undischarged bankrupt;
- (f) in the case of the Chairman or representative of the Sierra Leone Bar Association or the Institute of Chartered Accountants of Sierra Leone, if he is disqualified or suspended from practising his profession by the order of any competent authority made in respect of him personally;
- (g) fails to disclose any interest in any matter referred to in subsection (1) of section 7.

5. Members of the Commission appointed under paragraph (a), (b) and (d) of subsection (1) of section 3 shall be paid such remuneration and allowances as may be determined by the Minister of Finance and subject to the approval of Parliament. Remuneration and allowances.

6. (1) The Commission shall meet for the dispatch of its business at such time and place as the Chairman may determine. Meetings of Commission.

(2) A special meeting shall be summoned by the Chairman or at the written request of not less than two other members of the Commission.

(3) The Chairman shall preside at meetings at which he is present and in his absence, a member elected by the other members present shall preside.

(4) Each member shall have one vote but in the case of an equality of votes the Chairman or other person presiding shall have a casting vote.

company, association or partnership during the time that it carries on business after those 14, days shall be guilty of an offence and liable on conviction to a fine of Le500,000 for each day during which the default continues.

Capacity of individuals to form companies.

17. (1) Subject to subsection (2), an individual shall not form or join in the formation of a company under this Act if he is—

- (a) less than 18 years of age;
- (b) of unsound mind;
- (c) an undischarged bankrupt; or
- (d) otherwise disqualified under this Act from being a director of a company.

(2) Paragraph (a) of subsection (1) shall not apply to companies formed prior to the commencement of this Act.

(3) A corporate body in liquidation shall not join in the formation of a company under this Act.

Types of companies.

18. (1) An incorporated company may be either a company—

- (a) 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”);
- (b) 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”); or

- (b) establish and maintain a company’s registry and offices in all the provinces as may be necessary, suitably and adequately equipped to discharge its functions under this Act or any other enactment in respect of which it is charged with responsibility;
- (c) perform such other functions as may be specified by this Act or any other enactment; and
- (d) undertake such other activities as are necessary or expedient for giving full effect to this Act.

9. (1) There shall be appointed by the Commission a Registrar who shall be qualified to practise as a legal practitioner in Sierra Leone and has been so qualified for not less than ten years. Appointment of Registrar.

(2) The Registrar shall be the chief executive of and secretary to the Commission and shall be subject to the directions of the Commission.

(3) The Registrar shall hold office on such terms and conditions as the Commission may specify in his letter of appointment.

(4) The Registrar shall be the accounting officer for the purpose of controlling and disbursing amounts from the fund established pursuant to section 12 .

10. The Commission may appoint such other staff as it may think necessary for the efficient performance of the functions of the Commission. Appointment of staff.

11. Notwithstanding the provisions of any enactment to the contrary, the Registrar or a person appointed under section 10 who is a legal practitioner shall, while so appointed, be entitled to represent the Commission as a legal practitioner for the purpose and in the course of his employment. Right to appear in court.

Funds of Commission.

12. The Commission shall have a fund which shall be used to finance its activities, including—

- (a) moneys appropriated by Parliament for the purposes of the Commission;
- (b) any loans raised by the Commission ;
- (c) grants or gifts from any person or organisation; and
- (d) moneys accruing to the Commission in the course of its operations.

Accounts and audit.

13. (1) The Commission shall keep proper books of accounts and proper records in relation thereto and shall prepare in respect of each year a statement of accounts in such form as the Auditor-General may approve.

(2) The books of account and related records of the Commission shall be audited not later than six months after the end of each financial year by the Auditor-General, or an auditor appointed by the Auditor-General and the report of the audit shall, pursuant to section 119 of the Constitution, be submitted to Parliament by the Attorney-General.

Annual report.

14. (1) The Commission shall, not later than six months after the end of each financial year, submit to the Minister an annual report on the activities of the Commission during that financial year, and the Minister shall cause the report to be laid before Parliament.

(2) The annual report shall include the audited accounts of the Commission.

PART III—INCORPORATION OF COMPANIES AND INCIDENTAL MATTERS

Formation of Company

15. (1) Subject to subsection (2), any two or more persons may form and incorporate a company by complying with the requirements of this Act in respect of incorporation. Right to form company.

(2) Notwithstanding subsection (1), a private company may be formed by one person.

16. (1) No company, association, or partnership consisting of more than 20 persons shall be formed for the purpose of carrying on any business for profit or gain by the company, association, or partnership or by the individual members thereof, unless it is incorporated as a company under this Act or is formed in pursuance of some other enactment. Partnership, etc of more than 20 members to be incorporated.

(2) Nothing in this section shall apply to—

- (a) any co-operative society registered under the Cooperative Societies Act, 1977;
- (b) any partnership for the purpose of carrying on practice—
 - (i) as legal practitioners, by persons each of whom is a legal practitioner; or
 - (ii) as accountants by persons each of whom is entitled by law to practise as an accountant.

(3) If at any time the number of members of a company, association or partnership exceeds 20 in contravention of this section and it carries on business for more than 14 days while the contravention continues, every person who is a member of the

- (f) that the liability of its members is limited by shares or by guarantee or is unlimited, as the case may be.
- (2) If the company has a share capital–
- (a) the memorandum shall also state the amount of share capital–
- (i) not being less than Le1,000,000 in the case of a private company, 25 percent of which shall be taken by subscribers.
- (ii) not being less than Le50,000,000 in the case of a public company 25 percent of which shall be taken up by subscribers.
- (b) each subscriber shall write opposite to his name the number of shares he takes.
- (3) The memorandum of a company limited by guarantee shall also state that–
- (a) the income and property of the company shall be applied solely towards the promotion of its objects, and that no portion thereof shall be paid or transferred directly or indirectly to the members of the company except as permitted by or under this Act; and
- (b) 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 the payment of the debts and liabilities of the company, and of the costs of winding-up, such amount as may be required not exceeding Le250,000 or such greater amount as the members may determine.

- (c) not having any limit on the liability of its members (in this Act termed “an unlimited company”).
- (2) Any of the companies mentioned in subsection (1) may either be a public or private company.
- 19.** (1) A private company is one which is stated in its memorandum to be a private company. Private companies.
- (2) Every private company shall, by its articles, restrict the transfer of its shares, if any.
- (3) The total number of members of a private company shall not exceed 50, excluding persons who are *bona fide* in the employment of the company, or were while in that employment and have continued after the determination of that employment, to be members of the company.
- (4) Where two or more persons hold one or more shares in a company jointly, they shall, for the purpose of subsection (3) be treated as a single member.
- (5) A private company shall not, unless authorised by law invite the public to–
- (a) subscribe for any shares or debentures of the company; or
- (b) deposit money for fixed periods or payable at call, whether or not bearing interest.
- 20.** Any company other than a private company shall be a public company and its memorandum shall state that it is a public company. Public companies.

Unlimited company to have share capital.

21. After the commencement of this Act, an unlimited company shall be registered with a share capital; and where an existing unlimited company is not registered with a share capital, it shall, not later than six months after the commencement of this Act, alter its memorandum so that it becomes an unlimited company having a share capital not below the minimum share permitted under this Act.

Company limited by guarantee.

22. (1) Where a company is to be formed for promoting commerce, art, science, religion, sports, culture, education, research, charity or other similar objects, and the income and property of the company are to be applied solely towards the promotion of those objects and no portion thereof is applied or transferred directly or indirectly to the members of the company except as permitted by this Act, the company shall not be registered as a company limited by shares, but as a company limited by guarantee.

(2) After the commencement of this Act, every company limited by guarantee shall be incorporated as a company limited by guarantee and not having a share capital; and every existing company limited by guarantee and having a share capital shall not later than six months after the commencement of this Act, alter its memorandum so that it becomes a company limited by guarantee.

(3) In the case of a company limited by guarantee, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profit of the company or purporting to divide the company's undertaking into shares or interests shall be void.

(4) A company limited by guarantee shall not be incorporated with the object of carrying on business for the purpose of making profits for distribution to members.

(5) If any company limited by guarantee carries on business for the purpose of distributing profits, all officers and members thereof who are cognisant of the fact that it is so carrying on business shall be jointly and severally liable for the payment and discharge of all the debts and liabilities of the company incurred in

carrying on such business; and the company and every such officer and member shall be liable to a fine not exceeding Le500,000.00 for each day during which it carries on such business.

(6) Subject to compliance with subsection (5), the articles of association of a company limited by guarantee may provide that members can retire or be excluded from membership of the company.

(7) If, upon the winding up of a company limited by guarantee, there remains after the discharge of all its debts and liabilities any property of the company, the property shall not be distributed among the members but shall be transferred to some other company limited by guarantee having objects similar to the objects of the company or applied to some charitable object and such other company or charity shall be determined by the members prior to the dissolution of the company.

Memorandum of Association

- 23.** (1) The memorandum of every company shall state—
- (a) the name of the company;
 - (b) that the registered office of the company shall be situated in Sierra Leone;
 - (c) the nature of the business or businesses which the company is authorised to carry on, or if the company is not formed for the purpose of carrying on business, the nature of the object or objects for which it is established;
 - (d) the restriction, if any, on the powers of the company;
 - (e) that the company is a private or public company, as the case may be;

Requirements with respect to memorandum of company.

(3) A copy of a resolution passed by the directors in compliance with a direction under subsection (2) shall be forwarded to the Commission within fifteen days after the passing of the resolution in accordance with section 204.

(4) If a company contravenes subsection (1), the company and any officer in default shall be guilty of an offence and be liable to a daily default fine of Le500,000 and any resolution passed in contravention of this section shall be void.

(5) If a company fails to comply with a direction of the Commission under subsection (2), the company and any officer in default shall be liable to a daily default fine of Le500,000.

Prohibited
and restricted
names.

28. (1) No company shall be incorporated or registered under this Act by a name which—

- (a) is identical with that by which a company in existence is already registered, or so nearly resembles that name as to be likely to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the Commission may require;
- (b) contains the words “Chamber of Commerce” unless it is a company limited by guarantee;
- (c) in the opinion of the Commission is capable of misleading as to the nature or extent of its activities or is undesirable, offensive or otherwise contrary to public policy;
- (d) in the opinion of the Commission would violate any existing business name registered in Sierra Leone unless the consent of the owner of the business name has been obtained.

(4) The memorandum shall be signed by each subscriber in the presence of at least one witness who shall attest the signature.

(5) The memorandum shall be stamped as if it were a deed.

24. Subject to the provisions of section 23, the form of a memorandum of association of— Form of memorandum.

- (a) a company limited by shares;
- (b) a company limited by guarantee; and
- (c) an unlimited company,

shall be as specified in Tables B, C and D respectively in the First Schedule, or as near to that form as circumstances may permit.

Name of company

25. (1) The name of a private company limited by shares shall end with the word “Limited”. Name as stated in memorandum.

(2) The name of a public company limited by shares shall end with the words “Public Limited Company”.

(3) The name of an unlimited company shall end with the word “Unlimited”.

(4) Subject to section 26, the name of a company limited by guarantee shall end with the word “limited by guarantee”.

(5) A company may use the abbreviations “Ltd”, “PLC”, “Utd” and “LG” for the words “Limited”, “Public Limited Company”, “Unlimited” and Limited by Guarantee respectively in the name of the company.

26. (1) Subject to subsection (3), the Commission may exempt a company limited by guarantee from the requirements of section 25 relating to the use of “limited” as part of its name. Exemption from requirement of using “limited” as part of name.

Cap. 249. (2) Subject to subsection (3), an existing company which at the commencement of this Act did not include “limited” as part of its name by virtue of a licence under section 19 of the Companies Act may be exempted from the requirements of section 25.

(3) A company shall, in order to be exempted from the requirements of section 25 satisfy the Commission that—

- (a) the objects of the company are, or in the case of a company about to be registered are to be, the promotion of commerce, art, science education, religion, charity or any profession, and any thing incidental or conducive to any of those objects; and
- (b) the company’s memorandum or articles-
 - (i) require its profits (if any) or other income to be applied in promoting its objects;
 - (ii) prohibits the payment of dividends to its members, and
 - (iii) require all the assets which would otherwise be available to its members generally to be transferred to on its winding up either to another body with objects similar to its own or to another body the objects of which are the promotion of charity and anything incidental or conducive thereto (whether or not the body is a member of the company).

(4) The company shall deliver to the Commission a statutory declaration made—

- (a) in the case of a company to be formed, by a legal practitioner engaged in its formation or

by a person named as director or secretary in the statement delivered under subsection (2) of section 29;

- (b) in the case of a company proposing to change its name so that it ceases to have the word “limited” as part of its name, by a director or secretary of the company.

(5) A company which is exempted from the requirements relating to the use of “limited” and does not include that word as part of its name, is also exempted from the requirements of this Act relating to the publication of its name and the sending of lists of members to the Commission.

27. (1) A company which is exempted under section 26 and whose name does not include “limited” shall not alter its memorandum or to articles of association so that it ceases to comply with the requirements of subsection (3) of that section. Provisions applicable to company exempted section 26.

(2) If it appears to the Commission that a company referred to in subsection (1) has—

- (a) carried on any business other than the promotion of any of the objects mentioned in subsection (3) of section 26;
- (b) applied any of its profits or other income otherwise than in promoting such objects, or
- (c) paid a dividend to any of its members,

it may, in writing, direct the company to change its name by resolution of the directors within such period as may be specified in the direction, so that its name ends with “limited”.

Registration of Companies

Documents of incorporation.

32. (1) After the commencement of this Act, a company shall be formed in the manner set out in this section.

(2) There shall be delivered to the Commission—

- (a) the memorandum of association of the company;
- (b) the notice of the address of the registered office of the company and the head office if different from the registered office:

Provided that a postal box address or a private bag address shall not be accepted by the Commission as the registered office;

- (c) a statement containing—
 - (i) the list and particulars together with the consent of the persons who are to be the first directors of the company;
 - (ii) the person who is or the persons who are to be the first secretary or joint secretaries of the company;
- (d) a declaration by the subscribers stating—
 - (i) the names and addresses of the subscribers;
 - (ii) the share capital of the company;
 - (iii) the number of shares to be issued to each subscriber; and
 - (iv) that twenty five percent of the shares have been subscribed;

(2) Except with the consent of the Commission, no company shall be registered by a name which—

- (a) contains the words “Sierra”, “Leone” “National” or “Government,” or any word which in the opinion of the Commission suggests or is calculated to suggest that it enjoys the patronage of the Government or any Ministry or Department of Government; or
- (b) contains the word “Municipal” or “Chartered” or in the opinion of the Commission suggests, or is calculated to suggest, connection with any municipality or other local council;
- (c) contains the word “Co-operative”;
- (d) contains the word “Group” or “Holding”.

(3) The Commission may by statutory instrument amend subsection (2).

29. Any person who trades or carries on business under a name or title of which “limited or any contraction or imitation thereof, is the last word, that person, unless duly incorporated with limited, shall be guilty of an offence and be liable on conviction to a fine not exceeding Le.500,000 for each day that the default continues. Penalty for improper use of “limited”.

30. (1) Subject to subsection (2) a company may, by special resolution and with the approval of the Commission, change its name. Change of names of companies.

(2) In the case of a company which has been directed by the Commission to change its name under section 27 that company shall by resolution change its name within such period as may be specified in the direction.

(3) If a company, through inadvertence or otherwise, is registered under a name identical with that by which a company in existence is previously registered or so nearly resembling it as to be likely to deceive, the first mentioned company may—

- (a) with the approval of the Commission signified in Writing, change its name; and
- (b) if the Commission so directs, within six months after the registration, the company concerned shall change its name.

(4) If a company defaults in complying with a direction of the Commission given under subsection (2), the company and any director of the company who is cognisant of the default shall be guilty of an offence and be liable on conviction to a fine not exceeding Le500,000 for each day that the default continues.

(5) Where a company changes its name, 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.

(6) If the Commission is of the opinion that by reason of any change in the nature of the business carried on by a company the name under which it is registered is misleading or undesirable, it may direct the company to change its name within six weeks of such direction.

(7) If at the expiration of the period mentioned in subsection (6), the company has not complied with the direction and has not shown cause for the non-compliance, the Commission may strike its name off the register.

(8) Any company or member or creditor of such company aggrieved by a decision of the Commission under subsection (7) may appeal to the High Court for the restoration of the company to the register.

(9) A change of name shall not affect any right or obligation 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 against it by its former name may be continued or commenced against it by its new name.

(10) Any change in the name of a company shall be published by the Registrar in the *Gazette* and in any local newspaper.

(11) A publication in the *Gazette* shall be *prima facie* evidence of the change of name to which it relates.

Articles of association

31. (1) Every company whether limited by shares or by guarantee or unlimited shall be incorporated with the memorandum or articles of association, signed by the subscribers to the memorandum and prescribing regulations for the company. Articles for regulating companies.

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

(3) In the case of an unlimited company having a share capital, the articles shall state the amount of share capital with which the company proposes to be registered.

(4) The articles shall be—

- (a) printed;
- (b) divided into paragraphs numbered consecutively; and
- (c) signed by each subscriber of the memorandum in the presence of at least one witness who shall attest the signature.

(7) A party to a transaction decided on under subsection (6) is not bound to enquire as to the capacity of the company to enter into it or as to any limitation on the powers of the directors, and is presumed to have acted in good faith unless the contrary is proved.

Effect of memorandum and articles

Effect of memorandum and articles.

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

(2) All moneys payable by any member to the company under the memorandum or articles shall be a debt due from him to the company and shall be of the nature of a specialty debt.

(3) Where the memorandum or articles empower any person to appoint or remove any director or other officer of the company, such power shall be exercisable by that person notwithstanding that he is not a member or officer of the company.

(4) In any action by any member or officer to enforce any obligation owed under the memorandum or articles to him and any other member or officer, such member or officer may, if any other member or officer is affected by the alleged breach of such obligation with his consent, sue in a representative capacity on behalf of himself and all other members or officers who may be affected other than any who are defendants and the provisions of Part XI shall apply.

Member's right to copy of memorandum and articles

Member's right to copies of memorandum.

38. (1) A company shall, on being so required by any member send to him a copy of the memorandum and of the articles subject to payment, in case of a copy of the memorandum and the articles of Le20,000 or such amount as the company may determine.

(e) a declaration by the subscribers that they have complied with the requirement of the law; and

(f) any other document required by the Commission to satisfy the requirement of any law relating to the formation of a company.

(3) Where the Commission refuses a statutory declaration, it shall, within 14 days of the date of receipt of the declaration send to the declarant a notice of its refusal, giving reasons for the refusal.

33. (1) The Commission shall register the memorandum and articles unless in its opinion—

Registration of memorandum and articles.

(a) they do not comply with the provisions of this Act;

(b) the business which the company is to carry on, or the objects for which it is formed, or any of them, are illegal;

(c) any of the subscribers to the memorandum is incompetent or disqualified in accordance with section 17;

(d) there is non-compliance with the requirement of any other law as to registration and incorporation of a company.

(2) Where the Commission refuses to register the memorandum and articles of association, it shall, within 14 days give notice in writing to the applicant of its decision.

(3) Any person aggrieved by the decision of the Commission under subsection (1) shall appeal to the High Court within 30 days of the receipt of the decision.

(4) The Commission may, in order to satisfy itself as provided in paragraph (c) of subsection (1) in writing require a person subscribing to the memorandum to make and lodge with the Commission, a statutory declaration to the effect that he is not disqualified under section 17 from forming or joining in a company.

Effect of incorporation.

34. (1) On the incorporation of a company, the Commission shall certify under its seal that the company is incorporated and in the case of a limited company, that it is limited.

(2) From the date of incorporation mentioned in the certificate, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum.

(3) A certificate of incorporation shall be *prima facie* evidence—

- (a) that the requirements of this Act in respect of registration and of matters precedent and incidental to it have been complied with, and is duly registered under this Act; and
- (b) if the certificate contains a statement that the company is a public company, that the company is such company.

Capacity and powers of a company

Powers of companies.

35. Except to the extent that the company's memorandum or any enactment otherwise provides, every company shall, for the furtherance of its authorised business or objects, have all the powers of a natural person of full capacity.

Effect of *ultra vires* acts.

36. (1) A company shall not carry on any business not authorised by its memorandum and shall not exceed the powers conferred upon it by its memorandum or this Act.

(2) A breach of subsection (1) may be asserted in any proceedings under subsection (4) or Part XI.

(3) Notwithstanding subsection (1), no act of a company and no conveyance or transfer of property to or by a company shall be invalid by reason of the fact that such act, conveyance or transfer was not done or made for the furtherance of any of the authorised business of the company or that the company was otherwise exceeding its objects or powers.

(4) On the application of—

- (a) any member of the company; or
- (b) the holder of any debenture secured by a floating charge over all or any of the company's property or by the trustee of the holders of any such debentures,

the court may prohibit by injunction, the doing of any act or the conveyance or transfer of any property in breach of subsection (1).

(5) If the transactions sought to be prohibited in any proceeding under subsection (4) are being, or are to be performed or made pursuant to any contract to which the company is a party, the court may, if it thinks it to be equitable and if all the parties to the contract are parties to the proceedings, set aside and prohibit the performance of such contract, and may allow to the company or to the other parties to the contract compensation for any loss or anticipated profits to be derived from the performance of such contract.

(6) In favour of a person dealing with a company in good faith, any transaction decided on by the directors is deemed to be one which is within the capacity of the company to enter into, and the power of the directors to bind the company is deemed to be free of any limitation under the memorandum or articles.

- (ii) a certified true copy of the order in the case of confirmation of the resolution together with a printed copy of the memorandum as thereby altered;
- (b) no application is made with respect to the alteration to a court under this section, the company shall, within 15 days from the end of the period for making such an application deliver to the Commission a copy of the resolution as passed; and if the Commission—
 - (i) is satisfied, a printed copy of the memorandum as altered by the resolution shall forthwith be delivered to it;
 - (ii) is not satisfied, it shall give notice in writing to the company of its decision and an appeal from its decision shall thereafter lie to the court at the suit of any person aggrieved, if made within 21 days from the date of the receipt by the company of the notice of the rejection, or within such extended time as the court may allow.

(11) The court may, at any time extend the time for the delivery of documents to the Commission under paragraph (a) of subsection (10) for such period as the court may think proper.

(12) If a company defaults in giving notice or delivering any document to the Commission as required by subsection (10) the company and every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding Le3,000,000.

(13) The validity of an alteration of the provision of a company's memorandum with respect to the business or objects of the company shall not be questioned on the ground that it was not

(2) If a company defaults in complying with subsection (1) the company or every officer of the company who is in default commits an offence and is liable on conviction to a fine not exceeding Le3,000,000.

39. (1) Where an alteration is made in the memorandum of a company every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration. Copies of memorandum issued to embody alterations.

(2) If, where such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum which are not in accordance with the alteration, it shall be liable to a fine not exceeding Le 10,000 for each copy so issued, and every officer of the company who is in default shall be liable to the same penalty.

Alteration of memorandum and articles

40. (1) A company may not alter the conditions contained in its memorandum except in the cases and in the manner and to the extent for which express provision is made in this Act. Restriction on alteration of memorandum.

(2) Only those provisions which are required by section 23 or by any other specific provision contained in this Act, to be stated in the memorandum of the company concerned shall be deemed to be conditions contained in its memorandum.

41. (1) The name of the company shall not be altered except with the consent of the Commission in accordance with section 30. Alteration of memorandum.

(2) The business which the company is authorised to carry on or, if the company is not formed for the purpose of carrying on business, the objects for which it is established may be altered or added to in accordance with of section 42 or Part XVI.

(3) Any restriction on the powers of the company may be altered in the same way as the business or object of the company.

(4) Any other condition of the memorandum may be altered in accordance with section 42 or as otherwise provided in this Act.

Mode of alteration of business or objects.

42. (1) A company may, at a meeting of which notice in writing has been duly given to all members (whether or not otherwise entitled to it), by special resolution alter the provisions of its memorandum with respect to the business or objects of the company.

(2) If an application is made to the court in accordance with this section for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.

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

- (a) by the holders of not less in the aggregate than 10 per cent in nominal value of the company's issued share capital or any class thereof or, if the company is not limited by shares, not less than 10 per cent of the company's members; or
- (b) by the holders of not less than 10 per cent of the company's debentures entitling the holders to object to alterations of its objects:

Provided that such 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 not later than 28 days after the date on which the resolution altering the company's business or objects was passed, and may be made on behalf of the persons entitled to make the application by one or more of their number as they may appoint in writing for the purpose.

(5) The court may, on application, by order extend the period for the making of the application.

(6) On the hearing of an application under this section, the court may make an order confirming or cancelling the alteration either wholly or in part and on such terms and conditions as it thinks fit, and may 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 the court may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect such an arrangement:

(7) No part of the capital of the company shall be expended on any purchase referred to in subsection (6).

(8) The debentures entitling the holders to object to alterations of a company's business or objects shall be any debentures secured by a floating charge.

(9) The special resolution altering a company's business or objects shall require the same notice to the holders of any such debentures as to members of the company; and in default of any provisions regulating the giving of notice to such debenture holders, the provisions of the company's articles regulating the giving of notice to members shall apply.

(10) Where a company passes a resolution altering its business or objects and—

- (a) an application is thereafter made to the court for its cancellation under this section, the company shall forthwith give notice to the Commission of the making of the application, and thereafter there shall be delivered to the Commission within 15 days from the date of its making—
 - (i) a certified true copy of the order in the case of refusal to confirm the resolution; or

(7) The certificate of incorporation shall be *prima facie* evidence that—

- (a) the requirements of this Act in respect of re-registered conversion and of matters relating thereto have been complied with; and
- (b) the company is a public company.

(8) A company shall not be converted under this section if it has previously been re-registered as an unlimited liability company.

Re-regis-
tration of
public com-
pany as
private com-
pany.

46. (1) A public company may be re-registered as a private company if—

- (a) a special resolution complying with subsection (2) that it should be so registered is passed and has not been cancelled by the court under this section;
- (b) an application for the purpose signed by a director and the secretary of the company is delivered to the Commission together with a printed copy of the memorandum and articles of the company as altered by the resolution; and
- (c) either—
 - (i) the period during which an application for the cancellation of the resolution under this section may be made has expired without any such application having been made; or
 - (ii) where such an application has been made, the application has been withdrawn or an order has been made confirming the resolution and a copy of that order has been delivered to the Commission.

authorised by subsection (1) except in proceedings taken for the purpose (whether under this section or otherwise) before the expiration of 21 days after the date of the resolution in that behalf; and where such proceedings are taken otherwise than under this section, subsections (9), (10), and (11) 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 or an order dismissing the proceedings were an order confirming the alteration.

43. (1) Subject to the provisions of this Act and to the conditions of the other provisions contained in its memorandum, a company may by special resolution alter or add to its articles. Alteration of articles.

(2) Any alteration or addition so made in the articles shall, subject to the provisions of this Act, be as valid as if originally contained therein and be subject, in like manner, to alteration by special resolution.

44. (1) A member of a company is not bound by an alteration made in the memorandum or articles of the company after the date of which he became a member, if and so far as the alteration— Effect of alteration of company's members.

- (a) requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made; or
- (b) in any way increases his liability as at that date to contribute to the company's share capital or otherwise to pay money to the company.

(2) Subsection (1) operates notwithstanding anything in the memorandum or articles but does not apply in a case where the member agrees in writing, either before or after the alteration is made, to be bound by the alteration.

Re-registration of companies

Re-regis-
tration of
private
company as
public
company.

- 45.** (1) Subject to this section, a private company having a share capital may be re-registered as a public company if—
- (a) a special resolution that it should be so re-registered is passed; and
 - (b) an application for re-registration is delivered to the Commission together with the documents referred in to subsection (4).
- (2) The special resolution shall—
- (a) alter the company's memorandum so that it states that the company is a public company;
 - (b) make such alterations in the memorandum as are necessary to bring it in conformity with the requirements of this Act with respect to the memorandum of a public company; and
 - (c) make such alterations in the company's articles as are required in the circumstances.
- (3) The application shall be made to the Commission in writing and signed by at least one director and the secretary of the company.
- (4) The documents referred to in subsection (1) are—
- (a) a printed copy of the memorandum and articles as altered in pursuance of the resolution;
 - (b) a copy of a written statement by the directors and the secretary certified on oath by them and showing that the paid-up capital of the company as at the date of the application is not less than 25 percent of the share capital as at that date;

- (c) a copy of the balance sheet of the company as at the date of the resolution or the preceding 6 months, whichever is later;
 - (d) a statutory declaration by a director and the secretary of the company—
 - (i) that the special resolution required under this section has been passed; and
 - (ii) that the company's net assets are not less than the aggregate of the paid-up share capital and un-distributable reserves;
 - (e) a copy of a prospectus or statement in lieu of prospectus within fourteen days of the passing of the resolution.
- (5) If the Commission is satisfied that a company has complied with this section and may be re-registered as a public company, it shall—
- (a) retain the application and other documents delivered to it under this section;
 - (b) register the application and other documents; and
 - (c) issue the company a certificate of incorporation stating that the company is a public company.
- (6) Upon the issue of a certificate of incorporation -
- (a) the company becomes a public company; and
 - (b) any alterations in the memorandum and articles set out in the resolution shall take effect.

- (c) a printed copy of the memorandum and the articles incorporating the alterations set out in the application.

(7) If the Commission is satisfied that the company be registered under this section as an unlimited company, it shall retain the application and other documents lodged with it under this section and—

- (a) register the application and other documents; and
- (b) issue to the company a certificate of incorporation appropriate to the status to be assumed by virtue of this section.

(8) On the issue of the certificate—

- (a) the status of the company, by virtue of the issue, shall be changed from limited to unlimited;
- (b) the alterations in the memorandum set out in the application and any alteration in the article so set out shall take effect as if duly made by resolution of the company; and
- (c) this Act shall apply accordingly to the memorandum and articles as altered.

(9) The certificate shall be *prima facie* evidence that the requirements in respect of the re-registration and of matters precedent and incidental to it have been complied with, and that the company was authorised to be re-registered under this Act in pursuance of this section and was duly so re-registered.

(2) The special resolution shall alter the company's memorandum so that it states that the company is a private company and shall make such other alterations in the company's memorandum and articles as are requisite in the circumstances.

(3) Where the special resolution is passed, an application may be made to the court for the cancellation of the resolution, and such application may be made by either—

- (a) the holders of not less in the aggregate than *5 per cent* in the nominal value of the company's issued share capital, or any class thereof; or
- (b) not less than *5 per cent* of the company's members, but excluding any person who has consented to or voted in favour of the resolution.

(4) The application shall be made within 28 days after the passing of the resolution and the applicant shall forthwith give notice to the Commission and to the company.

(5) On the hearing of the application, the court shall make an order either cancelling or confirming the resolution and may make all such orders or give such directions as it may think expedient in the circumstances.

(6) The company shall, within 15 days of the making of the court's order, or within such other period as the court may by order direct, deliver to the Commission a certified true copy of the order.

(7) If a company fails to deliver to the Commission a certified true copy of the order as required in subsection (6), 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 Le3,000,000.

(8) If the Commission is satisfied that a company may be re-registered under this section, it shall—

- (a) retain the application and other documents delivered to it under this section;
 - (b) register the application and other documents; and
 - (c) issue the company with a certificate of incorporation as a private company.
- (9) On the issue of the certificate—
- (a) the company shall become a private company; and
 - (b) the alteration in the memorandum and articles set out in the resolution shall take effect accordingly.
- (10) The certificate shall be *prima facie* evidence that—
- (a) the requirements of this section in respect of re-registration and of matters precedent and incidental to it have been complied with; and
 - (b) the company is a private company.

(11) This section shall not apply to public companies whose members are more than 53.

Re-regis-
tration of
company
limited by
shares as
unlimited.

47. (1) Subject to this section, a company which is registered as limited may be re-registered as unlimited in pursuance of an application in that behalf complying with the requirements of this section.

(2) A company shall be precluded from re-registering under this section if it is limited by virtue of re-registration under section 48.

(3) A public company or a company which has previously been re-registered as unlimited company shall not be re-registered under this section.

(4) An application under this section shall be signed by a director and the secretary of the company, and be lodged with the Commission together with the documents specified in subsection (6).

(5) The application shall set out such alterations in the company's memorandum and articles as are requisite to bring it into conformity with the requirements of this Act with respect to the memorandum and articles of a company to be formed as an unlimited company.

(6) The documents to be lodged with the Commission are as follows:—

- (a) a special resolution by the company being registered as unlimited, subscribed by or on behalf of all the members of the company;
- (b) a statutory declaration made by the directors of the company stating—
 - (i) that the persons by whom or on whose behalf the special resolution is subscribed constitute the whole membership of the company; and
 - (ii) that if any of the members have not subscribed that form themselves, that the directors have taken all reasonable steps to satisfy themselves that each person who subscribed to it on behalf of a member was lawfully empowered to do so; and

(3) Except otherwise provided in the company's memorandum or articles, the business of the company shall be managed by the board of directors who may exercise all such powers of the company as are not by this Act or the memorandum required to be exercised by the members in general meeting.

(4) Unless otherwise provided in the memorandum, the board of directors when acting in good faith and with due diligence within the powers conferred upon them by this Act or the memorandum or articles shall not be bound to obey the directions or instructions of the members in general meeting.

(5) Notwithstanding subsection (3), the members in general meeting may—

- (a) act in any matter if the board of directors are disqualified or are unable to act by reason of a deadlock in the board or otherwise;
- (b) ratify or confirm any action taken by the board of directors;
- (c) make recommendations to the board of directors regarding action to be taken by the board; or
- (d) institute legal proceedings in the name and on behalf of the company if the board of directors refuse or neglect to do so.

(6) No alteration of the memorandum or articles shall invalidate any prior act of the board of directors which would have been valid if that alteration had not been made.

Delegation to committees and managing directors.

52. Unless otherwise provided in the memorandum or articles, the board of directors may—

- (a) exercise their powers through committees consisting of such member or members of their number as they think fit; and

48. (1) Subject to this section, a company which is registered as unlimited may be re-registered as limited by shares if a special resolution that it should be so re-registered is passed, and the requirements of this section are complied with in respect of the resolution or otherwise. Re-registration of unlimited as limited by shares.

(2) A company shall not, under this section be re-registered as a public company or company limited by guarantee; and a company shall be precluded from re-registering under it if it is unlimited by virtue of re-registration under section 47.

(3) The special resolution shall state the proposed share capital and provide for the making of such alterations in the memorandum as are necessary to bring it into conformity with the requirements of this Act with respect to the memorandum of a company so limited, and such alterations in the articles as are requisite in the circumstances.

(4) An application for the company to be re-registered as limited signed by a director and the secretary of the company shall be lodged with the Commission together with the necessary documents not earlier than the day on which the resolution was filed.

(5) The documents to be lodged with the Commission shall be a printed copy of the—

- (a) memorandum as altered in pursuance of the resolution; and
- (b) articles as so altered.

(6) If the Commission is satisfied that the company be re-registered under this section as a company limited by shares, it shall retain the application and other documents lodged with it under this section and register them, and it shall issue to the company a certificate of incorporation appropriate to the status to be assumed by the company by virtue of this section.

(7) On the issue of the certificate—

- (a) the status of the company shall, by virtue of the issue, change from unlimited to limited; and
- (b) the alterations in the memorandum specified in the resolution and the alterations in, and additions to, the articles so specified shall take effect accordingly.

(8) The certificate shall be *prima facie* evidence that the requirements of this section in respect of re-registration and of matters precedent and incidental to it have been complied with, and that the company was authorised to be re-registered in pursuance of this section and was duly so re-registered.

(9) The re-registration of an unlimited company as a limited company shall not affect the rights and liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of the company before the re-registration, and those rights or liabilities may be enforced in the manner provided by Part IV as in the case of a company registered pursuant to Part III.

Promoters

Persons promoting company.

49. Any person who undertakes to take part in forming a company with reference to a given project and to set it going and who takes the necessary steps takes the necessary steps to accomplish that purpose, or who, with regard to a or newly formed company, undertakes a part in raising capital for it, shall *prima facie* be deemed a promoter of the company:

Provided that a person acting in a professional capacity for persons engaged in procuring the formation of the company shall not be deemed to be a promoter.

Duties and liabilities of promoters.

50. (1) A promoter stands in a fiduciary relationship to the company and shall observe the utmost good faith towards the company in any transaction with it or on its behalf and shall compensate the company for any loss suffered by reason of his failure to do so.

(2) A promoter who acquired any property or information in circumstances in which it was his duty as a fiduciary to acquire it on behalf of the company shall account to the company for such property and for any profit which he may have made from the use of such property or information.

(3) Any transaction between a promoter and the company may be rescinded by the company unless, after full disclosure of all material facts known to the promoter, such transaction shall have been entered into or ratified on behalf of the company—

- (a) by the company's board of directors independent of the promoter;
- (b) by all the members of the company; or
- (c) by the company at a general meeting at which neither the promoter nor the holders of any shares in which he is beneficially interested shall vote on the resolution to enter into or ratify that transaction.

(4) No period of limitation shall apply to any proceedings brought by the company to enforce any of its rights under this section but in any such proceedings the court may relieve a promoter in whole or in part and on such terms as it thinks fit from liability hereunder if in all the circumstances, including lapse of time, the court thinks it equitable to do so.

PART IV—ACTS BY OR ON BEHALF OF THE COMPANY

51. (1) A company shall act through its members in general meeting or its board of directors or through officers or agents, appointed by or under authority derived from the members in general meeting or the board of directors.

Division of powers between general meeting and board of directors.

(2) Subject to this Act, the respective powers of the members in general meeting and the board of directors shall be determined by the company's memorandum or articles .

- (a) a person shall not be entitled to make such presumptions if he had actual knowledge to the contrary or if, having regard to his position with, or relationship to, the company, he ought to have known the contrary;
- (b) 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 by reason only that the company's memorandum or articles provide that authority to act in the matter may be delegated to a committee or to an officer or agent.

Liability of company not affected by fraud or forgery of officer.

57. Where, in accordance with this Part a company would be liable to a third party for the acts of any officer or agent, the company shall, except where there is collusion between the officer or agent and the third party, be liable notwithstanding that the officer or agent has acted fraudulently or forged a document purporting to be sealed by or signed on behalf of the company.

Company's contracts

Form of contract.

58. (1) Contracts on behalf of a company may be made, varied or discharged as follows:—

- (a) any contract which if made between individuals would be required by law to be in writing under seal, or which could be varied, or discharged only by writing under seal, may be made, varied or discharged, as the case may be, in writing under the common seal of the company;
- (b) any contract which if made between individuals would be required by law to be

- (b) from time to time appoint one or more of their members to the office of managing director and may delegate all or any of their powers to such managing director.

53. Any act of the members in general meeting, the board of directors, or a managing director while carrying on in the usual way the business of the company shall be treated as the act of the company itself; and accordingly the company shall be criminally and civilly liable therefore to the same extent as if it were a natural person: Acts of company.

Provided that—

- (a) the company shall not incur civil liability to any person if that person had actual knowledge at the time of the transaction in question that the general meeting, board of directors, or managing director, as the case may be, had no power to act in the matter or had acted in an irregular manner or if, having regard to his position with, or relationship to, the company, he ought to have known of the absence of power or of the irregularity;
- (b) if in fact a business is being carried on by the company, the company shall not escape liability for acts undertaken in connection therewith merely because the business in question was not among the businesses authorised by the company's memorandum.

54. (1) Except as provided in section 53, the acts of any officer or agent of a company shall not be deemed to be acts of the company, unless— Acts of officers or agents.

- (a) the company, acting through its members in general meeting, board of directors, or managing director, shall have expressly or impliedly authorised such officer or agent to act in the matter; or

- (b) the company, acting in paragraph (a), shall have represented the officer or agent as having its authority to act in the matter, in which event the company shall be civilly liable to any person who has entered into the transaction in reliance on such representation, unless such person had actual knowledge that the officer or agent had no authority or unless, having regard to his position with, or relationship to the company, he ought to have known of such absence of authority.

(2) The authority of an officer or agent of the company may be conferred prior to action by him or by subsequent ratification; and knowledge of action by such officer or agent and acquiescence therein by all the members for the time being entitled to attend general meetings of the company or by the directors for the time being or by the managing director for the time being shall be equivalent to ratification by the members in general meeting, board of directors, or managing director, as the case may be.

(3) Nothing in this section shall derogate from the vicarious liability of a company for the acts of its employees while acting within the scope of their employment.

Constructive notice of registered documents

Abolition of constructive notice of registered documents.

55. Subject to this Act, regarding particulars in the register, or particulars of charges, a person shall not be deemed to have knowledge of the contents of the memorandum and articles of a company or of any other particulars, documents, or the contents of documents merely because such particulars or documents so registered by the Commission or referred to in any particulars or documents so registered, are available for inspection at the office of the company.

Presumption of regularity.

56. Any person having dealings with a company or with someone deriving title under the company shall be entitled to make the following presumptions, that is to say—

- (a) that the company's memorandum have been duly complied with;
- (b) that every person described in the particulars filed with the Commission pursuant to this Act as a director, managing director or secretary of the company, or represented by the company acting through its members in general meeting, board of directors or managing director, as an officer or agent of the company, has been duly appointed and has authority to exercise the powers and perform the duties customarily exercised or performed by a director, managing director, or secretary of a company carrying on business of the type carried on by the company or customarily exercised or performed by an officer or agent of the type concerned;
- (c) 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;
- (d) that a document has been duly sealed by the company if it bears what purports to be the seal of the company attested by what purports to be the signatures of two persons who, in accordance with paragraph (b) can be assumed to be a director and the secretary of the company,

and the company and those deriving title under it shall be estopped from denying the truth of any such assumption:

Provided that—

(5) Where after the commencement of this Act, any shareholder purports to transfer any shares to a person falling within subsection (1), the purported transfer shall not vest the title in the shares in that person but the title shall remain in the purported transferor or his personal representative who shall hold the shares in trust for that person during the period of his incapacity.

(6) Where a member dies intestate, his personal representative shall hold his shares in trust for the persons referred to in subsection (1) during the period of their incapacity.

(7) Membership of a company with shares shall continue until—

- (a) a valid transfer of all shares held by the member is registered by the company;
- (b) all the shares are transmitted to another person by operation of law;
- (c) the shares are forfeited for non-payment of calls under a provision in the memorandum; or
- (d) until the member dies.

(8) Membership of a company limited by guarantee shall continue until—

- (a) the member dies or validly retires; or
- (b) the member is excluded from membership in accordance with any provision in the memorandum or articles.

Right of member to attend meetings and vote.

66. Subject to section 96, every member shall, notwithstanding any provision in the articles, have a right to attend any general meeting of the company and to speak and vote on any resolution before the meeting; but provided that the articles may provide that a member shall not be entitled to attend and vote unless calls or other sums payable by him in respect of shares in the company have been paid.

in writing under seal, or which could be varied, or discharged only by writing under seal, may be made, varied or discharged as the case may be, in writing signed in the name or on behalf of the company; and

- (c) any contract which if made between individuals would be valid although made by parol only and not reduced into writing or which could be varied or discharged by parol, may be made, varied or discharged, as the case may be, by parol on behalf of the company.

(2) A contract made according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto, their heirs, executors, or administrators, as the case may be; and may be varied or discharged in the same manner in which it is authorised by this section to be made.

59. (1) Any contract or other transaction purporting to be entered into by the company or by any person on behalf of the company prior to its formation may be ratified by the company after its formation and thereupon the company shall become bound by and entitled to the benefit thereof as if it had been in existence at the date of such contract or other transaction and had been a party thereto.

Pre-incorporation contracts.

(2) Prior to ratification by the company, the person who purported to act in the name of or on behalf of the company shall, in the absence of express agreement to the contrary, be personally bound by the contract or other transaction and be entitled to the benefit thereof.

60. A company shall have a common seal the use of which shall be regulated by its articles.

Common seal of company.

Official seal for use abroad.

61. (1) A company whose objects require or comprise the transaction of business in foreign countries may, if authorised by its articles, have for use in any territory, district, or place outside Sierra Leone, an official seal, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district, or place where it is to be used.

(2) A company having such an official seal may, by writing under its common seal, authorise any person appointed for the purpose in any territory, district, or place outside Sierra Leone, affix the seal to any deed or other document to which the company is party in that territory, district or place.

(3) The authority of 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 therein 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 on which and place at which it is affixed.

(5) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

Bills of exchange and promissory notes.

62. (1) A bill of exchange or promissory note shall be deemed to have been made, accepted, or endorsed if made, or by or on account of a company.

(2) The company and its successor shall be bound thereby if the company is in accordance with section 53, liable for the acts of those who made, accepted or endorsed it in its name or on its behalf or account, and the signature by the director or the secretary on behalf of the company shall be deemed to be a signature by procurator for the purposes of section 25 of the Bills of Exchange Act.

Cap 229.

63. A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorised officer of the company and need not be under its common seal . Authenti-
cation.

PART V—MEMBERSHIP OF COMPANY

64. (1) The subscribers of 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. Definition of
"member".

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

(3) In the case of a company having a share capital, each member shall be a shareholder of the company and shall hold at least one share.

65. (1) On the commencement of this Act, an individual shall not be capable of becoming a member of a company if— Capacity to
be member.

(a) he is of unsound mind and has been so found by a court;

(b) he is an undischarged bankrupt, or

(c) he is less than 18 years of age.

(2) After the commencement of this Act, a person who is less than 18 or a person under the age of 18 years shall not be counted for the purpose of determining the legal minimum number of members of a company.

(3) A body corporate in liquidation shall not be capable of becoming a member of a company.

(4) Where at the commencement of this Act, any person falling within paragraph (a) of subsection (1) is a member of a company by reason of being a shareholder of the company, his share shall vest in his committee or trustee, as the case may be.

- (a) the fact of the issue of the warrant;
- (b) a statement of the shares included in the warrant, distinguishing each share by its number so long as the share has a number; and
- (c) the date of the issue of the warrant.

(2) Subject to the company's articles, the bearer of a share warrant is entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members.

(3) The company shall be responsible for any loss incurred by any person by reason of the company entering in the register the name of a bearer of a share warrant in respect of the shares specified in it without the warrant being surrendered and cancelled.

(4) Until the warrant is surrendered, the particulars specified in subsection (1) are deemed to be those required by this Act to be entered in the register of members and on the surrender, the date of the surrender shall be entered.

(5) Subject to the provisions of this Act relating to the directors share qualification, the bearer of a share warrant may, if the articles of the company so provide, be deemed a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles.

Inspection of register and index.

73. (1) Except when the register of members is closed under this Act, the register and the index of members' names shall, during business hours be open to the inspection of any member of the company without charge, and of any other person on payment of the appropriate charge.

(2) The reference to business hours is subject to such reasonable restrictions as the company in general meeting may impose, but so that not less than 2 hours in each day is to be allowed for inspection.

67. If at any time a company ceases to have such number of members provided in section 15 and it carries on business for more than 6 months without at least one member, every person who is a director of the company during the time it so carries on business after those 6 months shall be jointly and severally liable for the payment of all the debts and liabilities of the company incurred during that period.

Companies ceasing to have members.

68. If any person falsely and deceitfully personates any member of a company and thereby obtains or endeavours to obtain any benefit due to any such member, he shall be guilty of an offence and be liable on conviction to imprisonment for a term not exceeding 3 years or to a fine not exceeding Le 8,000,000 or to both the fine and imprisonment.

Personation of members.

Register of members

69. (1) Every company shall keep a register of its members and enter in it the particulars required by this section.

Obligation to keep up and enter register.

(2) There shall be entered in the register—

- (a) the names and addresses of the members;
- (b) the date on which each person was registered as a member; and
- (c) the date at which any person ceased to be a member.

(3) The following applies in the case of a company having a share capital:—

- (a) with the names and addresses of the members there shall be entered a statement—
 - (i) of the shares held by each member, distinguishing each share by its number (so long as the share has a number) and, where the company has more than one class of issued shares, by class; and

(ii) of the amount paid or agreed to be considered as paid on the shares of each member;

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

(4) In the case of a company which does not have a share capital but has more than one class of members, there shall be entered in the register, with the names and addresses of the members, the class to which each member belongs.

(5) If a company defaults in complying with this section, the company and every officer of it who is in default is liable to a default fine and, for a continued contravention, to a daily default fine of Le500,000

(6) Any entry relating to a former member of the company may be removed from the register after the expiration of 10 years from the date on which he ceases to be a member.

(7) Liability incurred by a company from the making or deletion of an entry in its register of members, or from a failure to make or delete such entry, is not enforceable more than 10 years after the date on which the entry was made or deleted or, in the case of any such failure, the failure first occurred.

Location of register.

70. (1) A company's register of members shall be kept at its registered office, except that—

- (a) if the work of making it up is done at another office of the company, it may be kept there; and
- (b) if the company arranges with some other person for the making up of the register to be

undertaken on its behalf by that other, it may be kept at the office of the other person at which the work is done.

(2) Subject to this section, every company shall send notice in the prescribed form to the Commission of the place where its register of members is kept, and of any change in that place.

(3) The notice need not be sent if the register has, at all times since it came into existence been kept at the company's registered office.

(4) If a company defaults for 14 days in complying with subsection (2), the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine of Le500,000

71. (1) Every company having more than 50 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 14 days after the date on which any alteration is made in the register of members, make any necessary alteration in the index. Index of members.

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

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

(4) If default is made in complying with this section, the company and every officer of it who is in default is liable to a fine and for continued contravention, to a daily default fine of Le500,000

72. (1) On the issue of a share warrant, the company shall strike out of its register of members the name of the member then entered in its as holding the shares specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars— Entries in register in relation to share warrants.

- (a) to indicate in writing the capacity in which he holds any shares in the company; and
- (b) if he holds them otherwise than as beneficial owner, to indicate in writing the particulars of the identity of persons interested in the shares in question and whether persons interested in the same shares are parties to any agreement or arrangement relating to the exercise of any rights conferred by the holding of the shares.

(2) Where a company is informed in pursuance of a notice given to any person under subsection (1), or under this subsection that any other person has an interest in any shares in the company, the company may, by notice in writing, require that other person within such reasonable time as is specified in the notice—

- (a) to indicate in writing the capacity in which he holds that interest;
- (b) if he holds it otherwise than as beneficial owner, to indicate in writing, so far as it lies within his knowledge, the persons who have any interests in them (either by name and address or by other particulars sufficient to enable them to be identified) and the nature of their interests.

(3) Whenever a company receives information from a person in pursuance of a requirement imposed on him under this section with respect to shares held by a member of the company, it shall be under an obligation to inscribe against the name of the member in the register of members—

- (a) the fact that the requirement was imposed; and
- (b) the information received in pursuance of the requirement.

(3) Any member of the company or other person may require a copy of the register, or of any part of it, on payment of the appropriate charge; and the company shall cause any copy so required by a person to be sent to him within 10 days beginning with the day next following that on which the requirement is received by the company.

(4) The appropriate charge is—

- (a) under subsection (1), Le5,000 or such sum as the company may determine for each inspection; and
- (b) under subsection (3) Le5,000 or such sum as the company may determine for every 100 words (or fraction of 100 words) required to be copied.

(5) If an inspection required under this section is refused, or if a copy so required is not sent within the proper period, the company and every officer of it who is in default shall be guilty of an offence and be liable in respect of each offence to a fine not exceeding Le.3,000,000.

(6) In the case of such refusal or default the court may, by order, compel an immediate inspection of the register and index, or direct that the copies required be sent to the persons requiring them.

74. Where under paragraph (b) of subsection (1) of section 70, the register of members is kept at the office of some person other than the company, and by reason of any default of his the company fails to comply with—

- (a) subsection (2) of section 70;
- (b) subsection (3) of section 71; or
- (c) section 73;

Non-compliance with sections 70, 71 and 73.

or with any requirement of this Act as to the production of the register, that other person is liable to the same penalties as if he were an officer of the company who was in default, and the power of the court under subsection (6) of section 73 extends to the making of orders against that other person and his officers and servants.

Power to close register.

75. A company may, on giving notice by advertisement in a local newspaper circulating in the district in which the company's registered office is situated, close the register of members for any time or times not exceeding in the whole 30 days in each year.

Power of court to rectify register.

76. (1) If—

- (a) the name of any person is, without sufficient cause, entered in or omitted from a company's register of members; 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) 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 subsection (1), the court may decide any question relating to the title of a 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) In the case of a company required by this Act to send a list of its members to the Commission, 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 Commission.

77. No notice of any trust, express, implied or constructive shall be entered on the register or be receivable by the Commission. Trust not to be entered on register.

78. The register of members is *prima facie* evidence of any matters which is by this Act directed or authorised to be entered in it. Register to be evidence.

Liability of Members

79. (1) Prior to the winding up of a company a member of the company with shares shall be liable to contribute the balance, if any, of the amount payable in respect of the shares held by him in accordance with the terms of the agreement under which the shares were issued or in accordance with a call validly made by the company pursuant to its articles. Liability of members.

(2) Where any contribution has become due and payable by reason of a call validly made by the company pursuant to the articles or where, under the terms of any agreement with the company, a member has undertaken personal liability to make future payments in respect of shares issued to him, the liability of the member shall continue notwithstanding that the shares held by him are subsequently transferred or forfeited under a provision to that effect in the articles, but his liability shall cease if and when the company shall have received payment in full of all such moneys in respect of the shares.

(3) Subject to subsections (1) and (2), no member or past member shall be liable to contribute to the assets of the company, except in the event of its being wound up.

Disclosure of beneficial interest in shares

80. (1) Notwithstanding section 81, a public company may by notice in writing require any member of the company, within such reasonable time as is specified in the notice— Power of company to require disclosure.

(5) Where a company to which subsection (3) applies fails to comply with the applicable subsection, it shall be guilty of an offence and be liable to a fine of Le3,000,000 and every officer who is in default shall be liable to a fine of Le500,000 for each day during which the default continues.

Alteration of share capital

Alteration of share capital by consolidation etc.

86. (1) A company having a share capital may in general meeting and not otherwise alter the conditions of its so as to—

- (a) consolidate and divide all or any part of its share capital into shares of larger amount than its existing shares;
- (b) convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination;
- (c) subdivide its shares or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that the subdivision of 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;
- (d) cancel shares which, at the date 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.

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

(4) Subject to subsection (5), any person who—

- (a) fails to comply with a notice under this section; or
- (b) in purported compliance with such a notice, makes any statement which he knows to be false in material particular or recklessly makes any statement which is false in a material particular, shall be guilty of an offence and liable to imprisonment for a term not exceeding 6 months or to a fine of Le500,000 for every day during which the default continues.

(5) A person shall not be guilty of an offence under paragraph (a) of subsection (4), if he proves that the information in question was already in the possession of the company or that the requirement to give it was for any other reason frivolous or vexatious.

81. (1) A person who is a substantial shareholder in a public company shall give notice in writing to the company stating his name and address and giving full particulars of the shares held by him or his nominee (naming the nominee) by virtue of which he is a substantial shareholder.

Obligation of disclosure by substantial shareholders in public company.

(2) A person is a substantial shareholder in a public company if he holds by himself or by his nominee, shares in the company which entitle him to exercise at least 10 per cent of the un restricted voting rights at any general meeting of the company.

(3) A person required to give a notice under subsection (1) shall do so within 14 days after that person becomes aware that he is a substantial shareholder.

(4) The notice shall be so given notwithstanding that the person has ceased to be a substantial shareholder before the expiration of the period referred to in subsection (3).

(5) A person who fails to comply with this section shall be guilty of an offence and be liable to a fine of Le500,000 for each day during which the default continues.

Person ceasing to be substantial shareholder to notify company.

82. (1) A person who ceases to be a substantial shareholder in a public company shall give notice in writing to the company stating his name and the date on which he ceases to be a substantial shareholder and giving full particulars of the circumstances by reason of which he ceased to be a substantial shareholder.

(2) A person required to give notice under subsection (1), shall do so within 14 days after he becomes aware that he has ceased to be a substantial shareholder.

Register of interests in shares.

83. (1) A public company shall keep a register in which it shall enter—

- (a) in alphabetical order, the names of persons from whom it has received a notice under section 81;
- (b) against each name so entered, the information given in the notice and where it receives a notice under section 82, the information given in that notice.

(2) The register shall be kept at the place where the register of members required to be kept under section 70, is kept and subject to the same right of inspection as the register of members.

(3) The Commission may, at any time in writing, require the company to furnish it with a copy of the register or any part of the register and the company shall furnish the commission within 14 days after the day on which the requirement is received by the company.

(4) If the company ceases to be a public company, it shall continue to keep the register until the end of the period of 6 years beginning with the day next following that on which it ceases to be such a company.

(5) A company shall not, by reason of anything done for the purposes of this section, be effected with notice of, or put on enquiry as to, a right of a person to or in relation to a share in the company.

(6) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding Le3,000,000 and a fine of Le500,000 for each day that the default continues.

84. The matter relating to beneficial interests in shares required by section 80 to be disclosed shall be entered in a different part of the register of interests which shall be so made up that the entries inscribed in it appear in chronological order.

Registration of interests to be disclosed.

PART VI—SHARE CAPITAL

Minimum Share capital

85. (1) Whereafter the commencement of this Act, a memorandum delivered to the Commission under section 32 states that the association to be registered is to be registered with shares, the amount of the share capital stated in the memorandum to be registered shall not be less than 25 per cent of the shares taken up and paid up by the subscribers of the memorandum.

Authorised minimum share capital.

(2) No company having a share capital shall, after the commencement of this Act, be registered with share capital less than the minimum share capital.

(3) Where at the commencement of this Act, the share capital of an existing company is less than the minimum share capital, the company shall, not later than 30 days after the appointed day, increase the share capital to an amount not less than the minimum share capital of which not less than 25 per cent shall be issued.

(4) Subject to sub-section (3) and to section 88, where a company is registered with shares, its issued capital shall not at any time be less than 25 per cent of the share capital.

- (a) 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;
- (b) 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 of capital.

(5) If 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 if—

- (a) 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;
- (b) 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 same enquiry and adjudication as if the company were being wound up by the court.

(6) If a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the court may, if having regard to any special circumstances of the case it thinks proper to do so, direct that subsections (3) to (5) shall not apply as regards any class or classes of creditors.

92. (1) The court, if satisfied—

Court order confirming reduction.

(3) If a company alters its share capital under this section, it shall notify the Commission of the alteration within one month of the alteration.

(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 be liable to a fine of Le500,000 for each day during which the default continues.

87. (1) A company having a share capital, whether or not the shares have been converted into stock, may in general meeting and not otherwise, increase its share capital by new shares of such amount as it thinks expedient. Increase of share capital and notice of increase.

(2) Where a company has increased its share capital it shall, within 15 days after the passing of the resolution authorising the increase, give to the Commission, notice of the increase and the Commission shall record the increase.

(3) Where in connection with the increase of shares any approval is required to be obtained under any enactment other than this Act, the Commission may, on application by a company extend the time within which to give notice of the increase to the Commission.

(4) The notice to be given under this section shall include any particulars prescribed with respect to the classes of shares affected and the condition subject to which the new shares have been or are to be issued and the notice shall be accompanied by a printed copy of the resolution authorising the increase.

(5) If default is made in complying with the provisions of this section, the company in default shall be liable to a fine of Le500,000 for each day during which the default continues.

88. Where a company passes a resolution increasing its share capital, the increase shall not take effect unless— Increase of paid-up capital on increase of shares.

- (a) within 6 months of giving notice of the

increase to the Commission not less than 25 per cent of the share capital including the increase has been issued; and

- (b) the directors have delivered to the Commission a statutory declaration verifying that fact.

89. (1) Subject to confirmation by the court, a company having a share capital may, if so authorised by its articles, by special resolution reduce its share capital in any way.

(2) In particular, and without prejudice to subsection (1), the company may—

- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up;
- (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 company's wants, and the company may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(3) A special resolution under this section shall in this Act be referred to as “a resolution for reducing share capital”.

Special resolution for reduction of share capital.

Reduction of share capital

90. (1) Except as authorised by this Act, a company having a share capital shall not reduce its issued share capital.

Restriction on reduction of issued share capital.

(2) For the purpose of this and other sections relating to reduction of share capital any issue of share capital shall include the share premium account and any capital redemption reserve account of a company, and “issued share” capital shall be construed accordingly.

(3) In this section “share premium account” means the difference between par value of shares and the amount realized on the sale of shares.

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

Application to court for order of confirmation.

(2) If the proposed reduction of share capital involves either—

- (a) diminution of liability in respect of unpaid share capital; or
- (b) subject to subsection (6), the payment to a shareholder of any paid up share capital, and in any other case the court so directs, subsections (3), (4) and (5) shall have effect.

(3) 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 of capital.

(4) The court shall settle a list of creditors entitled to object, and for that purpose—

- (b) where, at the commencement of this Act, any share of a company carries more than one vote or does not carry any vote at a general meeting of the company, such a share shall be deemed, as from the appointed day, to carry one vote only.

(2) If a company contravenes any of the provisions of this section, the company and any officer in default shall be guilty of an offence and be liable to a daily default fine of Le500,000 and any resolution passed in contravention of this section shall be void.

(3) Nothing in this section shall—

- (a) affect any right attached to a preference share under section 119; and
- (b) apply to a private company.

Issue of shares

Power of companies to issue shares.

97. Subject to any limitation in the articles of a company with respect to the number of shares which may be issued, and any pre-emptive rights prescribed in the articles in relation to the shares, a company shall have the power, at such times and for such consideration as it shall determine, to issue shares up to the share capital of the company.

Issue of classes of shares.

98. (1) A company may, where so authorised by its articles, issue classes of shares.

(2) Shares shall not be treated as being of the same class unless they rank equally for all purposes.

Issue of shares at a premium.

99. (1) Shares of a company may be issued at a premium.

(2) Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premium on those shares shall be transferred to an

- (a) with respect to every creditor of the company who under section 91 is entitled to object to the reduction of capital that either—
- (i) his consent to the reduction has been obtained;
- or
- (ii) his debt or claim has been discharged or has determined, or has been secured; and
- (b) that the share capital does not by this reduction fall below the minimum share capital, may make an order confirming the reduction on such terms and conditions as it thinks fit.

(2) Where the court so orders, it may also—

- (a) if for any special reason it thinks proper to do so, make an order directing that the company shall, during such period (commencing on or at any time after the date of the order) as is specified in the order, add to its name as its last words “and reduced”;
- (b) make an order requiring the company to publish (as the court directs) the reasons for reduction of capital or such other information in regard to it as the court thinks expedient with a view to giving proper information to the public and (if the court thinks fit) the causes which led to the reduction).

(3) Where the company is ordered to add to its name the words “and reduced”, those words shall until the expiration of the period specified in the order, be deemed to be part of the company’s name.

Registration of order and minutes of reduction.

93. (1) The Commission, on production to it of the order of the court confirming the reduction of a company's share capital, and the delivery to it of a copy of the order and of the minutes of the meeting of the company (approved by the court) showing, with respect to the company's share capital as altered by the order –

- (a) the amount of the share capital;
- (c) the number of shares into which it is to be divided, and the amount of each share; and
- (c) the amount (if any) at the date of the registration deemed to be paid up on each share,

shall register the order and minutes.

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

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

(4) The Commission shall certify the registration of the order and minutes; and the certificate–

- (a) may be either signed by the Registrar or authenticated by the official seal of the Commission;
- (b) shall be *prima facie* evidence that all the requirements of this Act with respect to the reduction of share capital have been complied with, and that the company's share capital is as stated in the minutes.

(5) The minutes when registered shall be deemed to be substituted for the corresponding part of the company's memorandum, and valid and alterable as if it had been originally contained in it.

(6) The substitution of such minutes for part of the company's memorandum shall be deemed an alteration of the memorandum.

PART VII –SHARES

Nature of Shares

94. Subject to this Act, the rights and liabilities attaching to the share of a company shall–

Rights and liabilities attached to shares.

- (a) be dependent on the terms of issue and of the company's articles; and
- (b) include the right to attend any general meeting of the company and to vote at such a meeting.

95. The shares or other interest of a member in a company shall be personal estate transferable in the manner provided in the articles of association of the company.

Shares as transferable property.

96. (1) Unless otherwise provided by any other enactment or the articles of association–

Prohibition of non-voting and weighted shares.

- (a) any shares issued by a company after the date of commencement of this Act, shall carry the right on a poll at a general meeting of the company to one vote in respect of each share and no company may by its articles or otherwise authorise the issue of shares which carry more than one vote in respect of each share or which do not carry any right to vote; and

be returned to the company a form of application as prescribed in the company's articles, duly completed and signed by the person wishing to purchase shares;

- (c) upon the receipt of an application, a company shall, where it wholly or partially accepts the application, make an allotment to the applicant and within 21 days after the allotment notify the applicant of the fact of the allotment and the number of shares allotted to him;
- (d) the company shall, not later than 7 days after receiving the application in writing notify applicants who are unsuccessful and within 14 days after the end of the allotments refund the money of every unsuccessful applicant;
- (e) an applicant under this section may within 10 days before the closure of any public offer, withdraw his application by written notice to the company.

Allotment as acceptance of offer.

105. An allotment of shares made and notified to an applicant in accordance with section 104, shall be an acceptance by the company of the offer by the applicant to purchase its shares and the offer takes effects on the date on which the allotment is made by the company.

Payment on allotment.

106. Subject to sections 114 to 117, a company may in its articles, make provision with respect to payments on allotment of its shares.

Prohibition of allotment unless minimum subscription received.

107. (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 shall be raised by the issue of share capital in order to provide for matters specified in in subsection (6) has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company.

account, to be called "the share premium account"; and the provision of this Act relating to the reduction of share capital of a company shall, except as provided in this section, apply as if the share premium account were paid up share capital of the company.

(3) Notwithstanding anything to the contrary in subsection (2), the share premium account may be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares, in writing off—

- (a) the preliminary expenses of the company; or
- (b) the expenses of, or the commission paid or discount allowed on, issue of shares of the company; or in providing for the premium payable on redemption of any redeemable share of the company.

(4) Where a company has, before the commencement of this Act issued any shares at a premium, this section shall apply as if the shares had been issued after the commencement of this Act:

Provided that any part of the premium which has been so applied that it does not at the commencement of this Act form an identifiable part of the company's reserves within the meaning of this Act shall be disregarded in determining the sum to be included in the share premium account.

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

Issue of shares at discount.

- (a) the issue of the shares at a discount is authorised by resolution passed in general meeting of the company, and thereafter is sanctioned by the court;

- (b) the resolution specifies the maximum rate of discount at which the shares are to be issued;
- (c) the shares to be issued at a discount are issued within the month after the date on which the issue is sanctioned by the court or within such extended time as the court may allow; and
- (d) 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.

(2) Where a company has passed a resolution authorising the issue of shares at a discount, it may apply to the court for an order sanctioning the issue, and on any such application the court may, having regard to all the circumstances of the case, if it thinks proper to do so, 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 and every balance sheet issued by the company subsequent to the issue of shares, shall contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the prospectus.

(4) If default is made in complying with subsection (3), the company and every officer of the company who is in default shall be guilty of an offence and be liable to a fine of Le500,000 for each day during which the default continues.

101. Subject to section 132, a company limited by shares may, if so authorised by its articles, issue preference shares which shall, or at the option of the company, be liable to be redeemed.

Issue of redeemable preference shares.

102. (1) Where a company has purported to issue or allot shares and the creation, issue or allotment of those shares was invalid by reason of any provision of this Act or any other enactment or of the articles of the company or otherwise, or the terms of issue or allotment were inconsistent with or unauthorised by such provision, the court may, upon application made by the company or by a holder or mortgagee of those shares or by a creditor of the company, and upon being satisfied that in all the circumstances it is just and equitable to do so, validate the issue or allotment of those shares or confirm the terms of the issue allotment, as the case may be.

Validation of improperly issued shares.

(2) In every case where the court validates an issue or allotment of shares or confirms the terms of an issue or allotment in accordance with subsection (1), it shall make, upon payment of the prescribed fees, an order which shall be proof of the validation or confirmation and upon the issue of the order, those shares shall be deemed to have been issued or allotted upon the relevant terms of issue or allotment.

Allotment of shares

103. Subject to this Act, the power to allot shares shall be vested in the company which may delegate it to the directors, subject to any conditions of directions that may be imposed in the articles or from time to time by the company in general meeting.

Authority to allot shares.

104. The following provisions shall apply in respect of an application for an allotment of issued shares of a company—

Method of application and allotment.

- (a) in the case of a private company or a public company where the issue of shares is not public, there shall be submitted to the company a written application signed by the person wishing to purchase shares and indicating the number of shares required;
- (b) in the case of a public company, subject to any conditions imposed by the Commission where the issue of shares is public, there shall

Provided that, in case of default in delivering to the Commission within one month after the allotment any document required to be delivered by this section, the company or any officer liable for the default, may apply to the court for relief, and the court, if satisfied that the omission to deliver the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make any order extending the time for the delivery of the document for such period as the court may think proper.

Prohibition of payment of commissions, discounts out of shares and capital.

111. (1) Subject to section 105, no company shall apply any of its shares or capital money either directly or indirectly in payment of 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 absolutely or conditional, for any shares in the company, whether the shares or capital money of any property acquired by the company or to the contract price of any work to be executed for the company, or any such money is paid out of the nominal purchase money or contract price, or otherwise.

(2) Nothing in this section shall affect the payment of any brokerage as is usual for a company to pay.

(3) A vendor to or promoter of a company 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.

Power to pay commission in certain cases.

112. (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 subscription, whether absolutely or conditionally, for any shares in the company if—

- (a) the payment of the commission is authorised by the articles;

(2) For the purposes of subsection (1), a sum shall be deemed to have been paid to and received by the company if a cheque for that sum has been received in good faith by the company and the directors of the company have no reason for suspecting that the cheque will not be paid.

(3) The amount 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”.

(4) The amount payable on application on each share shall not be less than 5 per cent of the nominal amount of the share.

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

(6) If the conditions specified in this section have not been complied with on the expiration of 30 days after the closure of the public offering, all moneys received from applicants for shares shall be forthwith repaid to them without interest, and, if such money is not so repaid within 40 days, after the closure of the public offering, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per cent per annum from the expiration of the fortieth day; but 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.

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

(8) This section, except subsection (3), shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

Prohibition of allotment in certain cases of prospectus delivered to Commission.

- 108.** (1) A company having a share capital which—
- (a) does not issue a prospectus on or with reference to its formation; or
 - (b) issued such a prospectus but has not proceeded to allot any of the shares, shall not allot any of its shares or debentures unless at least 3 days before the first allotment of either shares or debentures there has been delivered to the Commission 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 authorised in writing in the form containing the particulars set out in the Second Schedule .
- (2) This section shall not apply to a private company.
- (3) If a company acts in contravention of this section, the company and every director of the company who knowingly authorises or permits the contravention shall be guilty of an offence and be liable to a fine not exceeding Le3,000,000

Effect of irregular allotment.

- 109.** (1) An allotment made by a company to an applicant in contravention of sections 107 and 108, shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, notwithstanding that the company is in the course of being wound up.
- (2) If any director of a company knowingly contravenes or permits or authorises the contravention of any of the provisions of 107 and 108 sections with respect to allotment, 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.

(3) Proceedings to recover any loss, damages or costs shall not be commenced after the expiration of two years from the date of allotment.

110. (1) Whenever a company limited by shares makes any allotment of its shares, the company shall, within one month thereafter delivery to the Commission for registration—

Return as to allotments.

- (a) a return of the allotments stating the number of nominal amount of the shares comprised in the allotment, the names, addresses and description 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—
 - (i) a contract in writing consisting of 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, such contracts being duly stamped;
 - (ii) 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; and
 - (iii) particulars of the valuation of the consideration in accordance with section 114 if any.

(2) If default is made in complying with this section, every officer of the company who is in default shall be guilty of an offence and be liable to a fine of Le500,000 for each day during which the default continues:

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

Reserve liability of companies having share capital.

118. A limited company may, by special resolution determine that any of its shares capital shall not be called up which has not already been called up, except in the event and for the purposes of the company being wound up and thereupon that portion of its share capital shall not be capable of being called up except for the winding up of the company.

Right of a preference shareholder to more than one vote.

119. (1) Notwithstanding section 96, the articles may provide that reference shares issued after the commencement of this Act shall carry the right to attend general meetings and on a poll at the meeting to more than one vote per share in the following circumstances, but not otherwise:—

- (a) upon any resolution during such period as the preferential dividend or any part of it remains in arrear and unpaid, such period starting from a date not more than 12 months or such less period as the articles may provide, after the due date of the dividend;
- (b) upon any resolution which varies the rights attached to such shares;
- (c) upon any resolution to remove an auditor of the company or to appoint another person in place of such auditor; and
- (d) upon any resolution for the winding up of the company or during the winding up of the company.

(2) Notwithstanding the provisions of section 96, any special resolution of a company increasing the number of shares of any class may validly resolve that any existing class of preference shares shall carry the right to such votes additional to one vote per

- (b) subject to any enactment to the contrary, the commission paid or agreed to be paid does not exceed 10 percent of the price at which the shares are issued or the amount or rate authorized by the articles, whichever is the lesser;
- (c) the amount or rate per cent 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 the payment of the commission to the Commission 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 the manner specified in this section.

(2) If default is made in delivering to the Commission any document required to be delivered to the Commission under this section, the company and every officer in default shall be liable to a fine not exceeding Le3,000,000.

Statement in balance sheet as to commission.

113. (1) Where a company has paid any sum by way of commission in respect of any shares in the company, the amount so paid or so much of it as has not been written off, shall be stated in every balance sheet of the company until the whole amount has been written off.

(2) If default is made in complying with this section, the company and every officer of the company in default commits an offence and be liable to a fine of Le500,000 for each day during which the default continues.

Call on and payment for shares

Payment for shares.

114. Subject to sections 116 and 117, the shares of a company and any premium on them shall be paid up in cash, or where the articles so permit, by a valuable consideration other than cash or partly in cash and partly by a valuable consideration other than cash.

Meaning of payment in cash.

115. Shares shall not be deemed to have been paid for in cash except to the extent that the company shall actually have received cash for them at the time of, or subsequent to the agreement to issue the shares, and where shares are issued to a person who has agreed to sell property or rendered or agreed to render services to the company or to persons nominated by him, the amount of any payment made for the property or services shall be deducted from the amount of any cash payment made for the shares and only the balance (if any) shall be treated as having been paid in cash for such shares notwithstanding any exchange of cheques or other securities for money.

Payment other than in cash.

116. (1) Where a company agrees to accept for its shares otherwise than wholly in cash, it shall appoint an independent valuer who shall determine the true value of the consideration other than cash and prepare and submit to the company a report on the value of the consideration.

(2) The valuer shall be entitled to require from the officers of the company such information and explanation as he thinks necessary to enable him carry out the valuation or make the report under subsection (3).

(3) The company shall, not more than three days after the receipt by it of the valuer's report, send a copy of it to the proposed purchaser of shares, and indicate to the proposed purchaser whether or not it intends to accept the consideration as payment or part payment for its shares by the valuer as worth at least as much as may be credited as paid up in respect of the shares allowed to the proposed purchaser.

(4) A company shall not accept as payment or part-payment for its shares consideration other than cash, unless the cash value of the consideration as determined by the valuer is worth at least as much as may be credited as paid-up in respect of the shares allowed to the proposed purchaser.

(5) A valuer who, in his report or otherwise, knowingly or recklessly makes a statement which is misleading, false or deceptive in a material particular shall be guilty of an offence and be liable to imprisonment for a term not exceeding 12 months or to a fine not exceeding Le8,000,000 or both such imprisonment and fine.

(6) A valuer shall be paid by the company and the buyer of the shares such amount as may be agreed upon.

(7) For the purposes of this section "valuer" means an auditor, a valuer, a surveyor or an accountant not being a person in the employment of the company nor an agent or associate of the company or any of its directors or officers

117. To the extent to which it is so authorised by its articles, a company may—

Power to pay different amounts on shares.

- (a) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;
- (b) accept from any member 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;

(7) In this section, “transfer” means a transfer duly stamped and otherwise valid but, does not include a transfer which under this Act, a company is for any reason entitled to refuse to, and does not, register.

Effect of share certificate.

123. (1) A certificate, under the common seal of the company, specifying any shares held by any member, shall be *prima facie* evidence of the title of the member to the shares.

(2) If any person changes his position to his detriment in good faith on the continued accuracy of the statements made in a certificate, the company shall be estopped from denying the continued accuracy of such statements and shall compensate the person for any loss suffered by him in reliance on them and which he would not have suffered had the statement been or continued to be accurate.

(3) Nothing in subsection (2) shall derogate from any right the company may have to be indemnified by any other person.

Probate, etc. as evidence of grant.

124. The production to a company of any document which is by law sufficient evidence of probate of the will, or letters of administration of the estate, or confirmation as executor, of a deceased person having been granted to some person, shall be accepted by the company as sufficient evidence of the grant, notwithstanding anything in its articles to the contrary.

Issue and effect of share warrants to bearer.

125. (1) A company limited by shares, if so authorised by its articles may, with respect to any fully paid-up shares, issue under its common seal a warrant (in this Act called a “share warrant”) stating that the bearer of the warrant is entitled to the shares specified in it, and may provided, by coupons or otherwise, for the payment of the future dividends on the shares.

(2) A share warrant shall entitle the bearer to the shares specified in it and the shares may be transferred by delivery of the warrant.

share as shall be necessary in order to preserve the existing ratio which the votes exercisable by the holders of such preference shares at a general meeting of the company bear to the total votes exercisable at the meeting.

(3) For the purposes of subsection (2), a dividend shall be deemed to be due on the date appointed in the articles for the payment of the dividend for any year or other period, or if no such date is appointed, upon the day immediately following the expiration of the year or other period, and whether or not such dividend shall have been earned or declared.

120. In construing the provisions of a company’s articles in respect of the rights attached to shares, the following rules of construction shall be observed— Construction of class rights.

- (a) unless the contrary intention appears, no dividend shall be payable on any shares unless the company resolves to declare such dividend;
- (b) unless the contrary intention appears, a fixed preferential dividend payable on any class of shares is cumulative, that is to say, no dividend shall be payable on any shares ranking subsequent to them until all the arrears of the fixed dividend have been paid;
- (c) unless the contrary intention appears, in a winding up arrears of any cumulative preferential dividend, whether earned or declared or not are payable up to the date of actual payment in the winding up;
- (d) if any class of shares is expressed to have a right to a preferential dividend, then, unless the contrary intention appears, such class has no further right to participate in dividends;

- (e) if any class of shares is expressed to have preferential rights to payment out of the assets of the company in the event of winding up, then unless the contrary intention appears, such class has no further right to participate in the distribution of assets in the winding up;
- (f) in determining the rights of the various classes to share in the distribution of the company's property on a winding up, no regard shall be had, unless the contrary intention appears, to whether or not such property represents accumulated profits or surplus which would have been available for dividend while the company remained a going concern;
- (g) subject to this section, all shares rank equally in all respects, unless the contrary intention appears in the company's articles.

Numbering of shares

Shares to be numbered.

121. Each share in a company having a share capital shall be distinguished by its appropriate number:

Provided that, if at any time all the issued shares in a company, or all of its issued shares 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.

Share certificates

Issue of share certificates.

122. (1) Every company shall, within two months after the allotment of any of its shares and within 3 months after the date on which to transfer of any shares is lodged with the company, complete and have ready for delivery the certificates of all shares allotted or transferred, unless the conditions of issue of the shares otherwise provide.

(2) Every person whose name is entered as a member in the register of members shall be entitled without payment to receive, within 3 months of allotment or lodgement of transfer or within such other period as the conditions of issue shall provide one certificate for all his shares or several certificates each for one or more of his shares upon payment of a fee as the directors shall, from time to time, determine.

(3) Every certificate issued by a company shall be under the company's seal and shall specify the shares to which it relates and the amount paid up on them:

Provided that in respect of shares held jointly by several persons, the company shall not be bound to issue more than one certificate, and delivery of a certificate for shares to one of several joint holders shall be sufficient delivery to all such holders.

(4) If a share certificate is defaced, lost or destroyed, it may be replaced on such terms (if any), as to evidence and indemnity and the payment of the expenses of the company of investigating evidence as the directors think fit.

(5) If any company on which a notice has been served requiring it to make good any default in complying with the provisions of subsection (1) of this section fails to make good the default within 10 days after the service of the notice, the court may, on the application of the person entitled to have the certificate 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.

(6) 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 be liable to a fine of Le500,000 for each day during which the default continues.

Certification
of transfers.

132. (1) When the holder of any shares or debentures of a company wishes to transfer to any person only a part of the shares represented by one or more certificates, the instrument of transfer together with the relevant certificates shall be delivered to the company with a request that the instrument of transfer be recognised and registered.

(2) A company to which a request is made under subsection (1) section may recognise the instrument of transfer by endorsing on it the words “certificate lodged” or words to the like effect.

(3) The recognition by a company of any instrument of transfer of shares in or debentures of the company shall be taken as a representation by the company to any person acting on the faith of the recognition that there have been produced to the company such documents as on the face of them show a *prima facie* title to the shares or debentures in the transferor named in the instrument of transfer, but not as a representation that the transferor has any title to the shares.

(4) Where any person acts on the faith of a false recognition by a company made negligently, the company shall be under the same liability to that person as if the recognition has been made fraudulently.

(5) For the purposes of this section—

- (a) an instrument of transfer shall be deemed to be recognised if it bears the words “certificate lodged” or words to the like effect;
- (b) the recognition of an instrument of transfer shall be deemed to be made by a company if—
 - (i) the person issuing the instrument is a person authorised to issue certificated instruments of transfer on the company’s behalf; and

Transfer and transmission of shares and debentures

126. (1) Notwithstanding anything in the articles of a company, it shall not be lawful for the company to register a transfer of shares in or debentures of the company, unless a proper instrument of transfer has been delivered to the company: ^{Transfer of shares.}

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

(2) In the case of the death of a shareholder or debenture holder, the survivor, where the deceased was a joint holder, and the legal representatives of the deceased, where he was a sole holder or last survivor of joint holders, shall be the only persons recognized by the company as shareholders or debenture Holders.

(3) A person upon whom the ownership of a share or debenture devolves by reason of his being the legal personal representative or trustee in bankruptcy of the holder or by operation of law, may upon such evidence being produced as the company may properly require, be registered himself as the holder of the share or debenture or transfer it to some other person; and such transfer shall be as valid as if he had been registered as a holder but shall have no right to refuse registration of the person himself.

(4) A person upon whom the ownership of a share or debenture devolves by reason of his being the legal representative, receiver or trustee in bankruptcy of the holder or by operation of law shall, prior to registration of himself or a transferee be entitled to the same dividends, interest and other advantages as if he were the registered shareholder and, in the case of a share, to the same rights and remedies as if he were a member of the company, except that he shall not, before being registered as a member in respect of the share, be entitled to attend and vote at any meeting of the company:

Provided that the company may at any time give notice requiring such person to elect to be registered himself or to transfer the share or debenture; and if the notice is not complied with within 90 days,

the company may thereafter suspend payment of all dividends, interest or other moneys payable in respect of the share or debenture until the requirements of the notice have been complied with.

Entry in register of transfers.

127. (1) 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 conditions as if the application for the entry were made by the transferee.

(2) Until the name of the transferee is entered in the register of members in respect of the transferred shares, the transferor shall, so far as concerns the company, be deemed to remain the holder of the shares.

Notice of refusal to register.

128. (1) If a company refuses to register a transfer of any share it shall, within two months after the date on which the transfer was lodged with it, send notice of the refusal to the transferee.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding Le3,000,000.

Transfer by personal representatives.

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

Recognition of executors' etc. title to shares.

130. (1) The executors or administrators of a deceased sole holder of a share are the only persons recognised by the company as having any title to the share.

(2) In the case of a share registered in the names of two or more holders, the survivor or survivors, or the legal representatives of the deceased survivor shall be the only persons recognised by the company as having title to the share.

(3) Nothing in subsection (2) shall release the estate of a deceased joint holder from any liability in respect of any share which have been jointly held by him with other persons.

(4) Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be properly required by the directors, have the right, either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made but the directors shall, in either case have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.

(5) A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

131. (1) Any person claiming to be interested in any shares or the dividends or interest on them may protect his interest by serving on the company concerned a notice and affidavit of interest. Protection of beneficiaries.

(2) Notwithstanding section 77, the company shall enter on the register of members, the fact that such notice has been served and shall not register any transfer or make any payment or return in respect of the shares contrary to the terms of the notice until the expiration of 21 days notice to the claimant of the proposed transfer or payment.

(3) In the event of any default by the company in complying with this section, the company shall compensate any person, injured by the default.

- (i) the company's principal purpose in giving the assistance is not to reduce or discharge any liability incurred by a person for the purpose of the acquisition of shares in the company or its holding company, or the reduction or discharge of such liability is but an incidental part of some larger purpose of the company; and
- (ii) the assistance is given in good faith;
- (f) a distribution of a company's assets by way of dividend lawfully made or a distribution made in the course of the winding up of the company;
- (g) the allotment of bonus shares;
- (h) anything done in pursuance of an order of the court under section 477 in relation to the power of a company to compromise with its creditors and members;
- (i) the provision of financial assistance by a company or any of its subsidiaries for the purposes of or in connection with anything done by the company for the purpose of enabling or facilitating transactions in shares in the company between and involving the acquisition of beneficial ownership of those shares by any of the following persons:-
 - (i) the *bona fide* employees or former employees of that company or of another company in the same group; or
 - (ii) the wives, husbands, widows, widowers, children or step children under the age of 18 of such employees or former employees;

- (ii) the recognition is signed by a person authorised to recognise transfers of shares or debentures on the company's behalf by or any officer or servant either of the company or of a body corporate so authorised;
- (c) a recognition shall be deemed to be signed by any person if-
 - (i) it purports to be authenticated by his signature or initials (whether handwritten or not); and
 - (iv) it is not shown that the signature or initials was or were placed there by any person other than him or person authorised to use the signature or initials for the purpose of transfers on the company's behalf.

Transaction by company in respect of its own shares

133. (1) The provisions of this section shall apply in respect of redemption by a company of any redeemable preference shares issued by it under section 99. Redemption of redeemable preference of shares.

(2) The shares shall not be redeemed unless they are fully paid, and redemption shall be made only out of –

- (a) profits of the company which would otherwise be available for dividend; or
- (b) the proceeds of a fresh issue of shares made for the purposes of the redemption.

(3) Before the shares are redeemed, the premium, if any, payable on redemption, shall be provided for out of the profits of the company or out of the company's share premium account.

(4) Where shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall, out of profits which should otherwise have been available for dividend, be transferred to a reserve fund to be called “the capital redemption reserve fund”, a sum equal to the nominal amount of the shares redeemed, and the provisions of this Act relating to the reduction of the share capital of the company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid up share capital of the company.

(5) Subject to the provisions of this section the redemption of reference shares thereunder, may be effected on such terms and in such manner as are provided by the articles of the company.

Prohibition of financial assistance by company for acquisition of its shares.

134. (1) Subject to this section—

- (a) where a person is acquiring or is proposing to acquire shares in a company, it shall not be lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of that acquisition before or at the same time as the acquisition takes place; and
- (b) where a person has acquired shares in a company and any liability has been incurred (by that or any other person), for the purpose of that acquisition, it shall not be lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of reducing or discharging the liability so incurred.

(2) Nothing in subsection (1) shall be taken to prohibit—

- (a) the lending of money by the company in the ordinary course of its business, where the lending of money is part of the ordinary business of a company;

- (b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of or subscription for, fully-paid shares in the company or its holding company, being a purchase of subscription by trustees of or for shares to be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company;
- (c) the making by a company of loans to persons, other than directors, *bona fide* in the employment of the company with a view to enabling those persons to purchase or subscribe for fully-paid shares in the company or its holding company, to be held by themselves by way of beneficial ownership.
- (d) a company from giving financial assistance for the acquisition of shares in it or its holding company if—
 - (i) the company’s principal purpose in giving that assistance is not to give it for the purpose of the acquisition if giving of the assistance for that purpose is but an incidental part of some larger purpose of the company; and
 - (ii) the assistance is given in good faith in the interest of the company;
- (e) a company from giving financial assistance if—

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

(3) Particulars of shares delivered to the company on different dates and under different contracts may be included in a single return to the Commission and in such a case the amount required to be stated under paragraph (a) of subsection (2) is the aggregate amount paid by the company for all the shares to which the return relates.

Enforceability of contract to acquire shares.

139. (1) A contract with a company providing for the acquisition by the company of shares in the company is specifically enforceable against the company, except to the extent that the company cannot perform the contract without there being a breach of section 134.

(2) In any action brought on a contract referred to in subsection (1), the company shall have the burden of proving that the performance of the contract is prevented by section 134.

Re-issue of shares acquired.

140. Where shares in a company are redeemed, purchased, acquired or forfeited, such shares shall, unless the company by alteration of its articles of association cancels the shares, be available for re-issue by the company.

Acquisition of shares of holding company.

141. (1) Subject to this section, a corporation or its nominees shall not become a member of a company which is its holding company, and any allotment or transfer of shares in a company to its subsidiary or to a nominee for the subsidiary shall be void.

(2) A company which is a subsidiary may acquire shares in its holding company where the subsidiary company is interested as a personal representative or trustee unless the holding company or any of its subsidiaries is beneficially interested otherwise than by way of security for the purpose of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

- (j) the making by a company of loans to persons other than directors, employed in good faith, by the company with a view to those persons to acquire fully paid shares in the company or its holding company to be held by them by way of beneficial ownership.

(3) The aggregate amount of any outstanding loans made under paragraph (c) of subsection (2) shall be shown as a separate item in every balance sheet of the company.

(4) If a company acts in contravention of this section, the company and every officer of the company who is in default shall be guilty of an offence and be liable to a fine not exceeding Le5,000,000.

(5) In this section “financial assistance” means—

(a) financial assistance given by way of—

- (i) a gift, guarantee, security or indemnity other than an indemnity in respect of the indemnifier’s own neglect or default or by way of release or waiver;
- (ii) a loan or any other agreement under which any of the obligations of the person giving the assistance are to be fulfilled at a time when, in accordance with the agreement, remains unfulfilled, or by way of the novation of or assignment of rights arising under, a loan or such other agreement; or

(b) any other financial assistance given by a company the net assets of which are thereby reduced to a material extent or which has no net assets.

Acquisition by company of its own shares.

135. (1) Subject to subsection (2) and its articles, a company may not purchase or otherwise acquire shares issued by it.

(2) A company may acquire its own shares for the purpose of—

- (a) settling or compromising a debt or claim asserted by or against the company;
- (b) eliminating fractional shares;
- (c) fulfilling the terms of a non-assignable agreement under which the company has an option or is obliged to purchase shares owned by an officer or an employee of the company;
- (d) satisfying the claim of a dissenting shareholder; or
- (e) complying with a court order.

(3) A company may accept from any shareholder, a share in the company surrendered to it as a gift, but may not extinguish or reduce a liability in respect of an amount unpaid on any such share, except in accordance with section 89.

Conditions for purchase by a company of its own shares.

136. Notwithstanding any provision in the articles, a company shall not purchase any of its own shares except on compliance with the following conditions:—

- (a) shares shall only be purchased out of profits of the company which would otherwise be available for dividend or the proceeds of a fresh issue of shares made for the purpose of the purchase;
- (b) redeemable shares shall not be purchased at a price greater than the lowest price at which

they are redeemable or shall be redeemable at the next date thereafter at which they are due or liable to be redeemed;

- (c) no purchase shall be made in breach of section 136.

137. No transaction shall be entered into by or on behalf of a company whereby the total number of its shares, or of its shares of any one class, held by persons other than the company or its nominees becomes less than 70 per cent of the total number of shares of that class, which have been issued: Limit on number of shares acquired.

Provided that—

- (a) redeemable shares shall be disregarded for the purposes of this section; and
- (b) where, after shares of any class have been issued, the number of such shares has been reduced, this section shall apply as if the number originally issued (including shares of that class cancelled before the reduction took effect) had been the number as so reduced.

138. (1) Within the period of 28 days beginning with the date on which any shares purchased by a company under this Part are delivered to it, the company shall deliver to the Commission for registration a return in the prescribed form stating with respect to shares of each class purchased, the member and nominal value of those shares and the date on which they are delivered to the company. Disclosure by company of purchase of its own shares.

(2) In the case of a public company, the return shall also state—

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

(2) For the purposes of subsection (1), a register shall be deemed to be duly closed if closed in accordance with provisions contained in the articles or in the debentures or, in the case of debenture stock, in the stock certificates, or in the trust deed or other documents securing the debentures or debenture stock, during such period or periods, not exceeding in the whole thirty days in any year, as may be therein specified.

(3) Every registered holder of debentures and every holder of shares in a company may require a copy of the register of the holders of debentures of the company or any part thereof on payment of such fees as the Commission may prescribe.

(4) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of such debentures at his request on payment of such fees as may be prescribed by the Commission or, where the trust deed has not been printed, on payment of such fees as the Commission may prescribe.

(5) If inspection is refused, or a copy is refused or not forwarded, the company and every officer of the company who is in default shall be guilty of an offence and be liable to a fine not exceeding Le3,000,000.

(6) Where a company is in default, the court may by order compel an immediate inspection of the register or direct that the copies required shall be sent to the person requiring them.

Meetings of
debenture
holders.

149. (1) The terms of any debenture or trust deed may provide for the convening of general meetings of the debenture holders and for the passing, at such meetings, of a resolution binding on all the holders of the debentures of the same class.

(2) Whether or not the debentures or trust deed contain such provisions as are referred to in subsection (1), the Commission may at any time direct a meeting of the debentures holders of any class to be held and conducted in such manner as the Commission thinks fit, to consider ancillary or consequential directions as it shall think fit.

(3) A subsidiary which is, at the commencement of this Act, a holder of shares of its holding company or a subsidiary which acquired shares in its holding company or may continue to hold such shares, but subject to subsection (1), shall have no right to vote at meetings of the holding company or any class of shareholders of the holding company and shall not acquire any future shares in it except on a capitalisation issue.

PART VIII – DEBENTURES

Creation of debentures and debenture stock

142. A company may borrow money for the purpose of its business or objects and may mortgage or charge its undertaking, property and uncalled capital, or any part thereof, and issue debentures, debenture stock and other securities whether outright or as security for any debt, liability or obligation of the company or of any third party.

Power to
borrow
money, to
charge
property and
to issue
debentures.

Types of debentures

143. A company may issue perpetual debentures, and a condition contained in any debentures, or in any deed for securing any debentures, shall not be invalid by reason only that the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

Perpetual
debentures.

144. Debentures may be issued upon the terms that in lieu of redemption or repayment, they may, at the option of the holder or the company, be converted into shares in the company on such terms as may be stated in the debentures.

Convertible
debentures.

145. (1) Debentures may either be secured by charge over the company's property or may be unsecured by any charge.

Secured and
unsecured
debentures.

(2) Debentures may be secured by a fixed charge on certain of the company's property or a floating charge over the whole or a specified part of the company's undertaking and assets, or by both a fixed charge on certain property and floating charge.

(3) A charge securing debentures shall become enforceable on the occurrence of the events as specified in the debentures or the deeds securing the debenture.

(4) Where any legal proceedings are brought by a debenture holder to enforce the security of a series of debentures of which he holds part, the debenture holder shall sue in a representative capacity on behalf of himself and all other debenture holders of that series.

(5) Where the debentures are secured by charge the provisions of section 170 relating to the registration of particulars of charges shall apply.

Redeemable debentures

146. A company limited by shares may issue debentures which are, or at the option of the company liable to be redeemed.

Power to re-issue re-deemed debentures in certain cases.

147. (1) Where either before or after the commencement of this Act, a company has redeemed any debentures previously issued, then unless—

- (a) any provision, express or implied, to the contrary is contained in the articles or in any contract entered into by the company; or
- (b) the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,

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 either before or after the commencement of this Act, 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 given by this section to or deemed to have been possessed by a company, whether the re-issue or issue was made before or after the commencement of this Act, shall be treated as issue of a new debenture for the purposes of a stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued.

(5) 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.

(6) Nothing in this section shall prejudice any power to issue debentures in place of any debentures paid off or otherwise satisfied or extinguished which, by its debentures or the securities for the debenture, is reserved to a company.

148. (1) Every register of holders of debentures of a company shall, except when duly closed, be open to the inspection of the registered holders of such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that not less than two hours in each day shall be allowed.

Right of debenture holders and shareholders as to register of holders.

Debenture trust deeds

Execution of
debenture
trust deed.

155. (1) Every company which offers debentures to the public for subscription or purchase shall, before issuing any of the debentures, execute a debentures trust deed in respect of them and procure the execution of the deed by the trustee for the debenture holders appointed by the deed.

(2) No debenture trust deed shall cover more than one class of debentures, whether or not the trust deed is required by this section to be executed.

(3) Where a trust deed is required to be executed by this section but has not been executed, the court, on the application of a debenture holder concerned, may—

- (a) order the company to execute a trust deed;
- (b) direct that a person nominated by the court shall be appointed to be trustee; and
- (c) give such consequential directions as it thinks fit, as to the contents of the trust deed and its execution by the trustee.

(4) For the purposes of this Act, debentures shall belong to different classes if different rights attach to them in respect of—

- (a) the rate of, or dates for payment of interest;
- (b) the dates when, or the instalments by which, the principal of the debenture shall be repaid, unless the difference is solely that the class of debentures shall be repaid during a stated period of time and particular debentures may be repaid at different dates during that period according to selections made by the company or by drawings, ballot or otherwise;

(3) Notwithstanding anything contained in a debenture trust deed, or in any debenture or contract or instruments, the trustee of a debenture deed shall, on the requisition of persons holding, at the date of the deposit of the requisition, debentures covered by the trust deed which carry not less than one-tenth of the total voting rights attached to all the issued and outstanding debentures of that class, forthwith, proceed duly to convene a meeting of that class of debenture holders.

Fixed and floating charges

150. (1) “A floating charge” means an equitable charge over the whole or a specified part of the company’s undertakings and “assets”, including cash and uncalled capital of the company both present and future, but that the charge shall not preclude the company from dealing with such assets until—

Meaning of
‘floating’ and
‘fixed’
charges.

- (a) the security becomes enforceable and the holder thereof, pursuant to a power in that behalf in the debenture or the deed securing the debenture appoints a receiver or manager or enters into possession of such assets;
- (b) the court appoints a receiver or manager of such assets on the application of the holder; or
- (c) the company goes into liquidation.

(2) On the happening of any of the events mentioned in subsection (1), the charge shall be deemed to crystallise and to become a fixed equitable charge on such of the company’s assets as are subject to the charge.

(3) If a receiver or manager is withdrawn with the consent of the chargee, or the chargee withdraws from possession, before the charge has been fully discharged, the charge shall thereupon be deemed to cease to be a fixed charge and again to become a floating charge.

Priority of fixed over floating charge.

151. A fixed charge on any property shall have priority over floating charge affecting that property, unless the terms on which the floating charge was granted prohibited the company from granting any later charge having priority over the floating charge and the person in whose favour such later charge was granted had actual notice of that prohibition at the time when the charge was granted to him.

Powers of court to appoint receiver or manager.

152. (1) Whenever a fixed or floating charge has become enforceable, the court shall have power to appoint a receiver and in the case of a floating charge, a receiver and manager of the assets subject to the charge.

(2) In the case of a floating charge, the court may, notwithstanding that the charge has not become enforceable, appoint a receiver or manager if satisfied that the security of the debenture holder is in jeopardy; and the security of the debenture holder shall be deemed to be in jeopardy if the court is satisfied that events have occurred or are about to occur which renders it unreasonable in the interest of the debenture holder that the company should retain power to dispose of its assets.

(3) A receiver or manager shall not be appointed as a means of enforcing debentures not secured by any charge.

(4) Where an application is made to the court to appoint a receiver on behalf of debenture holders or other creditors of a company which is being wound up by the court, the official receiver may be so appointed.

Advertisement of appointment of receiver and manager.

153. Where a receiver or a receiver and manager is appointed by the court, advertisement to this effect shall be made by the receiver or the receiver and manager in the *Gazette* and in two local newspapers.

154. (1) Where a receiver is appointed on behalf of the holders of any debentures of a registered company secured by a floating charge, or possession is taken by, or on behalf of those debenture holders of any property comprising or subject to the charge, then if the company is not, at the time in course of being wound up, the debts which in every winding up are under the provisions relating to preferential payments in Part XVI to be paid in priority to all other debts, shall be paid out of any assets coming into the hands of the receiver or other person taking possession in priority to any claim for principal or interest in respect of the debentures.

Preferential payment to debenture holders in certain cases.

(2) In the application of the provisions relating to preferential payments—

- (a) section 438 shall be construed as if provision for payment of accrued holiday remuneration becoming payable on the termination of employment before or by the effect of the winding-up order or resolution, were a provision for payment of such remuneration becoming payable on the termination of employment before or by the effect of appointment of the receiver or possession being taken ; and
- (b) the periods of time mentioned therein shall be reckoned from the date of the appointment of the receiver or possession being taken as the case may be, and if such date occurred before the commencement of this Act, the provisions relating to preferential payments which would have applied but for this Act, shall be deemed to remain in force.

(3) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

trustee or any other person for their benefit (other than the circumstances in which they are entitled to do so by this Act);

- (l) the powers of the company and trustee to call meetings of the debenture holders and the rights of debenture holders to require the company or the trustee to call such meetings;
- (m) whether the rights of debenture holders may be altered or abrogated and if so, the conditions which must be fulfilled, and the procedure which must be followed, to effect such an alteration or abrogation; and
- (n) the amount or rate of remuneration to be paid to the trustee and the period for which it shall be paid, and whether it shall be paid in priority to the principal, interest and costs in respect of debentures issued under the trust deed.

(2) If debentures are issued without a covering debenture trust deed being executed, the statements required by subsection (1) shall be included in each debenture or in a note forming part of the same document or endorsed thereon, and in applying that subsection references to “the debenture trust deed” shall be construed as references to all or any of the debentures of the same class.

(3) Subsection (2) shall not apply if the debenture is the only debenture of the class to which it belongs which has been or may be issued, and the rights of the debenture holder may not be altered or abrogated without his consent.

(4) Any director involved in the issue of a debenture in violation of this section shall be guilty of an offence.

(c) any right to subscribe for or convert the debentures into shares in, or other debentures of, the company or any other company; or

(d) the powers of the debenture holders to realise any security.

(5) Debentures further belong to different classes—

(a) if they do not rank equally for payment when any security invested in the debenture by holders under any trust deed is realised; or

(b) when the company is wound up, or in circumstances where the security may be realised, pursuant to paragraph (d) of subsection (4) the subject matter of such security or the proceeds thereof, or any assets available to satisfy the debentures, is or are not to be applied in satisfying the debentures strictly in proportion to the amount of principal, premiums and arrears of interest to which the holders are respectively entitled.

(6) A debenture is covered by a trust deed if the holder of the debenture—

(a) is entitled to participate in any money payable by the company under the deed; or

(b) is entitled to the benefit of any mortgage, charge or security created by the deed, whether alone or together with other persons.

(7) If a company issues debentures in circumstances in which this section requires a debenture trust deed to be executed without such a deed having been executed in compliance with this

section, or if the company issues debentures under a trust deed which covers two or more classes of debentures, each director of the company who is in default commits an offence and is liable on conviction to a fine not exceeding Le5,000,000

Contents of
debenture
trust deed.

156. (1) Every debenture trust deed, whether required by section 154 or not, shall state—

- (a) the maximum sum which the company may raise by issuing debentures of the same class;
- (b) the maximum discount which may be allowed on the issue or re-issue of the debentures, and the maximum premium at which the debentures may be made redeemable;
- (c) the nature of any assets over which a mortgage, charge or security is created by the trust deed in favour of any person other than of the trustee for the benefit of the debenture holders equally, except where such a charge is a floating charge or a general floating charge, the identity of the assets subject to it;
- (d) the nature of any assets over which a mortgage, charge or security has been or will be created in favour of any person other than the trustee for the benefit of the debenture holders equally, and except where such a charge is a floating charge or a general floating charge, the identity of the assets subject to it;
- (e) whether the company has created or will create any mortgage, charge or security for the benefit of some, but not all of the holders of debentures issued under the trust deed;

- (f) any prohibition or restriction on the power of the company to issue debentures or to create mortgages, charges or any security on any of its assets ranking in priority to, or equally with the debentures issued under the trust deed;
- (g) whether the company shall have power to acquire debentures issued under the trust deed before the date of their redemption and to re-issue the debentures;
- (h) the rate of and the dates on which interest on the debentures issued under the trust deed shall be paid and the manner in which payment may be made;
- (i) the date or dates on which the principal of the debentures issued under the trust deed shall be repaid, and unless the whole principal is to be repaid to all the debenture holders at the same time, the manner in which redemption shall be effected, whether by the payment of equal instalments of principal in respect of each debenture, or by the selection of debentures for redemption by the company or by drawing, ballot, or otherwise;
- (j) in the case of convertible debentures, the dates and terms on which the debentures may be converted into shares and the amounts which may be credited or paid up on those shares by virtue of the debentures held by them;
- (k) the circumstances in which the debenture holders shall be entitled to realise any mortgage, charge or security invested in the

Liability of trustees for debenture holders.

161. (1) Subject to this section, anything contained in a trust deed for securing an issue of debentures, or in any contract with the holders of debentures secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee from or indemnifying him against liability for breach of trust, where he fails to show the degree of care and diligence required of him as trustee, having regard to the provisions of the trust deed conferring on him any powers, authorities or discretions.

(2) Subsection (1) shall not invalidate—

- (a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or
- (b) any provision enabling such a release to be given—
 - (i) on the agreement thereto of a majority of not less than three quarters in value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose; and
 - (ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act.

(3) Subsection (1) shall not operate to—

- (a) invalidate any provision in force at the commencement of this Act in such trust deed or contract, so long as any person entitled to the benefit of that provision, or afterwards given the benefit thereof under subsection (4) remains a trustee of the trust deed in question; or

157. (1) Every debenture covered by a debenture trust deed shall state, either in the body thereof or in a note forming part of the same document or endorsed thereon—

Contents of debentures covered by trust deed.

- (a) the matters required to be stated in a debenture trust deed by paragraph (a), (b), (f), (h), (i), (j), (l) and (m) of subsection (1) of section 156;
- (b) whether the trustee of the covering debenture trust deed holds the mortgages, charges and securities vested in him by the trust deed in trust for the debenture holders equally, or in trust for some only of the debenture holders, and if so, which debenture holders; and
- (c) whether the debenture is secured by a general floating charge vested in the trustee of the covering debenture trust deed or in the debenture holders.

(2) A debenture issued by a company shall state on its face in clearly legible print, that it is unsecured if no mortgage, charge or security is vested in the holder of the debenture or in any other person for his benefit as security for payment of principal or interest.

(3) Any director of a company who is involved in the issue of a debenture in violation of subsections (1) and (2) shall be guilty of an offence and be liable on conviction to a fine not exceeding Le3,000,000.00.

158. (1) Whether or not a debenture is secured by a charge over the company's property it may be secured by a trust deed appointing trustees for the debenture holders.

Trustees for debenture holders.

(2) It shall be the duty of such trustees to safeguard the rights of the debenture holders and, on behalf of and for the benefit of the debenture holders, to exercise the rights, powers and discretions conferred upon them by the trust deed.

(3) Charges securing the debentures may be created in favour of the debenture holders by vesting them in the trustees.

(4) Notwithstanding anything contained in the debentures or trust deed, the court may, on the application of any debenture holder or of the Commission remove any trustee and appoint another in his place if satisfied that such trustee has interests which conflict or may conflict with those of the debenture holders or that for any reason it is undesirable that such trustee should continue to act:

Provided that where such application is made by a debenture holder, the court if it thinks fit, may order the applicant to give security for the payment of the costs of the trustee and may direct that the application shall be heard in chambers.

Disqualifi-
cation for ap-
pointment as
trustee of
debenture
trust deed.

159. (1) A person is not qualified for appointment as a trustee of a debenture trust deed if he is—

- (a) an officer or an employee of the company which issues debentures covered by the trust deed or of a company in the same group of companies as the company so issuing debentures;
- (b) less than 18 years of age;
- (c) of unsound mind and has been so found by a court;
- (d) an undischarged bankrupt;
- (e) disqualified under section 218 from being appointed as a director of a company;
- (f) a substantial shareholder (as defined in section 81) of the company.

(2) If a trustee becomes subject to any of the disqualifications mentioned in subsection (1) after he has been appointed, he shall immediately cease to be qualified to act as a trustee of the debenture trust deed.

(3) Any person who acts as a trustee of a debenture trust deed shall be guilty of an offence, if his appointment is invalid under subsection (1) or if he is disqualified from acting under subsection (2).

160. (1) The trustee of a debenture trust deed shall hold all contract, stipulations and undertakings given to him and all mortgages, charges and securities vested in him in connection with the debentures covered by the deed, or some of those debentures, exclusively for the benefit of the debenture holders concerned (except in so far as the deed otherwise provides); and the trustee shall exercise due diligence in respect of the enforcement of those contracts, stipulations, undertakings, mortgages, charges and securities and the fulfilment of his functions generally.

Rights of
debenture
holders.

(2) A debenture holder may sue—

- (a) the company which issued the debentures he holds for payment of any amount payable to him in respect of the debentures; or
- (b) the trustee of the debenture trust deed covering the debentures he holds or compensation for any breach of the duties which the trustee owes him,

and in such action, it shall not be necessary for any other debenture holders of the same class, or if the action is brought against the company, the trustee of the covering trust deed, to be joined as a party.

(2) Any registered holder of debentures or any other person may require a copy of the register of the holders of debentures of the company or any part thereof on payment of such fees not exceeding Le.10,000 as may be determined by the company.

(3) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of such debentures at his request on payment—

- (a) in the case of a printed trust deed, of such fee not exceeding Le10,000 as may be determined by the company; or
- (b) where the trust deed has not been printed, on payment of such fee not exceeding Le10,000 as may be determined by the company.

(4) If inspection is refused, or a copy is refused or not forwarded, 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 Le3,000,000 and in case of a continuing default, to a further fine of Le500,000. for each day during which the default continues.

(5) Where a company is in default, the court convicting may by order compel an immediate inspection of the register or direct that the copies required shall be sent to the person requiring them.

(6) For the purpose of this section, a register shall be deemed to be duly closed in accordance with provisions contained in the articles or in the debentures or, in the case of debenture stock, in the stock certificates, or in the trust deed or other document securing the debentures or debenture stock, during such periods, not exceeding in the whole 30 days in any year as may be therein specified.

(b) deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him, while such provision was in force.

(4) While any trustee of a trust deed remains entitled to the benefit of a provision saved by subsection (3), the benefit of that provision may be given—

- (a) to all trustees of the deed, present and future; or
- (b) to any named trustees or proposed trustees thereof, by a resolution, passed by a majority of not less than three-quarters in value of the debenture holders present in person or, where proxies are permitted by proxy at a meeting summoned for the purpose in accordance with the provisions of the trust deed or, if the trust deed makes no provision for summoning meetings, a meeting summoned for the purpose in any manner approved by the court.

162. (1) Except as expressly provided in the terms of any debenture, debentures shall be transferable without restriction by a written transfer in common form so that the transferee shall be entitled to the debenture, and to the moneys secured thereby without regard to any equities, set-off, or cross-claim between the company and the original or any intermediate holder.

Restrictions on transferability of debentures.

(2) The terms of any debenture may impose restrictions of any nature whatsoever on the transferability of debentures, including power for the company to refuse to register any transfer and provisions for compulsory acquisition or rights of first refusal in favour of other debenture holders, or members or officers of the company:

Provided that if any restriction is imposed on the right to transfer any debenture, notice of the restriction shall be endorsed on the face of the debenture or debenture stock certificate and in the absence of such endorsement, the restriction shall be ineffective as regards any transferee for value, whether or not he has notice of the restriction.

Provisions as to company's register of charges, debenture holders and as to copies of instruments creating charges

Company to keep copies of instruments creating charges.

163. Every company shall cause a copy of every instrument creating any charge requiring registration under this Part to be kept at the registered office of the company:

Provided that, in the case of a series of uniform debentures, a copy of one debenture of the series shall be sufficient.

Company's register of charges.

164. (1) Every limited company shall keep at the registered office of the company, a register of charges and enter in it all charges specifically affecting property of the company and floating charges on the undertaking or any property of the company, giving in each case a short description of the property charged, the amount of the charge, and, except in the case of securities to bearer, the names of the persons entitled thereto.

(2) If any officer of the company knowingly and wilfully authorises or permits the omission of any entry required to be made in pursuance of this section, he shall be guilty of an offence and liable on conviction to a fine not exceeding Le3,000,000.

Inspection of register and copies of instruments.

165. (1) The copies of instruments creating any charge requiring registration with the Commission under this Part and the register of charges kept in pursuance of section 162, shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than 2 hours each day shall be allowed for inspection) to inspect by any creditor or member of the company without fee and the register of charges shall also be open to inspection by any other person on payment of such fee, as the company may prescribe for each inspection.

(2) If inspection of copies of instruments creating charges or of the register is refused, every officer of the company who is in default shall be guilty of an offence and be liable to a fine of Le500,000 for each day during which the refusal continues.

166. (1) A company which issues or has issued debentures shall maintain a register of the holders of such debentures.

Register of debenture holders.

(2) The register shall contain the following information—

- (a) the names and addresses of the debenture holders;
- (b) the principal of the debentures held by each of them;
- (c) the amount or the highest amount of any premium payable on redemption of the debentures;
- (d) the issue price of the debentures and the amount paid up on the issue price;
- (e) the date on which the name of each person was entered on the register as a debenture holder; and
- (f) the date on which each person ceased to be a debenture holder.

(3) The entry required under this section shall be made within 30 days of the conclusion of the agreement with the company to become a debenture holder or within 30 days of the date at which he ceases to be one.

167. (1) Every register of holders of debentures of a company shall, except when duly closed (but subject to such reasonable restrictions as the company may in general meeting impose, so that not less than two hours each day shall be allowed for inspection), be open to the inspection of the registered holder of such debentures or any holder of shares in the company without fee, and of any other person on payment of such fee not exceeding Le5,000 as may be determined by the company.

Inspection of register of debentures etc.

- (c) a general description of the property charged, and
- (d) the names of the trustees, if any, for the debenture holders, together with the deed containing the charge or copy thereof verified in the prescribed manner, or, if there is no such deed, one of the debentures of the series; and where more than one issue is made of debentures in the series, there shall be sent to the Commission for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issue.

(9) Where a commission, allowance or discount has been paid or made either directly or indirectly by a company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions whether absolute or conditional, for such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount or rate per cent of commission, discount or allowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued:

Provided that the deposit of any debentures as security for any debt of the company shall not, for the purpose of this subsection, be treated as the issue of the debentures at a discount.

(10) In this Part, “charge” includes mortgage.

Register of particulars of charges.

171. (1) The Commission shall keep with respect to each company, a register in the prescribed form, of all the charges requiring registration under this Part and shall, on payment of such fee as may be prescribed by the Commission, enter in the register with respect to such charges the following particulars—

168. On the application of the transferor of any debenture in a company, the company shall enter in its register of debenture holders, the name of the transferee in the same manner and subject to the same condition as if the application for the entry were made by the transferee.

Entry in register of transferees.

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

Notice of refusal to register.

(2) If any 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 Le3,000,000.

Registration of charges with Commission

170. (1) Subject to this Part, every charge created by a company being a charge to which this section applies shall, so far as any security on the company’s property or undertaking is conferred, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge together with the instrument, if any, by which the charge is created or evidenced or by a copy verified in the prescribed manner have been or are delivered to or received by the Commission for registration in the manner required by this Act within 21 days after the date of its creation but without prejudice to any contract or obligation for repayment of the money thereby secured and when a charge becomes void under this section, the money thereby secured shall immediately become payable.

Registration of charges created by companies.

(2) This section applies to the following charges—

- (a) a charge for the purpose of securing any issue of debentures;
- (b) a charge on uncalled share capital of the company;

- (c) a charge created or evidenced by an instrument which it executed by an individual would require registration as a bill of sale;
- (d) a charge on land, where situate, or any interest therein, but not including a charge for rent or other periodical sum issuing out of land;
- (e) a charge on book debts of the company;
- (f) a floating charge on the undertaking or property of the company;
- (g) a charge on calls made but not paid;
- (h) a charge on a ship or aircraft or any share in a ship;
- (i) a charge on goodwill, on a patent or a licence under a copyright.

(3) In the case of a charge created out of Sierra Leone comprising solely property situated outside Sierra Leone, the delivery to and the receipt by the Commission of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced, shall have the same effect for the purpose of this section as the delivery and receipt of the instrument itself, and 90 days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in Sierra Leone shall be substituted for twenty-one days after the date of the creation of the charge, as the time within which the particulars and instrument or copy are to be delivered to the Commission.

(4) Where a charge comprises property situated outside Sierra Leone and registered in the country where the property is situated is necessary to make the charge valid or effectual according to the law of that country, the delivery to and the receipt by the

Commission of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced, together with a certificate in the prescribed form stating that the charge was presented for registration in the country where the property is situated on the date on which it was so presented shall, for the purposes of this section, have the same effect as the delivery and receipt of the instrument itself.

(5) Where a charge is created in Sierra Leone but affects relates to property outside Sierra Leone, the instrument creating or purporting to create the charge may be sent for registration under this section notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situated.

(6) Where a negotiable instrument has been given to ensure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not, for the purpose of this section, be treated as a charge on those book debts.

(7) The holding of debentures entitling the holder to a charge on land not, for the purposes for this section, be deemed to be an interest in land.

(8) Where a series of debentures containing or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall, for the purpose so this section, be sufficient if there are delivered to or received by the Commission within 90 days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars:—

- (a) the total amount secured by the whole series;
- (b) the dated of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined;

Provided that, if—

- (a) additional stamp duty is subsequently paid on such charge; and
- (b) at any time thereafter prior to the commencement of the winding up of the company, amended particulars of the charge stating the increased maximum sum deemed to be secured thereby (together with the original instrument by which the charge was created or evidenced) are delivered to the Commission for registration, then, as from the date of such delivery the charge, if otherwise valid, shall be effective to the extent of such increased maximum sum except as regards any person who, prior to the date of such delivery, has acquired any proprietary rights in, or a fixed or floating charge on, the property subject to the charge.

Endorsement
of regist-
ration.

176. (1) The company shall cause a copy of every certificate of registration given under section 169 to be endorsed on every debenture or certificate of debenture stock which is issued by the company and the payment of which is secured by the charge so registered.

(2) Nothing in subsection (1) shall be construed as requiring a company to cause a certificate of registration of any charge so given to be endorsed on any debenture or certificate of debenture stock issued by the company before the charge was created.

(3) If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock which under this section is required to have endorsed on it a copy of a certificate without prejudice to any other liability he shall be guilty of an offence and be liable to a fine not exceeding Le5,000,000.

- (a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are specified in subsection (8) of section 170;
- (b) in the case of any other charge—
 - (i) if the charge was a charge created by the company, the date of its creation, and if the charge was a charge existing on property acquired by the company, the date of its creation, and the date of the acquisition of the property;
 - (ii) the amount secured by the charge;
 - (iii) brief particulars of the property; and
 - (iv) the persons entitled to the charge.

(2) Where a charge is registered under this Part the Commission shall issue a registration certificate setting out the parties to the charge, the amount thereby secured, with such other particulars as the Commission may consider necessary; and the certificate shall be conclusive evidence of due compliance with the requirements as to registration under this Part.

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of such fee, for each inspection as may be prescribed by the Commission.

172. (1) It shall be the duty of a company to send to the Commission for registration, the particulars of every charge created by the company and of the issues of debentures of a series requiring registration under section 169, but registration of any such charge may be effected on the application of any person interested therein.

Duty of
company to
register
charges.

(2) Where registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the Commission on the registration.

(3) If any company defaults in sending to the Commission for registration, the particulars of any charge created by the company or of the issues of debentures of a series requiring registration, then, unless the registration has been effected on the application of some other person, the company and every officer of the company who is in default shall be guilty of an offence and be liable to a fine not exceeding Le3,000,000.

Duty of company acquiring property to register subsisting charge.

173. (1) Where a company acquires any property which is subject to a charge of any kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered, to the Commission for registration in the manner required by this Act within 90 days after the date on which the acquisition is completed:

Provided that, if the property is situated and the charge was created outside Sierra Leone, 90 days after the date on which the copy of the instrument could in due course of post, and if despatched with due diligence, have been received in Sierra Leone shall be substituted for 90 days after the completion of the acquisition, as the time within which the particulars and the copy of the instrument are to be delivered to the Commission.

(2) If default is made in complying with this section, the company and every officer of the company who is in default commits of an offence and be liable to a fine not exceeding Le3,000,000.

174. (1) Where, at the date of commencement of this Act a company has property on which there is a charge particulars of which would require registration if it had been created by the company after the date of such commencement then, unless the charge has been discharged or the property has ceased to be held by the company prior to the expiration of 6 months from the date of such commencement, the company shall, within that time, cause particulars of the charge as prescribed by section 160 to be delivered to the Commission for registration together with the document, if any, by which the charge was created or copy thereof, certified as required by that section.

Existing charges.

(2) Every existing company shall, prior to the expiration of 6 months from the commencement of this Act, deliver to the Commission for registration a statutory declaration made by a director and the secretary of the company stating whether or not there are any charges on the company's property of which particulars required to be registered under this section and confirming that particulars of any such charges have been duly delivered to the Commission for registration.

(3) In the event of default in complying with subsection (2) 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 fine of Le500,000 for each day during which the default continues.

(4) Failure to comply with the provisions of this section shall not affect the validity of the charge.

175. Where a charge, particulars of which require registration under section 169, is expressed to secure all sums due or to become due or some other uncertain or fluctuating amount the particulars required under paragraph (a) of subsection (8) of section 169 state the maximum sum deemed to be secured by such charge (being the maximum sum covered by the stamp duty paid thereon) and such charge shall be void, so far as any security on the company's property is thereby conferred, in respect of any excess over the stated maximum:

Charges to secure fluctuating amounts.

principal or interest in priority to the debentures secured by the general floating charges to realise his security.

Remedies available to debenture holders.

181. (1) At any time after a debenture holder or a class of debenture holders becomes entitled to realise his security, a receiver of any assets subject to a mortgage, charge or security in favour of the class of debenture holders or the trustee of the covering trust deed or any other person may be appointed by—

- (a) that trustee;
- (b) the holders of debentures of the same class containing power to appoint;
- (c) debenture holders having more than one-half of the total amount owing in respect of all the debentures of the same class; or
- (d) the court on the application of the trustee.

(2) Subject to any conditions imposed in the debenture or debenture trust deed, a debenture holder or a trustee in the case of a trust deed may—

- (a) bring an action in a representative capacity against the company for payment and enforcement of the security; or
- (b) realise his security by—
 - (i) bringing a foreclosure action; or
 - (ii) commencing a winding up proceeding.

(3) A receiver appointed under this section shall have, subject to any order made by the court, power to take possession of the assets subject to the mortgage, charge or security and to sell those assets and, if the mortgage, charge or enforce claims vested in

177. If the Commission is satisfied with respect to any registered charge that— Entries of satisfaction of charges.

- (a) the debt for which the charge was given has been paid or satisfied in whole or in part; or
- (b) part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking,

it may enter on the register a memorandum of satisfaction to the extent necessary to give effect thereto and, where it enters a memorandum of satisfaction it shall, if required, furnish the company with a copy of the entry, and such entry shall have effect, subject to the requirement of any other enactment as to registration.

178. The court may, on being satisfied that the omission— Rectification of register.

- (a) to register a charge within the time required by this Act;
- (b) or mis-statement of any particulars with respect to any such charge or in a memorandum of satisfaction was accidental, or due to inadvertence or to some other sufficient cause; or
- (c) is not of a nature to prejudice the position of creditors or share holders of the company, or that on other grounds it is just and equitable to grant relief,

on the application of the company or any person interested and on such terms and conditions as seems to the court just and expedient order, that the time for registration shall be extended or, as the case may be, that the omission or mis-statement shall be rectified and may make such order as to costs of the application as it thinks just.

Inspection of register and copies of instruments.

179. (1) The copies of instruments creating any charge requiring registration with the Commission and the register of charges kept in pursuance of section 169 shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than 2 hours in each day shall be allowed for inspection) to inspection by any creditor or member of the company without fee, and the register of charges shall also be open to inspection by any other person on payment of such fee, not exceeding Le5,000 for each inspection, as the company may determine.

(2) If inspection of copies of instruments creating charges or of the register is refused, every officer of the company who is in default shall be guilty of an offence and be liable to a fine of Le500,000 for each day during which the refusal continues and the court may by order compel an immediate inspection of the copies of the register.

(3) If any refusal occurs in relation to a company incorporated or registered in Sierra Leone and an instrument creates a charge over any of its property in Sierra Leone, and the refusal relates to that charge, the court may by order compel an immediate inspection of the copies or register.

(4) The registration of any particular of charges under this part shall constitute actual notice of such particulars but not of the contents of any document referred to in the particulars or delivered with the registration, to all persons and for all purposes as from the date of registration.

Realisation of debenture holder's security.

180. (1) A debenture holder shall be entitled to realise any security vested in him or in any other person for his benefit if—

- (a) the company fails to pay any instalment of interest, or the whole or part of the principal or any premium, owing under the debenture or the debenture trust deed covering the debenture within one month after it becomes due;

- (b) the company fails to fulfil any of the obligations imposed on it by the debentures or the debenture trust deed;
- (c) any circumstances occur which by the terms of the debentures or debenture trust deed entitled the holder of the debenture to realise his security; or
- (d) the company is wound up.

(2) A debenture holder whose debenture is secured by a general floating charge vested in him or the trustee of the covering debenture trust deed or any other person shall additionally be entitled to realise his security if—

- (a) any creditor of the company issues a process of execution against any of its assets or commences proceedings for winding up of the company by order of any court;
- (b) the company ceases to pay its debts as they fall due;
- (c) the company ceases to carry on business;
- (d) the company suffers, after the issue of debentures of the class concerned, losses or diminutions in the value of its assets which in the aggregate amount to more than one-half of the total amount owing in respect of debentures of the class held by the debenture holder who seeks to enforce his security and debentures whose holder ranks before him for payment of principal or interest; or
- (e) any circumstances occur which entitles a debenture holder who ranks for payment of

PART IX—MEETINGS AND PROCEEDINGS

Statutory meetings

Statutory meetings.

183. (1) Every public company shall, within a period of 6 months from the date of its incorporation hold a general meeting of the members of the company (in this Act referred to as “the statutory meeting”).

(2) The directors shall, at least 21 days before the day on which the statutory meeting is held, forward to every member of the company the statutory report (in this Act referred to as the “statutory report”).

(3) The statutory report shall be certified by not less than 2 directors or by a director and the secretary of the company and shall state—

- (a) the total number of shares allotted, distinguishing shares allotted as fully or partly 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;
- (b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid;
- (c) the names, addresses and descriptions of the directors, auditors, managers, if any, and secretary of the company;
- (d) the particulars of any pre-incorporation contracts together with the particulars of any modification or proposed modification of the contracts;

the company, to compromise, settle and enter into arrangements in respect of claims by or against the company’s business with a view to selling it on the most favourable terms, to grant or accept leases of land and licences in respect of patents designs and to recover any instalment unpaid on the company’s issued shares.

(4) Where a representative action is being brought under paragraph (a) of subsection (2) the approval of the court shall be obtained where the company is being wound up.

(5) The remedies given by this section shall be in addition to, and not in substitution for, any other powers and remedies conferred on the trustee of the debenture trust deed or on the debenture holders by the debentures or debenture trust deed, and any power or remedy which is expressed in any instrument to be exercisable if the debenture holders become entitled to realise their security is exercisable on the occurrence of any of the events specified in subsection (1) of section 179, or in the case of a general charge in subsections (1) and (2) of section 179 but a manager of the business or of any of the assets of a company may not be appointed for the benefit of debenture holders unless a receiver has also been appointed and has not ceased to act.

(6) No provision in any instrument which purports to exclude or restrict the remedies given by this section shall be valid.

182. (1) Every company shall, within 60 days after the allotment of any of its debentures or after the registration of the transfer of any debentures deliver to the registered holder thereof, the debenture or a certificate of the debenture stock under the common seal of the company.

Delivery of debentures or certificate of debenture stock.

(2) If a debenture or debenture stock certificate is defaced, lost or destroyed, the company at the request of the registered holder of the debenture, shall issue a certified copy of the debenture or renew the debenture stock certificate on payment of a fee not exceeding Le 5,000 and on such terms as to evidence and indemnity and the payment of the company’s out-of-pocket expenses of investigating evidence as the company may reasonably require.

(3) If default is made in complying with this section, the company and any officer of the company who is in default shall be liable to a fine not exceeding Le3,000,000 and on application by any person entitled to have the debentures or debenture stock certificate delivered to him, the court may order the company to deliver the debenture or debenture stock certificate and may require the company and such officer to bear all the costs of and incidental to the application.

(4) Every debenture shall include a statement on the following matters:—

- (a) the principal amount borrowed;
- (b) the maximum discount which may be allowed on the issue or re-issue of the debentures, and the maximum premium at which the debentures may be made redeemable;
- (c) the rate of and the dates on which interest on the debentures issued shall be paid and the manner in which payment shall be made;
- (d) the date on which the principal amount shall be repaid or the manner in which redemption shall be effected, whether by the payment of instalments of principal or otherwise;
- (e) in the case of convertible debentures, the date and terms on which the debentures may be converted into shares and the amounts which may be credited as paid up on those shares, and the dates and terms on which the holders may exercise any right to subscribe for shares in right of the debentures held by them;
- (f) the charges securing the debenture and the conditions subject to which the debenture shall take effect.

(5) Statements made in debenture or debenture stock certificates shall be *prima facie* evidence of the title to the debentures of the person named therein as the registered holder and of the amounts secured thereby.

(6) If any person changes his position to his detriment in reliance in good faith on the continued accuracy of any statements made in the debenture or debenture stock certificate, the company shall be estopped in favour of such person from denying the continued accuracy of such statements and shall compensate such person for any loss suffered by him in reliance thereon and which he would not have suffered had the statement been or continued to be accurate.

(7) Nothing in subsection (6) shall derogate from any right the company may have to be indemnified by any other person.

(8) A contract with a company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.

(9) If any person obtains an order for the appointment of a receiver or manager of the property of a company or appoints such a receiver or manager under any power contained in any instrument, he shall, within 7 days from the date of the order or of the appointment under the power, give notice of the fact to the Commission; and the Commission shall, on the payment of the prescribed fee enter the fact in the register of charges.

(10) Where any person appointed a receiver or manager of the property of a company under any power contained in any instrument ceases to act as a receiver or manager, he shall, on so ceasing, give the Commission notice to that effect; and the Commission shall enter the notice in the register of charges.

company's articles; and the directions that may be given under this subsection shall include a direction that one member of the company present in person or by proxy may apply to the court for an order to take a decision which shall bind all the members.

(5) A general meeting held in pursuance of subsection (4) shall, subject to any directions of the Commission, be deemed to be an annual general meeting of the company; but, where a meeting so held is not held in the year in which the default in holding the company's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held unless at that meeting the company resolves that it shall be so treated.

(6) Where a company resolves that a meeting shall be treated as its annual general meeting, a copy of the resolution shall within days after the passing of the resolution be filed with the Commission.

(7) If default is made in holding a meeting of the company in accordance with subsection (1) or in complying with any directions of the Commission under subsection (4) the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding Le3,000,000 and if default is made in complying with subsection (6), the company and every officer of the company who is in default shall be liable to a fine not exceeding Le3,000,000.

Business transacted at annual general meetings.

186. All businesses transacted at annual general meeting shall be deemed special business, except declaring a dividend, the presentation of the financial statements and the reports of the directors and auditors, the elections of directors in the place of those retiring, the appointment, and the fixing of the remuneration of the auditors and the appointment of the members of the Audit Committee, which shall be ordinary business.

- (e) any underwriting contract that has not been carried out and the reasons therefore;
- (f) the arrears, if any, due on calls from every director;
- (g) the particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares or debentures to any director or to the manager.

(4) The report shall also contain an abstract of the receipts of the company and of the payments made from them up to a date within 7 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 from such receipts and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company.

(5) The statutory report shall, so far as it relates to-

- (a) the shares allotted by the company;
- (b) the cash received in respect of such shares; and
- (c) to the receipt and payments of the company on capital account,

be certified as correct by the auditors of the company.

(6) The directors shall cause a copy of the statutory report, certified as required by this section, to be delivered to the Commission for registration forthwith after the sending of copies to the members of the company.

(7) 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 statutory meeting.

(8) The members of the company present at the statutory meeting shall be at liberty to discuss any matter relating to the formation of the company, and its commencement of business or arising out of the statutory report.

(9) Any member who wishes a resolution to be passed on any matter arising out of the statutory report shall give further 21 days notice from the date on which the statutory report was received to the company of his intention to propose such a resolution.

(10) The statutory 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, either before or subsequent to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

Non-compliance and penalty.

184. (1) Without prejudice to paragraph (b) of section 342, if a company fails to comply with the requirements of section 179 the company and any officer in default shall be guilty of an offence and be liable to a fine of Le500,000 for each day during which the default continues.

(2) If default is made in holding a statutory meeting within the time stipulated in section 181, the Commission may, on the application of any member of the company call or direct the calling of a statutory meeting and give ancillary or consequential directions as it thinks expedient.

General meetings

Annual general meeting.

185. (1) Every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notice calling it;

and not more than 15 months shall elapse between the date of one annual general meeting of a company and that of the next:

Provided that—

- (a) so long as a company holds its first annual general meeting within 18 months of its incorporation it need not hold it in that year or in the following year;
- (b) except for the first annual general meeting, the Commission shall have the power to extend the time within which any annual general meeting shall be held, by a period not exceeding 3 months.

(2) The annual general meeting shall be held not earlier than 21 days after the company's profit and loss account and balance sheet, any group accounts, and the reports of the directors and auditors' thereon shall have been dispatched to members and debenture holders of the company; and the statements, accounts and reports shall be laid before the annual general meeting for consideration.

(3) Notwithstanding subsections (1) and (2), if the auditors of a private company and all the members of the company entitled to attend and vote at any annual general meeting agree in writing that an annual general meeting be dispensed with in any year, it shall not be necessary for that company to hold an annual meeting that year.

(4) If default is made in holding a meeting of a company in accordance with subsection (1) the Commission may, on the application of any member of the company call, or direct the calling of, a general meeting of the company and give ancillary or consequential directions as the Commission thinks expedient, including directions modifying or supplementing, in relation to the calling, holding and conducting of the meeting, the operation of the

(4) An error or omission in a notice with respect to the place, date, time or general nature of the business of a meeting shall not invalidate the meeting, unless the officer of the company responsible for the error or omission acted in bad faith or failed to exercise due care and diligence:

Provided that in the case of accidental error or omission, the officer responsible shall effect the necessary correction either before or during the meeting.

Persons entitled to notice.

191. (1) The following persons shall be entitled to receive notice of general meetings—

- (a) every member of the company;
- (b) every person upon whom the ownership of a share devolves by reason of his being a legal representative, receiver or a trustee in bankruptcy of a member;
- (c) every director of the company;
- (d) every auditor for the time being of the company; and
- (e) the secretary.

(2) No other person shall be entitled to receive notices of general meetings.

Service of notice.

192. (1) A notice required to be given under subsection (1) of section 190 shall be given either personally, by post or by electronic means to the registered address either in Sierra Leone or elsewhere, of the person entitled to receive the notice.

(2) Where a notice is sent by post, service of the notice shall be deemed to be effected where a letter containing the notice has been properly addressed, prepaid, and posted and unless the

Extra-ordinary general meetings

187. (1) The Board of directors may convene an extraordinary general meeting whenever they think fit, and if at any time they are not within Sierra Leone sufficient directors capable of acting to form a quorum, any director may convene an extraordinary general meeting. Extra-ordinary general meetings.

(2) An extraordinary general meeting of a company may be requisitioned by any member or members of the company holding at the date of the requisition not less than one-tenth of the paid up capital of the company as at the date of the deposit of the requisition carrying the right of voting, or in the case of a company not having a share capital, members of the company representing not less than one-tenth of the total voting rights of all the members having at the date a right to vote at general meetings of the company; and the directors shall on receipt of the requisition forthwith proceed to convene an extraordinary general meeting of the company, notwithstanding anything in its articles.

(3) The requisition shall state the objects of the meeting, and be signed by the requisitionists and be deposited at the registered office of the company, and the requisition may consist of several documents in like form each signed by one or more of the requisitionists.

(4) If the directors do not, within 21 days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists, or any one or more of them representing more than one-half of the total voting rights of all of them, may themselves convene a meeting:

Provided that any meeting so convened shall not be held after the expiration of 3 months from that date.

(5) A meeting convened under this section by a requisitionist or requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(6) Any reasonable expenses incurred by the requisitionist or 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 in default.

(7) For the purpose of this section, the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice as is required by section 189.

(8) All business transacted at an extraordinary general meeting shall be deemed special.

Place of meetings.

188. Unless the company's articles otherwise provide, all general meetings shall be held in Sierra Leone.

Notice of meetings

Length of notice for calling meetings.

189. (1) The notice required for all types of general meetings from the commencement of this Act shall be 21 days from the date on which the notice was sent out.

(2) A general meeting of a company shall, notwithstanding that it is called by a shorter notice than that specified in subsection (1) be deemed to have been duly called if it is so agreed in the case of—

- (a) a meeting called as the annual general meeting, by all the members entitled to attend and vote there at; and
- (b) any other general meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than 95

per cent in nominal value of the shares giving a right to attend and vote at the meeting or, in the case of a company not having a share capital, together representing not less than 95 per cent of the total voting rights at that meeting of all the members.

(3) No business shall be transacted at any general meeting unless notice of it has been duly given.

(4) The accidental omission to give notice of a meeting or the non-receipt of notice of a meeting by any member shall not invalidate the proceedings at the meeting.

190. (1) The notice of a meeting shall specify the place, date and time of the meeting, and the general nature of the business to be transacted in sufficient detail to enable those to whom it is given to decide whether to attend or not, and where the meeting is to consider a special resolution it shall set out the terms of the resolution.

Contents of notice.

(2) In the case of notice of an annual general meeting a statement that the purpose is to transact the ordinary business of an annual general meeting shall be deemed to be a sufficient specification that the business is for the declaration of dividends, presentation of the financial statements, reports of the directors and auditors, the election of directors in the place of those retiring, the fixing of the remuneration of the auditors and, if the requirements of sections 292, 293 and 294 are duly complied with, the removal and election of auditors and directors.

(3) In every case in which a member is entitled, pursuant to section 197, to appoint a proxy to attend and vote instead of him, the notice shall contain with reasonable prominence, a statement that the member has the right to appoint a proxy to attend and vote instead of him and that the proxy need not be a member of the company; and if default is made in complying with this subsection as respects any meeting, every officer of the company who is in default shall be guilty of an offence and be liable to a fine not exceeding Le3,000,000.

(5) If for the purpose of the meeting of the 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 notice of the meeting and to vote by proxy at the meeting every officer of the company who knowingly and willfully authorises or permits their issue shall be guilty of an offence and be liable to a fine not exceeding Le5,000,000.

(6) An officer shall not be liable under subsection (5) by reason only of the issue to a member at his request in writing 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.

(7) A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority by which the proxy was executed, or of the transfer of shares in respect of which the proxy is given:

Provided that no intimation in writing of such death, insanity, revocation or transfer has been received by the company before the commencement of the meeting or adjourned meeting at which the proxy is used.

(8) The instrument appointing a proxy shall be in writing under the hand of the appointer or his attorney duly authorised in writing or, if the appointer is a corporation either under seal or under the hand of an officer or attorney duly authorised.

(9) The instrument appointing a proxy in the power of attorney or other authority, if any, under which it is signed or a certified copy of that power or authority shall be deposited at the registered office or the head office of the company or at such other place within Sierra Leone as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the

contrary is proved to have been effected in the case of a notice of a meeting at the expiration of 7 days after the letter containing the notice is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

(3) If a person has no registered address in Sierra Leone and has not supplied to the company an address within Sierra Leone for the giving of notice to him, a notice addressed to him published in the *Gazette* or advertised in a newspaper circulating in the area of the registered office of the company, shall be deemed to be duly given to him at noon on the day on which the later notice appears.

(4) A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the share.

(5) A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of the representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, within Sierra Leone supplied for the purpose by the person claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which it might have been given if the death or bankruptcy had not occurred.

(6) "Registered address" means, in the case of a member, any address supplied by him to the company for the giving of notice to him and includes an e-mail address.

193. In addition to the notice required to be given to those entitled to receive it in accordance with section 190, every public company shall, at least 21 days before any general meeting, advertise notice of such meeting in at least two daily newspapers and on the radio. Additional notice.

194. Failure to give notice of any meeting to a person entitled to receive it shall invalidate the meeting unless such failure is an accidental omission on the part of the person or persons giving the notice. Failure to give notice.

Court to order meetings.

195. (1) If for any reason it is impracticable to call a meeting of a company or of the board of directors in any manner in which meetings of that company or board may be called, or to conduct the meeting of the company or board in the manner prescribed by the articles or this Act the court may—

- (a) of its own motions, or
- (b) 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 or board, as the case may be, 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 direction as it thinks expedient; and these may include a direction that one member of the company present in person or by proxy be deemed to constitute a meeting, either of its own motion.

(2) Any meeting called, held and conducted in accordance with an order under subsection (1) shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.

Right to attend general meetings.

196. Notwithstanding anything to the contrary in a company's articles, the following persons shall be entitled to attend any general meeting of the company—

- (a) every member of the company;
- (b) every director of the company;
- (c) the secretary of the company; and
- (d) every auditor of the company:

Provided that—

- (a) if the company's articles so provide, a member shall not be entitled to attend unless all calls or other moneys payable by him in respect of shares in the company have been paid;

(b) any member who is a holder of preference shares only shall not be entitled to attend if his right to do so is validly suspended under this Act;

(c) nothing in this Part shall be deemed to preclude other persons from attending any general meeting with the permission of the chairman.

197. (1) Any member of a company entitled to attend and vote ^{Proxies.} at a meeting of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of him, and such proxy shall also have the same right as a member to speak at the meeting.

(2) Unless the article otherwise provides, subsection (1) shall not apply in the case of a company not having a share capital.

(3) In every notice calling a meeting of a company having a share capital, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy, or where that is allowed, two or more proxies, to attend and vote instead of him, and that a proxy need not be a member; and if default is made in complying with this subsection in respect of any meeting, every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding Le3,000,000.

(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 48 hours before a meeting or adjourned meeting in order that the appointment may be effective at the meeting.

dealt with at that meeting, and where the statement has more than 1,000 words, to circulate a summary of it.

(2) The number of members necessary for a requisition under subsection (1) shall be—

- (a) any one or more members representing not less than one twentieth of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or
- (b) not less than one hundred members holding shares in the company on which there has been paid up an average sum, per member, of not less than Le20,000.

(3) Notice of such resolution shall be given, and 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 member in any manner permitted for service of notice of the meeting: and notice of such resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving notice of meetings of the company; and 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—

instrument proposed to vote, or in the case of a poll not less than 24 hours before the time appointed for the taking of the poll; and in default, the instrument of proxy shall not be treated as valid.

(10) This section shall apply to meetings of any class of members of a company as it applies to general meetings of the company.

198. (1) A corporation, whether a company within the meaning of this Act or not may—

Corporation representation at meetings of companies.

- (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, authorise such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company;
- (b) if it is a creditor (including a holder of debentures) of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the creditors of the company held in pursuance of this Act or of any regulations made under it or in pursuance of any provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorised under subsection (1) 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 shareholder, creditor or holder of debentures, of that company.

Quorum.

199. (1) Unless otherwise provided in the articles, no business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business and at the time of any voting.

(2) Unless otherwise provided in the articles, the quorum for the meeting of a company shall be one-third of the total number of members of the company or 25 members (whichever is less) present in person or by proxy:

Provided that where the number of members is not a multiple of three, then the number nearest to one-third, and where the number of members is 6 or less, the quorum shall be two members.

(3) This section does not apply to one-man companies.

(4) For the purpose of determining a quorum, all members or their proxies shall be counted.

(5) If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members shall be dissolved; in any other case it shall be adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall form a quorum.

Resolutions.

200. (1) A resolution shall be an ordinary resolution when it has been passed by a simple majority of votes cast by such members of the company as, being entitled to do so, vote in person or by proxy at a general meeting.

(2) A resolution shall be a special resolution when it has been passed by not less than two-thirds of the votes cast by such members of the company as, being entitled to do so, vote in person or by proxy at a general meeting of which 21 days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given:

Provided that, if it is so agreed by a majority in number of the members having the right to attend and vote at any such meeting, being a majority together holding not less than 95 percent in nominal value of the shares giving that right or, in the case of a company not having a share capital, together representing not less than 95 per cent of the total voting rights at that meeting of all the members, a resolution may be proposed and passed as a special resolution at a meeting of which less than 21 days' notice has been given.

201. (1) All resolutions shall be passed at general meetings and shall not be effective unless so passed: Written resolutions.

Provided that in the case of a private company a written resolution signed by all the members entitled to attend and vote shall be as valid and effective as if passed in a general meeting.

(2) A written resolution shall be deemed to have been passed on the date on which it was signed by the last member to sign, and where the resolution states a date as the date of signature by any member, such statement shall be *prima facie* evidence that it was signed by that member on that date.

202. (1) Subject to this section, it shall be the duty of a company, on the requisition in writing of such number of members as is specified in this section and (unless the company otherwise resolves) at the expense of the company to— Circulation of members' resolutions.

(a) give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution submitted by a member which may properly be moved and is intended to be moved at that meeting;

(b) circulate to members entitled to have notice of any general meeting sent to them, any statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or the business to be

Effect of resolutions passed at adjourned meetings.

205. (1) Where a resolution is passed at an adjourned meeting, of—

- (a) a company;
- (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 day on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

(2) Where a resolution is passed on a poll, it shall for all purposes be deemed to have been passed on the day on which the result of the poll is declared, and not on any earlier day.

Miscellaneous matters relating to meetings and proceedings

Minutes of proceedings and effect.

206. (1) Every company shall cause—

- (a) minutes of all proceedings of general meetings;
- (b) all proceedings at meetings of its directors; and
- (c) where there are managers, all proceedings at meetings of its managers,

to be entered in books kept for that purpose.

(2) Any minutes if purporting to be signed by the chairman of the meeting at which the proceedings were held, or by the chairman of the next succeeding meeting, shall be *prima facie* evidence of the proceedings.

(a) a copy of the requisition signed by the requisitionists (or two or more copies which between them contain the signatures of all the requisitionists) is deposited at the registered office of the company—

- (i) in the case of a requisition requiring notice of a resolution, not less than 6 weeks before the meeting;
- (ii) in the case of any other requisition, not less than one week 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 6 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 statement if, on the application either of the company or of any other person who claims to be aggrieved, the court if satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; may order the company's costs on an application under this section to be paid in whole or in part by the requisitionist, notwithstanding that the requisitionist is not party 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 to one or more members.

(7) In the event of any default in complying with the provisions of this section, every officer of the company who is in default shall be guilty of an offence and be liable to a fine not exceeding Le3,000,000

Resolutions
requiring
special notice.

203. (1) Where by any provision in this Act, special notice is required of a resolution, a resolution shall not be effective unless notice of the intention to move it has been given to the company not less than 28 days before the meeting at which it is to be moved, and the company shall give its members notice of any such resolution at the same time and the same manner as it gives notice of the meeting or, if that is not practicable, shall give the notice either by advertisement in a local newspaper or in another note allowed by the articles, not less than 21 days before the meeting.

(2) If after the notice of the intention to move such a resolution has been given to the company, a meeting is called for a date not later than 28 days or less after the notice has been given, the notice though not given within the time required by this section shall be deemed to have been properly given for purposes thereof.

Registration
and copies of
certain
resolutions.

204. (1) Subject to paragraph (b) of subsection (10) of section 42 a printed copy of every resolution or agreement to which this section applies shall, within 15 days after the passing or making of the resolution or agreement as the case may be, be forwarded to the Commission.

(2) Where pursuant to sections 40 to 42 a company by special resolution alters the provision of its memorandum and the Commission is satisfied that the alteration is not in compliance with the applicable provisions of those sections, it may refuse to file a copy of the resolution in its records, and shall notify the company accordingly; and any person aggrieved by the refusal may appeal to the court within 21 days from the receipt of the notification.

(3) A copy of every resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.

(4) This section applies to—

- (a) special resolutions;
- (b) resolutions which have been agreed to by all the members of the company, but which, if not so agreed, would not have been effective for their purpose unless as the case may be, they had been passed as a special resolution; or
- (c) resolutions or agreements which have been agreed to by all the members of any class of shareholders but which, if not so agreed to, would not have been effective for their purpose, unless they have been passed by some particular majority or otherwise in some particular manner, and all resolutions and agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members; and
- (d) a resolution requiring the company to be wound up voluntarily, passed under paragraph (a) of subsection (1) of section 402.

(5) If a company fails to comply with subsection (3) of this section, the company and every officer of the company who is in default shall be guilty of an offence and be liable to a fine not exceeding Le3,000,000.

(6) For the purposes of subsections (4) and (5), a liquidator of the company shall be deemed to be an officer of the company.

(2) Where a casual vacancy is filled by the directors, the person so appointed may be approved by the company at the next general meeting and if not so approved, he shall forthwith cease to be a director.

(3) The directors may, at any time appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

Liability of a person where not duly appointed.

214. Where a person not duly appointed as a director acts as such on behalf of the company, his act shall not bind the company and he shall be personally liable for such action; but where it is the company which holds him out as director, the company shall be bound by his acts.

(2) The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

(3) Nothing in subsection (2) shall be deemed to give validity to acts done by a director after the appointment of the director has been shown to be invalid.

Share qualification of directors.

215. (1) The shareholding qualification for directors may be fixed by the articles of association or by the company in general meeting and unless and until so fixed no shareholding qualification shall be required.

(2) 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 so qualified, to obtain his qualification within 2 months after his appointment or such shorter time as may be fixed by the articles.

(3) The office of director of a company shall be vacated if the director does not, within 2 months from the date of his appointment, obtain his qualification or after the expiration of the period, he ceases at any time to hold his shareholding qualification.

(3) Where minutes have been made, in accordance with the provisions of this section of the proceedings at any general meeting of the company or meeting of directors or managers, then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings had at the meeting to have been duly had, and all appointments of directors, managers or liquidators shall be deemed to be valid.

(4) If a company fails to comply with the provisions 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 fine not exceeding Le3,000,000.

207. (1) The books containing the minutes of proceedings of any general meeting of a company held on or after the commencement of this Act, 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, but so that not less than 6 hours in each day be allowed for inspection) be open to inspection by members without charge. Inspection of minute books and copies.

(2) Any member shall be entitled to be furnished within 14 days after receipt of his request in that behalf to the company, with a copy of any such minutes certified by the Secretary at a charge not exceeding Le5,000 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 be liable in respect of each offence to a fine not exceeding Le10,000,000.

(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 be sent to the persons requiring them.

208. This Part shall apply to any class of meetings except where expressly excluded by this Act. Class of meetings.

PART X—DIRECTORS AND SECRETARIES OF COMPANY

Directors

Meaning of
“directors”.

209. (1) There shall be a rebuttable presumption in favour of any person dealing with the company that all persons who are described by the company as directors, whether as executive or otherwise, have been duly appointed.

(2) Any person not being a duly appointed director of a company—

(a) who holds himself out or knowingly allows himself to be held out as a director of that company; or

(b) on whose directions or instructions the duly appointed directors are accustomed to act, shall be subject to the same duties and liabilities as if he were a duly appointed director of the company.

(3) Nothing in subsection (3) shall derogate from the duties and liabilities of the duly appointed directors, including the duty not to act on the directions or instructions of any other person.

(4) If any person, not being a duly appointed director of a company holds himself out, or knowingly allows himself to be held out as a director of the company or if the company holds out such person or knowingly allows such person to hold himself out as a director of the company, such person or the company, as the case may be, shall be guilty of an offence and be liable to a fine not exceeding Le8,000,000.

Shadow
directors.

210. Without prejudice to the provisions of sections 210 and 215 of this Act, “shadow director” shall include any person on whose instructions and directions the directors are accustomed to act.

Appointment of Directors

211. (1) Every company registered after the coming into force of this Act shall have at least two directors. Number of directors.

(2) Any company whose number of directors falls below two shall, within one month of its so falling appoint new directors and shall not carry on business after the expiration of 3 months, unless new directors are appointed.

(3) A director of a company who knows that a company carried on business for more than 30 days after the number of directors had fallen below two shall be liable for all liabilities and debts incurred by the company during that period when the company so carried on business.

(4) A director shall, immediately after being appointed as such indicate in writing that he has accepted the appointment.

212. (1) The members at the annual general meeting shall have power to re-elect or not to re-elect existing directors and to appoint new ones. Subsequent appointment of directors.

(2) In the event of all the directors and the only surviving shareholder dying, any of the personal representatives shall be entitled to apply to the court for an order to convene a meeting of all the personal representatives of the shareholders entitled to attend and vote at a general meeting to appoint new directors to manage the company, and if they fail to convene a meeting, the creditors, if any, to do so.

(3) This section shall not apply to one man companies.

213. (1) The board of directors shall have power to appoint new directors to fill any casual vacancy arising out of the death, resignation, retirement or removal of any director, but the persons so appointed shall retire at the same time as the directors in whose place they were appointed. Casual vacancy.

(5) The annual general meeting shall have power to increase or reduce the number of directors generally and may determine in what rotation the directors shall retire but such direction shall not invalidate any prior act of the directors so removed.

Mode of voting on appointment of directors.

221. (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 passed unanimously by the meeting.

(2) A resolution passed in contravention of this section shall be void, whether or not it was objected to at the time:

Provided that-

- (a) this subsection shall not be taken as excluding the operation of section 220; and
- (b) where a resolution so moved is passed, no provision for automatic re-appointment 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.

(4) Nothing in this section shall apply to a resolution altering the company's articles.

Removal of directors.

222. (1) Unless the articles of association otherwise provide a company may, by ordinary resolution remove any director before the expiration of his period of office and may, by ordinary resolution appoint another person in his place but the director to be removed shall have a right to make representations to the meeting at which the ordinary resolution is passed.

(4) A person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his shareholding qualification.

(5) For the purpose of any provision in the articles requiring a director to hold a specified share qualification, the bearer of a share warrant shall not be deemed to be the holder of the shares specified in the warrant.

216. (1) Any person who is appointed or to his knowledge is proposed to be appointed director of a public company and who is 70 or more years old shall disclose this fact in writing to the members at the general meeting. Duty of directors to disclose age to company.

(2) Any person who fails to disclose his age as required under this section or makes a false disclosure in relation to his age shall be guilty of offence and be liable on conviction to a fine not exceeding Le5,000,000.

217. If any person, being an undischarged bankrupt acts as director or directly or indirectly takes part in or is concerned in the management of any company, he shall be guilty of an offence and be liable to a fine not exceeding Le5,000,000., or to imprisonment for a term not exceeding 6 months, or to both. Insolvent persons acting as directors

218. (1) Where-

- (a) a person is convicted by a court of any offence in connection with the promotion, formation or management of a company or an offence involving fraud or dishonesty; or
- (b) in the course of winding up a company it appears that a person-
 - (i) has committed any offence referred to under paragraph (a); or

Restraint of fraudulent persons.

- (ii) has otherwise been found guilty, while an officer of the company, of any fraud in relation to the company or of any breach of his duty to the company,

the court shall make an order that that person shall not be a director of or in any way, whether directly or indirectly, be concerned or take part in the management of a company for a specified period not exceeding 10 years.

(2) A person intending to apply for the making of an order under this section, shall give not less than 10 days notice of his intention to the person against whom the order is sought; and on the hearing of the application, the last mentioned person may appear and himself give evidence or call witnesses.

(3) An application for the making of an order by the court having jurisdiction to wind up a company may be made by the official receiver, or by the liquidator of the company or by any person who is or has been a member or creditor of the company; and on the hearing of any application for an order by the official receiver or the liquidator, or of any application for leave under this section by a person against whom an order has been made on the application of the official receiver or liquidator, the official receiver or liquidator shall appear and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.

(4) An order may be made by virtue of sub paragraph (ii) of paragraph (b) of subsection (1), notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made; and for the purposes of that paragraph "officer" includes any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

(5) If any person acts in contravention of an order made under this section, he shall be guilty of an offence and in respect of each offence, be liable to a fine not exceeding Le5,000,000 or to imprisonment for a term not exceeding 6 months, or to both.

219. The following persons shall be disqualified from being directors-

- (a) a person under the age of 18 years;
- (b) a lunatic or person of unsound mind;
- (c) a person who is an undischarged bankrupt; and
- (d) a person convicted, whether in Sierra Leone or elsewhere, of any offence involving fraud or dishonesty or any offence in connection with the promotion, formation or management of a company.

Disqualification for directorship.

220. (1) Unless the articles otherwise provide, at the first annual general meeting of the company, all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being, or if their number is not three or a multiple of three, then the number nearest one-third shall retire from office.

Rotation of directors.

(2) A retiring director shall be eligible for re-election.

(3) The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

(4) The company at the meeting at which a director retires in the manner mentioned in subsections (1) and (2) of this section, may fill the vacated office by electing a person to that office and failing which the retiring director shall, if offering himself for re-election, be deemed to have been re-elected, unless at such meeting it is expressly resolved not to fill such vacated office or unless a resolution for the re-election of such director shall have been put to the meeting and lost.

- (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;
- (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, 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 do all things reasonably necessary to ensure that particulars with respect to the proposed payment and the amount, are included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(2) If—

- (a) any director referred to in subsection (1) fails to do all things reasonably necessary as mentioned in this section; or
- (b) any person who has been properly required by any such director to include the particulars in or send them with any such notice fails to do so,

he shall be guilty of an offence and be liable to a fine not exceeding Le5,000,000.

(3) If—

- (a) the requirements of subsection (1) are not complied with in relation to such payments as are mentioned therein; or

(2) The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected as a director.

(3) Nothing in this section shall be taken as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as a 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.

Remuneration and other payments

223. (1) Subject to this section, the fees and other remuneration payable to the directors in whatsoever capacity, shall be determined from time to time by ordinary resolution of the company and not by any provision in the articles or in any agreement, which provision shall be null and void. Remuneration of directors.

(2) The fees payable to the directors as such shall be determined from time to time by ordinary resolution of the company and not in any other way:

Provided that where the articles of an existing company contain any provision fixing the fees payable to the directors, such provision shall continue in operation and have effect until the date of the first annual general meeting of the company held next after the commencement of this Act.

(3) Unless otherwise resolved, the fees payable to directors shall be deemed to accrue from day-to-day and the directors shall also be entitled to be paid all travelling and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meeting of the company or otherwise in connection with the business of the company.

224. A managing director shall receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way, and partly in another), as may be determined by the board of directors. Remuneration of managing directors.

Prohibition of loans to directors in certain circumstances.

225. (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 by any other person.

(2) Nothing in this section shall apply-

- (a) subject to subsection (3), to anything done to provide such person as mentioned in this subsection 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 guarantee in connection with loans made by other persons, to anything done by the company in the ordinary course of that business.

(3) Paragraph (a) of subsection (1) does not authorise the making of any loan, or the entering into any guarantee, or the provision of any security except-

- (a) with the prior approval of the company given at a general meeting at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed;
- (b) on condition that, if the approval of the company is not given as in subsection (1) of this section 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 6 months from the conclusion of that meeting.

(4) Where the approval of the company is not given as required by the condition referred to in paragraph (a) of subsection (3), the directors authorising the making of the loan, or the entering into the guarantee, or the provision of the security, shall be jointly and severally liable to indemnify the company against any loss arising from it.

226. It shall not be lawful for a company to make to any director or former director of the company or any associated company any payment 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 and the amount have been disclosed to members of the company and the proposal is approved by the company by ordinary resolution.

Payment by company for loss of office etc. to be approved.

227. (1) If in connection with the transfer of the whole or any part of the undertaking or property of a company, it is proposed to make any payment 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, the payment shall be unlawful unless particulars with respect to the proposal and the amount, have been disclosed to members of the company and the proposal is approved by the company.

Payment to director for loss of office etc. or transfer of property illegal.

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

228. (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 -

Directors to disclose payment for loss of office, in certain cases.

- (a) an offer made to the general body of shareholders;

or instructions of such director or his nominee or if at a general meeting of the body corporate such director or his nominee is entitled to exercise or control the exercise of one-third or more of the voting power.

(5) Nothing in this section shall prohibit-

- (a) the issue of any shares under a *bona fide* underwriting agreement; or
- (b) the issue to a director at a fair price payable in cash of such shares, if any, as under the articles of the company, he is required to hold by way of share qualification.

(6) Unless the company's articles otherwise provide, the directors of a company having a share capital shall not, without the approval of a special resolution of the company, exercise the company's power to borrow money or to charge any of its assets where the moneys to be borrowed or secured, together with the amount remaining undischarged of moneys already borrowed or secured, apart from temporary loans obtained from the company's bankers in the ordinary course of business, will exceed the share capital for the time being of the company.

(7) No person dealing with the company in good faith or registering any disposition of, or title to, property shall be concerned to see whether the conditions have been fulfilled and the provisions of Part IV shall apply to any transactions of the type referred to in sections 52 to 54 notwithstanding that such conditions have not been fulfilled.

(8) In this section "treasury shares" are shares which on redemption, purchase, acquisition or forfeiture are available for re-issue by the company, unless the company by alteration of its memorandum and articles cancels or re-issues such shares.

- (b) the making of the proposed payment is not, before the transfer of any shares in pursuance of the offer, approved at a meeting summoned by the holders of the shares to which the offer relates of the same class as any of the shares at a meeting summoned for that purpose,

any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any person who has sold his shares as a result of the offer made, and the expenses incurred by him in distributing that sum among those persons shall be borne by him and not retained out of that sum.

(4) If, in connection with any transfer-

- (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 same shares; or

- (b) any valuable consideration is given to the director,

the excess or the money value of the consideration, as the case may be, shall for the purposes of this 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.

(5) Nothing in this section shall prejudice the operation of any rule of law requiring disclosure to be made with respect to any payments made under this section or with respect to any other like payments made, or to be made, to the directors of a company.

229. (1) For the purposes of sections 227 and 228 the expression "payment" includes any benefit or advantage whether in cash or in kind.

Provisions supplemental to sections 227 and 228.

(2) Sections 227 and 228 shall not render unlawful or apply to the payment of damages awarded or approved by any competent court for breach of any valid service agreement or the *bona fide* payment of any pension or superannuation benefit in respect of past services in accordance with a valid service agreement.

Powers and duties of directors

Limitations on the powers of directors.

230. (1) Notwithstanding any other provision of this Act or any provision in the company's articles, the directors of a company having a share capital shall not, without the approval of a special resolution of the company—

- (a) sell, lease or otherwise dispose of the whole, or substantially the whole, of the undertaking or of the assets of the company;
- (b) issue any new or unissued shares, other than treasury shares, in the company unless the shares shall first have been offered on the same terms and conditions to all the existing shareholders or to all the holders of the shares of the class or classes being issued in proportion as nearly as maybe to their existing holdings;
- (c) make voluntary contributions to any charitable or other funds, other than pension funds for the benefit of employees of the company or any associated company, of any amounts the aggregate of which will, in any financial year of the company, exceed Le10,000,000 or 2 per cent of the income surplus of the company at the end of the preceding financial year, whichever is the greater:

Provided that—

- (i) no resolution of the company shall be effective as approving of such transaction as is referred to in paragraph (a) unless it authorises in terms the specific transaction proposed by the directors;
- (ii) no resolution of the company shall be effective as approving of such a transaction referred to in paragraph (a) of subsection (1) if passed more than one year before the issue of the shares unless such issue is in accordance with a scheme for the time being in force relating to the issue of shares to or for the benefit of persons *bona fide* in the employment of the company or any of its associated companies.

(2) Paragraph (b) of subsection (1) shall not apply to private companies.

(3) Notwithstanding any other provision of this Act or in the company's articles or in any resolution of the company in general meeting, no new or unissued shares or treasury shares shall be issued to any director or past director of the company or of any associated company or to his nominee or to any body corporate controlled by him unless the shares shall first have been offered on the same terms and conditions to all the existing shareholders or to all the holders of the shares of the class or classes being issued in proportion to their existing holdings or, in the case of a public company, to members of the public.

(4) For the purposes of subsection (3), a body corporate shall be deemed to be controlled by a director if the body corporate or its directors are accustomed to act in accordance with the directions

Consent of companies.

236. (1) For the purposes of section 235, the company shall not be deemed to have consented unless after full disclosure of extent of any interest of the directors, the transaction concerned shall have been specifically authorised by the company either by a resolution which shall have been supported by all the members of the company entitled to attend and vote at a general meeting or by a special resolution at a general meeting at which neither the director concerned nor the holders of any shares in which he is beneficially interested, either directly or indirectly, shall have voted as members on such resolution.

(2) Consent in accordance with subsection (1) shall be given before the occurrence of the transaction to which it relates:

Provided that a resolution of the company ratifying a transaction or series of related transactions which has already taken place shall not be effective for the purposes of subsection (1) unless it was passed not later than 15 months after the date when the transaction or first of such transactions took place.

Duties of directors in connection with sales.

237. (1) If a director of a company, having acquired as a director any special information which may substantially affect the value of the shares or debentures of the company or any associated company, buys or sells such shares without disclosing such or information to the seller or purchaser thereof, the purchase or sale shall be voidable at the option of the seller or purchaser within 12 months after the agreement to sell or buy.

(2) For the purposes of this section, any shares or debentures bought or sold shall be deemed to have been bought or sold by a director if his interest in the shares is such as to require recording in relation to him in the register to be maintained under this Act, unless it is proved that the sale or purchase was not made by him or on his instruction or advice or on the instructions or advice of any other person to whom he had imparted any special information affecting the value of the shares or debentures obtained by him in his capacity as director

(3) This section shall not prejudice the right of the company to proceed against any director for breach of section 235.

231. (1) A director of a company stands in a fiduciary relationship towards the company and shall observe the utmost good faith towards the company in any transaction with it or on its behalf. Duties of directors.

(2) A director shall act at all times in what he believes to be the best interests of the company as a whole so as to preserve its assets, further its business, and promote the purposes for which it was formed.

(3) In considering whether a particular transaction or course of action is in the best interests of the company as a whole a director may have regard to the interests of the employees, as well as the members, of the company, and, when appointed by, or as representative of, a special class of members, employees, or creditors may give special, but not exclusive, consideration to the interests of that class.

(4) No provision, whether contained in the articles of a company, or in any contract, or in any resolution of a company shall relieve any director from the duty to act in accordance with this section or relieve him from any liability incurred as a result of any breach thereof.

(5) A director shall exercise his powers for the purpose for which they are specified and shall not do so for a collateral purpose; and the power, if exercised for the right purposes does not constitute a breach of duty, if it incidentally affects a member adversely.

(6) Any duty imposed on a director under this section shall be enforceable against the director by the company.

232. (1) Every director of a company shall exercise the powers and discharge the duties of his office honestly, in good faith and in the best interests of the company, and shall exercise that degree of care, diligence and skill which a reasonably prudent director would exercise in comparable circumstances. Duty of care and skill.

(2) Failure to take reasonable care in accordance with this Act shall ground an action for negligence and breach of duty.

(3) Each director shall be individually responsible for the actions of the board in which he participated, and his absence from the board's deliberations, unless justified, shall not relieve a director of such responsibility.

(4) The same standard of care in relation to the director's duties to the company shall be required for both executive and non-executive directors:

Provided that additional liability and benefit may arise under the master and servant law in the case of an executive director if there is an express or implied contract to that effect.

Directors as trustees and agents of company.

233. (1) Directors are trustees of the company's moneys, properties and powers and as such shall-

- (a) account for all the moneys over which they exercise control;
- (b) refund any moneys improperly paid away;
- (c) exercise their powers honestly in the interest of the company and all the shareholders, and not in their own or sectional interests.

(2) A director may, when acting within his authority and the powers of the company be regarded as an agent of the company under this Act.

Exercise of directors' power.

234. Directors shall not, without the approval of a special resolution of the company, exceed the powers conferred upon them by this Act and the company's articles or exercise such powers for a purpose different from that for which such powers were conferred notwithstanding that they may believe such exercise to be in the best interest of the company.

Conflict of duty and interest.

235. (1) Notwithstanding any provision in the company's articles, a director shall not, without the consent of the company place himself in a position in which his duty to the company conflicts or may conflict with his personal interests or his duties to other persons, and in particular, without such consent a director shall not-

- (a) use for his own advantage any money or property of the company or any confidential information or special knowledge obtained by him in his capacity as director;
- (b) be interested directly or indirectly, otherwise than merely as a shareholder or debenture holder in a public company, in any business which competes with that of the company;
- (c) be personally interested, directly or indirectly, in any contract or other transaction entered into by the company except as provided for by this Act.

(2) A director shall not, in the course of the management of the company or in the utilisation of the company's property, make any secret profit or gain or other unauthorised benefits.

(3) A director shall be accountable to the company for any secret profit or any other unauthorised benefits derived by him contrary to subsection (2).

(4) The inability or unwillingness of the company to perform any functions or duties under its articles and memorandum shall not constitute a defence to any breach of duty of a director under this Act.

(5) The duty not to use confidential information shall not cease where a director or an officer has resigned from the company, and he shall still be accountable and can be restrained by an injunction from misusing the information received by virtue of his previous position.

Directors acting professionally.

239. Unless otherwise provided in the company's articles, any director may, notwithstanding section 235, act by himself or his firm in a professional capacity for the company except as auditor and he or his firm shall be entitled to proper remuneration for professional services as if he were not a director.

Civil liabilities for breach of duty.

240. If a director commits any breach of his duties under sections 233, 234 and 235—

- (a) the director and any other person who knowingly participated in the breach shall be liable to compensate the company for any loss it suffers as a result of such breach;
- (b) the director shall account to the company for any profit made by him as a result of such breach; and
- (c) any contract or other transaction entered into between the director and the company in breach of such duties may be rescinded by the company.

Legal liabilities for breach of duty.

241. (1) Proceedings to enforce the liabilities referred to in section 247 to restrain a threatened breach of any duty under sections 234 and 235 or to recover from any director of the company property of the company may be instituted by the company or any member of the company.

(2) Proceedings may be instituted by the company on the authority of the board of directors or of any receiver and manager or liquidator of the company, or of an ordinary resolution of the company which shall either have been agreed to by all the members of the company entitled to attend and vote at a general meeting or have been passed at a general meeting.

(3) After an investigation of the affairs of the company, proceedings may also be instituted in the name of the company by the Commission.

238. (1) Unless otherwise provided in the company's articles, a director, notwithstanding section 235, shall be entitled to enter into a contract with the company and, subject to compliance with section 231 and subsections (2) to (7), such contract or any other contract by the company in which any director is in any way interested shall not be liable to be avoided nor shall any director be liable to account for any profit made thereby by reason of such director holding that office or of the fiduciary relationship thereby established.

Contracts in which directors are interested.

(2) Every director who is in any way, whether directly or indirectly, materially interested in any contract or proposed contract entered into or to be entered into by or on behalf of the company shall declare the nature and extent of his interest at a meeting of the directors of the company.

(3) 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 after he became so interested; and in a case where the director becomes interested in a contract after it is made the declaration shall be made at the first meeting of the directors held after the director becomes so interested.

(4) For the purposes of this section, a general notice in writing given to the directors of the 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 or proposed contract so made or to be made:

Provided that—

- (a) there is stated in the notice the nature and extent of the interest of the director in such company or firm;

- (b) at the time the question of confirming or entering into the 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;
- (c) no general notice shall be of any effect unless it is given at a meeting of the directors or the director giving the notice takes all reasonable steps to ensure that it is brought up and read at the next meeting of directors after it is given;
- (d) such general notice shall not be effective for more than twelve months but may from time to time be renewed.

(5) A director of the company shall not enter into any contract on its behalf in which he or, to his knowledge, any director of the company or any associated company is in any way materially interested, whether directly or indirectly, until a resolution has been passed by the directors approving it.

(6) In the case of any proposed contract in which such officer is himself interested he shall, prior to the passing of the approving resolution, declare the nature and extent of his interest in the contract at a meeting of directors or by written notice given to the director or such other director.

(7) A director shall not vote in respect of any contract or arrangement in which he is materially interested and if he does so his vote shall not be counted, nor shall he be counted in the quorum required for that business; but neither of these prohibitions shall apply to—

- (a) any arrangement for giving any director any security and indemnity in respect of money lent by him to or obligations undertaken by him for the benefit of the company;

- (b) any arrangement for the giving by the company of any security to a third party in respect of a debt or obligation of the company for which the director himself has assumed responsibility in whole or in part under a guarantee or indemnity or by the deposit of a security; or
- (c) any contract by a director to subscribe for or underwrite shares or debentures of the company.

(8) A copy of every declaration made and notice given in pursuance of this section shall, within three days after the making or giving thereof, be entered in a book kept for this purpose.

(9) The book shall be open for inspection without charge by any director, secretary, auditor or member of the company at the registered office of the company and shall be produced at every general meeting of the company and at any meeting of the directors if any director so requests in sufficient time to enable the book to be available at the meeting.

(10) Any director or officer who fails to comply with any of the provisions of this section shall be guilty of an offence and be liable to a fine not exceeding Le5,000,000

(11) If a company fails to comply with subsections (8) and (9), the company and every officer of the company who is in default shall be guilty of an offence and be liable to a fine not exceeding Le.3,000,000 and if any inspection or production required thereunder is refused, the court may by order compel an immediate inspection or production.

(12) For the purpose of this section, an interest merely as holder of debentures, or of not more than 2 per cent of the shares or any class of shares, of a public company shall not be deemed to be a material interest.

(4) Pursuant to subsection (1), it shall be sufficient to state the total aggregate of all moneys paid to or other emoluments received by all the directors in each year without specifying the amount received by any individual.

(5) Any director who fails to comply with subsection (1) shall be guilty of an offence and be liable to a fine not exceeding Le5,000,000.

(6) In this section “emoluments” includes fees, percentages and other payments made or consideration given, directly or indirectly, to a director as such, and the money value of any allowances or perquisites belonging to his office.

Provision as to liability of officers and auditors.

246. Subject to this section, any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any director, manager or officer of the company, or any person (whether an officer of the company or not) employed by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he maybe guilty in relation to the company shall be void:

Provided that—

- (a) in relation to any such provision which is in force on the commencement of this Act, this section shall have effect only on the expiration of a period of 6 months from that date;
- (b) 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 such provision was in force; and
- (c) notwithstanding anything in this section, a company may, in pursuance of such

(4) Where proceedings are instituted by a member he shall sue in a representative capacity on behalf of himself and all other members, except any members that are defendants to the action, and shall join the company as a defendant.

(5) The court, on the application of any defendant, may stay proceedings by such member if satisfied that, in all the circumstances, including his participation in the transaction complained of and the circumstances in which he became a member, it is inequitable that he should be allowed to have the conduct of the action and may, if it thinks fit order such member to give security for payment of the costs of the defendants and may direct that the action or any part of it shall be heard in chambers.

(6) No period of limitation shall apply to any proceedings under this section, but in any such proceedings the court may relieve a director from liability in whole or in part and on such terms as it thinks fit if, in all the circumstances including lapse of time, the court thinks it equitable to do so.

(7) In any proceedings under this section, the court shall have power when justice so requires, to order that any moneys found to be payable by any defendant shall be restored, in whole or in part, to members or former members of the company instead of to the company itself; and in that event the court may order that the necessary enquiries shall be made to ascertain the identity of the members and former members concerned and may give such consequential directions as may be necessary or expedient.

(8) No proceedings under this section shall be dismissed, settled or compromised without the approval of the court after notice of the proposed dismissal, settlement or compromise has been given to all members of the company and to the Commission in such manner as the court directs.

(9) Within the time prescribed by such notice any member of the company and the Commission may appear and call the attention of the court to any matters which seem relevant and may give evidence and call witnesses.

(10) If the court does not approve the dismissal or compromise, it may give the conduct of the action to any member willing to continue it, or to the Commission in the name of the company, making such consequential orders regarding the parties to the action or otherwise as may be necessary or expedient.

Miscellaneous matters relating to directors

Multiple directors.

242. The fact that a person holds more than one directorship shall not derogate from his fiduciary duties to each company, including the duty not to use property, opportunity or information obtained in the course of the management of one company for the benefit of the other company or to his or other person's advantage.

Directors with unlimited liability in respect of limited company

243. (1) In a limited company, the liability of the directors or managers or of the managing director, may, if so provided by the memorandum

(2) In a limited company in which the liability of a director or manager is unlimited, the directors and any managers of the company and the member who proposes a person for election or appointment to the office of director or manager, shall add to the proposal a statement that the liability of the person holding that office shall be unlimited, and before the person accepts the office or acts therein, notice in writing that his liability shall be unlimited shall be given to him by the following or one of the following persons, namely, the promoters, directors, managers and the secretary of the company.

(3) If any director, manager, or promoter defaults in adding such a statement, or if any promoter, director, manager or secretary fails to give such notice, he shall be guilty of an offence and be liable to a fine not exceeding Le.3,000,000 and shall also be liable for any damage which the person so elected or appointed may sustain from the default.

Special resolution of limited company making liability of directors unlimited.

244. (1) A limited company, if so authorised by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors, managers, or of any managing director.

(2) Upon the passing of the special resolution, and notwithstanding the terms of any contract between a director and the company, the director may resign his office as director and in the event that a director resigns, he shall not be affected by the passing of the special resolution.

(3) The passing of the special resolution and any consequent resignation of a Director shall not prejudice any existing rights which the director may otherwise have for breach of any contract of service with the company

245. (1) Subject to this section, the directors of a company shall, on demand made to them in writing by members of the company entitled to not less than one-fourth of the aggregate number of votes, furnish to all the members of the company within one month of receipt of the demand, a statement certified as correct or with such qualifications as may be necessary by the auditors of the company, showing for each of the last three years in respect of which the accounts of the company have been made up, the aggregate amount received in that year as remuneration or other emoluments by directors of the company, whether as directors or otherwise, in respect of the management of the company.

Statement on remuneration of directors to be furnished to shareholders.

(2) There shall, in respect of any director of the company who is-

(a) a director of a subsidiary company of the company referred to in subsection (1); or

(b) by virtue of the nomination, whether direct or indirect, of the company a director of any other company,

be included in the said aggregate amount any remuneration or other emoluments received by him whether as a director of or otherwise in relation to the management of the other company.

(3) A demand for a statement under subsection (1) shall be of no effect if the company, within one month after the date on which the demand is made resolves that the statement is not to be furnished.

(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 register shall, if he so requires, be indicated in the register.

(4) The company shall not by virtue of anything done for the purposes, 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 register shall, subject to the provisions, be kept at the company's registered or head 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 14 days before the date of the company's annual general meeting and ending 3 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 Commission.

(6) In computing the 14 days and the 3 days mentioned in subsection (5) any day which is a Saturday or Sunday or a public holiday shall be disregarded.

(7) Without prejudice to the rights conferred by subsection (5), the Commission may at anytime, request for the production to it of a copy of the register, or any part thereof.

(8) The register shall also 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.

provision, indemnify such director, manager, officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgement is given in his favour or in which he is acquitted or in connection with any application under section 513 in which relief is granted to him by the court.

247. (1) Every company shall keep at its registered office, a register of its directors and secretaries. Register of directors and secretaries.

(2) The register shall contain the following particulars with respect to each director—

- (a) his present forename and surname;
- (b) any former forename and surname;
- (c) his usual residential address;
- (d) his nationality;
- (e) his business or occupation, if any;
- (f) particulars of any other directorships held by him; and
- (g) the date of his birth.

(3) The register shall contain the following particulars with respect to the secretary—

- (a) in the case of an individual—
 - (i) his present forename and surname;
 - (ii) any former forenames and surnames; and

(iii) his usual residential address; and

(b) in the case of a corporation its registered name and registered or head office.

(4) The company shall, within the periods respectively mentioned in subsection (5), send to the Commission a return containing the particulars specified in the register and notification of any change among its directors or in its secretary or in any of the particulars contained in the register, specifying the date of the change.

(5) The periods referred to in subsection (4) shall be the period within which—

(a) a return is to be sent which shall be a period of 14 days from the date of incorporation of the company; and

(b) the notification of a change is to be sent 14 days from the happening thereof:

Provided that, in the case of a return containing particulars with respect to any person who is the company's secretary at the commencement of this Act, the period shall be 14 days from the commencement of this Act.

(6) 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 no less than two hours in each day be allowed for inspection) be open to inspection by any member of the company without charge and by another person on payment of such sum as the company may determine, for each inspection.

(7) If any inspection required under this section is refused, or if default is made in complying with subsections (1), (2), and (4), the company and every officer of the company who is default shall be guilty of an offence and be liable to a fine not exceeding Le3,000,000

(9) In case of any refusal or default, the court may by order compel an inspection of the register or that the copies required be sent as provided in this section.

(10) For the purpose of this section—

(a) a person in accordance with whose directions or instruction the directors of a company are accustomed to act shall be deemed to be a director and officer of the company; and

(b) references to a former forename or surname in the case of a married woman shall not include the name or surname by which she was known previous to the marriage.

248. (1) Every company shall keep a register showing as respects each director of the company (not being its holding 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):

Register of
Directors'
holdings.

Provided that the register need not include shares in any body corporate which is the wholly-owned subsidiary of another body corporate, and for this purpose, a body corporate shall be deemed to be the wholly-owned subsidiary of another if it has no member but that other if and that other's wholly-owned subsidiaries and its or their nominees.

(2) Where any shares or debentures fall to be or cease to be recorded in the register in relation to any director by reason of a transaction entered into after the commencement of this Act, and while he is a director, the register shall also show the date of, and price or other consideration for the transaction that where there is an interval between the agreement for any such transaction and the completion thereof, the date shown shall be that of the agreement.

- (b) maintaining the registers and other records required to be maintained by the company under this Act;
- (c) rendering proper returns and giving notification to the Commission as required under this Act; and
- (d) carrying out such administrative and other secretarial duties as directed by the director, or the company.

(2) The secretary shall not, without the authority of the board of directors, exercise any powers vested in the board of directors.

PART XI—PROTECTION OF MINORITY AGAINST ILLEGAL AND OPPRESSIVE CONDUCT

Action by or against company

Only company may sue for wrong or ratify irregular conduct.

255. Subject to this Act, where any irregularity has been committed in the course of a company's affairs or any wrong has been done to the company only the company can sue to remedy that wrong and only the company can ratify the irregular conduct.

Injunction or declaration in the event of illegal or irregular activity.

256. (1) Without prejudice to the rights of members, the court may on the application of any member, by injunction or declaration, restrain the company from the following:—

- (a) entering into any transaction which is illegal or *ultra-vires*;
- (b) purporting to do by ordinary resolution any act which by its memorandum or articles require to be done by special resolution;
- (c) any act affecting the applicant's individual rights as a member;

(9) If default is made in complying with subsection (1) or (2), or if any inspection required under this section is refused, or any copy required thereunder is not sent within a reasonable 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 Le3,000,000, and if default is made in complying with subsection (8) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding Le3,000,000.

(10) If any inspection required under this section is refused, the court may, by order, compel an immediate inspection of the register.

(11) For the purposes of 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 share or debenture if a permanent representative of the body corporate other than the company holds them or has that interest or right in or over them, and either—
 - (i) that permanent representative is accustomed to act in accordance with the directions or instructions; or
 - (ii) he is entitled to exercise or control of one third or more of the voting power at any general meeting of that body corporate

Secretaries

249. (1) Every company shall have a secretary.

Secretaries.

(2) Anything required or authorised to be done by or to the secretary may, if the office is vacant or there is for any other reason no secretary, be done by or to any assistant or deputy secretary; or, if there is no assistant or deputy secretary capable of acting, by or to any officer of the company authorised generally or specially in that behalf by the directors.

(3) If any company carries on business for more than 6 months without a secretary the company and every officer of the company who is in default shall be liable to a fine of Le500,000 for each day that the company continues to carry on business without a secretary after the expiration of the period.

Avoidance of acts done by person as director and secretary.

250. A provision requiring or authorising a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of the secretary.

Qualification of secretary.

251. (1) It shall be the duty of directors of a company to take all reasonable steps to ensure that the secretary of the company is a person who appears to them to have the requisite knowledge and experience to discharge the functions of a secretary of a company, and in the case of a public company, he shall be—

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- (a) a member of the Institute of Chartered Secretaries and Administrators;
- (b) a legal practitioner within the meaning of the Legal Practitioners Act, 2000;
- (c) a member of the Institute of Chartered Accountants of Sierra Leone or such other bodies of accountants as are established from time to time by an enactment; or

(d) a body corporate or firm consisting of members any one of whom is qualified under paragraphs (a), (b) or (c).

(2) In the case of paragraph (d) of subsection(1), the body corporate or firm shall designate a person or persons to carry out the duties of secretary and such person or persons shall be qualified under paragraphs (a) (b) or (c).

252. (1) Unless otherwise provided in the articles a secretary shall be appointed by the directors and, subject to the provisions of this section, may be summarily dismissed by them.

Appoint and summary dismissal of secretary.

(2) Where it is intended to summarily dismiss the secretary of a public company, the board of directors shall give him notice—

- (a) stating that it is intended to dismiss him;
- (b) setting out the grounds on which it is intended to summarily dismiss him; and
- (c) giving him a period not less than 7 working days within which to make his defence.

253. A secretary shall not owe fiduciary duties to the company, but where he is acting as its agent he shall owe fiduciary duties to it, and as such shall be liable to the company where he makes secret profits or derives other unauthorised benefits or lets his duties conflict with his personal interests, or uses confidential information he obtains from the company for his own benefit.

Fiduciary interests of secretary.

254. (1) The duties of a secretary shall include the following—

Duties of secretary.

- (a) attending the meeting of the company, the board of directors and its committees, rendering all necessary secretarial services in respect of the meeting and advising on compliance by the meeting with the applicable rules and regulations;

Definition of applicant.

264. In sections 258 to 260 “applicant” means—

- (a) a registered holder or a beneficial owner and a former registered holder or beneficial owner, of a security of a company;
- (b) a director or an officer or a former director or officer of a company;
- (c) the Commission; or
- (d) any other person who, in the discretion of the court, is a proper person to make an application under section 258.

Relief on the grounds of unfairly prejudicial and oppressive conduct

Application

265. (1) An application to the court by petition for an order under section 283 in relation to a company may be made by a member of the company, the Commission or any other person approved by the court.

(2) In sections 266 and 267 “member” includes—

- (a) the personal representative of a deceased member; and
- (b) any person to whom shares have been transferred or transmitted by operation of law.

Grounds of application.

266. (1) An application for relief on the ground that the affairs of a company are being conducted in an illegal or oppressive manner may be made to the court by petition.

(2) An application to the court by petition for an order under this section in relation to a company may be made—

- (a) by a member of the company who alleges—

- (d) committing fraud on either the company or the minority shareholders where the directors fail to take appropriate action to redress the wrong done;
- (e) where a meeting of the company cannot be called in time to be of practical use redressing a wrong done to the company or to minority shareholders;
- (f) where the directors are likely to derive a profit or benefit or have profited or benefited from their negligence or breach of duty.

Provided that:

- (a) nothing in this section shall derogate from the protection afforded by any provision of this Act to any person dealing with the company;
- (b) in relation to acts beyond the capacity or power of the company, the company shall be liable for such acts in accordance with this Act;
- (c) the right afforded to a member to apply to the court under this section shall be without prejudice to any right he may have to institute proceedings against any director of the company under this section.

(2) In any proceedings by a member under this section, the Court may, if it thinks fit, order that the member give security for the costs of the company and may direct that the application shall be heard in chambers.

(3) Where any member institutes an action under this section, the court may award costs to him personally whether or not his action succeeds.

Definition of members. **257.** For purposes of section 256 “member” includes—

- (a) the personal representative of a deceased member; and
- (b) any person to whom shares have been transferred or transmitted by operation of law.

Commencing derivative action. **258.** (1) Subject to subsection (2), an applicant may apply to the court for leave to bring an action in the name or on behalf of a company, or to intervene in an action to which the company is a party for the purpose of prosecuting, defending or discontinuing the action on behalf of the company.

(2) No action may be brought and no intervention may be made under subsection (1), unless the court is satisfied that—

- (a) the wrongdoers are the directors who are in control, and will not take necessary action;
- (b) the applicant has given reasonable notice to the directors of the company of his intention to apply to the court under subsection (1) if the directors of the company do not with due diligence bring, prosecute, defend or discontinue the action;
- (c) the applicant is acting in good faith; and
- (d) it appears to be in the best interest of the company that the action be brought, prosecuted, defended or discontinued.

Powers of court. **259.** (1) In connection with an action brought or intervened under section 258, the court may at any time make such order or orders, as it thinks fit.

(2) Without prejudice to the generality of subsection (1), the court may make one or more of the following orders, that is an order—

- (a) authorising the applicant or any other person to control the conduct of the action;
- (b) giving directions for the conduct of the action;
- (c) directing that any amount adjudged payable by a defendant in the action shall be paid, in whole or in part, directly to former and present security holders of the company instead of to the company;
- (d) requiring the company to pay reasonable legal fees incurred by the applicant in connection with the proceedings.

260. An application made or an action brought or intervened in under section 258 shall not be stayed or dismissed by reason only that it is shown that an alleged breach of a duty owed to the company has been or may be approved by the shareholders of such company, but evidence of approval by the shareholders may be taken into account by the court in making an order under section 258. Evidence of share-holders’s approval not conclusives

261. An application made or an action brought or intervened in under section 258 shall not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the court given upon such terms as the court thinks fit; and if the court determines that the rights of any applicant may be substantially affected by such stay, discontinuance, settlement or dismissal, the court may order any party to the application or action to give notice to the applicant. Court’s approval to discontinue.

262. An applicant shall not be required to give security for costs in an application made or action brought or intervened in under section 258. No security for costs.

263. In an application made or action brought or intervened in under section 258, the court may at any time order the company to pay to the applicant ‘interim costs before the final disposition of the application or action. Interim costs.

- (a) the company's affairs are being or have been conducted with intent to defraud its creditors or the creditors of any other person, or in a manner which is unfairly prejudicial to some part of its members;
- (b) any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial, or that the company was formed for any fraudulent or unlawful purpose;
- (c) persons concerned with the company's formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members;
- (d) the company's members have not been given all the information with respect to its affairs which they might reasonably expect; or
- (e) there are any other reasons for appointing the inspectors than in paragraphs (a), (b), (c), and (d).

Inspector's powers during investigation.

269. (1) Where an inspector appointed under section 268 to investigate the affairs of a company thinks it necessary, for the purposes of his investigation to also investigate the affairs of another body corporate which is or at any relevant time has been the company's subsidiary or holding company or a subsidiary of its holding company or a holding company of its subsidiary, he shall report on the affairs of the other body corporate so far as he thinks that the results of his investigation of its affairs are relevant to the investigation of the affairs of the company first mentioned.

- (i) that the affairs of the company are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members, or in a manner that is in disregard of the interests of a member or the members as a whole;
 - (ii) that an act or omission or proposed act or omission, by or on behalf of the company or a resolution or a proposed resolution of a class of members, was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members or was or would be in a manner which is in disregard of the interests of a member or the members as a whole; or
- (b) by the Commission in a case where it appears to it in the exercise of its powers under this Act or any other enactment that—
- (i) the affairs of the company are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against a member or members or in a manner which is in disregard of the public interest; or
 - (ii) any actual or proposed act or omission of the company (including an act or omission on its behalf) which was or would be oppressive, or unfairly prejudicial to, or unfairly discriminatory against a member or members in a manner which is in disregard of the public interests.

Powers of court to grant relief.

267. (1) If the court is satisfied that a petition under sections 265 and 266 is well founded, it may make such order or orders as it thinks to fit for giving relief in respect of the matter complained of. relief.

(2) Without prejudice to the generality of subsection (1), the court may make one or more of the following orders that is, an order:—

- (a) for regulating the conduct of the affairs of the company in future;
- (b) for the purchase of the shares of any member by other members of the company;
- (c) for the purchase of the shares of any member by the company and for the reduction accordingly of the company's capital;
- (d) directing the company to institute, prosecute, defend or discontinue specific proceedings, or authorising a member or members of the company to institute, prosecute, defend or discontinue specific proceedings in the name or on behalf of the company;
- (e) varying or setting aside a transaction or contract to which the company is a party and compensating the company or any other party to the transaction or contract;
- (f) directing an investigation to be made by the Commission;
- (g) appointing a receiver or a receiver and manager of the property of the company;
- (h) restraining a person from engaging in a specific conduct or from doing a specific act or thing;

(i) requiring a person to do a specific act or thing.

(3) Where an order under this section makes any alteration or addition to the memorandum or articles of a company, then, notwithstanding anything in any other provision of this Act but subject to the provisions of the order, the company shall not have power, without the leave of the court, to make any further alteration or addition to the memorandum and articles inconsistent with the provisions of the order but, subject to this subsection, the alteration or addition shall have effect as if it had been duly made by a resolution of the company.

(4) On any application under this section by a member of a company or the Commission, the court may if it thinks fit, order the applicant to give security for the costs of the company and may, direct that the application be heard in chambers.

Investigation of companies and their affairs

268. (1) The court may appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as shall be directed—

Investigation of affairs of company by inspectors.

- (a) in the case of a company having a share capital on the application of members holding not less than one quarter of the shares issued;
- (b) in the case of a company not having a share capital, on the application of not less than one-quarter of the persons on the company's register of members; and
- (c) in any other case, on the application of the company.

(2) The court may make such an appointment if it appears to it that there are circumstances suggesting that—

- (ii) any person whose conduct is referred to in the report;
- (iii) the auditors of that company or body corporate; or
- (iv) any other person whose financial interests appear to the court to be affected by the matters dealt with in the report, whether as creditors of the company or body corporate, or otherwise; and

(b) cause such report to be printed and published.

Power to bring civil proceedings.

273. (1) If, from any report made under section 272, it appears to the Commission, that any civil proceedings ought in the public interest to be brought by the company or the applicant, the Commission may itself bring such proceedings in the name of the company or the applicant .

(2) The Commission shall indemnify the company or applicant against any costs or expenses incurred by it or him in or in connection with proceedings brought under this section; and any cost or expenses so incurred shall be, if not otherwise recoverable be defrayed out of the Consolidated Fund.

Criminal proceedings on report by inspector.

274. (1) If, from any report made under section 272, it appears to the court, the company, a member of the company or the applicant that any person has been guilty of any offence in relation to the company for which he is liable the court, company, member or applicant shall refer the matter to the Attorney General.

(2) If, where any matter is referred to the Attorney General under this section he considers that—

- (a) the case is one in which a prosecution ought to be instituted and;

(2) An inspector appointed under section 268 may at any time in the course of his investigation, without the necessity of making an interim report, inform the court and the Commission of matters coming to his knowledge as a result of the investigation tending to show that an offence has been committed.

270. (1) When an inspector is appointed under section 268, 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 being investigated under section 268—

Production of documents and evidence to inspectors.

- (a) 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;
- (b) to attend before the inspector when required to do so; and
- (c) otherwise to give the inspector all assistance in connection with the investigation which he is reasonably able to give.

(2) If the inspector considers that a person other than an officer or agent of the company or other body corporate is or may be in possession of information concerning its affairs, he may require that person to produce to him any books or documents in his custody or power relating to the company or other body corporate, and to attend before him otherwise to give him all assistance in connection with the investigation which he is reasonably able to give; and it is that person's duty to comply with the requirement.

(3) An inspector may examine on oath the officers and agents of the company or other body corporate, and such person as is mentioned in subsection (2) in relation to the affairs of the company or other body, and administer an oath accordingly.

(4) In this section, a reference to officers or to agents includes past, as well as present, officers or agents and “agents” in relation to a company or other body corporate, includes its bankers and persons employed by it as auditors, whether these persons are or are not officers of the company or other body corporate.

(5) An answer given by a person to a question put to him in the exercise of powers conferred by this section (whether it has effect in relation to an investigation under section 268 as applied by any other section in this Act) may be used in evidence against him.

(6) If any officer or agent of a company or body corporate—

- (a) refuses to produce to the inspectors any book or document which it is his duty to produce; or
- (b) refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company or body corporate, the inspectors may certify the refusal under his hand to the court and it may then enquire into the case; and after hearing any witnesses who may be produced against or on behalf of the alleged offender or hearing any statement which may be offered in defence, the court may punish the offender in the same manner as if he had been guilty of contempt of the court

Powers of inspector to call for directors' bank accounts.

271. (1) If an inspector has reasonable grounds for believing that a director, or past director or other officer of the company or other body corporate whose affairs he is investigating maintains or has maintained a bank account of any description (whether alone or jointly with another person and whether in Sierra Leone or elsewhere), into or out of which there has been paid—

- (a) the emoluments or part of the emoluments of his office as such director particulars of which have not been disclosed in the financial statements of the company or other body corporate for any financial year, contrary to this Act (in relation to particulars in accounts of directors);
- (b) any money which has resulted from or been used in the financing of an undisclosed transaction, arrangement or agreement; or
- (c) any money which has been in any way connected with an act or omission or series of acts or omissions which on the part of that director constituted misconduct (whether fraudulent or not) towards the company or body corporate or its members,

the inspector may require the director to produce to him all documents in the director's possession, or under his control, relating to that bank account.

272. (1) On the conclusion of the investigation, the inspectors shall submit their report to the court. Inspectors' report.

(2) A copy of the report referred to in subsection (1) shall be forwarded by the court to the Commission and the registered office of the company, and a further copy shall at the request of the applicants for the investigation, be delivered to them.

(3) In any case, the court may, if it thinks fit—

- (a) furnish a copy of the report on request and on payment of the prescribed fee to—
 - (i) any member of the company or other body corporate which is the subject of the report;

- (b) to act or to have acted in relation to those shares or debentures as a legal practitioner or an agent of some one interested in the shares or debentures, to give to the Commission any information which the person has or might reasonably be expected to obtain as to the present and past interest 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—

- (a) he has any right to acquire or dispose of the shares or debentures or any interest in them or to vote in respect of them;
- (b) if his consent is necessary for the exercise of any of the rights of other persons interested in the shares or debentures;
- (c) if other persons interested in the shares or debentures can be required or are accustomed to exercise their rights in accordance with his instructions.

(3) Any person who—

- (a) fails to give any information required of him under this section;
- (b) in giving such information makes any statement which he knows to be false in a material particular; or
- (c) recklessly makes any statement which is false in a material particular,

- (b) it is desirable in the public interest that the prosecution should be conducted by him,

he shall institute proceedings accordingly, and it shall be the duty of all officers and agents of the company, past and present (other than the defendant in the proceedings), to give to him all assistance in connection with the prosecution which they are reasonably able to give.

(3) The expenses of and incidental to an investigation under section 268 shall be defrayed as follows:—

- (a) where as a result of the investigation a prosecution is instituted by the Attorney-General, the expenses shall be defrayed by the Accountant General;
- (b) in any other case the expenses shall be defrayed by the company unless the court directs that they shall either be paid by the applicants or in part by the company and in part by the applicants.

275. A copy of the report of any inspectors appointed under this Part, authenticated by the seal of the company or body corporate whose affairs they have investigated, shall be admissible in any legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in the report.

Inspector's report to be used as evidence in legal proceedings.

276. (1) Where it appears to the Commission, that there is good reason to do so, it may appoint one or more competent 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.

Appointment, etc. of inspectors to investigate ownership of company.

(2) The appointment of an inspector under this section may define the scope of his investigation, with regard to the matter or the period to which it is to extend or otherwise and in particular may limit his investigation to matters connected with particular shares or debentures.

(3) Where an application for an investigation under this section with respect to particular shares or debentures of a company is made to the Commission by members of the company and the number of applicants or the amount of the shares held by them is not less than that required for an application for the appointment of an inspector under paragraphs (a) and (b) of subsection (1) of section 268—

- (a) the Commission shall appoint an inspector to conduct the investigation unless it is satisfied that the application is vexatious; and
- (b) the inspector's appointment shall not exclude from the scope of his investigation any matter which the application seeks to include except in so far as the Commission is satisfied that it is reasonable for the matter to be investigated.

(4) Subject to the terms of an inspector's appointment, his powers shall extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of his investigation.

Provisions applicable to investigations.

277. (1) For the purposes of any investigation under section 276, sections 268 to 272 shall apply with the necessary modifications to references to the affairs of the company or to those of any body corporate, so however, that—

- (a) the sections shall apply in relation to all persons—

(i) who are or have been, or whom the inspector has reasonable cause to believe to be or have been, financially interested in the success or failure or the apparent success or failure of the company or other body corporate whose membership is investigated with that of the company; or

(ii) who are able to control or materially to influence the policy thereof, including persons concerned only on behalf of others, as they apply in relation to officers and agents of the company or of the other body corporate, as the case may be; and

- (b) the Commission shall not be bound to furnish the company or any other person with a copy of any report by an inspector appointed under this section or with a complete copy thereof if it is of the opinion that there is good reason for not divulging the contents of the report or of part thereof, but shall keep a copy of the report, or, as the case may be, the parts of any report, as regards which it is not of that opinion.

(2) The expenses of any investigation under section 276 shall be defrayed out of the funds of the Commission .

278. (1) Where it appears to the Commission, that there is good reason to investigate the ownership of any shares in or debentures of a company and that it is necessary to appoint an inspector for the purpose, the Commission may require any person who it has reasonable cause to believe—

Power to require information as to persons interested in shares, etc.

- (a) to be or to have been interested in those shares or debentures; or

- (b) all statements of stocktakings from which such statement of stock as is mentioned in paragraph (a) of this subsection has been or is to be prepared; and
- (c) except in the case of goods sold by way of ordinary retail trade, statements of all goods sold and purchased, showing the goods and the buyers and sellers in sufficient detail to enable all these to be identified.

Place and duration of records.

282. (1) The accounting records of a company shall be kept at its registered office or such other place in Sierra Leone as the directors think fit, and shall at all times be open to inspection by the officers of the company.

(2) Subject to any direction with respect to the disposal of records given under this Act accounting records which a company is required by section 281 to be kept shall be preserved by it for a period of 6 years from the date on which they were made.

Penalties for non-compliance with sections 299 and 3000.

283. (1) If a company fails to comply with any provision of section 299 or 300, every officer of the company who is in default shall be guilty of an offence unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on, the default was excusable.

(2) An officer of a company shall be guilty of an offence if he fails to take all reasonable steps for securing compliance by the company with section 300 or has intentionally caused any default by the company under it.

(3) A person guilty of an offence under this section, shall be liable to a fine not exceeding Le5,000,000.

shall be guilty of an offence and be liable to a fine not exceeding Le3,000,000 or to imprisonment for a term not exceeding 6 months or to both.

279. (1) Where in connection with an investigation under section 276 or 277 it appears to the Commission that there is difficulty in finding out the facts about any share (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, the Commission may in writing direct that the shares shall, until further notice be subject to the restrictions imposed by this section.

Powers to impose restrictions on shares, etc.

(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 case of unissued shares any transfer of the right to be issued there- with and any issued 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 of those shares;
- (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 Commission directs shares to be subject to restrictions under this section, or refuses to direct that shares shall cease to be subject to restrictions, any person aggrieved thereby may appeal to the court, and the court may, if it sees fit, direct that the shares shall cease to be subject to the restrictions.

(4) Any direction or order of the court that shares shall cease to be subject to restrictions under this section, 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 restrictions under this section;
- (b) votes in respect of any shares, whether as holder or proxy, or appoints a proxy to vote in respect of such shares;
- (c) being the holder of any such shares, fails to notify that they are subject to the restrictions,

shall be guilty of an offence and be liable to a fine not exceeding Le8,000,000 or to imprisonment for a term not exceeding 6 months, or to both.

(6) Where shares in any company are issued in contravention of the restrictions, the company and every officer of the company who is in default shall be guilty of an offence and be liable to a fine not exceeding Le5,000,000

(7) This section shall apply in relation to debentures as it applies in relation to shares.

280. Nothing in this Part shall require disclosure to the courts or the Commission or to an inspector appointed by it by—

- (a) a legal practitioner of any privileged communication made to him in that capacity, except as regards the name and address of his client; or

Savings for legal practitioners and bankers.

- (b) a company's bankers as such, of any information as to the affairs of any of their customers other than the company.

PART XI—FINANCIAL STATEMENTS AND AUDIT

Accounting Records

281. (1) Every company shall cause accounting records to be kept in accordance with this section. Companies to keep accounting records.

(2) The accounting records shall be sufficient to show and explain the transactions of the company and shall be such as to—

- (a) disclose with reasonable accuracy, at any time, the financial position of the company; and
- (b) enable the directors to ensure that any financial statements prepared under this Part comply with the requirements of this Act as to the form and content of the company's financial statements.

(3) The accounting records shall, in particular, contain—

- (a) entries from day to day of all sums of money received and expended by the company, and the matters in respect of which the receipt and expenditure take place; and
- (b) a record of the assets and liabilities of the company;

(4) If the business of the company involves dealing in goods, the accounting records shall contain—

- (a) statements of stocks held by the company at the end of each financial year of the company;

(2) Where by virtue of such a notice one date is substituted for another as the accounting reference date of a company—

- (a) the current or previous accounting reference period, shortened or extended (as the case may be) in accordance with the notice; and
- (b) each successive period of 12 months beginning after the end of that accounting reference period (as so shortened or extended) and ending with the new accounting reference date, or (as the case may require) is to be treated as having been an accounting reference period of the company, instead of any period which would be an accounting reference period of the company if the notice had not been given.

(3) Section 285 and this section shall not affect any accounting reference period of the company which—

- (a) in the case of a notice under subsection (1) of section 285 is earlier than the current accounting reference period; or
- (b) in the case of a notice under subsection (2) of section 285, is earlier than the previous accounting reference period.

Inspection of accounts and books by non-directors.

287. (1) Subject to subsection (2), the directors shall from time to time determine whether and to what extent, at what time and places and under what conditions and regulations the accounts and books of the company or any of them shall be open for the inspection of members who are not directors.

(2) No member who is not a director shall have any right to inspect any account or book or document of the company unless that right is conferred by this Act or authorised by the directors or the company at general meeting.

Company's accounting reference periods and financial year

284. (1) A company's accounting reference period shall be determined according to its accounting reference date.

Accounting reference period and date.

(2) A company may give notice in the prescribed form to the Commission specifying a date in the calendar year as being the date on which in each successive calendar year an accounting reference period of the company is to be treated as coming to an end; and the date specified in the notice is then the company's accounting reference date.

(3) No notice shall have effect unless it is given before the end of 6 months beginning with the date of the commencement of business by a company and, failing such notice, the company's accounting reference date shall be 31st March.

(4) A company's first accounting reference period is such period ending with its accounting reference date which begins on the date of its incorporation and is a period of more than 6 months and not more than 18 months; and each successive period of 12 months beginning after the end of the first accounting reference period and ending with the accounting reference date is also an accounting reference period of the company.

(5) This section is subject to section 289, under which in certain circumstances a company may alter its accounting reference date and accounting reference periods.

285. (1) At any time during a period which is an accounting reference of a company by virtue of section 284, the company may give notice in the prescribed form to the Commission specifying a date in the calendar year (the new accounting reference date) on which that accounting reference period (the current accounting reference period) and each subsequent accounting reference period of the company is to be treated as coming to an end or (as the case may require) as having come to an end.

Alteration of accounting reference period.

(2) At any time after the end of a period which was an accounting reference period of a company by virtue of section 283 or 284 the company may give notice in the prescribed form to the Commission specifying a date in the calendar year (“the new accounting reference date”) on which that accounting reference period (“the previous accounting reference period”) and each subsequent accounting reference period of the company is to be treated as coming or (as the case may require) as having come to an end.

(3) A notice under subsection (2) shall have no effect—

- (a) unless the company is a subsidiary or holding company of another company and the new accounting reference date coincides with the accounting reference date of that other company; and
- (b) if the period allowed for laying and delivering accounts in relation to the previous accounting reference period has already expired at the time when the notice is given.

(4) A notice under this section shall state whether the current or previous accounting reference period of the company—

- (a) is to be treated as shortened, so as to come to an end or (as the case may require) be treated as having come to an end on the new accounting reference date on the first occasion on which that date falls or fell after the beginning of that accounting reference period; or
- (b) is to be treated as extended, so as to come to an end or (as the case may require) be treated as having come to an end on the new accounting reference date on the second occasion on which that date falls or fell after the beginning of that accounting reference period.

(5) A notice which states that the current or previous accounting reference period is to be extended shall have no effect if the current or previous accounting reference period, as extended in accordance with the notice, would exceed 18 months.

(6) Subject to any direction given by the Commission under subsection (7), a notice which states that the current or previous accounting reference period is to be extended shall have no effect unless—

- (a) no earlier accounting reference period of the company has been extended by virtue of a previous notice given by the company under this section;
- (b) the notice is given not less than 5 years after the date on which any earlier accounting reference period of the company which was so extended came to an end; or
- (c) the company is a subsidiary or holding company of another company and the new accounting reference date coincides with the accounting reference date of that other company.

(10) The Commission may, if it thinks fit, direct that subsection (6) shall not apply to a notice already given by a company under this section or (as the case may be) in relation to a notice which may be so given.

286. (1) Where a company has given notice under section 303 and that notice has not been superseded by a subsequent notice by the company, the new date specified in the notice is the company’s accounting company’s accounting reference date, in substitution for that which, by virtue of section 285, was its accounting reference date at the time when the notice was given.

Consequence of giving notice under section 285.

- (i) complies with the requirements of this Act relating to consolidated profit and loss account; and
- (ii) shows how much of the consolidated profit and loss for the year is dealt with in the individual financial statements of the company.

(10) If group financial statements are prepared and advantage is taken of subsection (6), that fact shall be disclosed in a note to the group financial statements.

Group financial statements of holding company.

290. (1) If at the end of a financial year a company has subsidiaries, the directors shall, as well as preparing individual accounts for that year, also prepare group financial statements being accounts or statements, which deal with the state of affairs and profit or loss of the company and the subsidiaries.

(2) Subsection (1) shall not apply if the company is a wholly owned subsidiary of another body corporate incorporated in Sierra Leone.

(3) A group financial statement may not deal with a subsidiary, if the directors of the company are of the opinion that-

- (a) it is impracticable, or would be of no real value to the members, in view of the insignificant amounts involved;
- (b) it would involve expense or delay out of proportion to its value to members of the company;
- (c) the result would be misleading, or harmful to the business of the company or any of its subsidiaries; or

288. (1) The directors of every company shall in respect of each financial year of the company, prepare financial statements for the year which shall comply with International Financial Reporting Standards. Directors' duty to prepare annual accounts.

(2) Subject to subsection (3), the financial statements required under subsection (1) shall include-

- (a) statement of the accounting policies;
- (b) the balance sheet as at the last day of the financial year;
- (c) an income statement or, in the case of a company not trading for profit, an income and expenditure account for the year;
- (d) notes on the accounts;
- (e) the auditors report;
- (f) the directors report;
- (g) cash flow statements;
- (h) a five-year financial summary for publicly traded companies; and
- (i) in the case of a holding company, the group financial statements.

(3) The financial statements of a private company need not include the matters stated in paragraphs (a), (g), (h) and (i) of subsection (2).

(4) The directors shall at their first meeting after the incorporation of the company, determine to what date in each year financial statements shall be made up, and they shall give notice of the date to the Commission within 14 days of the determination.

(5) In the case of a holding company, the 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 year of the company.

Form and content of company, individual and group financial statements

Form and content of individual financial statements.

289. (1) The financial statements of a company prepared under section 288, shall comply with the requirements of the Third Schedule (so far as applicable) with respect to their form and content, and with the International Financial Reporting Standards adopted from time to time by the Institute of Chartered Accountants of Sierra Leone after due consultation with such accounting bodies as they may think fit for these purposes provided that such accounting standards do not conflict with the provisions of this Act or that Schedule thereof.

(2) The balance sheet shall give a fair representation of the state of affairs of the company as at the end of the year; and the profit and loss account shall give a true and fair view of the profit or loss of the company for the year.

(3) The cash flow statements shall provide information on the generation and utilisation of funds by the company during the year.

(4) The five-year financial summary shall provide a report for a comparison over a period of five years or more of vital financial information.

(5) Subsection (2) overrides—

- (a) the requirements of the Second Schedule; and
- (b) all other requirements of this Act as to the matters to be included in the accounts of a company or in notes to those accounts;

and accordingly subsections (6) and (9) shall have effect.

(6) If the balance sheet or profit and loss account drawn up in accordance with those requirements would not provide sufficient information to comply with subsection (2), any necessary additional information shall be provided in that balance sheet or profit and loss account, or in a note to the accounts.

(7) If, owing to special circumstances in the case of any company compliance with such requirement in relation to the balance sheet or profit and loss account would prevent compliance with subsection (2), any necessary additional information shall be provided in that balance sheet or profit and loss account, or in a note to the accounts.

(8) If the directors depart from such requirement, particulars of the departure, the reasons for it and its effect shall be given in a note to the accounts.

(9) Subsections (1) to (8) shall not apply to group accounts prepared under section 290 and subsections (1) and (2) shall not apply to a company's income statement (or require the notes otherwise required in relation to that account) if—

- (a) the company has subsidiaries; and
- (b) the income statement is framed as a consolidated account dealing with all or any of the subsidiaries of the company as well as the company—

(4) It shall be the duty of any director of a company to give notice to the company of such matters relating to himself as may be necessary for the purposes of Part V of the Third Schedule and this applies to persons who are or have at any time in the preceding 3 years been officers as it applies to directors.

(5) A person who defaults in complying with subsection (4) of this section shall be guilty of an offence and be liable to a fine of Le.3,000,000 for every day during which the default continues.

Director's report

Director's
report.

293. (1) The Directors of every company, shall prepare in respect of each financial year a report—

- (a) containing a representation of the effects of transactions, other events and conditions, in accordance with the definitions and recognition criteria for assets and liabilities, income and expenses set out in the International Accounting Standards Board's Framework for the Preparation and Presentation of Financial Statements;
- (b) stating the amount (if any) which they recommend should be paid as dividend and any further appropriation of profits.

(2) The report shall state the names of the persons who, at any time during the financial year, were directors of the company, and the principal activities of the company and its subsidiaries in the course of the year and any significant change in those activities in the year.

(3) The report shall also state the matters, and give the particulars required by the Part I of the Fourth Schedule to this Act.

(4) Part II of the Fourth Schedule shall apply as regards the matters to be stated in the report of the directors in the circumstances specified therein.

- (d) the business of the holding company and that of the subsidiary are so different that they cannot reasonably be treated as a single undertaking.

(4) The group financial statements of a company shall consist of a consolidation of—

- (a) the balance sheet dealing with the state of affairs of the company and all the subsidiaries of the company; and
- (b) the profit and loss account of the company and its subsidiaries.

(5) If the directors are of the opinion that it is better for the purpose of presenting the same or equivalent information about the state of affairs and profit or loss of the company and its subsidiaries, and that to so present it that it may be readily appreciated by the members of the company, the group financial statements may be prepared in a form not consistent with subsection (1) and in particular the group financial statement may consist of—

- (a) more than one set of consolidated financial statements dealing respectively with the company and one group of subsidiaries and with other groups of subsidiaries;
- (b) separate financial statements dealing with each of the subsidiaries; or
- (c) statements expanding the information about the subsidiaries in individual balance sheet and profit and loss account of the holding company.

Form and content of group financial statements.

291. (1) The group financial statements of a holding company shall comply with the requirements of the Third Schedule, so far as applicable to group financial statements in the form in which those accounts are prepared with respect to the form and content of those statements and any additional information to be provided by way of notes to those accounts.

(2) Group financial statements together with any notes on them shall give a true and fair view of the state of affairs and profit or loss of the company and the subsidiaries dealt with by those statements as a whole.

(3) Subsection (2) shall override—

- (a) the requirements of the Third Schedule; and
- (b) all other requirements of this Act as to the matters to be included in group financial statements or in notes to those statements and accordingly subsections (4) and (5) shall have effect.

(4) If, group financial statements are not in accordance with the requirements of this Act by not providing sufficient information in compliance with subsection (2), any necessary additional information shall be provided in, or in a note to, the group financial statements.

(5) If, owing to special circumstances in the case of any company compliance with such requirements in relation to its group financial statements would prevent the statements from complying with subsection (2) of this section, (even if additional information were provided in accordance with subsection (4)) the directors may depart from that requirement in preparing the group financial statements.

292. (1) The additional matters contained in the Third Schedule shall be disclosed in the company's financial statements for the year; and in that Schedule where a thing is required to be stated or shown or information is required to be given, it shall be construed to mean that the thing shall be stated or shown, or the information is to be given in a note to those statements.

Additional disclosure required in notes to financial statements.

(2) In the Third Schedule—

- (a) Parts I and II deal respectively with the disclosure of particulars of the subsidiaries of the company and its shareholders;
- (b) Part III deals with the disclosure of financial information relating to subsidiaries;
- (c) Part IV requires a subsidiary company to disclose its ultimate holding company;
- (d) Part V deals with the emoluments of directors, including emoluments waived, pensions of directors and compensation for loss of office to directors and past directors; and
- (e) Part VI deals with disclosure of the number of the employees of the company who are remunerated at higher rates.

(3) Whenever it is stated in the Third Schedule that this subsection shall apply to certain particulars or information, the particulars or information shall be annexed to the annual return first made by the company after copies of its financial statements have been laid before its shareholders in a general meeting and if a company fails to satisfy an obligation thus imposed, the company and every officer of it who is in default shall be guilty of an offence and shall be liable to a fine not exceeding Le.5,000,000 and for continued contravention, to a daily default fine of Le500,000

(4) In the case of an unlimited company, the directors shall not be required by subsection (3), to deliver a copy of the accounts if—

- (a) at no time during the accounting reference period has the company been, to its knowledge, the subsidiary of a company that was then limited and at no such time, to its knowledge have there been held or been exercisable, by or on behalf of two or more companies that were then limited, shares or powers which, if they had been held or been exercisable by one of them, would have made the company its subsidiary; and
- (b) at no such time has the company been the holding company of a company which was then limited.

(5) References in this section to a company that was limited at a particular time are to a body corporate (under whatever law incorporated) the liability of whose members was at that time limited.

Penalty for non-compliance with section 296.

297. (1) If in a year any of the requirements of subsection (1) or (3) of section 296 is not complied with by any company every person who immediately before the end of that period was a director of the company shall, in respect of each of those subsections which is not so complied with, be guilty of an offence and be liable to a daily default fine of Le.500,000 in the case of a small company, a company limited by guarantee or an unlimited company, and Le.600,000 in the case of any other company.

(2) If a person is charged with an offence in respect of any of the requirements of subsection (1) or (3) of section 296, it shall be a defence for him to prove that he took all reasonable steps for ensuring that those requirements were complied with before the end of the period allowed for laying and delivering accounts.

(5) Part III of the Fourth Schedule shall apply as regards the matters to be stated in the directors' report relative to the employment, training and advancement of disabled persons, the health, safety and welfare at work of the employees of the company and the involvement of employees in the affairs, policy and performance of the company.

(6) In respect of any failure to comply with the requirements of this Act as to the matters to be stated, and the particulars to be given, in the directors' report, every person who was a director of the company immediately before the end of the period prescribed for laying and delivering financial statements shall be guilty of an offence and be liable on conviction to a term of imprisonment not exceeding 6 months or to a fine not exceeding Le.5,000,000

(8) In proceedings for an offence under subsection (6), it shall be a defence for the person to prove that he took all reasonable steps for securing compliance with the requirements in question.

294. (1) A company's balance sheet and every copy of it which is laid before the company in general meeting or delivered to the Commission shall be signed on behalf of the board by two of the directors of the company.

Signing of balance sheet and documents to be annexed thereto.

(2) If a copy of the balance sheet—

- (a) is laid before the company or delivered to the Commission without being signed as required by this section; or
- (b) not being a copy so laid or delivered, is issued, circulated or published in a case where the balance sheet has not been signed as so required or where (the balance sheet having been so signed) the copy does not include a copy of the signatures or signature as the case may be,

the company and every officer of it who is in default shall be guilty of an offence and be liable to a fine not exceeding Le3,000,000.

(3) A company's profit and loss account and so far as not incorporated in its individual balance sheet or profit and loss account, any group accounts of a holding company, shall be annexed to the balance sheet, and the auditors' report and the directors' report shall also be attached to the balance sheet.

(4) The balance sheet and the profit and loss account annexed to it shall be approved by the board of directors and signed on their behalf by two directors authorised to do so.

Persons entitled to receive financial statements as of right.

295. (1) In the case of every company, a copy of the company's financial statements for the year shall, not less than 21 days before the date of the meeting at which they are to be laid in accordance with section 296 shall be sent to each of the following persons:—

- (a) every member of the company (whether or not entitled to receive notice of general meeting);
- (b) every holder of the company's debentures, (whether or not so entitled); and
- (c) all persons other than members and debenture holders, being persons so entitled.

(2) In the case of a company not having a share capital, subsection (1) shall not require a copy of the financial statements to be sent to a member of the company who is not entitled to receive notices of general meetings of the company, or to a holder of the company's debenture who is not so entitled.

(3) Subsection (1) shall not require copies of the financial statements to be sent to—

- (a) a member of the company or a debenture holder, being in either case a person who is not entitled to receive notices of general meetings, and of whose address the company is unaware;
- (b) more than one of the joint holders of any shares or debentures none of whom are entitled to receive such notices; or
- (c) those who are not so entitled in the case of joint holders of shares or debentures some of whom are not entitled to receive such notices.

(4) If copies of the financial statements are sent less than 21 days before the date of the meeting, it shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by all the members entitled to attend and vote at the meeting.

(5) If default is made in complying with subsection (1), the company and every officer of it who is in default shall be guilty of offence and be liable to a fine not exceeding Le3,000,000.00.

296. (1) In respect of each year, the directors shall at a date not later than 18 months after incorporation of the company and subsequently once at least in every year, lay before the company in general meeting, copies of the financial statements of the company made up to a date not exceeding nine months previous to the date of the meeting.

Directors's duty to lay and deliver financial statements.

(2) The auditors' report shall be read before the company in general meeting, and be open to the inspection of any member of the company.

(3) In respect of each year, the directors shall deliver with the annual return to the Commission a copy of the balance sheet, the profit and loss account and the notes on the statements which were laid before the general meeting as required by this section.

- (a) deliver financial statements modified as for a small company if the company qualifies as small and it also so qualified in the preceding year;
- (b) deliver financial statements modified as for a small company (although not qualifying in that year as small), if in the preceding year it so qualified and the directors were entitled to deliver financial statements so modified in respect of that year;
- (c) deliver financial statements modified as for a small company if, in that year the company qualifies as small and the directors were entitled under paragraph (b) of this subsection to deliver financial statements so modified for the preceding year (although the company did not in that year qualify as small).

Modified financial statement of holding company.

304. (1) This section shall apply to a holding company where in respect of a year section 294 requires the preparation of group financial statements for the company and its subsidiaries.

(2) The directors of the holding company may not, under section 303 deliver financial statements modified as for a small company, unless the group (that is to say, the holding company and its subsidiaries together) is in that year a small group and the group is small if it would so qualify as a small company.

(3) The figures to be taken into account in determining whether the group is small shall be the group account figures, that is—

- (a) where the group financial statements are prepared as consolidated financial statements the figures for turnover and balance sheet total; and

(3) In proceedings under this section with respect to a requirement to lay a copy of a document before a company in general meeting, or to deliver a copy of a document to the Commission, it shall not be a defence to prove that the document in question was not in fact prepared as required by this Part .

298. (1) If—

- (a) in respect of a year, any of the requirements of subsection (1) or (3) of section 296 has not been complied with by a company before the end of the period allowed for laying and delivering financial statements; and
- (b) the directors of the company fail to make good the default within 14 days after the service of a notice on them requiring compliance,

Default order in case of non-compliance.

the court may, on application by any member or creditor of the company or by the Commission make an order directing the directors (or any of them) to make good the default within such time as may be specified in the order.

(2) The court's order may provide that all costs of and incidental to the application shall be borne by the directors.

(3) Nothing in this section shall affect the provisions of section 295.

299. (1) If any financial statements of a company (other than its group financial statement) of which a copy is laid before the shareholders in general meeting or delivered to the Commission do not comply with the requirement of this Act as to the matters to be included in, or in a note to, those financial statements, every person who at the time when the copy is so laid or delivered is a director of the company shall be guilty of an offence and in respect of each offence, be liable to a fine not exceeding Le5,000,000

Penalty for laying or delivering defective financial statements.

(2) If any group financial statements of which a copy is laid before a company in a general meeting or delivered to the Commission do not comply with section 296 or 297 and with the other requirements of this Act as to the matters to be included in or in a note to those financial statements, every person who at the time when the copy was so laid or delivered was a director of the company shall be guilty of an offence and be liable to a fine not exceeding Le.5,000,000.

(3) In proceedings against a person for an offence under this section, it shall be a defence for him to prove that he took all reasonable steps for ensuring compliance with the requirements in question.

Share holder's right to obtain copies of financial statements.

300. (1) Any member of a company, whether or not he is entitled to have sent to him copies of the company's financial statements, and any holder of the company's debentures (whether or not so entitled) shall be entitled to be furnished (on demand and without charge) with a copy of the company's last financial statements.

(2) If, when a person makes a demand for a document which he is entitled by this section to be furnished with, default is made in complying with the demand within 7 days after its making, the company and every officer of it who is in default shall be guilty of an offence and be liable to a daily default fine of Le.500,000, unless it is proved that the person has already made a demand for, and been furnished with, a copy of the document

Modified financial statements

Entitlement to deliver financial statements in modified form.

301. (1) In certain cases a company's directors may, in accordance with Part I of the Fifth Schedule deliver modified financial statements in respect of a year as a small company.

(2) For the purposes of sections 303 and 304 and the Fifth Schedule "deliver" means deliver to the Commission.

Definition of small company.

302. (1) In this Part and in Part XIII, a company qualifies as a small company in a year if for that year the following conditions are satisfied—

- (a) it is a private company having a share capital;
- (b) the amount of its turnover for that year is not more than such amount as may be fixed by the Commission;
- (c) the value of its net assets is not more than such amount as may be fixed by the Commission;
- (d) none of its members is a non-citizen of Sierra Leone;
- (e) non of its members is a Government or Government corporation or agency or its nominee; and
- (f) the directors between them hold not less than 51 percent of its equity share capital.

(2) In applying subsection (1) to a period which is a company's year but not in fact a year, the maximum figure for turnover in paragraph (b) of that subsection shall be proportionately adjusted.

303. (1) The directors of a company may, (subject to section 322 where the company has subsidiaries) deliver individual financial statements modified as for a small company in the cases specified in subsections (2) and (3);

Modified individual financial statements.

and Part I of the Fifth Schedule shall apply with respect to the delivery of financial statements so modified.

(2) In respect of the company's first year, the directors may deliver financial statements modified as for a small company, if in that year it qualifies as a small company.

(3) The directors may in respect of a company's year subsequent to the first—

qualification, to the effect that in the opinion of the person making it, the company's financial statements had been properly prepared).

(4) Where a company publishes abridged financial statements, it shall not publish with those statements the report of the auditors as is mentioned in paragraph (c) of subsection (3).

(5) A company which contravenes any provision of this section and any officer of it who is in default, shall be guilty of an offence and be liable to a daily default fine of Le.500,000

Audit

Power of Minister to alter accounting requirements.

307. The Minister may, after consultation with the Institute of Chartered Accountants of Sierra Leone, by regulations—

- (a) add to the classes of documents—
 - (i) to be comprised in a company's account for a financial year to be laid before the company in general meeting as required by section 296, or
 - (ii) to be delivered to the Commission under that section,

and make provision as to the matters to be included in any document to be added to either class;

- (b) modify the requirements of this Act as to the matters to be stated in a document of such class;
- (c) reduce the classes of documents to be delivered to the Commission under section 296.

- (b) where the group financial statements are not prepared as consolidated financial statements, the corresponding figures given in the group financial statements, with such adjustment as would have been made if the statements had been prepared in consolidated form;

aggregated in either case with the relevant figures for the subsidiaries (if any) omitted from the group accounts (excepting those for any subsidiary omitted under paragraph (a) of subsection (3) of section 290 on the grounds of impracticability).

(4) In the case of each subsidiary omitted from the group financial statements, the relevant figures as regards turnover, and balance sheet total shall be those which are included in the financial statements of that subsidiary prepared in respect of its relevant year (with such adjustment as would have been made if those figures had been included in group financial statements prepared in consolidated form).

(5) For the purposes of subsection (4), the relevant year of the subsidiary shall be—

- (a) if its year ends with that of the holding company to which the group financial statements relate, that year ;and
- (b) if not, the subsidiary's year ending last before the end of the year of the holding company.

(6) If the directors are entitled to deliver modified financial statements they may also deliver modified group financial statements and such group financial statements—

- (a) if consolidated, may be in accordance with Part II of the Fifth Schedule (while otherwise comprising or corresponding with group financial statements prepared under section 307; and

- (b) if not consolidated, may be such as (together with any notes) give the same or equivalent information as required by paragraph (a),

and Part III of the Fifth Schedule shall apply to modified group financial statements whether consolidated or not.

Publication of financial statements

Publication by company of full individual or group financial statements.

305. (1) This section shall apply to the publication by a company of full individual or group financial statements, that is to say, the statements required by section 296 to be laid before the company in general meeting and delivered to the Commission including the director's report, unless dispensed with or under Part III of the Fifth Schedule, but does not apply to interim financial statements.

(2) If a company publishes individual financial statements (modified or otherwise) for a year, it shall publish with them the relevant auditor's report.

(3) If a company required by section 290 to prepare group financial statements for a year, publishes individual financial statements for that year, it shall also publish with them its group financial statements (which may be modified financial statements but only if the individual financial statements are modified).

(4) If a company publishes group financial statements (modified or not) otherwise than together with its individual financial statements, it shall publish with them the relevant auditors' report.

(5) References in this section to the relevant auditors' report are to the auditors' report under section 308, or, in the case of modified financial statements (individual or group), the auditors' special report under paragraph 10 of Part 11 of the Fifth Schedule.

(6) A company which contravenes any provision of this section and any officer of it who is in default shall be guilty of an offence and be liable to a daily default fine of Le.500,000.

306. (1) This section shall apply to the publication by a company of abridged financial statements, that is to say, any balance sheet or profit and loss account relating to a year of the company or purporting to deal with such year, otherwise than as part of the full financial statements (individual or group) to which section 305, applies. Publication of abridged financial statements.

(2) The reference in subsection (1) to a balance sheet or profit and loss account, in relation to financial statements published by a holding company, includes an account in any form purporting to be a balance sheet or profit and loss account for the group consisting of the holding company and its subsidiaries.

(3) If the company publishes abridged financial statements, it shall publish with those statements, a statement indicating—

- (a) that the statements are not full financial statements;
- (b) whether full individual or full group financial statements, according as the abridged statements deal solely with the company's own affairs or with the affairs of the company and any subsidiaries have been delivered to the Commission or, in the case of an unlimited company exempted under subsection (4) of section 296 from the requirement to deliver financial statements, that the company is so exempted;
- (c) whether the company's auditors have made a report under section 310 on the company's financial statements for any year with which the abridged financial statements purport to deal; and
- (d) whether any report so made was unqualified (meaning that it was a report, without

- (a) ascertain whether the accounting and reporting policies of the company are in accordance with legal requirements and agreed ethical practices;
- (b) review the scope and planning of audit requirements;
- (c) review the findings on management matters in conjunction with the auditor and departmental responses on the findings;
- (d) keep under review the effectiveness of the company's system of accounting and internal control;
- (e) make recommendations to the board of directors in regard to the appointment, removal and remuneration of the auditors of the company; and
- (f) authorise the internal auditor to carry out investigations into any activities of the company which may be of interest or concern to the committee.

Auditors' duties and powers.

311. (1) It shall be the duty of the company's auditors, in preparing their report, to carry out such investigations as may enable them to form an opinion as to the following matters:—

- (a) whether proper accounting records have been kept by the company and proper returns adequate for their audit have been received from branches not visited by them; and
- (b) whether the company's balance sheet and (if not consolidated) its profit and loss account are in agreement with the accounting records and returns.

308. (1) Every company shall, at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

Appointment and remuneration of auditors.

(2) If an appointment of auditors is not made at the annual general meeting the court may, on the application of any member of the company, appoint an auditor of the company for the current year.

(3) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a member to the company not less than 14 days before the annual general meeting.

(4) The company shall send a copy of the notice to the retiring auditor, and shall give notice to the members either by advertisement or in any other mode allowed by the articles, not less than 7 days before the annual general meeting.

(5) If, after notice of the intention to nominate an auditor had been so given, an annual general meeting is called for a date 14 days or less after the notice has been given, the notice, though not given within the time required by subsection(4) of this section, shall be deemed to have been properly given for the purposes thereof; and the notice to be sent or given within the time required by subsection (4) shall be sent or given at the same time as the notice of the annual general meeting.

(6) Subject to this section, the first auditors of a company may be appointed by the directors at any time before the first annual general meeting, and the auditors so appointed shall hold office until that annual general meeting.

309. (1) A person shall not be qualified for appointment as auditor of a company for the purposes of this Act, unless he is qualified to practice as an accountant under the Institute of Chartered Accountant Act, 1988 and successan but in the case of a public company, the auditor shall be a chartered accountant.

Qualification of auditors

Act No. 5 of 1988.

(2) None of the following persons shall be qualified for appointment as auditor of a company:—

- (a) a director or other officer or servant of the company;
- (b) a person who is a partner of or in the employment of an officer or servant of the company;
- (c) a person or firm who or which offers to the company professional advice in a consultancy capacity in respect of secretarial or financial management;
- (d) a body corporate or firm which is closely connected or has control of another body corporate or firm which provides or has provided consulting services to the company intended to be audited;
- (e) an accountant who is disqualified from practising his profession by a competent body.

(3) A person shall also not qualify for appointment as an auditor of a company if he is, under subsection (5), 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.

(4) Notwithstanding subsections (1), (2) and (3), a firm is qualified for appointment as auditor of a company if, but only if, all the partners are qualified for appointment as auditors.

(5) No person shall act as auditor of a company at a time when he knows that he is disqualified for appointment to that office and if an auditor of a company to his knowledge becomes so

disqualified during his term of office, he shall thereupon vacate his office and give notice in writing to the company that he has vacated it by reason of that disqualification.

(6) A person who acts as auditor in contravention of subsection (5), or fails without reasonable excuse to give notice of vacating his office as required by that subsection, shall be guilty of an offence and be liable to a fine not exceeding Le.3,000,000 and, for continued contravention, to a daily default fine of Le.500,000.

310. (1) The auditors of a company shall make a report to the members on the accounts examined by them; and on every balance sheet and profit and loss account, and on all group financial statements copies of which are to be laid before the company in a general meeting during the auditors' tenure of office. ^{Auditors' report.}

(2) In addition to the report made under subsection (1) the auditor shall, in the case of a public company also make a report to an audit committee which shall be established by the public company.

(3) The audit committee referred to in subsection (2) shall consist of an equal number of directors and representatives of the shareholders of the company (subject to a maximum number of six members) and shall examine the auditors' report and make recommendations thereon to the annual general meeting as it may think fit:

Provided that such member of the audit committee shall not be entitled to remuneration and shall be subject to re-election annually.

(4) Any member may nominate a shareholder as a member of the audit committee by giving notice in writing of such nomination to the secretary of the company at least 21 days before the annual general meeting.

(5) Subject to such other additional functions and powers that the company's articles of association may stipulate, the objectives and functions of the audit committee shall be to—

(2) If the auditors are of the opinion that proper accounting records have not been received from branches not visited by them, or if the balance sheet and (if not consolidated) the profit and loss account are not in agreement with the accounting records and returns, the auditors shall state that fact in their report.

(3) Every auditor of a company shall have a right of access at all times to the company's books, accounts and vouchers, and be entitled to require from the company's office such information and explanations as he thinks necessary for the performance of the auditor's duties.

(4) If the requirements of Part IV of the Third Schedule are not complied with in the accounts, it shall be the auditors' duty to include in their report, so far as they are reasonably able to do so, a statement giving the required particulars.

(5) It shall be the auditors' duty to consider whether the information given in the director's report for the year for which the accounts are prepared is consistent with those accounts; and if they are of opinion that it is not, they shall state that fact in their report.

312. (1) A company may, at a general meeting of which notice has been served on the auditor by ordinary resolution remove an auditor before the expiration of his term of office, notwithstanding anything in any agreement between the company and the auditor. Inspector's powers during investigation.

(2) Where a resolution removing an auditor is passed at a general meeting of a company, the company shall, within 14 days give notice in writing that fact to the Commission and if a company fails to give the notice required by this subsection the company and every officer who is in default shall be guilty of an offence and be liable to a daily default fine of Le500,000

(3) Nothing in this section shall be taken as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as auditor or of any appointment terminating with that as auditor.