Companies Act, 2019 Act 992

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Act 992

REPUBLIC OF GHANA

THE NINE HUNDRED AND NINETY-SECOND

ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA
ENTITLED

THE COMPANIES ACT, 2019

AN ACT to amend and consolidate the law relating to companies; to establish the Office of the Registrar of Companies; and to provide for related matters.

DATE OF ASSENT: *2nd August, 2019.*

PASSED by Parliament and assented to by the President:

CHAPTER ONE—PRELIMINARY PROVISIONS

Application of Act

1. (1) Except as otherwise provided, this Act applies to companies formed in the Republic, whether before or after the commencement of this Act.

(2) This Act does not affect the validity of anything done before the date when the Act comes into operation.

Application of particular chapters

2. (1) Chapter Two applies to all companies.

(2) Chapter Three applies to private companies.

(3) Chapter Four applies to public companies.

(4) Chapter Five applies to external and non-Ghanaian companies.

Prohibition of association exceeding twenty members

3. A company, or an association consisting of more than twenty persons shall not be formed for the purpose of carrying on a business that has for the object of the company or association, the acquisition of gain by the company or association or by the individual members of the company or association, unless the company or association is registered as a company under this Act or is formed in pursuance of any other enactment.

Companies formed for special purposes

4. This Act does not abrogate or affect legislation relating to companies carrying on the business of banking, insurance or any other business which is subject to special regulation.

Saving of equity and common law

5. The rules of equity and of common law applicable to companies shall continue in force unless they are inconsistent with a provision of this Act.

CHAPTER TWO—PROVISIONS APPLICABLE TO ALL COMPANIES

Part A: Formation and Incidental Matters

Right to form a company

6. One or more persons may form an incorporated company under this Act.

Types of companies

7. (1) An incorporated company may be

(a) a company limited by shares;

(b) a company limited by guarantee;

(c) an unlimited company; or

(d) an external company.

(2) For the purposes of subsection (1),

(a) a company limited by shares is a company which has the liability of its members limited to the amount unpaid on the shares respectively held by them;

(b) a company limited by guarantee is a company which has the liability of its members limited to an amount that the

members may respectively undertake to contribute to the assets of the company in the event of its being wound up;

(c) an unlimited company is a company which does not have a limit on the liability of its members; or

(d) an external company is a company as defined in section 329.

(3) A company limited by shares and an unlimited company shall for the purposes of incorporation be registered with shares.

(4) A company of a type specified in subsection (1), may be a private company or a public company.

(5) A private company, other than a company limited by guarantee, is a company which by virtue of its constitution

(a) restricts the right to transfer the shares of the company, if any,

(b) limits the total number of the members and debenture holders to fifty, not including

(i) persons who are genuinely in the employment of the company, and

(ii) persons who, having been formerly in the employment of the company, were while in that employment, and have continued after the determination of that employment to be members or debenture holders of the company;

(c) prohibits the company from making an invitation to the public to acquire shares or debentures of the company; and

(d) prohibits the company from making an invitation to the public to deposit money for fixed periods or payable at call, whether bearing or not bearing interest.

(6) Where two or more persons hold one or more shares or debentures jointly, they shall, for the purposes of subsection (3) be treated as a single member or debenture holder.

(7) A company which is not a private company is a public company except a company limited by guarantee which has a membership of fifty or less.

(8) A company limited by guarantee shall not for the purposes of incorporation be registered with shares and shall not create or issue shares.

Companies limited by guarantee

8. (1) A company limited by guarantee shall not be incorporated with the object of carrying on business for the purpose of making profits other than making profits for the furtherance of its objects.

(2) Where a company limited by guarantee carries on business for the purpose of making profits, other than for the furtherance of the objects of the company, the officers and members of that company who are cognisant of the fact that the company is so carrying on business are jointly and severally liable for the payment and discharge of the debts and liabilities of the company incurred in carrying on that business, and the company and those officers and members are each liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the company carries on that business.

(3) The total liability of the members of a company limited by guarantee to contribute to the assets of the company in the event of the company being wound up shall not at any time be less than the amount of money specified in the application required for incorporation.

(4) Where in breach of subsection (3), the total liability of the members of a company limited by guarantee is at any time, less than the amount specified in the application required for incorporation, every director and member of the company who is cognisant of the breach is liable to pay to the Registrar an administrative penalty of five hundred penalty units.

Conversion of company limited by shares to company limited by guarantee

9. (1) A company limited by shares may be converted into a company limited by guarantee if,

(a) the liability on any of its shares is fully paid;

(b) all the members agree in writing to the conversion and to the voluntary surrender to the company for cancellation of the shares held by them immediately before the conversion;

(c) a new constitution, appropriate to a company limited by guarantee, is adopted by the company pursuant to section 30; and

(d) a member agrees or the members agree in writing to contribute to the assets of the company, in the event of the company being wound up, to an amount of money not less than that prescribed by subsection (3) of section 8.

(2) On delivery to the Registrar for registration of a statutory declaration by a director and the Company Secretary confirming that the conditions of subsection (1) have been complied with, the Registrar shall issue a new certificate of incorporation to the effect that the company is limited by guarantee.

(3) From the date stated in the certificate

(a) the company is converted into a company limited by guarantee,

(b) the shares in the company shall be validly surrendered and cancelled despite the provisions of section 58, and

(c) the members of the company who have not agreed to contribute to the assets of the company in the event of the company being wound up cease to be members of the company.

(4) Except in accordance with subsection (4) of section 21, the company shall not change the name under which the company was registered before the conversion.

(5) The omission of words

(a) "(plc) Public Liability Company", or

(b) "(ltd) Private Company Limited"

as the last words of the name of the company after conversion shall not be regarded as a change of name.

(6) If the Registrar is of the opinion that the name under which the company is registered will be misleading or undesirable on its conversion to a company limited by guarantee, the Registrar shall in accordance with subsection (6) of section 21, direct the company to change its name and shall not issue a new certificate of incorporation until the direction has been complied with or cancelled in accordance with that subsection.

(7) Until a new certificate of incorporation is issued under subsection (2), neither the surrender of the shares of the company nor the agreement to contribute to the assets of the company in the event of the company being wound up shall take effect.

(8) The conversion of a company, pursuant to this section shall not
(a) affect the rights or obligations of the company except as mentioned in this section; or
(b) render defective any legal proceedings by or against the company.

Duties of promoters

10. (1) A person who is or has been engaged or interested in the formation of a company is a promoter of that company.

(2) A person acting in a professional capacity for persons engaged in procuring the formation of a company is not a promoter of that company.

(3) The promoter shall, until the formation of a company is complete and the working capital of the company has been raised,
(a) stand in a fiduciary relationship to the company;
(b) observe utmost good faith towards the company in a transaction with the company or on behalf of the company; and
(c) compensate the company for any loss suffered by the company by reason of the failure of the promoter to observe utmost good faith.

(4) A promoter that acquires property or information in circumstances in which it was the duty of the promoter as a fiduciary to acquire the property or information on behalf of the company, shall account to the company for the property or information and for the profit which the promoter may have made from the use of that property or information.

(5) A transaction between a promoter and the company may be rescinded by the company unless, after full disclosure of the material facts known to the promoter, the transaction has been entered into or ratified on behalf of the company,
(a) by the board of directors of the company, if all the directors of the company are 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 the shares in which the promoter is beneficially interested have voted on the resolution to enter into or ratify that transaction.

(6) A period of limitation shall not apply to proceedings brought by a company to enforce a right under this section.

(7) In proceedings under subsection (6), the Court may relieve a promoter in whole or in part and on the terms that the Court considers fit from liability if in the circumstances, including lapse of time, the Court considers it equitable so to do.

Pre-incorporation contracts

11. (1) A contract or any other transaction purporting to be entered into by a company before the formation of the company, or by a person on behalf of the company before its formation, may be ratified by the company within eighteen months after the formation of the company.

(2) On ratification under subsection (1), the company shall become bound by, and entitled to the benefit of, that contract or that transaction as if the company has been in existence at the date of that contract or other transaction and had been a party to the contract or other transaction.

(3) Before ratification by a company, the person who purported to act in the name or on behalf of the company is, in the absence of express agreement to the contrary, personally bound by the contract or other transaction and is entitled to the benefit of the contract or other transaction.

Part B: Incorporation of Companies

Right to apply for incorporation

12. Subject to this Act, a person of the age of eighteen years and above may apply for the incorporation of a company under this Act.

Application for incorporation

13. (1) An application for incorporation shall be made in the prescribed form and delivered to the Registrar.

(2) The application shall include

(a) the name of the company as required by section 21;

(b) an indication of the type of proposed company;

(c) the nature of the proposed business in the case of a company registered with an object;

(d) the address of the proposed registered office and principal place of business of the company in the Republic, the

telephone number and the post office box, private mail bag or digital address of the registered office of the company;

(e) the electronic mail address and website of the company, if available;

(f) the following particulars of each subscriber:

(i) the date and place of birth;

(ii) the present full name and any former name;

(iii) the residential, occupational, postal and electronic mail addresses and telephone contact; and

(iv) the nationality;

(g) the following particulars of each proposed director of the proposed company:

(i) the present full name and any former name;

(ii) the particulars of any business occupation and other directorships held by the director as provided by section 215; and

(iii) the residential, occupational, postal and electronic mail addresses and telephone contact;

(h) a statutory declaration by each proposed director of the proposed company indicating that within the preceding five years, that proposed director has not been

(i) charged with or convicted of a criminal offence involving fraud or dishonesty;

(ii) charged with or convicted of a criminal offence relating to the promotion, incorporation or management of a company; or

(iii) declared insolvent or if that proposed director has been insolvent, the date of the insolvency and the particulars of that company;

(i) the consent of each proposed director;

(j) the following particulars of the proposed Company Secretary of the proposed company:

(i) the present full name and any former name;

(ii) the usual postal, occupational and electronic mail address;

(iii) the residential address in the case of an individual; and

(iv) the business occupation as provided by section 215;

(k) the following particulars of the proposed auditor of the proposed company:
  (i) the present full name and any former name;
  (ii) the postal and electronic mail addresses and telephone number;
  (iii) the residential address in the case of an individual; and
  (iv) the consent of the auditor;

(l) the following particulars of each subscriber for a proposed company with shares:
  (i) the full name and any former or other name;
  (ii) the date and place of birth;
  (iii) the telephone number;
  (iv) the nationality and proof of identity;
  (v) the residential, postal or email address, if any;
  (vi) place of work and position held;

(m) the following particulars in respect of each beneficial owner of the proposed company:
  (i) the full name and any former or other name;
  (ii) the date and place of birth;
  (iii) the telephone number;
  (iv) the nationality, national identity number, passport number or other appropriate identification and proof of identity;
  (v) the residential, postal or email address, if any;
  (vi) place of work and position held;
  (vii) the nature of the interest including the details of the legal, financial, security, debenture or informal arrangement giving rise to the beneficial ownership; and
  (viii) confirmation as to whether the beneficial owner is a politically exposed person;

(n) the following details in the case of a company that has shares:
  (i) the amount of proposed stated capital, as defined in section 68;
  (ii) the number of authorised shares of the company for each class; and

(o) in the case of a proposed company limited by guarantee the specified amount up to which the member undertakes to contribute to the assets of the company, in the event of the company being wound up while that person is a member or within a stipulated period after ceasing to be a member, for payment of the costs, charges and expenses of winding up, and the adjustments of the rights amongst members.

(3) The application shall be signed by the subscriber or each subscriber if more than one, for shares of the company by writing opposite the name of the subscriber, the number of shares the subscriber takes and the cash price payable for the shares and the subscriber shall take at least one share.

(4) The provisions of subsection (3) shall apply to an application for incorporation of a company that proposes to register a constitution.

(5) The application for incorporation may be effected by

(a) the delivery of the completed application form as required by subsection (2); or

(b) the delivery of the completed application form as required by subsection (2) accompanied with a proposed constitution.

(6) Without limiting the provisions of subsection (2), the applicant shall furnish the Registrar with appropriate evidence of the identity and place of residence of the applicant at the time of the delivery of the completed application form for incorporation.

Incorporation

14. (1) Where the Registrar is satisfied that the application for incorporation of a company complies with this Act, the Registrar shall, after payment of the prescribed fee, certify under the seal of the Registrar that the company is incorporated and in the case of a limited liability company, that the liability of the members is limited.

(2) From the date of incorporation, the company becomes a body corporate by the name contained in the application for incorporation and, subject to section 13, is capable of performing the functions of an incorporated company.

Certificate of incorporation

15. The certificate of incorporation, or a copy of that certificate, certified as correct by the Registrar, is conclusive evidence that the company has been duly incorporated under this Act and proceedings shall not be brought in a Court to cancel or annul the incorporation.

Certificate of incorporation and winding up

16. Section 15 does not preclude the institution of proceedings to wind up the company in accordance with section 274.

Error or omission in document

17. (1) Where there is an error or omission in a document containing particulars delivered to the Registrar under section 13, the company and every signatory of the document is without limiting section 346, liable to pay to the Registrar an administrative penalty of one hundred and fifty penalty units.

Part C: Capacity of Companies

Powers of companies

18. (1) Subject to this Act and to any other enactment, a company shall have

(a) full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction; and

(b) full rights, powers and privileges for the purposes of paragraph *(a).*

(2) Without limiting subsection (1), and despite the provisions of any other enactment, a company shall be capable of giving and entering into and being bound by and claiming all rights under a deed or mortgage or other instrument.

(3) The registered constitution of a company may contain a provision regarding the capacity, rights, powers or privileges of the company if the provision restricts the capacity of the company or those rights, powers and privileges.

Limits of authority of company

19. (1) Where the registered constitution of a company sets out the nature of business or objects of the company, there is deemed to be a restriction in the registered constitution on the business or activities

in which the company may engage, unless the registered constitution expressly provides otherwise.

(2) Where the registered constitution of a company provides for any restriction on the business or activities in which the company may engage

(a) the capacity and powers of the company shall not be affected by that restriction; and

(b) an act of the company, a contract or other obligation entered into by the company and a transfer of property to or by the company shall not be invalid by reason only of the fact that it was done in contravention of that restriction.

(3) Subsection (1) shall not affect the application of the provisions of subsection (5) and sections 200, 219 and 275.

(4) Despite subsection (1), an act of a company and a conveyance or transfer of property to, or by, a company is not invalid by reason of the fact that the act, conveyance or transfer was not done or made for the furtherance of any of the authorised businesses or that the company was otherwise exceeding its objects or powers.

(5) On the application of

(a) a member of the company, or

(b) the holder of a debenture secured by a floating charge over all or any of the property of the company or by the trustee for the holders of those debentures,

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

(6) Where the transactions sought to be prohibited in proceedings under subsection (5) are being, or are to be, performed or made in accordance with a contract to which the company is a party, the Court may,

(a) if the Court considers it equitable and if all the parties to the contract are parties to the proceedings, set aside and prohibit the performance of the contract, and

(b) allow for the payment of compensation to the company or to the other parties to the contract for the loss or damage sustained by the company or the other parties by reason of the setting aside or prohibition of the performance of the contract, but not compensation for loss of anticipated profits to be derived from the performance of the contract.

(7) The capacity of the company to do an act shall not be affected by the fact that the act is not, or would not be, in the best interests of a company.

Alteration of objects or business

20. (1) Where applicable, a company may change the business for which the company was incorporated to carry on, or in the case of a company not formed for the purpose of carrying on a business, the objects of the company by special resolution.

(2) Within twenty-eight days of the passing of the special resolution under subsection (1), notice of the resolution shall be given in the prescribed form to the holders of the debentures secured by a floating charge over any of the property of the company and to the trustees for the debenture holders.

(3) Where a company defaults in giving a notice as required by this section, the company and every officer of that company that is in default is liable to pay to the Registrar an administrative penalty of fifty penalty units.

Names of companies

21. (1) The last words of the name of a

(a) private company limited by shares shall be "Limited Company" or the abbreviation "LTD";

(b) public company limited by shares shall be "Public Limited Company" or the abbreviation "PLC";

(c) company limited by guarantee shall be "Limited by Guarantee" or the abbreviation "LBG"; and

(d) private company unlimited by shares shall be "Private Unlimited Company" or the abbreviation 'PRUC'

(e) public company unlimited by shares shall be "Public Unlimited Company" or the abbreviation "PUC".

(2) A company shall not be registered by a name which, in the opinion of the Registrar, is misleading or undesirable.

(3) A company shall not be registered with a name of a company that has been dissolved within the preceding five years of the intended registration.

(4) A company may in writing change its name by special resolution and with the written approval of the Registrar.

(5) Where, through inadvertence or otherwise, a company on first registration or on registration by a new name is registered by a name which, in the opinion of the Registrar, is misleading or undesirable, the company shall change the name of the company with the approval of the Registrar.

(6) Where the Registrar so directs within six months of the company being registered by that name, the company shall change the name within a period of six weeks from the date of the direction.

(7) Where the Registrar is of the opinion that by reason of a change in the objects of, or the nature of the business carried on by a company, the name under which the company is registered is misleading or undesirable, the Registrar may direct the company to change the name and the company shall change that name within six weeks of the direction, unless within that time the company has lodged an appeal to the Court against the direction.

(8) The Court shall cancel or confirm the direction and if the direction is confirmed, the company shall change the name within six weeks of the confirmation.

(9) Where a company defaults in complying with a direction under subsection (6), (7), or (8) the Registrar shall change the name of the company in the Register.

(10) Where a company defaults in complying with a direction under subsection (5), (6), (7) or (8), the company and any of the directors of the company that are cognisant of the default are liable to pay to the Registrar, an administrative penalty of twenty-five penalty units and a further penalty of fifty penalty units for each day that the default continues.

(11) Where a company changes the name of the company under this section, the Registrar shall record the new name in place of the former name, and shall issue a certificate of incorporation that indicates the change of name.

(12) Pursuant to subsection (11), the Registrar shall advertise the change in the *Companies Bulletin*, the website of the Office of the Registrar of Companies and in one daily newspaper published in the Republic and circulating in the district in which the registered office of the company is situated.

(13) A certificate or an advertisement in the *Companies Bulletin* under this section is conclusive evidence of the change to which the change of name relates.

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

(15) A company limited by shares existing at the commencement of this Act has six months within which to comply with paragraphs *(b)* and *(c)* of subsection (1).

Reservation of name

22. (1) An application for reservation of the name of a company may be sent or delivered to the Registrar, and shall be in a form approved by the Registrar.

(2) The Registrar may, after receipt of the application and on payment of the prescribed fee, reserve a name pending registration of a company or a change of name by a company.

(3) A reservation under subsection (2) shall not exceed two months and may be renewed for a further period of two months.

(4) A company shall not be registered under a reserved name or under any other name which in the opinion of the Registrar is similar to the reserved name.

Part D: Constitution of the Company

Option to have a registered constitution

23. (1) A company has the option to have a registered constitution.

(2) Where a company opts to have a registered constitution, the document that represents the constitution shall be

(a) signed by one or more subscribers or the Company Secretary, and

(b) delivered to the Registrar by the subscriber or an authorised representative before incorporation; or

(c) delivered to the Registrar by the Company Secretary, director or an authorised representative after incorporation.

Effect of Act on company that has lodged a registered constitution

24. (1) Where a private company has delivered to the Registrar its document intended to be the registered constitution, the rights, powers, duties and obligations of the company, the Board, each director

and each shareholder of the company shall have effect as provided in the Second Schedule, unless they are restricted, limited or modified by the registered constitution.

(2) Where a public company has duly delivered the registered constitution of the company, the rights, powers, duties and obligations of the company, the Board, each director and each shareholder of the company shall have effect as provided in the Third Schedule, unless they are restricted, limited or modified by the registered constitution of the company duly delivered in accordance with this Act.

(3) Where a company limited by guarantee has duly delivered the registered constitution of the company, the rights, powers, duties and obligations of the company, the Board, each director and each shareholder of the company shall have effect as provided in the Fourth Schedule, unless they are restricted, limited or modified by the registered constitution of the company duly delivered in accordance with this Act.

Effect of Act on company without a registered constitution

25. (1) Where a private company does not have a registered constitution, the rights, powers, duties and obligations of the company, the Board, each director and each shareholder of the company shall be as provided in the Second Schedule and be deemed accordingly to be the constitution of that company, unless they are restricted, limited or modified by a registered constitution of the company duly delivered after incorporation in accordance with this Act.

(2) Where a public company does not have a registered constitution, the rights, powers, duties and obligations of the company, the Board, each director and each shareholder of the company shall be as provided in the Third Schedule, and be deemed accordingly to be the constitution of that company, unless they are restricted, limited or modified by the registered constitution of the company duly delivered after incorporation in accordance with this Act.

(3) Where a company limited by guarantee does not have a registered constitution, the rights, powers, duties and obligations of the company, the Board, each director and each member of the company shall be as provided in the Fourth Schedule and be deemed accordingly to be the constitution of that company, unless they are restricted, limited or modified by the registered constitution of the company duly delivered after incorporation in accordance with this Act.

Contents of registered constitution

26. (1) Where at incorporation, a company opts to have a registered constitution, the registered constitution of that company shall state,

(a) the name of the company, with the last words of the name as required by subsection (1) of section 21;

(b) the names of the first directors of the company; and

(c) that the powers of the directors are limited in accordance with section 189.

(2) Where a company has been incorporated in accordance with this Act and subsequently opts to have a registered constitution, it

(a) may state the nature of the business in that constitution which the company is authorised to carry on, or if the company is not formed for the purpose of carrying on a business, the nature of the objects for which the company is incorporated; and

(b) shall deliver to the Registrar

(i) the constitution, and

(ii) a special resolution of the company to indicate the intention to have the registered constitution.

(3) In the case of a company having shares, the registered constitution shall also state the number of shares with which the company is to be registered.

(4) A registered constitution may contain any other lawful provisions relating to the structure and administration of the company.

(5) In the case of a company that does not have a registered constitution, the company shall be deemed to have as part of the constitution under section 25 the matters with respect to the

(a) name of the company,

(b) names of its first directors,

(c) number of shares with which the company is registered, and

(d) number of shares subscribed by each shareholder on the incorporation of the company and the consideration to be respectively paid for those shares as are respectively stated in the application for incorporation under section 13.

Form of constitution

27. (1) An unlimited company may have a registered constitution

and the form of the constitution shall be in accordance with the form set out in the

(a) Second Schedule, if a private company unlimited by shares, or

(b) Third Schedule, if a public company unlimited by shares, or as near to those with the necessary modifications, but with a statement that the liability of the members is unlimited.

(2) The registered constitution of a company may adopt any of the provisions of the appropriate Schedule and subject to subsection (3), in so far as the constitution does not exclude or modify those provisions they shall, so far as applicable, be part of the registered constitution of the company.

(3) The registered constitution of every company shall contain the matters set out in

(a) subsection (1) of section 26, and

(b) paragraphs

(i) 3 and 12 of the Second Schedule in the case of a private company,

(ii) 1 and 2 of the Third Schedule in the case of a public company, and

(iii) 1, 4, 5, 6 and 7 of the Fourth Schedule in the case of a company limited by guarantee.

(4) The registered constitution shall be printed, type written, hand-written or be in any other legible form acceptable to the Registrar.

Subscription to constitution

28. The constitution of a company shall be signed by one or more subscribers in the presence of a witness, who shall attest to the signing.

Effect of company constitution

29. (1) Subject to this Act, the constitution has the effect of a contract under seal

(a) between the company and each member or officer; and

(b) between the members or officers themselves by which they agree to observe and perform the functions contained in the constitution as amended from time to time, in so far as they relate to the company, the members or the officers.

(2) Where the constitution empowers a person to appoint or remove a director or any other officer of the company, that power is enforceable by that person although that person is not a member or officer of the company.

(3) In an action by a member or an officer to enforce an obligation owed under the constitution to that member or officer and any other member or officer, that member or officer shall, if any other member or officer is affected by the alleged breach of the obligation, sue in a representative capacity on behalf of that member or officer and all other members or officers who may be affected other than any who are defendants and the provisions of section 205 shall apply.

(4) The registered constitution of a company shall be void to the extent that it contravenes or is inconsistent with this Act.

(5) A registered constitution shall not be subject to a stamp duty.

Adoption, alteration, amendment and revocation of constitution

30. (1) The shareholders or members of a company may, by special resolution

(a) adopt a registered constitution where a company does not have a registered constitution; or

(b) alter or revoke the constitution of the company subject to this Act.

(2) For the purposes of subsection (1) *(b)*,

(a) the name of the company shall not be altered except with the consent of the Registrar in accordance with section 21;

(b) the number of the shares of the company may be altered in accordance with sections 9, 59 to 65, 78 to 82, 219, or 239 but not otherwise;

(c) the businesses for which the company is incorporated to carry on or, if the company is not formed for the purpose of carrying on a business, the objects for which the company is incorporated may be amended in accordance with section 15 or 239 but not otherwise where the business or object is indicated at incorporation;

(d) an amendment shall not be made which shall conflict with an order of the Court made under section 219;

(e) if at any time the shares of the company are divided into different classes, the rights attached to a class may be amended in accordance with section 50 or 239 but not otherwise;

(f) the constitution may restrict or exclude the power of the company to amend all or any of the provisions of the constitution or to add to the provisions of the constitution, or may impose conditions for the amendment of the constitution, in which event the constitution shall not be amended except in accordance with the provisions of the constitution or section 239;

(g) the constitution as amended shall be in accordance with this Act and shall contain the requirements under section 26;

(h) except in accordance with section 239, a member of the company is not bound by an amendment made in the constitution after the date on which that person became a member, where the amendment

(i) requires that member to take more shares than the number held by that member on the date on which the amendment is made,

(ii) in any way increases the liability of that member as at that date to pay money to the company, or

(iii) increases or imposes restrictions on the right to transfer the shares held by that member at the date of the amendment,

unless that member agrees in writing, before or after the amendment is made, to be bound by the amendment;

(i) an amendment shall not be made which would have the effect of converting an unlimited company into a limited company or a company limited by guarantee into a company limited by shares; and

(j) an amendment may be restrained or revoked by the Court in accordance with section 218 or 219.

Registration of consolidated constitution

31. (1) Where the Registrar is of the opinion that, due to the numerous amendments to the registered constitution of a company, the amend-

ments should be consolidated in a single document, the Registrar may by notice in writing require a company to deliver to the Registrar a single document that incorporates the registered constitution of the company as amended.

(2) The Board shall within twenty-eight days after receipt by the company of the notice, cause to be delivered to the Registrar

(a) the document for registration;

(b) a certificate signed by a director or Company Secretary authorised by the Board to the effect that the document referred to in paragraph *(a)* complies with subsection (1) or (2), as the case may be.

(3) On receipt of the document referred to in subsection (2), the Registrar shall register the document upon the payment of a prescribed fee.

Copies of registered constitution

32. (1) A company shall, upon request of a member, send to that member a copy of its registered constitution on payment of the fee prescribed by the company.

(2) Where an amendment is made to the registered constitution, each copy of the constitution issued after the date of the amendment and whether to a member or to any other person, shall be in accordance with the amendment.

(3) Where a company defaults in complying with this section, the company and every officer of the company that is in default commits an offence and is liable on summary conviction for each offence to a fine of not less than twenty-five penalty units and not more than fifty penalty units.

Part E: Membership of Companies

Members of a company

33. (1) The subscribers to the documents for the incorporation of a company are members of the company and upon incorporation shall be entered as members in the register of members referred to in section 35.

(2) Any other person who agrees with the company to become a member of the company and whose name is entered in the register of members is a member of the company.

(3) A member has the rights, duties and liabilities that are by this Act and where applicable, by the registered constitution of the company conferred and imposed on the members.

(4) In the case of a company with shares, each member is a shareholder of the company and shall hold at least one share.

(5) A holder of a share is a member of the company.

(6) Membership of a company with shares continues until

(a) a valid transfer of the shares held by the member is registered by the company;

(b) the shares are transmitted by operation of law to another person, or forfeited for non-payment of calls; or

(c) the member of the company dies.

(7) Membership of a company limited by guarantee continues until the member dies, or validly retires or is excluded from membership.

Right of member to attend and vote at general meeting

34. (1) Subject to subsection (2), and section 52, a member has the right to attend a general meeting of the company and to speak and vote on a resolution before the meeting.

(2) Despite subsection (1), a registered constitution of a company may provide that a member is not entitled to attend and vote at a general meeting unless the calls or any other sums of money presently payable by that member in respect of shares in the company have been paid.

Register of members

35. (1) Subject to the Central Securities Depository Act, 2007 (Act 733) and any other enactment, a company shall keep in the country a register of the members and shall enter in the register

(a) in respect of members of the company

(i) the names and addresses of the members and, in the case of a company having shares, a statement of the shares held by each member, and of the amount paid, or agreed to be considered as paid, on the shares of each member, and of the amount remaining payable on the shares;

(ii) the date at which a person was entered in the register as a member;

(iii) the nature of the interest of each member; and
(iv) the date at which a person ceased to be a member; and

(b) in respect of each beneficial owner of the company
(i) the full name and any former or other name of the beneficial owner;
(ii) the date and place of birth;
(iii) the telephone number;
(iv) the nationality, national identity number, passport number or other appropriate identification, and proof of identity;
(v) residential, postal and email address, if any;
(vi) place of work and position held;
(vii) the nature of the interest including the details of the legal, financial, security, debenture or informal arrangement giving rise to the beneficial ownership; and
(viii) a confirmation as to whether the beneficial owner is a politically exposed person.

(2) For the purpose of paragraph *(b)* of subsection (1), where a member of a company is not the beneficial owner, that member shall

(a) provide the company with the particulars of the beneficial owner at the time of becoming a member as set out in paragraph *(b)*; and

(b) update the company within twenty-eight days of a change in the particulars submitted under paragraph *(a)*.

(3) The entry required under subparagraphs (i) and (iii) of paragraph *(a)* of subsection (1) shall be made within twenty-eight days of the conclusion of the agreement with the person to become a member.

(4) The entry required under subparagraph (iv) of paragraph *(a)* of subsection (1) shall be made within twenty-eight days of the date when the person concerned ceased to be a member, or, if that person ceased to be a member otherwise than as a result of an action by the company, within twenty-eight days of production to the company of evidence satisfactory to the company of the occurrence of the event by which that person ceased to be a member.

(5) The entry required under paragraph *(b)* of subsection (1) shall be made within twenty-eight days of receipt of the necessary particulars under subsection (2).

(6) A company shall, within twenty-eight days of making an entry required under paragraph *(b)* of subsection (1) and subsection (5), submit particulars of the entry to the Registrar for registration and indicate the members or beneficial owners who are politically exposed persons.

(7) The entries relating to a person who has ceased to be a member may be deleted from the register after the expiration of six years from the date when the person ceased to be a member.

(8) Where a company has more than fifty members, the register shall contain an index of the names of the members and the names of beneficial owners in a form that enables the account of each member to be readily found.

(9) An existing company shall, within twenty-eight days of a change in the place at which the register of members is kept, send notice of the change to the Registrar.

(10) A company is not bound to send notice where the register has, since the company came into existence, been kept at the registered office of the company.

(11) An existing company shall, within two months after the coming into force of this Act, submit the information required under paragraph *(b)* of subsection (1) to the Registrar for registration.

(12) The company may arrange with any other person, to be known as the registration officer, for the making up of the register to be undertaken on behalf of the company by the registration officer at the office of that officer, and if by reason of a default of the registration officer the company defaults in complying with this section or with section 36, the registration officer is liable to the same penalties as if the registration officer were an officer of the company.

(13) The power of the Court under subsection (6) of section 36 shall extend to the making of orders against the registration officer and the officers and employees of the registration officer.

(14) A person who

(a) fails to provide the information required under subsection (2), or

(b) provides false or misleading information to the Registrar

commits an offence and is liable on summary conviction to a fine of not less than one hundred and fifty penalty units and not more than two hundred and fifty penalty units or to a term of imprisonment of not less than one year and not more than two years or to both.

(15) Where a company defaults in complying with this section, the company and every officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the default continues.

Inspection of register

36. (1) Except when the register of members is closed in accordance with section 37, the register, the index of the names of the members of the company and the index of the names of beneficial owners of the company shall, during business hours, and subject to reasonable restrictions that the company may impose, be open for the inspection of

(a) a member without charge, and

(b) any other person on payment of a reasonable fee prescribed by the company, for each inspection.

(2) Not less than two hours each day, other than a Saturday, Sunday or a public holiday, shall be allowed for inspection under subsection (1).

(3) A member or any other person may require a copy of the register or a part of the register on payment of a fee prescribed by the company.

(4) The company shall send the copy so required by a person to that person within a period of ten days commencing on the day next after the day on which the requirement is received by the company.

(5) Where an inspection required under this section is refused, or where a copy required under this section is not sent within the proper period, the company and every officer of the company that is in default, is liable in respect of each default to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the default continues.

(6) In the case of a refusal or default, the Court may order the immediate production of the register for inspection or direct that the copies required be sent to the person requiring them.

Power to close register

37. A company may close the register of members or that part of the register relating to a class of members for any time or times of not more than a total period of thirty days in each year on giving reasonable notice by

(a) advertisement in a daily newspaper of national circulation in which the registered office of the company is situated; and

(b) electronic means.

Rectification of register

38. (1) A person aggrieved, a member of the company, or the company, may apply to the Court for rectification of the register where

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

(b) default is made in entering on the register any of the particulars which, under section 35, are required to be entered on the register.

(2) Where an application is made under subsection (1), the Court may refuse the application or may order rectification of the register and payment by the company of compensation for the loss sustained by the aggrieved party.

(3) Where an application is made under subsection (1), the Court may decide a question relating to the entitlement of a person who is a party to the application to have the name of that person entered in or omitted from the register, whether, the question arises

(a) between members or alleged members, or

(b) between members or alleged members on the one hand and the company on the other hand;

and generally the Court may decide a question necessary or expedient to be decided for rectification of the register.

(4) A company may, without application to the Court, at any time rectify an error or omission in the register of members, but the rectification shall not adversely affect a person unless that person agrees to the rectification made.

Register to be evidence

39. (1) The register of members is prima facie evidence of the matters which by this Act are directed or authorised to be inserted in the register.

(2) Subsection (1) shall not where the circumstances admit, apply to shares of a company that are held in a depository under a scheme provided under the Central Securities Depository Act, 2007 (Act 733).

Liability of members

40. (1) Before the winding up of a company, a member of the company with shares is liable to contribute the balance of the amount payable in respect of the shares held by that member 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.

(2) Where a contribution has become due and payable in accordance with subsection (1), or where, under the terms of an agreement with the company, a member has undertaken personal liability to make future payments in respect of shares issued to that member, the liability of the member shall continue although the shares held by that member are subsequently transferred or forfeited but the liability of the member shall cease if and when the company receives payment in full of all the moneys in respect of the shares.

(3) Subject to subsections (1) and (2), a member or past member is not liable to contribute to the assets of the company except in the event of the company being wound up.

(4) In the event of a company being wound up, every present or past member is liable to contribute to the assets of the company an amount sufficient for the payment of the debts and liabilities of the company and for the costs, charges and expenses of the winding up, and for the adjustment of the rights of the members and past members among themselves but subject to the following qualifications:

(a) a past member is not liable to contribute if that member has ceased to be a member for a period of not less than one year before the commencement of the winding up;

(b) a past member is not liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this section;

(c) in the case of a company limited by shares, a contribution shall not be required from a member or past member exceeding the amount of money unpaid on the shares in respect of which that member is liable as a present or past member;

(d) in the case of a company limited by guarantee, a contribution shall not be required from a member or past member exceeding the amount of money undertaken to be contributed by that member to the assets of the company in the event of the company being wound up; or

(e) a sum of money due from the company to a member or past member, in the character of a member, by way of dividends or otherwise shall not be set-off against the amount of money for which that member is liable to contribute in accordance with this section, but that amount of money shall be taken into account for the purposes of final adjustment of the rights of the members and former members amongst themselves.

(5) For the purposes of this section, "past member" includes the estate of a deceased member and where a person dies after becoming liable as a member or past member, the liability is enforceable against the estate of that member.

(6) Except as otherwise provided in this section, a member or past member of a company is not liable as a member or past member for any of the debts and liabilities of the company.

Companies ceasing to have members

41. If at any time a company ceases to have a member and it carries on business without at least one member, every person who is a director of the company during the time that it so carries on business is jointly and severally liable for the payment of all the debts and liabilities of the company incurred during that period.

Part F: Shares

Legal nature of shares

42. (1) The shares of a member in a company are movable property.

(2) The number of shares in a company and the rights and liabilities attaching to the shares are dependent on the terms of issue.

No par value shares

43. The shares created or issued under this Act are shares of no par value.

Issue of shares

44. (1) Subject to the registered constitution of a company, different classes of shares may be issued in a company at the times and for the consideration that the company shall determine and shall be paid for, at the times that are agreed between the member and the company.

(2) On the winding up of the company, every past and present shareholder of the company is liable to contribute to the assets of the company to the extent referred to in section 40.

Payment of shares

45. (1) Except on a capitalisation issue pursuant to subsection (1) of section 77, shares shall not be issued otherwise than for valuable consideration paid or payable to the company and unless otherwise agreed, shares shall be paid for in cash.

(2) Where a company agrees to accept payment for shares otherwise than wholly in cash, the company shall, within twenty-eight days after the allotment of the shares, deliver to the Registrar for registration a contract in writing duly stamped evidencing the terms of the agreement and the true value of the consideration or, if the agreement has not been reduced to writing, particulars in the prescribed form of the agreement duly stamped, as if it were a written agreement.

(3) The particulars referred to in subsection (2) shall not be required on a capitalisation issue of shares pursuant to subsection (1) of section 77.

(4) The statement in the agreement of the value of the non-cash consideration is sufficient evidence of the true value of the consideration, but when a company limited by shares is in the course of being wound up under the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180), the liquidator or a creditor may apply to the Court and if the Court is satisfied that the true value of the consideration was less than stated, it may direct that the shares shall be treated as unpaid to the amount of money that it shall direct.

Return of issues

46. Where a company issues shares, other than a re-issue of treasury shares as defined in subsection (3) of section 61, the company shall, within

twenty-eight days after the issue, deliver to the Registrar for registration a return in the prescribed form showing, as at the date of the return,

(a) the amount of the stated capital, attributable to each of the items specified in subsection (1) of section 68;

(b) the number of the authorised shares of each class;

(c) the total number of the issued shares of each class and the amount of money paid on the shares, distinguishing between the amount paid in cash and the amount paid otherwise than in cash and, in the case of a company limited by shares, the amount of money remaining payable on the shares, distinguishing between the amount presently due for payment and the amount not yet due for payment; and

(d) the total number of the treasury shares of each class.

Penalties for non-compliance with section 45 or 46

47. Where a company defaults in delivering a document required under section 45 or 46, the company and every officer of the company who is in default is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the default continues.

Meaning of payment in cash

48. (1) For the purposes of this Act, shares have not been paid for in cash except to the extent that the company has actually received cash for the shares at the time of, or subsequent to the agreement to issue the shares.

(2) Where shares are issued to a person who has sold or agreed to sell property or rendered or agreed to render services to the company or to persons nominated by that person, the amount of money of a payment made for the property or services shall be deducted from the amount of a cash payment made for the shares and only the balance shall be treated as having been paid in cash for the shares despite an exchange of cheques or any other securities for money.

Classification of shares

49. (1) The registered constitution of a company may provide for different classes of shares by attaching to certain of the shares preferred, deferred or any other special rights or restrictions, whether as regards dividend, voting, repayment or otherwise.

(2) Shares are not of the same class unless they rank at the same rate for all purposes.

Variation of class rights

50. (1) Where at any time the shares of a company are divided into different classes, the rights attached to a class shall not be varied unless otherwise expressly provided for in the constitution of a company.

(2) Where the constitution of a company expressly forbids a variation of the rights of a class, or contains provisions regarding that variation and expressly forbids an amendment of the provision, in respect of the variation of rights, the rights shall not be varied and the provision for variation shall not be amended except with the sanction of the Court under a scheme of arrangement in accordance with section 239.

(3) Except as provided in subsection (2), a company may, by special resolution, amend its constitution by inserting in the constitution provisions regarding the variation of the rights of a class, or by modifying the terms of those provisions.

(4) An amendment under this section requires the prior written consent of the holders of at least three-fourths of the issued shares of each class or the sanction of a special resolution of the holders of the shares of each class and shall be deemed, to be a variation of the rights of each class.

(5) Despite a provision in the constitution of a company to the contrary, the rights attached to a class of shares shall not be varied except with the written consent of the holders of at least three-fourths of the issued shares of that class, or the sanction of a special resolution of the holders of the shares of that class.

(6) A resolution of a company the implementation of which would have the effect of

(a) diminishing the proportion of the total votes exercisable at a general meeting of the company by the holders of the existing shares of a class, or

(b) reducing the proportion of the dividends or distributions payable at any time to the holders of the existing shares of a class,

is for the purposes of this Act, a variation of the rights of that class.

Preference and equity shares

51. (1) In this Act, "preference share" means a share, which does not entitle the holder of the share to a right to participate beyond a specified amount of money in a distribution whether by way of dividend, on redemption, in a winding up, or otherwise; and any other share shall be referred to as an "equity share".

(2) A share that is not a preference share shall be referred to as an "equity share".

(3) The meaning of "preference share" under subsection (1) shall apply to whatever name a company may designate in its constitution.

Suspension of voting rights of preference shares

52. (1) Despite section 34, the right of holders of preference shares to attend and vote at a general meeting of the company may be suspended on conditions.

(2) Despite a provision to the contrary in the constitution of a company, preference shares carry the right to attend general meetings and on a poll at those meetings to at least one vote per share in the following circumstances, but not otherwise:

(a) on a resolution during the period that the preferential dividend or a part of the preferential dividend remains in arrears and unpaid, the period starting from a date not more than twelve months, or a lesser period that the constitution of a company may provide, after the due date of the dividend;

(b) on a resolution which varies the rights attached to those shares;

(c) on a resolution to remove an auditor of the company or to appoint another person in place of that auditor; or

(d) on a resolution for the winding up of the company or during the winding up of the company.

(3) Apart from the circumstances in section 34 and subject to subsections (1) and (2) of this section, preference shares carry the right on a poll at a general meeting of the company to one vote, only, in respect of each share.

(4) A special resolution of a company increasing the number of shares of a class may validly resolve that an existing class of preference shares shall carry the right to the votes specified in subsection (3) additional to one vote per share as shall be necessary in order to preserve the existing ratio which the votes exercisable by the holders of those preference shares at a general meeting of the company bear to the total votes exercisable at the meeting.

(5) For the purposes of subsection (2), a dividend is due

(a) on the day immediately following the expiration of the year or other period; or

(b) where a company has a registered constitution, on the date appointed in the constitution for the payment of the dividend for a year or other period whether or not the dividend has been earned or declared.

Votes of equity shares

53. (1) Despite a provision to the contrary in the constitution of a company, equity shares carry the right on a poll at a general meeting of the company to one vote only, in respect of each share subject to section 34.

(2) For the purposes of subsection (1), an alteration of the rights of issued preference shares so that they become equity shares is an issue of equity shares.

Canons of construction of class rights

54. In construing the provisions of the constitution of a company in respect of the rights attached to shares, the following canons of construction shall be observed:

(a) unless the contrary intention appears, a dividend is not payable on any shares unless the company resolves to declare that dividend;

(b) unless the contrary intention appears, a fixed preferential dividend payable on a class of shares shall be cumulative; in other words, a dividend is not payable on any shares ranking subsequent to that class of shares until all the arrears of the fixed dividend have been paid;

(c) unless the contrary intention appears, in a winding up, arrears of a cumulative preferential dividend whether or not earned or declared is payable up to the date of actual payment in the winding up;

(d) if a class of shares is expressed to have a right to a preferential dividend, then, unless the contrary intention appears, that class does not have a further right to participate in dividends;

(e) if a class of shares is expressed to have preferential rights to payment out of the assets of the company in the event of winding up, unless the contrary intention appears, that class does not have a 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 property of the company on a winding up, consideration shall not be given unless the contrary intention appears, to whether or not the property represents accumulated profits or surplus which would have been available for dividend while the company remained a going concern; and

(g) subject to this section, the shares rank equally in all respects unless the contrary intention appears.

Issue of share certificates

55. (1) Subject to the Central Securities Depository Act, 2007 (Act 733), a company shall, within two months after the issue of any of the shares of the company or after the registration of the transfer of a share, deliver to the registered holder of the share, a certificate certified by one director and the Company Secretary indicating

(a) the number and class of shares held by that holder and the definitive numbers of the shares,

(b) the amount of money paid on the shares and the amount remaining unpaid, and

(c) the name and address of the registered holder.

(2) Where a share certificate is defaced, lost or destroyed, the company at the request of the registered holder of the shares, shall renew the certificate on payment of a fee prescribed by the company and on the terms as to evidence and indemnity and the payment of the out-of-pocket expenses of company of investigating evidence that the company may reasonably require.

(3) Where a company defaults in complying with this section, the company and an officer of the company who is in default are liable to pay to the Registrar, an administrative penalty of fifty penalty units.

(4) Where an application is made to the Court by a person entitled to have the certificate delivered to that person, the Court may order the company to deliver the certificate and may require the company and that officer to bear the costs of, and incidentals to the application.

Effect of share certificates

56. (1) Statements made in a share certificate under the common seal of the company or as certified by two directors and the Company Secretary of the company, are prima facie evidence of the title to the shares of the person named in the certificate as the registered holder and of the amounts of money paid and payable on the certificate.

(2) Where a person changes a position to the detriment of that person in reliance in good faith on the continued accuracy of the statements made in the certificate, the company is estopped in favour of that person from denying the continued accuracy of those statements and shall compensate that person for the loss suffered by that person in reliance on those statements and which that person would not have suffered had the statement been or continued to be accurate.

(3) Subsections (1) and (2) do not affect a right the company may have to be indemnified by any other person.

(4) The provisions of subsections (1) to (3) do not apply in the case of shares which can be transferred through a scheme of a central depository under the Central Securities Depository Act, 2007 (Act 733) or any other relevant enactment.

Reserve liability

57. (1) A company limited by shares may, by special resolution, determine that a portion of the unpaid liability on its shares which has not already been called up shall not be capable of being called up except in the event, and for the purpose, of the company being wound up.

(2) Where a resolution is passed, that portion shall not be capable of being called up except in the event and for the purpose stated in that subsection.

Prohibited transactions in shares

58. (1) Except as provided in this Act, a company shall not,

(a) alter the number of its shares or the amount of money remaining payable on those shares;

(b) release a shareholder or former shareholder from a liability on the shares;

(c) provide financial assistance, directly or indirectly, for the subscription or purchase of the shares of the company or the shares of its holding company; or

(d) acquire, by way of purchase or otherwise, any of its issued shares or any shares of its holding company.

(2) For the purposes of paragraph *(d)* of subsection (1), shares are acquired by the company if they purport to be held in trust for the company although they are registered in the names of nominees.

(3) Subsection (1) does not prohibit a company from voluntarily acquiring its own shares on the conversion of the company to a company limited by guarantee in accordance with section 9.

(4) In the event of a breach of this section,

(a) if the breach is of paragraph *(a)* or *(b)* of subsection (1), the purported alteration or release is void and every officer of the company who is in default is liable to pay to the Registrar, an administrative penalty of five hundred penalty units;

(b) if the breach is of paragraph *(c)* or *(d)* of subsection (1), then,

(i) knowledge of the breach, voidable by the company and a payment made by the company in respect of that transaction is immediately repayable with interest at the yearly interest rate applicable to the ninety-one day government treasury bill or a higher rate that the Court may order, and

(ii) whether or not the transaction is avoided, every officer of the company who is in default is liable to pay to the Registrar, an administrative penalty of five hundred penalty units or twice the amount of money of a provision or payment made by the company in respect of the transaction, whichever is the greater.

Alteration of number of shares

59. (1) Subject to subsection (3), a company may

(a) increase the number of the shares of the company by creating new shares; or

(b) reduce the number of the shares of the company by cancelling shares which have not been taken or agreed to be taken by a person or by consolidating its existing shares, whether issued or not, into a smaller number of shares.

(2) On a consolidation of shares

(a) the amounts of money paid,

(b) an unpaid liability on the shares, and

(c) a fixed sum of money by way of dividend or repayment to which the shares were entitled

shall also be consolidated.

(3) Unless otherwise provided in the constitution of a company, the directors may issue shares with rights or restrictions as may be determined by the directors, subject to the provisions of this Act.

Financial assistance for acquisition of shares

60. Section 58 does not prohibit any of the following transactions:

(a) the payment of commission or brokerage to a person in consideration of that person subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares in the company, where the payment of commission or brokerage does not exceed ten per cent of the price at which the shares are issued or a lesser rate as may be specified in the constitution of the company;

(b) where the lending of money is part of the ordinary business of the company, or lending of money is the ordinary course of business although the money may be used for the subscription or purchase of shares in the company or its holding company;

(c) the provision by a company of money for the purchase or subscription of shares to be held for the benefit of persons genuinely in the employment of the company or an associated company including a director holding a salaried employment in the company or an associated company in accordance with a scheme for the time being in force;

(d) the advancing by a company of loans to persons, other than directors, genuinely in the employment of the company or an associated company with a view to enabling those persons to purchase or subscribe for shares to be held by themselves beneficially and not as nominees for the company or any other person;

(e) the payment by a company of a lawful dividend on the shares of the company although the dividend received by

a shareholder is used to discharge a liability on the shares of that shareholder or to repay money borrowed for the purpose of subscribing or purchasing shares;

(f) in the case of a public company some or all of whose equity shares are dealt with on an approved stock exchange, or in respect of which an application has been made to an approved stock exchange for permission to deal in those shares, the payment of any commissions, fees, costs and expenses and the giving of any indemnities and warranties in each case to a person arranging or otherwise involved in an underwriting, placing or sale of securities in the company or any other similar transaction, where

(i) an application for permission to deal in those securities has been or is to be made to an approved stock exchange, and

(ii) any other financial assistance is given in good faith in the interests of the company.

Acquisition by company of its own shares

61. (1) Despite section 58 a company may,

(a) create and issue preference shares which are, or at the option of the company are liable, to be redeemed and may convert existing shares, whether issued or not, into those redeemable preference shares subject to sections 62 to 65;

(b) purchase its own shares subject to sections 63 to 67;

(c) acquire its own shares by a voluntary transfer to the company or to nominees for the company subject to compliance with sections 62 to 65; and

(d) acquire its own shares pursuant to the buy-out provisions in section 222.

(2) For the purposes of subsection (1), shares shall not be redeemed, purchased or acquired by the company so long as there is an unpaid liability on those shares.

(3) A company may forfeit the shares issued with an unpaid liability for non-payment of the sums of money due and payable on those shares.

(4) On redemption, purchase, acquisition or forfeiture, shares shall be available for re-issue by the company unless a company by amendment of the constitution of the company cancels those shares.

(5) Shares which are cancelled by virtue of the constitution of the company, shall until re-issued or cancelled, be referred to as treasury shares.

(6) Except as provided in section 69, a redemption, purchase, an acquisition or a forfeiture by the company of the shares of the company, or the cancellation of shares so redeemed, purchased, acquired or forfeited shall not reduce the stated capital of the company.

(7) Voting rights shall not be exercised and dividends shall not be payable on treasury shares, and except where otherwise stated, treasury shares shall not be treated as issued shares within the meaning of this Act.

Redemption of redeemable preference shares

62. (1) Despite a provision in the constitution of the company to the contrary, a company shall not redeem any of its redeemable preference shares except,

(a) out of a credit balance on the share deals account referred to in section 65 or out of transfers to that account in the manner referred to in that section from retained earnings as defined in section 71; or

(b) out of the proceeds of a fresh issue of shares made for the purposes of the redemption not more than twelve months before the date of redemption.

(2) Where redeemable preference shares have become redeemable and the funds of the company are sufficient to entitle the company to redeem the whole of the shares due for redemption, the holder of those shares may serve notice on the company requiring it to effect the redemption.

(3) Where the company fails to redeem the shares within twenty-eight days of the service of the notice, the shareholder who has served the notice may apply to the Court on behalf of that shareholder and the other shareholders whose shares are due for redemption; and the Court, if satisfied that the conditions of this subsection are fulfilled, may order the company to redeem the shares and may require the company and an officer of the company who is in default to bear the costs of, and incidental to, the application.

(4) Section 205 shall apply to an application to the Court under subsection (3).

Purchase by a company of its own shares

63. Despite a provision of the constitution of the company to the contrary, a company shall not purchase any of the shares of the company except where

(a) shares are only purchased out of a credit balance on the share deals account referred to in section 65, or out of transfers to that account in the manner referred to in that section from retained earnings;

(b) redeemable preference shares are not purchased at a price greater than the lowest price at which they are then redeemable or will be redeemable at the next date at which they are due or liable to be redeemed; or

(c) the purchase is not made in breach of section 64.

Limit on number of shares acquired

64. (1) A transaction shall not be entered into by or on behalf of a company by which 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 eighty-five per cent of the total number of shares, or of shares of that class, which have been issued.

(2) For the purposes of subsection (1), redeemable preference shares shall be disregarded.

(3) Where, after shares of a class have been issued and the number of those shares has been reduced, subsection (1) shall apply as if the number originally issued, including shares of the class cancelled before the reduction took effect, had been the number as so reduced.

Share deals account

65. (1) When a company first redeems or purchases any of its shares, otherwise than on a redemption of redeemable preference shares out of the proceeds of a fresh issue of shares in accordance with paragraph *(b)* of subsection (1) of section 62, it shall open a share deals account and shall credit to that account a sum of money not less than the amount of money to be expended on the redemption or purchase by transferring that sum from retained earnings as defined in section 71.

(2) There shall be debited to the share deals account the sums of money which the company shall from time to time expend on the

redemption or purchase of any of the shares of the company, otherwise than on a redemption of redeemable preference shares out of the proceeds of a fresh issue of shares in accordance with paragraph *(b)* of subsection (1) of section 62.

(3) The net price or the value of the consideration received by the company on the re-issue of any of the treasury shares of the company shall be credited to the share deals account.

(4) If at any time the total amount of money to be debited to the share deals account under subsection (2) exceeds the amount of money credited to that account in accordance with subsections (1), (2) and (3), an amount of money equal to the excess shall be transferred to the credit of that account from retained earnings, and a purchase or redemption, otherwise than a redemption of redeemable preference shares out of the proceeds of a fresh issue of shares in accordance with paragraph *(b)* of subsection (1) of section 62, shall not be made by the company unless its retained earnings is sufficient to enable the transfer to be made.

(5) An amount of money shall not be debited or credited to the share deals account, otherwise than in accordance with subsections (1), (2), (3) and (4) except on a transfer to stated capital in accordance with section 68 or under an order of the Court under section 80 or 239.

(6) A true copy of the share deals account, showing the class and number of shares involved in each transaction and the price paid or received for those shares, shall be kept in a separate book at the registered office of the company and shall during business hours, be open to the inspection of a member without charge and of any other person on payment of a fee prescribed by the company for each inspection unless otherwise subject to reasonable restrictions expressed in the constitution of a company.

(7) Not less than two hours in each day, other than a Saturday, Sunday or a public holiday shall be allowed for the inspection.

(8) A member or any other person is entitled to be furnished, within ten days after the member or that person has made a request in that behalf to the company, with a copy of the share deals account or a part of the share deals account at a fee prescribed by the company.

(9) Where an inspection required under subsection (6) is refused, or where a copy required to be sent under subsection (8) is not sent within the proper time, the company and every officer of the company who is in default is liable to pay to the Registrar, an administrative penalty of

twenty-five penalty units for each day during which the default continues, and the Court may order an immediate inspection or furnishing of a copy.

Modification of sections 61 to 65 in relation to authorised mutual funds

66. Any of the provisions of sections 61 to 65 may be waived or modified by order of the Registrar in relation to a company which is for the time being an authorised mutual fund as defined in section 216 of the Securities Industry Act, 2016 (Act 929).

Acquisition of shares of holding company

67. (1) Despite section 58, a company which is a subsidiary may acquire shares in its holding company, where the subsidiary company is concerned as a personal representative or trustee unless the holding company or a subsidiary of the holding company is beneficially interested otherwise than by way of security for the purposes of a transaction entered into by the holding company or subsidiary of the holding company in the ordinary course of a business which includes the lending of money.

(2) A subsidiary which is a holder of shares of its holding company or a subsidiary which acquired shares in its holding company before it became a subsidiary of that holding company may continue to hold those shares but, subject to subsection (1), shall not have a right to vote at meetings of the holding company or a class of shareholders of the holding company, and shall not acquire any future shares in the holding company, except on a capitalisation issue in accordance with subsection (1) of section 77.

Part G: Stated Capital and Dividends

Meaning of "stated capital"

68. (1) The stated capital of a company with shares consists of the sum of the following items:

(a) the total proceeds of every issue of shares for cash, including the amounts paid on calls made on shares issued with an unpaid liability, less deductions for transactions costs that are direct and incidental to share issue,

(b) the total value of the consideration, as stated in the agreement, received for every issue of shares otherwise than for cash, and

(c) the total amount which the company by special resolution resolves to transfer to stated capital from reserves, as defined in section 70 including the credit balance on the share deals account referred to in section 65.

(2) Paragraph *(a)* or *(b)* of subsection (1) does not require the proceeds or value of the consideration received on the re-issue of treasury shares to be added to stated capital.

(3) For the purpose of subsection (2), when a company having treasury shares makes an issue of shares, the issue is, until the number of treasury shares of that class is exhausted, an issue of those treasury shares and not a first issue of further shares, unless the company otherwise determines.

(4) The amount of the stated capital may be reduced to the extent and in the manner provided by section 69 and in the buy-out provisions in sections 220 to 226.

(5) Within twenty-eight days after the raising of a stated capital, the company shall deliver to the Registrar for registration particulars in the prescribed form showing the amount of money so raised and the total stated capital, distinguishing between the amounts attributable to each of the items specified in subsection (1).

(6) Where the company defaults in delivering to the Registrar the particulars required under subsection (5), the company and every officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the default continues.

Reduction of stated capital

69. (1) Despite subsection (4) of section 61, the stated capital of a company shall be deemed to be reduced by the amount of money by which a redemption of redeemable preference shares is made out of the proceeds of a fresh issue of shares made for the purposes of the redemption not more than twelve months before the date of redemption.

(2) An unlimited company may, reduce its stated capital by ordinary resolution.

(3) Subject to subsections (1) and (2) and to section 66, a company may not reduce its stated capital except in accordance with sections 78 to 82.

Meaning of "reserves"

70. The reserves of a company with shares is the amount of money by which the assets of the company, other than unpaid calls and other sums of money payable in respect of the shares of the company and not including treasury shares, less the liabilities of the company, as shown in the accounts of the company prepared and audited in accordance with sections 127 to 142, exceed the stated capital of the company.

Meaning of "retained earnings"

71. The retained earnings of a company with shares is the reserves, as defined in section 70, less the amounts of money attributable to

(a) an unrealised appreciation in the value of an asset of the company, other than an appreciation in the value of an asset as would, under normal accounting principles, be credited to the income statement, unless the amount of the appreciation has been transferred to stated capital; and

(b) a balance standing to the credit of the share deals account immediately before the ascertainment of the retained earnings.

Legality of dividend payments

72. (1) Except in a winding up, a company shall not pay a dividend to the shareholders of the company or, except in accordance with sections 78 to 82 make a return or distribution of any of the assets of the company to the shareholders of the company unless, the company has complied with the distribution test.

(2) Where a payment, return or distribution is made in contravention of this section,

(a) every director of the company who is in default is jointly and severally liable to restore to the company the total amount of money by which the payment, return or distribution contravenes this section, with interest on that amount at the yearly interest rate of the ninety-one day government treasury bill;

(b) unless, within twelve months after the date of the payment, return or distribution, the total amount of money with interest on the payment, return or distribution is

restored to the company by the directors in accordance with paragraph *(a)* of this subsection, every shareholder is liable to restore to the company, the amount of money received by the shareholder in contravention of this section; and

(c) if the directors of the company make a restoration to the company in accordance with paragraph *(a)* of this subsection, they shall have a right to be indemnified by a shareholder who has received an amount of money knowing that it contravenes this section to the extent of the amount received by the shareholder with interest on that account at the yearly interest rate of the ninety-one day government treasury bill.

(3) A shareholder, an officer or a creditor of the company or the Registrar may apply to the Court for an injunction restraining a company from paying a dividend or from making a return or distribution in contravention of this section or for an order for restoration in accordance with subsection (2).

(4) An application by a shareholder or creditor shall be made in a representative capacity on behalf of the shareholder or the creditor and the other shareholders or creditors of the company and section 205 shall apply.

(5) In relation to public companies, paragraph *(b)* of subsection (2) shall be modified as stated in section 320.

Unclaimed dividends accounts

73. (1) Where any dividend declared by a company cannot be paid by reason of the dividends being unclaimed by the member entitled to the dividend and remains unclaimed for a period of three months, the company shall forthwith

(a) open an interest bearing unclaimed dividend account, and

(b) credit to that account the total amount of the unclaimed dividend of its shareholders unless that account has already been opened.

(2) Where payment of the dividend cannot be made or is not claimed within a further period of twelve months after the transfer made under paragraph *(b)* of subsection (1), the company shall pay to

the Registrar the total amount of the unclaimed dividend plus interest accrued on the amount.

(3) The Registrar shall pay into the account under subsection (4)

(a) the amount received under subsection (2), and

(b) the amount received under subsection (3) of section 74.

(4) The Registrar shall with the approval of the Board open an interest bearing bank account for the safe keeping of moneys received from any company under subsection (2).

(5) The Registrar is responsible for the moneys lodged and disbursed from the interest bearing account.

(6) The company shall on the date of the payment under subsection (2), notify the respective shareholder or the estate of the shareholder at the last address known to the company of the payment made in respect of the dividend.

(7) The shareholder or the estate of the shareholder shall on providing satisfactory evidence, be entitled to make a claim for the dividend and any accrued interest during the period that the

(a) company had possession of the dividend under subsection (1); and

(b) Registrar had possession of the dividend under subsection (3).

(8) The Registrar shall publish annually in the *Companies Bulletin* and in a daily newspaper of national circulation, details of shareholders whose dividends have been transferred to the Registrar for safe keeping.

Management by Registrar of unclaimed dividends account

74. (1) The Registrar shall keep unclaimed dividends lodged in the account under subsection (4) of section 73 for, seven years.

(2) The Registrar shall on the expiration of the seven year period referred to in subsection (1)

(a) transfer to the Consolidated Fund fifty percent of the total amount of money lodged in the interest bearing account under subsection (4) of section 73, and

(b) donate or apply fifty percent of the total amount of money lodged in the interest bearing account under subsection (4) of section 73,

for the purpose of investor education, research, entrepreneurial development and advancement in company law.

(3) Where a company on the commencement of this Act has in the possession of the company unclaimed dividends, the company shall immediately transfer the total amount of the dividends to the Registrar to be applied in accordance with subsections (1) and (2).

Prohibition of payment of dividends by companies limited by guarantee

75. (1) A company limited by guarantee shall not at any time pay a dividend or make a distribution or return of the assets of the company to members of the company.

(2) Where a payment, distribution or return is made in contravention of subsection (1), a member to whom it is made shall restore same to the company with interest at the yearly interest rate of the ninety-one day government treasury bill, and every officer of the company who is in default is liable to pay to the Registrar, an adminstrative penalty of five hundred penalty units.

Declaration of dividends

76. (1) Subject to sections 72 and 75, and in the case of a private company, its registered constitution where applicable, a company may, by ordinary resolution, declare dividends in respect of a year or any other specified period, but a dividend shall not exceed the amount recommended by the directors.

(2) In relation to public companies, subsection (1) shall be supplemented by section 321.

(3) A dividend shall be paid within sixty days after the resolution of the shareholders confirming payments or after dividends have become payable.

(4) Where a dividend is to be paid in accordance with subsection (3), the shareholders shall be notified of the amount of dividend recommended by directors for payment.

(5) A registered constitution of a company may prescribe modes for the payment of dividend without reference to the resolution of the shareholders.

Capitalisation issues and non-cash dividends

77. (1) When a company resolves to transfer a sum of money from reserves to stated capital pursuant to paragraph *(c)* of subsection (1) of section 68, the company, on the recommendation of the directors may, by the same or a subsequent special resolution, resolve that unissued shares in the company be issued and credited as fully paid to the members who

would have been entitled to receive that sum of money had it been lawfully distributed by way of dividend and in the same proportions so that the sum of money so transferred to stated capital shall be deemed to be paid, otherwise than in cash, on the shares.

(2) An issue under subsection (1) shall be referred to as a capitalisation issue.

(3) A company, on the recommendation of the directors, may resolve that a sum of money standing to the credit of the retained earnings of the company, and which could have lawfully been distributed by way of dividend shall be applied, on behalf of the members who would have been entitled to receive same if it had been distributed by way of dividend, in paying up amounts of money for the time being unpaid on the shares held by the members, and that sum shall be deemed to have been paid on a call made on those shares and shall be transferred to stated capital pursuant to paragraph *(a)* of subsection (1) of section 68.

(4) A resolution of a company lawfully declaring a dividend may, on the recommendation of the directors, direct payment wholly or partly by distribution of securities for money, or of fully paid, but not partly paid, shares or debentures of any other body corporate, or of fully paid debentures of the company of a nominal amount equal to the amount so directed to be paid.

(5) The directors shall give effect to the resolution and

(a) may make a provision that they think fit for the case of the shares, debentures, or securities for money becoming distributable in fractions,

(b) may issue fractional certificates or, in the case of a distribution in accordance with subsection (4), but not in the case of a capitalisation issue in accordance with subsection (1), and

(c) may sell the shares, debentures or securities for money represented by those fractions and distribute the net proceeds of the sale among the members otherwise entitled to those fractions in due proportions.

(6) An allotment of shares or debentures or a pay-up of shares pursuant to the resolution, may be made without obtaining the individual consents to that allotment of the members concerned and a transfer of shares or debentures in any other body corporate may be

signed on behalf of the members to whom they are transferred by a person nominated in writing by the directors and the signature of that person shall be effective and binding on all the members.

Part H: Resolutions Reducing Capital, Shares or Liability

Resolutions requiring confirmation of Court

78. (1) Subject to confirmation by the Court, a company limited by shares may, by special resolution,

(a) reduce the stated capital of the company in any way;

(b) extinguish or reduce the unpaid liability on any of the shares of the company;

(c) resolve to pay or return to the shareholders any of the assets of the company which are in excess of the requirements of the company; or

(d) alter the constitution of the company by cancelling any of the shares of the company.

(2) A resolution under subsection (1) shall in this Act be referred to as a resolution requiring confirmation.

(3) Where the resolution requiring confirmation varies the rights attached to a class of shares, the resolution shall not be effective unless section 50 has been complied with.

(4) This section does not require confirmation by the Court of a transaction validly effected under sections 72 and 75 to 77.

(5) The provisions of this section and sections 139 to 141 and 156 are subject to the Securities Industry Act, 2016 (Act 929).

Application for confirming order

79. (1) Where a company passes a resolution requiring confirmation, the company may apply to the Court for an order confirming the resolution.

(2) Where the resolution requiring confirmation involves diminution of liability in respect of shares with an unpaid liability, or a payment or return to any shareholder, and in any other case if the Court so directs, the following provisions shall have effect unless, having regard to the special circumstances of the case, the Court otherwise directs:

(a) a creditor of the company who at the date fixed by the Court is entitled to a 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, is entitled to oppose the confirmation;

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

(c) where a creditor entered on the list whose debt or claim is not discharged or has not determined, does not consent to the confirmation, the Court may dispense with the consent of that creditor on the company securing payment of the debt of that creditor or claim by appropriating, as the Court may direct, the following amount:

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

(ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up under the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180).

(3) The Court may refer the application to the Registrar who shall appoint one or more competent reporters to investigate the fairness of the resolution for reduction and to report on the resolution to the Court.

(4) The remuneration of the reporters shall be fixed by the Registrar and the expenses of the investigation shall be borne by the company.

Order confirming the resolution

80. The Court may make an order confirming the resolution on the terms and conditions specified by the Court, if satisfied,

(a) with respect to every creditor of the company who under section 79 is entitled to oppose, that the consent of the creditor has been obtained or that the debt or claim of that creditor has been discharged or secured,

(b) that sections 78 and 79 have been duly complied with, and
(c) that the resolution requiring confirmation is fair and equitable.

Order and minute to be registered

81. (1) The Registrar, on production of an order of the Court confirming the resolution requiring confirmation and the delivery to the Registrar of a copy of the order and of a minute, approved by the Court, showing,

(a) the new stated capital of the company,
(b) the number of authorised and issued shares and the classes into which they are divided, and
(c) the amount of money deemed to be paid and the unpaid liability on the issued shares, distinguishing the amount paid in cash and the amount paid otherwise than in cash,

shall register the order and the minute and publish the particulars stated in the minute in the *Companies Bulletin*.

(2) On registration of the order and minute, the resolution for reduction shall take effect.

(3) The Registrar shall personally certify the registration of the order and the minute, and the certificate is conclusive evidence that the requirements of this Act with respect to the resolution requiring confirmation have been complied with and that the stated capital and shares of the company are as stated in the minute.

Protection of creditors

82. (1) Where a creditor, entitled in respect of a debt or claim to oppose the confirmation, is by reason of ignorance of the proceedings for confirmation, or of their nature and effect with respect to the claim of that creditor, not entered on the list of creditors and, after the confirmation, the company fails to pay the amount of the debt of that creditor or claim, then,

(a) a person who was a member of the company at the date of the registration of the order and minute, is liable to contribute for the payment of that debt or claim, an amount of money not more than the amount which that person would have been liable to contribute on the winding up of the company had that commenced immediately before the date of the registration; and

(b) where the company is wound up, the Court, on the application of that creditor and proof of the ignorance of the creditor, may settle a list of persons so liable to contribute and make and enforce calls and orders on those persons as if they were members liable to contribute in accordance with section 40.

(2) Subsection (1) does not affect the rights of the members among themselves and, except as provided in subsection (1), a member or past member after the date of the registration of the order and minute is not liable in respect of a share to a call or contribution exceeding in amount the unpaid liability on that share as set out in the minute.

(3) An officer of the company who,

(a) wilfully conceals the name of a creditor entitled to oppose the confirmation, or

(b) wilfully misrepresents the nature or amount of the debt or claim of a creditor, or

(c) aids, abets, or is privy to a concealment or misrepresentation,

commits an offence and is liable on summary conviction to a fine of not less than two hundred and fifty penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than one year and not more than two years or to both the fine and the imprisonment and is personally liable to pay the creditor the amount of the debt or claim of the creditor to the extent to which the debt or claim is not paid by the company.

Part I: Debentures and Debenture Stock

Issue of debentures or debenture stock

83. (1) A company may raise a loan capital by the issue of a debenture or of a series of debentures or of debenture stock.

(2) Debentures of the same series shall rank at the same rate in all respects although they may be issued on different dates.

(3) Instead of issuing debentures acknowledging separate loans to the company, the loans may be funded by the creation of debenture stock of a prescribed amount parts of which, represented by debenture stock certificates, may be issued to separate holders.

(4) Debenture stock shall be created by deed under the common seal of the company or certified by the signatures of two directors and the Company Secretary in the form of a deed poll or of an indenture in favour of trustees for debenture stockholders.

(5) A debenture holder is not a member of the company and, despite a provision in the debenture or the constitution of the company, is not entitled to attend and vote at a general meeting of the company.

Specific performance of contract for debentures

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

Documents of title to debentures

85. (1) Subject to the Central Securities Depository Act, 2007 (Act 733) a company shall, within two months after the allotment of any of its debentures, or after the registration of the transfer of any debentures, deliver to the registered holder of the debentures, the debentures or a certificate of the debenture stock under the common seal of the company or as certified by two directors and the Company Secretary of that company.

(2) Where 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 prescribed by the company and on the terms, as to evidence and indemnity and the payment of the out-of-pocket expenses of the company investigating the evidence, that the company may reasonably require.

(3) Where a company defaults in complying with this section, the company and an officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of two hundred and fifty penalty units.

(4) On an application by a person entitled to have the debentures or debenture stock certificate delivered to that person, the Court may order the company to deliver the debenture stock certificate and may require the company and that officer to bear the costs of, and incidental to, the application.

Effect of statements in debentures

86. (1) Statements made in debentures or debenture stock certifi-

cates, including statements made electronically are prima facie evidence of the title to the debentures of the person named in the statement as the registered holder and of the amounts so secured.

(2) Where a person changes the position of that person in reliance in good faith on the continued accuracy of the statements made in the debenture or debenture stock certificate, the company is estopped in favour of that person from denying the continued accuracy of the statements and shall compensate that person for a loss suffered by that person in reliance on that accuracy, and which that person would not have suffered had the statement been or continued to be accurate.

(3) Subsection (2) does not derogate from a right the company may have to be indemnified by any other person.

Perpetual debentures

87. A condition contained in a debenture or in a trust deed for securing any debentures, shall not be invalid by reason of the fact that the debentures are by that condition made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period however long.

Convertible debentures

88. Subject to the Central Securities Depository Act, 2007 (Act 733), debentures may be issued on the terms that in lieu of redemption or repayment the debentures may, at the option of the holder or the company, be converted into shares in the company on the terms that are stated in the debentures.

Secured or unsecured debentures

89. (1) Debentures may either be secured by a charge over the property of the company or may be unsecured by a charge.

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

(3) A charge securing debentures becomes enforceable on the occurrence of the events specified in the debentures or the deed securing the debentures.

(4) Where legal proceedings are brought by a debenture holder to enforce the security of a series of debentures of which that holder

holds part, the debenture holder shall sue in a representative capacity personally and on behalf of the other debenture holders of that series, and section 205 shall apply.

(5) Where debentures are secured by a charge, sections 110 to 121 relating to registration of particulars of charges, shall apply.

Meaning of "floating charge"

90. (1) Subject to subsection (2), a floating charge is an equitable charge over the whole or a specified part of the undertaking and assets of the company both present and future.

(2) A floating charge does not preclude the company from dealing with the assets of the company until,

(a) the security becomes enforceable and the holder of the security pursuant to a power in that behalf in the debenture or the deed securing same, appoints a receiver or manager or enters into possession of those assets;

(b) the Court appoints a receiver or manager of the assets on the application of the holder; or

(c) the company goes into liquidation.

(3) On the happening of an event specified in subsection (2), the charge crystallises and becomes a fixed equitable charge on those of the assets of the company that are subject to the charge.

(4) Where 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 ceases to be a fixed charge and reverts to a floating charge.

(5) A fixed charge on a property has priority over a floating charge affecting that property unless the terms on which the floating charge was granted, prohibited the company from granting a later charge having priority over the floating charge and the person in whose favour that later charge was granted had actual notice of that prohibition at the time when the charge was granted to that person.

Powers of the Court

91. (1) Where a fixed or floating charge becomes enforceable, the Court may 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, although the charge has not become enforceable, appoint a receiver or manager if satisfied that the security of the debenture holder is in jeopardy.

(3) The security of the debenture holder is in jeopardy if the Court is satisfied that events have occurred or are about to occur which render it unreasonable in the interests of the debenture holder that the company should retain power to dispose of its assets.

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

Payment of preferential creditors out of assets subject to a floating charge

92. (1) Where a receiver is appointed on behalf of the holders of the debentures of the company secured by a floating charge or possession is taken by or on behalf of those debenture holders of a property subject to the charge, the debts which in a winding up are, under section 41 of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) to be paid in priority to any other debts, shall be paid out of the assets coming to the hands of the receiver or any other person taking that possession in priority to a claim for principal or interest in respect of the debentures.

(2) Where the receiver or any other person taking possession as provided for in subsection (1) makes a repayment in respect of the debenture before discharging the debts having priority in accordance with subsection (1), the receiver or that person is personally liable to discharge the debts to the extent of the repayment made by the receiver or that person.

(3) The periods of time mentioned in section 41 of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) shall be reckoned from the date of the appointment of the receiver or possession being taken.

(4) The 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.

Limitation of efficacy of floating charges in liquidations

93. Where the winding up of the company commences within twelve months of the creation of a floating charge on the undertaking or property of the company, the charge is invalid, unless it is proved that the company was solvent immediately after the creation of the charge, except to the amount of the cash paid to the company at the time of, or subsequent to, the creation of the charge and in considera-

tion for the charge, together with interest on that amount at the yearly interest rate applicable to the ninety-one day government treasury bill.

Appointment of a receiver

94. The appointment of a receiver by or a manager on behalf of a debenture holder shall be in accordance with sections 261 to 263.

Trustee for debenture holder

95. (1) Whether or not a debenture is secured by a charge over the property of the company, the debenture may be secured by a trust deed appointing trustee for a debenture holder.

(2) A trustee shall safeguard the rights of the debenture holder and, on behalf of and for the benefit of the debenture holder, exercise the rights, powers, and discretion conferred on them by the trust deed.

(3) Charges securing a debenture may be created in favour of the debenture holder by vesting the debenture in the trustee.

(4) A provision contained in a trust deed or in a contract with a holder of a debenture secured by a trust deed is void in so far as it would have the effect of exempting a trustee of the holder from, or indemnifying the trustee against, liability for a breach of trust or failure to show the degree of care and diligence required of the trustee as trustee having regard to the powers, authorities or discretion conferred on the trustee by the trust deed.

(5) Subsection (4) does not invalidate a release otherwise validly given in respect of anything done or omitted to be done by a trustee on the agreement to that release, of a majority of not less than three-fourths in value of the debenture holders present in person, or where proxies are permitted, by proxy at a meeting summoned for the purpose.

(6) Despite the provisions in the debenture or trust deed, the Court may, on the application of a debenture holder or of the Registrar, remove a trustee and appoint another trustee in the place of the removed trustee if satisfied that the first mentioned trustee has an interest which conflict or may conflict with the interest of the debenture holder or that for a sufficient reason, it is desirable to remove that trustee.

(7) Where an application is made under subsection (6) by a debenture holder, the Court 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.

(8) Where a trustee dies or retires, the Registrar may appoint another trustee in the place of the trustee who has died or retired at any time before the appointment of another trustee in accordance with a provision to that effect in the trust deed.

Meetings of debenture holders

96. (1) The terms of the debentures or trust deed may provide for the convening of general meetings of the debenture holders and for the passing, at those meetings, of resolutions binding on the holders of the debentures of the same class.

(2) Whether or not the debentures or trust deed contains the provisions referred to in subsection (1), the Registrar may at any time direct a meeting of the debenture holders of a class to be held and conducted in the manner that the Registrar thinks fit, to consider the matters which the Registrar or the trustees, shall bring before the meeting, and may give the ancillary or consequential direction that the Registrar thinks fit.

Re-issue of redeemed debentures

97. (1) Where a company redeems a debenture previously issued, the company may, subject to subsection (5), re-issue that debenture.

(2) The re-issue may be made either by re-issuing that debenture or by issuing another debenture in place of the redeemed debenture.

(3) On re-issue, the person entitled to the debenture has the same priority as if the debenture had never been redeemed.

(4) The re-issue of a redeemed debenture shall be treated as the issue of a new debenture for the purposes of stamp duty but not for any other purpose including a provision limiting the amount or number of debentures to be issued.

(5) For the purposes of subsection (4), a person lending money on the security of a re-issued debenture which appears to be duly stamped may give the debenture in evidence in any proceedings without payment of the stamp duty or a penalty unless that person had notice, or with due diligence might have discovered that the debenture was not duly stamped, but the company in either case is liable to pay the proper stamp duty and penalty.

(6) This section does not entitle a company to re-issue a redeemed debenture if the company has manifested the intention of the company that the debenture shall be cancelled or if re-issued, is forbidden by a provision in the constitution of the company or in the debenture, trust deed or any other contract entered into by the company.

(7) Where a company has deposited any of the debentures of the company to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason of the account of the company having ceased to be in debit while the debentures remained so deposited.

Part J: Transfer of Shares and Debentures

Restrictions on transferability of shares

98. (1) Except as expressly provided in the registered constitution of a company, shares are transferable without restriction by a written transfer in common form.

(2) Subject to section 322, the registered constitution of a company may impose restrictions on the transferability of shares, including power for the directors to refuse to register a transfer and provisions for compulsory acquisition or rights of first refusal in favour of other members or officers of the company.

(3) A restriction shall not be imposed under subsection (2) on the transferability of any shares after the shares have been issued unless the holders of the shares consent in writing to the transfer.

(4) Despite subsection (1), a company may refuse to register a transfer of shares to a person who is an infant or to a person found by a court of competent jurisdiction in the Republic to be an infant or a person of unsound mind.

Register of debentures

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

(2) Subject to sections 106 to 109,

(a) the register of debenture holders shall be kept and maintained at the address at which the register of members is kept; and

(b) sections 35 to 39 shall apply as regards the giving of notice to the Registrar of the place where the register is kept, taking into consideration the details in the register of debentures.

Restrictions on transferability of debentures

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

(2) Subject to section 322, the terms of a debenture may impose restrictions on the transferability of debentures including power for the company to refuse to register a transfer and provisions for compulsory acquisition or rights of first refusal in favour of other debenture holders, or members or officers of the company.

(3) Where a restriction is imposed on the right to transfer a debenture, notice of the restriction shall be endorsed on the face of the debenture or debenture stock certificate and, in the absence of that endorsement, the restriction is ineffective as regards a transferee for value whether or not that transferee has notice of the restriction.

Registration of transfers

101. (1) Subject to sections 35, 102 and 103, a notice of a trust, express, implied or constructive or of any equitable, contingent, future or partial interest in a share or debenture or a fractional part of a share or debenture shall not be entered in the register of members or debenture holders or receivable by the company.

(2) For the purposes of subsection (1), the company is not bound by, or is not compelled in any way to recognise, any other rights in respect of a share or debenture except an absolute right to the entirety of the share or debenture in the registered holder; and accordingly until the name of the transferee is entered in the register in respect of the share or debenture, the transferor remains, so far as concerns the company, the holder of the share or debenture.

(3) Despite anything contained in the constitution of a company or in a contract, that company shall not register a transfer of shares or debentures unless a proper instrument of transfer duly stamped, if chargeable to stamp duty, has been delivered to the company.

(4) Subsection (3) does not derogate from a power of the company to register a person to whom the right to shares or debentures has been transmitted by operation of law.

(5) Unless otherwise provided in the constitution of a company or the terms of the debenture, the company may refuse to register a transfer if the transfer is not accompanied by the appropriate share certificate, debenture or debenture stock certificate, or the company is bound to issue a renewal or copy of that certificate in accordance with subsection (2) of section 55 or section 85.

(6) Transfers may be lodged for registration by the transferor or the transferee.

(7) Where a company refuses to register a transfer, the company shall, within two months after the date on which the transfer was lodged with the company, send to the transferee and transferor notice of the refusal.

(8) Where a company defaults in complying with subsection (3) or (7), that company and every officer of the company that is in default is liable to pay to the Registrar an administrative penalty of five hundred penalty units.

(9) The provisions of this section shall not apply to a company the shares of which can be transferred through a scheme established under the Central Securities Depository Act, 2007 (Act 733).

Transmission of shares or debentures by operation of law

102. (1) In the case of the death of a shareholder or debenture holder,

(a) the survivor or survivors, where the deceased was a joint holder, and

(b) the legal personal representatives of the deceased, where the deceased was a sole holder or last survivor of joint holders,

shall be the only persons recognised by the company as shareholders or debenture holders.

(2) A person on whom the ownership of a share or debenture devolves by reason of that person being the legal personal representative, receiver, or trustee in bankruptcy of the holder, or by operation of law may, on the evidence being produced that the company may properly require, be registered personally as the holder of the share or debenture or transfer the same to any other person, and the transfer shall be as valid as if that person had been registered as a holder at the time of execution of the transfer.

(3) The company has the right to decline registration of a transfer under subsection (2) as it would have had in the case of a transfer by the registered holder but does not have a right to refuse registration personally of that person.

(4) A person on whom the ownership of a share or debenture devolves by reason of that person being the legal personal representative, receiver, or trustee in bankruptcy of the holder, or by operation of law is entitled, before registration personally of that person or a transferee, to the same dividends, interest and other advantages as if that person were the registered holder and, in the case of a share, to the same rights and remedies as if that person were a member of the company, but that person is not entitled before being registered as a member in respect of the share, to attend and vote at a meeting of the company.

(5) For the purposes of subsection (4), the company may at any time give notice requiring that person to elect to be registered personally or to transfer the share or debenture, and if the notice is not complied with within ninety days, the company may suspend payment of the dividends, interest or any other moneys payable in respect of the share or debenture until the requirements of the notice have been complied with.

(6) The provisions of subsections (2) to (5) shall not apply to a company the shares of which can be transferred through a scheme established under the Central Securities Depository Act, 2007 (Act 733).

Protection of beneficiaries

103. (1) A person claiming to be interested in any shares or debentures or the dividends or interest on those shares or debentures may protect the interest of that person by serving on the company concerned copies of a notice and affidavit in accordance with the High Court (Civil Procedure) Rules, 2004 (C.I. 47).

(2) Despite subsection (1) of section 101, the company shall

(a) enter on the register of members or debenture holders, the fact that the notice has been served, and

(b) not register a transfer or make a payment or return in respect of the shares or debentures contrary to the terms of the notice until the expiration of due notice to the claimant in accordance with that Order.

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

(4) The provisions of this section shall not apply to a company the shares of which are dealt with by virtue of a scheme established under the Central Securities Depository Act, 2007 (Act 733).

Certification of transfers

104. (1) Where the holder of shares or of debenture stock wishes to transfer to a person part only of the shares or stock represented by one or more certificates, the instrument of transfer together with the related certificates may be delivered to the company or to the registration officer of the company with a request to certify the instrument of transfer.

(2) If a company or its registration officer endorses on an instrument of transfer the words "certificate lodged", or words to the like effect, the endorsement shall be taken as a representation to anyone acting on the faith of the certification that there has been produced to, and retained by, the company or the registration officer the certificates that show a prima facie title to the shares or stock in the transferor named in the instrument of transfer but not as a representation that the certificates are genuine or that the transferor has a title to the shares or stock.

(3) Where a person acts on the faith of a false certification made by the company, the company is liable to compensate that person for a loss suffered as a result of so acting.

(4) Where a person acts on the faith of a false certification made by the registration officer, the company and the registration officer are jointly and severally liable to compensate that person for a loss suffered as a result of so acting but the company is entitled to be indemnified by the registration officer.

(5) The certification is made by the company,

(a) if the certification bears the signature or initials, whether handwritten or not, of an officer for whose act of signing that certificate the company is liable under sections 147 to 151; or

(b) if the certification purports to bear the signature or initials, whether hand-written or not, of an officer of the company and is issued by an officer of the company for whose act of issuing the certificate the company is liable under sections 147 to 151.

(6) The certification is made by the registration officer,

(a) if the certification bears the signature or initials, whether handwritten or not, of the registration officer or of any officer, agent or servant of the registration officer having the authority to certify transfers of the shares or debenture stock of the company; or

(b) if the certification purports to bear the signature or initials, whether handwritten or not, of the registration officer or any officer, agent or servant of the registration officer and when issued by the registration officer or any officer, agent or servant of the registration officer having the authority to issue certification of transfers of the shares or debenture stock of the company.

(7) For the purposes of subsections (5) and (6), the certification is issued by a person, if the instrument of transfer bearing the certification is delivered or sent by that person to the transferor, transferee or any other person named in the request for certification, or is despatched to the transferor, transferee or that other person with a covering letter bearing the signature or initials of that person whether handwritten or not.

(8) The provisions of this section shall not apply to a company the shares of which are operated by virtue of a scheme established under the Central Securities Depository Act, 2007 (Act 733).

Lien of a company on shares

105. (1) Subject to the Central Securities Depository Act, 2007 (Act 733), a company may, where the constitution of the company so provides, have a lien on any of the issued shares on which there is an unpaid liability for the moneys, whether presently payable or not, called or payable at a fixed time in respect of those shares.

(2) The lien shall be an effective charge on the shares and the dividends payable on the shares enforceable in the manner provided by the constitution of the company.

(3) Despite a provision in the constitution of the company, the lien of the company shall not extend to shares on which there does

not exist an unpaid liability, or to the sums of money due from the shareholder except in respect of the unpaid liability on the shares.

Part K: Branch Registers

Power of company to keep branch register

106. (1) A company that has shares may, if so required by the constitution of the company, keep in a country outside the Republic a branch register of shareholders or debenture holders or beneficial owners residing in that country or in any other country outside the Republic.

(2) The company shall give to the Registrar, notice of the location of the office where a branch register is kept, and of a change in the location of the company, and if it is discontinued, of the discontinuance.

(3) The notice shall be given within twenty-eight days of the opening of the office or of the change or discontinuance.

(4) Where the company defaults in complying with subsections (2) and (3), the company and every officer of the company who is in default is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the default continues.

Regulations as to branch registers

107. (1) A branch register is a part of the principal register of members, debenture holders or beneficial owners of the company.

(2) A branch register shall be kept in, and shall be opened for inspection in, the same manner in which the principal register is, by sections 35 to 39 and sections 99 to 101 required to be kept, and the advertisement before closing the branch register shall be published in a daily newspaper circulating in the district where the branch register is kept.

(3) The company shall,

(a) transmit to the registration office of the company a copy of every entry in the branch register as soon as practicable after the entry is made; and

(b) keep at the place where the principal register of the company is kept, a duplicate of the branch register duly entered up from time to time.

(4) The duplicate is, for the purposes of this Act, a part of the principal register.

(5) Subject to this section, with respect to the duplicate register, the shares or debentures registered in a branch register shall be distinguished from those registered in the principal register, and a transaction with respect to a share or debenture registered in a branch register shall not, during the continuance of that registration, be registered in any other register.

(6) A company may discontinue a branch register, and the entries in that register shall be transferred to the principal register.

(7) Subject to this Act, a company may, by the constitution of the company, make provisions respecting the keeping of branch registers.

(8) Where a company defaults in complying with subsection (3), the company and every officer of the company who is in default is liable to pay to the Registrar an administrative penalty of twenty-five penalty units for each day during which the default continues.

(9) Where the principal register is kept at the office of a person other than the company, and by reason of a default of that person the company fails to comply with paragraph *(b)* of subsection (3), that person is liable to the same penalty as if that person was an officer of the company who was in default.

(10) The provisions of this section shall not apply to a company the shares of which are operated by virtue of a scheme established under the Central Securities Depository Act, 2007 (Act 733).

Stamp duties in case of securities registered in branch registers

108. An instrument of transfer of a share or debenture registered in a branch register, is a transfer of property situate out of the Republic, and, unless executed in a part of the Republic, shall be exempted from a stamp duty chargeable in the Republic.

Provisions as to branch registers kept in the Republic

109. (1) Subject to subsection (2), where the law in force in a country provides for companies incorporated under that law to keep in Ghana branch registers of their shareholders or debenture holders, the Minister may, by legislative instrument, make Regulations for the application of sections 36 and 38 in relation to those branch registers.

(2) The application of sections 35, 36 and 38 shall not derogate from any modification and adaptation specified in the legislative instrument made under subsection (1).

Part L: Registration of Particulars of Charges

Registration of particulars of charges created by companies

110. (1) A charge, other than a charge specified in subsection (5), created by a company after the commencement of this Act is void so far as a security on the property of the company, is conferred by that charge, unless the particulars prescribed in this section together with the original or a certified copy of the instrument by which the charge is created or evidenced, are delivered in the prescribed form to the Registrar for registration within forty-five days after the date of the creation of the charge.

(2) For the purposes of subsection (1), "property" includes the undertaking of the company and the unpaid liability on the shares of the company.

(3) This section shall not affect a contract or an obligation for repayment of the money secured by the contract or obligation.

(4) When a charge becomes void under this section, the money secured by the charge shall immediately become payable despite a provision to the contrary in the contract.

(5) This section shall not apply to a pledge of, or possessory lien on, goods, or to a charge, by way of pledge, deposit, letter of hypothecation or trust receipt, of bills of lading, dock warrants or any other documents of title to goods, or of bills of exchange, promissory notes or any other negotiable securities for money.

(6) Subject to subsections (7) and (8), the particulars requiring delivery for registration under this section are

(a) the date of creation of the charge;

(b) the nature of the charge;

(c) the amount of money secured by the charge, or the maximum sum of money secured by the charge in accordance with section 111;

(d) short particulars of the property charged;

(e) the persons entitled to the charge;

(f) in the case of a floating charge, the nature of a restriction on the power of the company to grant further charges ranking in priority to, or at the same rate with, the charge created by the registration; and

(g) particulars of any variation of the terms and provisions of a charge.

(7) Where a series of debentures containing, or giving by reference to any other instrument, a charge to the benefit of which the debenture holders are entitled at the same rate, is created by the company, it shall, for the purposes of this section, be sufficient if the debentures are delivered to the Registrar within forty-five days after the execution of the document containing the charge or, if there is no document containing the charge after the execution of any debentures of the series, the following particulars, namely,

(a) the dates of the resolutions authorising the issue of the series and the date of the covering deed by which the security is created or defined,

(b) the total amount of money secured by the whole series,

(c) the names of the trustees, and

(d) the particulars specified in paragraphs *(b), (d)* and *(f)* of sub section (6) of this section,

together with the original or certified copy of the deed creating the charge or, of any deed variation of the terms and provisions of the charge or if there is no certified copy of the deed, the debentures of the series.

(8) For the purposes of subsections (1) and (7), a certified copy is a copy which has, endorsed on that copy, a certificate to the effect that it is a true and complete copy of the original, under the seal of the company or signed personally by a person interested in the copy otherwise than on behalf of the company.

(9) Where the original is not in the English language, the copy shall also contain a translation acceptable to the Registrar similarly certified to the effect that it is an accurate translation of the original.

(10) This section does not affect the provisions of any other enactment relating to the registration of charges.

Charges to secure fluctuating amounts

111. (1) Where a charge, particulars of which require registration under section 110 is expressed to secure

(a) the sums of money due or to become due, or

(b) some other uncertain or fluctuating amount,

the particulars required under paragraph *(c)* of subsection (6) of section 110 shall state the maximum sum of money secured by the charge, being

the maximum sum of money covered by the stamp duty paid on the charge and the charge shall be void, so far as a security on the property of the company is conferred by the registration, regarding an excess over the stated maximum.

(2) For the purposes of subsection (1), if

(a) additional stamp duty is subsequently paid on the charge, and

(b) at any time after the payment, but before the commencement of the winding up of the company, particulars of the charge stating the increased maximum sum of money secured by the charge, together with the original instrument by which the charge was created or evidenced, are delivered to the Registrar for registration,

as from the date of the delivery, the charge, if otherwise valid, shall be effective to the extent of the increased maximum sum of money except as regards a person who, before the date of the delivery, has acquired any proprietary rights in, or a fixed or floating charge on, the property subject to the charge.

Charges on property acquired

112. (1) When a company acquires a property which is subject to a charge of the kind that particulars of it would, if it had been created by the company after the acquisition of the property, have been required to be registered under section 110, the company shall deliver to the Registrar for registration particulars of the charge together with the document by which the charge was created or evidenced or a copy of that document, certified as provided in subsections (8) and (9) of section 110.

(2) The delivery under subsection (1) shall be effected within twenty-eight days after the date on which the acquisition is completed.

(3) The particulars requiring registration under subsection (1) shall be those specified in subsection (6) of section 110 with the addition of the date of the acquisition of the property by the company.

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

Existing charges

113. (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 that commencement then, unless the charge has been discharged or the property has ceased to be held by the company before the expiration of six months from the date of that commencement, the company shall, within that time, deliver particulars of the charge as prescribed by section 110 to the Registrar for registration together with the document, by which the charge was created or a copy of that document certified as required by that section.

(2) An existing company shall before the expiration of six months from the commencement of this Act, deliver to the Registrar for registration a statutory declaration made by a director and the Company Secretary stating whether or not there are any charges on the property of the company of which particulars require to be registered under subsection (1) and confirming that particulars of those charges have been duly delivered to the Registrar for registration.

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

Duty of company to deliver particulars for registration

114. (1) A company shall send to the Registrar for registration the particulars required to be sent under sections 110 to 113, but registration of the particulars of the charge may be effected on the application of a person interested in the charge.

(2) Where registration is effected on the application of a person other than the company, that person is entitled to recover from the company the amount of the fees payable to the Registrar on the registration.

(3) Where a company defaults in sending to the Registrar the particulars requiring registration as required by this section, the company and every officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of five hundred penalty units unless the particulars have been duly delivered for registration by any other person.

Register of particulars of charges

115. (1) The Registrar shall keep, with respect to each company, a register of the particulars duly delivered pursuant to sections 110 to 113 and shall enter the particulars in the register.

(2) The Registrar shall give a certificate signed by the Registrar of

the registration of particulars of a charge registered in pursuance of sections 110 to 113, and the certificate is conclusive evidence, except in favour of the company or of any other person who has delivered false or incomplete particulars or an incorrect copy of a document, that the requirements of sections 110 to 113 have been complied with.

(3) In the case of a charge of the type referred to in section 111, the certificate shall state the maximum sum of money deemed to be secured by the charge.

(4) The original or certified copy of the instrument of the charge delivered with the particulars shall not be registered or retained by the Registrar.

Endorsement of registration on debentures of a series

116. (1) A company shall endorse on every debenture, being one of a series of debentures, or certificate of debenture stock which is issued by the company and the payment of which is secured by a charge, the following particulars of which are registered under sections 110 to 113:

(a) a copy of the certificate of registration, or

(b) a statement that registration has been effected and the date of registration.

(2) Subsection (1) shall not be construed as requiring to be so endorsed a debenture or certificate or debenture stock issued by the company before the charge was created.

(3) A person who knowingly authorises or permits the delivery of a debenture or certificate of debenture stock which is required to be endorsed under this section and which is not so endorsed is liable to pay to the Registar, an administrative penalty of fifty penalty units.

(4) A person who

(a) endorses or causes to be endorsed on a debenture or certificate of debenture stock a purported copy of a certificate of registration or statement that registration has been effected which that person knows to be false in a material particular, or

(b) authorises or permits the delivery of a debenture or certificate of debenture stock bearing an endorsement purporting to be a copy of a certificate of registration or statement that registration has been effected which that person knows to be false in a material particular,

commits an offence and is liable on summary conviction to a fine of not less than five hundred penalty units and not more than one thousand penalty units or to a term of imprisonment of not less than two years and not more than five years or to both the fine and imprisonment.

Entry of satisfaction upon receipt of discharge

117. The Registrar, upon receipt of an application in the prescribed form and on satisfactory evidence given with respect to a charge of which particulars have been registered,

(a) that the debt for which the charge was given has been paid or satisfied in whole or in part, or

(b) that the whole or part of the property charged has been released from the charge or has ceased to form part of the property of the company or undertaking,

shall enter on the register a memorandum of satisfaction in whole or in part, or of the fact that the whole or part of the property has been released from the charge or has ceased to be part of the property of the company, and where the Registrar enters a memorandum of satisfaction in whole, the Registrar shall if required, furnish the company with a copy of the memorandum.

Rectification of register of particulars of charges

118. (1) The Court, on being satisfied

(a) that the omission to register particulars of a charge within the time required by this Act, or that the omission or mis-statement of the particulars with respect to a charge or in a memorandum of satisfaction was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or members of the company, or

(b) that on other grounds it is just and equitable to grant relief, may, on the application of the company or a person interested, and on the terms that the Court considers just and expedient, order that the time for registration shall be extended, or that the omission or mis-statement shall be corrected.

(2) When the Court grants an extension of time for registration, the charge shall not, unless the Court otherwise orders, adversely

affect a person who, before the date of actual registration of particulars of the charge, has acquired proprietary rights in, or a fixed or floating charge on, the property subject to the charge, and shall be ineffective against the liquidator and the creditors of the company if the winding up of the company commences before the date of actual registration.

Registration of enforcement of security

119. (1) Where a person obtains an order for the appointment of a receiver of property of a company, or appoints a receiver or enters into possession of the property under a power contained in a charge, notice of the fact in the prescribed form shall, within ten days from the date of the order, appointment, or entry into possession, be given to the Registrar who shall enter the fact in the register of the particulars of charges relating to that company.

(2) Where there is a default in giving the notice required under subsection (1), the receiver, the person entering into possession, the company, or an officer of the company who is in default, is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the default continues.

(3) Where a person appointed receiver of the property of the company ceases to act as receiver, or where a person having entered into possession goes out of possession, that person shall give notice to the Registrar, within ten days of so ceasing to act or to remain in possession, to that effect in the prescribed form.

(4) The Registrar shall enter the notice referred to in subsection (3) in the register of particulars of charges.

(5) A person who defaults in complying with the requirements of subsection (3) is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the default continues.

(6) The Registrar shall cause a copy of a notice given under this section to be published in the *Companies Bulletin*.

Copies of charges to be kept by company

120. (1) A company shall keep a copy of every instrument creating a charge of which particulars require to be registered under sections 110 to 113, at the registered office of the company and at any other office in Ghana at which the register of debenture holders is kept; but

in the case of a series of uniform debentures, a copy of one debenture of the series is sufficient.

(2) The copies are open to inspection during usual business hours, subject to the reasonable restrictions that the company in general meeting may impose.

(3) For the purposes of subsection (2), not less than two hours in each day, other than a Saturday, a Sunday and a public holiday, shall be allowed for inspection by

(a) a member or creditor of the company without a fee, and

(b) any other person on payment of a fee, prescribed by the company for each inspection.

(4) Where a company defaults in complying with subsection (1), or if inspection of the copies is refused, the company and every officer of the company that is in default is liable on summary conviction to a fine of not less than two hundred and fifty penalty units and not more than five hundred penalty units, and in the event of refusal, the Court may compel an immediate inspection of the copies.

Registration constituting notice

121. The registration of any particulars under sections 113 to 120 constitutes actual notice of those particulars, but not of the contents of a document referred to in, or delivered with, the particulars to all persons and for all purposes as from the date of registration.

Part M: Registered Office, Publication of Name and Annual Returns

Registered office

122. (1) A company shall within twenty-eight days after its incorporation, have the following to which communications and notices to the company may be addressed:

(a) a registered office and principal place of business in the Republic with a telephone contact, a post office box, private mail bag or digital address of the registered office; and

(b) an electronic mail address and the website of the company if available.

(2) Where a company defaults in complying with subsection

(1), the company and every officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the default continues.

Notice of location of registered office

123. (1) A company shall give notice of the following for purposes of incorporation in accordance with section 13:

(a) the original registered office of the company, the telephone contact, a post office box, private mail bag or digital address of the registered office; and

(b) an electronic mail address and the website of the company if available.

(2) Notice of a change in the location of the registered office or of the number of the post office box, digital address or of the electronic mail address shall be given in the prescribed form to the Registrar for registration within twenty-eight days of the change.

(3) The inclusion in the annual return referred to in section 126 of a statement as to the location of the registered office of the company and the number of the post office box, digital address or the electronic mail address of the company does not satisfy the obligation imposed by this section.

(4) Where a company defaults in complying with subsection (2) or (3), the company and every officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the default continues.

Requirement to change registered office

124. (1) Subject to the other provisions of this section, a company shall change the registered office where the company is required to do so by the Registrar.

(2) The Registrar may require a company to change the registered office by notice in writing delivered or sent to the company at the registered office of the company.

(3) The notice shall

(a) state that the company is required to change the registered office by the date specified in the notice, not being a date that is earlier than twenty-eight days after the date of the notice;

(b) state the reason for the required change;

(c) state that the company has the right to appeal to Court; and

(d) be dated and signed by the Registrar.

(4) A copy of the notice shall be sent to each director of the company.

(5) The company shall change the registered office

(a) by the date specified in the notice; or

(b) where the company appeals to the Court and the appeal is dismissed, within seven days of the date of the decision of the Court.

(6) Where a company fails to comply with this section, each director and the Company Secretary commit an offence and are liable on summary conviction to a fine of not more than twenty-five penalty units for each day during which the default continues.

Publication of name of company

125. (1) A company shall,

(a) paint or affix, and keep painted or affixed, the name of the company on the outside of the registered office and of every office or place in which the business of the company is carried on, in a conspicuous position in letters that are easily legible;

(b) where the company has a common seal, have the name of the company engraved in legible characters on the seal; and

(c) have the name of the company accurately mentioned in legible characters at the head of the business letter, invoices, receipts, notices, or any other publication of the company and in the negotiable instruments or orders for money, goods or services purporting to be signed or endorsed by or on behalf of the company.

(2) Where a company defaults in complying with subsection (1), the company and each officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of two hundred and fifty penalty units.

(3) Where an officer of the company or a person purporting to act on behalf of the company uses or authorises the use of a seal purporting to be a seal of the company on which the name is not engraved as required by subsection (1), that officer commits an offence and is liable on summary conviction to a fine of not less than one hundred and twenty-five penalty units and not more than two hundred and fifty penalty units.

(4) Where an officer of the company or any other person signs or endorses or authorises the signing or endorsement on behalf of the company of a negotiable instrument or order for money, goods or services in which the name of the company is not accurately mentioned in accordance with paragraph *(c)* of subsection (1), that officer or person is personally liable to discharge the obligation thereby incurred unless the obligation is duly discharged by the company or otherwise, but without limiting a right of indemnity which that person may have against the company or any other person.

(5) The use of the following abbreviations:

(a) "Ltd" stands for "Limited",

(b) "PLC" stands for "Public Limited Company",

(c) "LBG" stands for "Limited by Guarantee",

(d) "PRUC" stands for "Private Unlimited Company", or

(e) "PUC" stands for "Public Unlimited Company"

is not a breach of this section.

Annual return

126. (1) A company shall, at least once in every year, deliver to the Registrar for registration an annual return including particulars of every member of the company, and every beneficial owner of that company and in the form and relating to the matters prescribed in the Fifth Schedule.

(2) A company need not make an annual return,

(a) in the year of incorporation, or

(b) in a year ending less than eighteen months after the date of incorporation, so long as the company makes a return within thirty-six days after the first despatch to the members and debenture holders of the statements, accounts, and reports referred to in section 128.

(3) The annual return shall be completed within thirty-six days from the date on which the financial statements, reports of the directors and auditors of the company are sent to the members and debenture holders pursuant to section 128, and signed by at least one director and the Company Secretary in accordance with section 213.

(4) The annual return shall state the position of the company as at the date of the annual general meeting or, if the holding of an

annual general meeting is waived in accordance with subsection (5) of section 157, at the twenty-first day after the despatch of the documents referred to in subsection (3).

(5) The Registrar, after registering the annual return, shall publish in the *Companies Bulletin* a notice that the annual return in respect of the company has been registered.

(6) In the case of a private company, the annual return shall be accompanied by the documents specified in section 298 and in the case of a public company by the documents specified in section 323.

(7) Where a company defaults in complying with this section, the company and every officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the default continues.

Part N: Accounts and Audit

Keeping of accounting records and preparation of financial statements

127. (1) A company shall keep proper accounting records with respect to the financial position and changes in the accounting records, and with respect to the control of and accounting for assets acquired whether for resale or for use in the business of the company, and, in particular with respect to

(a) the sums of money received and expended by, or on behalf of, the company and the matters in respect of which the receipt and expenditure takes place;

(b) the sales and purchases by the company of property, goods and services; and

(c) the assets and liabilities of the company and the interests of the members in the company.

(2) For the purposes of subsection (1), accounting records which do not give a true and fair view of the state of affairs of the company and are not necessary for the preparation of the proper income statements and statement of financial position in accordance with sections 129 to 135 are not proper accounting records.

(3) The accounting records may be kept by making entries in bound volumes, or, subject to compliance with subsections (2) and (3) of section 293, by a system of electronic recording, or otherwise.

(4) The accounting records shall be kept at the registered office of the company or at any other place in Ghana that the directors consider fit, and shall be open to inspection by the directors, Company Secretary and auditors of the company.

(5) The financial statements of a company shall

(a) comprise a

(i) statement of financial position,

(ii) statement of comprehensive income,

(iii) statement of cash flows,

(iv) statement of changes in equity, and

(v) summary of significant accounting policies and other explanatory notes to the financial statements; and

(b) be prepared in compliance with International Financial Reporting Standards adopted by the Institute of Chartered Accountants, Ghana or any other standards approved or adopted by the Institute.

Circulation of financial statements and reports

128. (1) The directors of a company shall, at a date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year at intervals of not more than fifteen months, prepare and send to every member of the company and to every holder of debentures of the company a copy of each of the following documents:

(a) financial statements prepared and signed in accordance with sections 129 to 135;

(b) a report by the directors in accordance with section 136; and

(c) a report by the auditors in accordance with section 137.

(2) Subsection (1) does not require a copy of the documents to be sent to a member or debenture holder of whose address the company is unaware, but that member or debenture holder is entitled to be furnished on demand without charge with a copy of the last of the financial statements and reports of directors and auditors.

(3) Unless the holding of an annual general meeting is duly waived by the members in accordance with subsection (5) of section

157, the documents referred to in subsection (1) of this section shall be laid before the company in general meeting.

(4) The Registrar may extend the periods of eighteen months and fifteen months referred to in subsection (1) and, in the circumstances referred to in subsection (8) of section 131, may waive the requirements of this section in respect of a calendar year.

First financial statements after incorporation

129. (1) The financial statements referred to in paragraph *(a)* of subsection (1) of section 128 shall, in the case of the first financial statements since the incorporation of the company, cover the period since the incorporation of the company and, in any other case, cover the period since the preceding account and shall be made up to a date not earlier than nine months or more from the date on which it is to be sent to members and debenture holders pursuant to section 128.

(2) For the purposes of subsection (1),

(a) in the case of an existing company which has not previously prepared the statements specified in subsection (5) of section 127 and which was not required by the constitution of the company to prepare one, the first financial statements need not cover a period commencing earlier than the date of the commencement of this Act; and

(b) the Registrar may extend the period of nine months.

(3) The date to which the statement of comprehensive income and statement of cash flows is to be made up in accordance with subsection (1) is the end of the financial year of the company.

(4) The statement of comprehensive income and statement of cash flows shall, subject to subsection (4) of section 131, relating to a consolidated financial statement,

(a) give a true and fair view of the profit or loss and other comprehensive income of the company for the period to which the statement relates; and

(b) comply with the requirements of sections 131 to 135 and Part One of the Sixth Schedule.

(5) The Registrar may, on the application or with the consent of the directors of a company, modify in relation to that company, any of the requirements in Part One of the Sixth Schedule for the

purpose of adapting those requirements to the circumstances of the company, but a modification shall not derogate from the obligation imposed by paragraph *(a)* of subsection (4) to give a true and fair view of the profit or loss of the company.

Statement of financial position

130. (1) The statement of financial position as part of the financial statements referred to in paragraph *(a)* of subsection (1) of section 128 shall give a true and fair view of the state of affairs of the company as at the end of the financial year of the company and shall comply with the requirements of sections 131 to 135 and Part Two of the Sixth Schedule.

(2) The Registrar may, on the application or with the consent of the directors of the company, modify any of the requirements in Part Two of the Sixth Schedule for the purpose of adapting them to the circumstances of the company, but a modification shall not derogate from the obligation imposed by subsection (1) to give a true and fair view of the state of affairs of the company.

Consolidated financial statements

131. (1) At the end of the financial year of a company, this section shall apply where a company has subsidiaries.

(2) Financial statements dealing with the operating results and the state of affairs of the company and the subsidiaries, that is, the consolidated financial statements, shall be sent to the members and debenture holders of the company with the financial statements of the company pursuant to section 128.

(3) The consolidated financial statements shall comprise

(a) statement of financial position,

(b) statement of comprehensive income,

(c) statement of changes in equity,

(d) statement of cash flows, and

(e) notes to the consolidated financial statements.

(4) The consolidated financial statements shall

(a) give a true and fair view of the profit or loss and other comprehensive income and of the state of affairs of the company and the subsidiaries dealt with by the consolidated financial statements as a whole, in so far as it concerns the interest of the company; and

(b) be prepared in compliance with International Financial Reporting Standards as adopted by the Institute of Chartered Accountants, Ghana.

(5) The financial statements of the company and the consolidated financial statements, shall comply with the requirements of Part Three of the Sixth Schedule.

(6) The Registrar may, on the application or with the consent of the directors of the company, modify in relation to that company any of the requirements in Part Three of the Sixth Schedule for the purpose of adapting those requirements to the circumstances of the company; but a modification shall not derogate from the obligation imposed by subsection (4) to give a true and fair view of the profit or loss and other comprehensive income and the state of affairs of the company and the subsidiaries as a whole, in so far as it concerns the interests of the company.

(7) Directors of a holding company shall secure that, except where in the opinion of the directors there are good reasons against the company, in which case reasons of the directors shall be stated in a note on the financial statements of the company, the financial year of each of the subsidiaries shall coincide with the financial year of the company, and the consolidated financial statements shall deal with the affairs of the holding company and the subsidiaries for the same financial year.

(8) Where it appears to the Registrar that it is desirable for a holding company or subsidiary company to extend its financial year so that the financial year of the subsidiary may end with that of the holding company, and for that purpose to postpone the despatch of the financial statement and reports referred to in section 128, from one calendar year to another, the Registrar may direct that the despatch of the financial statements by one or other of these companies shall not be required in the earlier years of the calendar.

(9) Where the financial year of a subsidiary does not coincide with that of the holding company, the consolidated financial statements shall, unless the Registrar otherwise directs, deal with the profit or loss and other comprehensive income of the subsidiary, and the state of affairs as at the end of the financial year of the subsidiary ending last before that of the holding company.

Particulars of emoluments and pensions of directors

132. (1) There shall be shown in accordance with this section, in a note to the financial statements of a company, the following information as it is contained in the accounting records of the company, or the company has obtained the information from the persons concerned or has the right to obtain it under section 134, namely, the individual and aggregate amounts of the

(a) emoluments of the directors;

(b) pensions of the directors or past directors; and

(c) emoluments of the directors or past directors in respect of loss of office.

(2) The amount to be shown under paragraph *(a)* of subsection (1) includes fees, salaries and percentages, expenses, allowances, contributions paid under a pension scheme, and the estimated value of benefits in kind, except benefits of the character and value that are customarily afforded to employees other than directors, paid to, or receivable by, a director in respect of the services of the director as an officer of the company or of an associated company.

(3) The amount to be shown under paragraph *(b)* of subsection (1) shall include the pension paid or receivable in respect of services as a director or past director of the company, or in respect of services, while a director of the company, in connection with the management, or as an officer of the company or an associated company, whether that pension is paid to, or receivable by, the director or past director or any other person.

(4) For the purposes of subsection (3), it is not necessary to include a pension paid or receivable under a pension scheme where the contributions are substantially adequate for the maintenance of the scheme.

(5) The amount to be shown under paragraph *(c)* of subsection (1) shall include

(a) the sums of moneys paid to or receivable by a director or past director by way of compensation for the loss of office as director of the company or for the loss, while a director of the company, or in connection with that person ceasing to be a director of the company, or of any other office in the company or of an office in an associated company; and

(b) a sum of money and the value of any other valuable consideration paid or receivable in connection with retire-

ment from office, or as damages for breach of contract of service;

and shall be deemed to be paid or received by way of compensation for loss of office.

(6) The amounts to be shown under each paragraph of subsection (1) shall include the relevant sums of money paid by, or receivable from, the company or any other person.

(7) The amounts to be shown under this section for a financial year shall be the sums of money receivable in respect of that year whenever paid or in the case of sums not receivable in respect of a period, the sums paid during that year.

(8) For the purposes of subsection (7), the sums paid in advance of the financial year to which the sums are expressed to relate shall be shown in the accounts for the financial year in which the sums are paid.

(9) Where it is necessary to do so for the purposes of making a distinction required by this section, the directors may apportion, in a manner that the directors think appropriate, the payments between the matters in respect of which they have been paid or are receivable.

Particulars of amounts due from officers

133. (1) Subject to this section, there shall be separately shown in a note to the financial statements of a company, the following:

(a) the individual and aggregate amounts of money due to the company or an associated company at the end of the financial year of the company from an officer of the company or an associated company; and

(b) the maximum amount of money due to the company and an associated company at any time during the financial year of the company from any officer of the company or an associated company.

(2) Where the company or an associated company gives a guarantee or security to a person in respect of an indebtedness of an officer of the company or an associated company, the amount guaranteed or in respect of which the security was given, shall be included in the amounts to be shown under subsection (1).

(3) Despite subsections (1) and (2), the following do not require to be separately shown:

(a) an indebtedness incurred as a result of a transaction in the ordinary course of business by the company or an associated company unless the indebtedness has not been discharged as and when the payment was due;

(b) a loan made in the ordinary course of business by a company, the ordinary business of which includes the lending of money; or

(c) a loan made by the company or an associated company to an officer of the company or associated company if the loan does not exceed five thousand currency points or two percent of the stated capital of the company concerned, whichever is less, and is certified by the directors of the company concerned to have been made in accordance with a practice adopted, or about to be adopted, by that company with respect to loans to those employees.

(4) Paragraphs *(b)* and *(c)* of subsection (3) shall not include a loan made by a company under a guarantee from or on security provided by an associated company.

(5) A reference in this section to an associated company includes a company which is an associated company at the end of the financial year of the company, whether or not an associated company at the date of the transaction concerned.

(6) This section does not derogate from section 328 prohibiting loans by public companies to directors of the company or directors of associated companies.

Provisions supplemental to sections 127 to 133

134. (1) A reference in this Act to the financial statements of a company includes the notes on those financial statements and a document annexed to those financial statements giving information which is required by this Act.

(2) A reference in this Act to a statement of comprehensive income of a company limited by guarantee or any other company not trading for profit shall be construed as a reference to statement of comprehensive income and expenditure of the company.

(3) Where a person, who is a director of a company, fails to take the reasonable steps necessary to secure compliance with sections 127 to 133, that person commits an offence and is, in respect of each offence, liable on summary conviction to a fine of not less than two hundred and fifty penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than one year and not more than two years or to both the fine and imprisonment.

(4) For the purposes of subsection (3),

(a) in proceedings against a person for an offence, that person may as a defence prove that, that person had reasonable cause to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that those provisions were complied with and was in a position to discharge that duty; and

(b) a person shall not be sentenced to imprisonment for an offence unless, in the opinion of the Court, the offence was committed wilfully.

(5) A director and former director of the company shall give notice in writing to the company of the matters relating to that director or former director that may be necessary to enable the company comply with sections 132 and 133, and if notice is given, the director or former director shall secure that it is brought up and read at the next meeting of the directors after the notice is given.

(6) It is not necessary for a person under subsection (5) to give written notice of loans, guarantees or securities made or given by the company.

(7) A person who defaults in complying with subsection (5) is liable to pay to the Registrar an administrative penalty of two hundred and fifty penalty units.

(8) A company shall give a written notice to an associated company relating to a transaction entered into by the first named company that may be necessary to enable the associated company comply with sections 132 and 133.

(9) Where a company defaults in complying with subsection (8), the company and every officer of the company, that is in default is liable to pay to the Registrar an administrative penalty of two hundred and fifty penalty units.

Signing and publication of financial statements

135. (1) A company shall not issue, publish or circulate a copy of the financial statements unless

(a) the company attaches to the financial statements, reports of the directors and auditors respectively, as required under sections 136 and 137, and

(b) the financial statements have been approved by the board of directors and, after that approval, signed by two directors on behalf of the board.

(2) Subsection (1) does not prohibit the publication of

(a) a fair and accurate summary of the financial statements and report of the auditors on the financial statements after the financial statements have been approved, and signed on behalf of the board of directors; and

(b) a fair and accurate summary of the profit or loss and other comprehensive income statements for part of the financial year of the company.

(3) In the event of a breach of subsection (1), the company and every officer of the company that is in default is liable to pay to the Registrar an administrative penalty of one hundred and fifty penalty units.

Report of directors

136. (1) The report of the directors referred to in paragraph *(b)* of subsection (1) of section 128, shall consist of a report on the

(a) details on the state of affairs of the company and, if the company is a holding company, on the state of affairs of the company and the subsidiaries of the company as a group, and the amount of money which the directors recommend to be paid by way of dividend,

(b) particulars of entries in the interests register during the financial year,

(c) corporate social responsibility of the company and a subsidiary and the amounts spent during the financial year;

(d) amount payable by way of audit fees; and

(e) details of steps taken to build the capacity of directors to discharge their duties.

(2) The report shall deal, so far as is material for the appreciation of the state of affairs of the company, with any change during the financial year in the nature of the business of the company or of the associated companies, or in the classes of business in which the company has an interest, whether as a member of another company or otherwise.

(3) The report shall contain a list of bodies corporate in relation to which is fulfilled at the end of the financial year of the company, the condition that

(a) the body corporate is a subsidiary of the company, or

(b) although the body corporate is not a subsidiary of the company, the company is beneficially entitled to equity shares of the body corporate conferring the right to exercise more than twenty-five per cent of the votes exercisable at a general meeting of the body corporate.

(4) The list referred to in subsection (3) shall distinguish between bodies corporate falling within paragraphs *(a)* and *(b)* of that subsection and shall state as regards each company, the

(a) name;

(b) country of incorporation; and

(c) nature of the business carried on by the company.

(5) If the company is, at the end of the financial year, the subsidiary of another, the report shall also state the name and country of incorporation of the holding company.

(6) If, on an application made by the directors, the Registrar is satisfied that, mention of any of the matters referred to in subsections (2) (3), (4) and (5) would be harmful to the business of the company or any of the associated companies, the Registrar may direct that the matter need not be mentioned in the report of a financial year.

(7) The report shall be approved by the board of directors and signed on behalf of the board by two directors.

(8) A director who fails to take the reasonable steps necessary to comply with this section is liable to pay to the Registrar, an administrative penalty of one hundred and fifty penalty units.

Report of Auditors

137. (1) The report by the auditors referred to in paragraph *(c)* of subsection (1) of section 128, shall

(a) consist of a report, addressed to the members of the company, by an auditor or auditors duly qualified and appointed as auditors of the company in accordance with sections 138 and 139 on

(i) the accounting records of the company, and

(ii) financial statements of the company as listed in subsection (5) of section 127 and the consolidated financial statements to be sent to the members and debenture holders of the company in accordance with sections 128 and 131; and

(b) contain statements as to the matters mentioned in the Seventh Schedule.

(2) Where, in the case of the accounts, any of the particulars required to be shown under sections 132 and 133 are not shown, the report, in addition to stating that the accounts do not give the information required by this Act, shall contain a statement giving the required particulars so far as the auditors are reasonably able to do so.

(3) The audit of the financial statements shall, in the case of a public or private company be carried out in compliance with international standards on auditing adopted by the Institute of Chartered Accountants, Ghana and it shall be sufficient if the report of the auditor complies with those standards and accords with terminology approved by the Institute of Chartered Accountants, Ghana.

(4) The report shall be open for inspection by a member or debenture holder of the company at the registered office of the company during usual business hours and shall be read at an annual general meeting of the company held within three months after the report is sent to members and debenture holders in accordance with section 128.

Qualification of an auditor

138. (1) A person is qualified for appointment as an auditor of a private or public company, if that person is,

(a) qualified and licensed in accordance with the Chartered Accountants Act, 1963 (Act 170); and

(b) not disqualified under subsection (2).

(2) A person is disqualified for appointment as an auditor, if that person is

(a) an officer of the company or of an associated company;
(b) a partner of, or in the employment of, an officer of the company or of an associated company; *(c)* an infant;
(d) found by a court of competent jurisdiction to be a person of unsound mind;
(e) a body corporate, except that a member of an incorporated partnership may be appointed in the manner provided by subsection (2) of section 139;
(f) one in respect of whom an order has been made under section 177 so long as the order remains in force unless leave to act as an auditor of the company concerned has been granted by the Court in accordance with that section;
(g) an undischarged bankrupt, unless that person has been granted leave to act as an auditor of the company concerned by the Court by which the adjudication as bankrupt was made; or
(h) for the time being disqualified from acting as an auditor of a company by order of the Registrar under subsection (4).

(3) Paragraph *(b)* of subsection (2) does not disqualify a person from being appointed as an auditor by reason only of the fact that, that person is a partner or in the employment of a person acting as Company Secretary of the company or of an associated company.

(4) The Registrar may, subject to a legislative instrument, disqualify a person otherwise qualified from acting as an auditor of a company and may at any time remove that disqualification.

(5) A person aggrieved by a decision of the Registrar under subsection (4) has a right to appeal to the Court.

(6) A person not qualified for appointment as an auditor who acts as an auditor, commits an offence and is liable on summary conviction to a fine of not less than three hundred and twenty-five penalty units and not more than seven hundred and fifty penalty units and the company by whom that person is appointed and an officer of that company that is in default are liable each to pay to the Registrar an administrative penalty of seven hundred and fifty penalty units.

Appointment of an auditor

139. (1) A person shall not be appointed as an auditor of a company unless, that person

(a) has, before the appointment, consented in writing to be appointed; and

(b) is duly qualified in accordance with section 138.

(2) A partnership firm may be appointed, in the name of the firm, as an auditor of a company, but, whether or not that firm is a body corporate, the appointment shall be deemed to be an appointment of the partners of the firm who, at the time of the appointment, are duly qualified.

(3) Despite a contrary provision in the constitution of a company, an auditor shall be appointed by ordinary resolution of the company and not otherwise.

(4) For the purposes of subsection (3),

(a) the directors may appoint the first auditors of a company and may fill a casual vacancy in the office of auditor; or

(b) if a company does not have an auditor for a continuous period of three months the Registrar may appoint an auditor for that company.

(5) An existing auditor shall continue in office until,

(a) that auditor ceases to be qualified for appointment;

(b) that auditor resigns from office by notice in writing to the company;

(c) an ordinary resolution is duly passed at an annual general meeting in accordance with section 141 removing that auditor from office or appointing any other person in place of that auditor as from the conclusion of the annual general meeting; or

(d) the tenure of that auditor ends;

and when a casual vacancy occurs in the office of the auditor, the surviving or continuing auditor may act.

(6) Within fourteen days after the occurrence of a change in the auditors of a company, the company shall give notice of the change in the prescribed form to the Registrar for registration.

(7) For the purposes of subsection (6)

(a) where a partnership firm has been appointed auditor in the name of the firm, the name and business address of the firm shall be given to the Registrar, and

(b) a change in the constitution of the firm or of the partners in the firm with respect to an auditor of the company is not a change in the auditors.

(8) Before accepting the appointment as an auditor of a company, the auditor shall communicate with the retiring auditor and request the retiring auditor to make any representations and supply information about the company.

(9) The retiring auditor shall respond to the request and supply the requisite information.

(10) Where a company contravenes a provision of this section or describes as auditor of the company a person who has not been duly appointed, the company and an officer of the company that is in default are liable each to pay to the Registrar an administrative penalty of two hundred and fifty penalty units.

(11) An auditor shall hold office for a term of not more than six years and is eligible for appointment after a cooling-off period of not less than six years.

Remuneration of an auditor

140. (1) The remuneration of an auditor of a company shall be fixed where the auditor is appointed

(a) by the directors for the period expiring at the conclusion of the next annual general meeting of the company;

(b) by the Registrar; or

(c) at a meeting of the company, by ordinary resolution of the company or in a manner that the company by ordinary resolution may determine.

(2) For purposes of full disclosure, the

(a) company shall clearly state in the financial statements which are accessible and reported to shareholders of the company the remuneration offered to an auditor of the company for any service rendered; and

(b) remuneration payable to an auditor of the company shall be subject to confirmation by members of the company.

(3) For the purposes of this section, "remuneration" includes the sums of money payable by a company in respect of the expenses of an auditor.

(4) Where a company contravenes a provision of this section, the company and an officer of the company that is in default are liable each to pay to the Registrar an administrative penalty of two hundred and fifty penalty units.

Removal of an auditor

141. (1) A resolution to remove an auditor or to appoint any other person in the place of that auditor is not effective unless,

(a) a written notice has been given to the company of the intention to pass the resolution, not less than thirty-five days before the general meeting at which the resolution is to be moved and on receipt of the resolution, the company has forthwith sent a copy of the resolution to the auditor concerned;

(b) the resolution is passed at a general meeting of the company; and

(c) the company has given the members notice of the resolution at the same time and in the same manner as the company gives notice of meetings or, if that is not practicable, has given the members notice of the resolution in the same manner as notices of meetings are required to be given not less than twenty-one days before the meeting.

(2) For the purposes of subsection (1),

(a) if, after notice of the intention to move the resolution is given to the company, an annual general meeting is called for a date thirty-five days or less after the notice has been given to the company, the notice is properly given; and

(b) in the case of a resolution to remove an auditor appointed by the directors in accordance with subsection (4) of section 139 or to appoint any other person in place of an auditor so appointed, subsection (1) shall have effect with the substitution of fourteen days for thirty-five days in paragraph *(a)* of subsection (1) and seven days for twenty-one days in paragraph *(c)* of subsection (1).

(3) The auditor concerned is entitled

(a) to be heard on the resolution at the meeting; and

(b) to send to the company a written statement, and the company shall send copies of the statement with every notice of the annual general meeting or, if the statement is received too late, shall forthwith circulate to each person entitled under subparagraph *(f)* of paragraph 1 of the Eighth Schedule the notice of the meeting in the same manner as notices of meetings are required to be given.

(4) The company is not required to send or circulate the statement under paragraph *(b)* of subsection (3),

(a) if the statement is received by the company less than seven days before the meeting; or

(b) if the Court, on an application made by the company or any other person who claims to be aggrieved, so orders on being satisfied that the statement is unreasonably long or that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; the Court may order the costs of the applicant to be paid in whole or in part by the auditor although the auditor is not a party to the application.

(5) Without limiting the right of the auditor to be heard orally on the resolution, the auditor may, unless the Court makes an order under subsection (4), also require that the written statement by the auditor be read to the meeting.

(6) If the resolution is passed, the resolution shall not take effect until the conclusion of the annual general meeting.

Functions of an auditor

142. (1) An auditor of a company while acting in the performance of functions under this Act, is not an officer or agent of the company, but

(a) stands in a fiduciary relationship to the members of the company as a whole, and

(b) shall act in a manner that a faithful, diligent, careful, and ordinarily skilful auditor would act in the circumstances.

(2) A provision, whether contained in the constitution of a company, or in a contract, or in a resolution of a company, shall not relieve an auditor from

(a) the duty to act in accordance with subsection (1); or

(b) a liability incurred as a result of a breach of that duty.

(3) An auditor shall have a right of access at all times to the accounting records and financial statements and vouchers of the company and is entitled to require from the officers of the company the information and explanation that the auditor thinks necessary for the performance of the functions of the auditor.

((4) The auditor of a company is entitled to

(a) attend a general meeting of the company,

(b) receive the notices of, and other communications relating to, a general meeting, and

(c) be heard at a general meeting on any part of the business of the meeting which concerns the auditor.

(5) The auditor of a company may apply to the Court for directions in relation to a matter arising in connection with the performance of functions under this Act.

(6) On receipt of that application, the Court may give directions that the Court considers just and unless the Court otherwise directs, the costs of the application shall be paid by the company.

Auditor to avoid conflict of interest

143. (1) An auditor of a company shall ensure that in carrying out the duties of an auditor under this Part, the personal judgment of the auditor is not impaired by reason of any relationship with or interest in the company or any of the subsidiaries of the company.

(2) Without limiting subsection (1), a company, person or firm that carries out duties of an auditor shall not engage in any relationship with a client that will result in a conflict of interest between that person or firm and that client including a relationship with a client that will

(a) place the person or firm in the position of auditing work of that person or firm;

(b) result in that person or firm acting as management or an employee of the client; or

(c) place that person or firm in a position of being an advocate for the client.

(3) Subsection (2) applies to the appointment of an auditor who is appointed to perform the services of a receiver.

Division of powers between general meeting and board of directors

144. (1) A company shall act through the members of the company in general meeting or the 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.

(2) Subject to this Act, the respective powers of the members in general meeting and the board of directors may be determined by the constitution of a company.

(3) Except as otherwise provided in the constitution of a company, the business of the company shall be managed by the board of directors who may exercise the powers of the company that are not by this Act or the constitution required to be exercised by the members in general meeting.

(4) Unless the constitution of the company otherwise provides, the board of directors when acting within the powers conferred on them by this Act or the constitution of the company, are not bound to comply the directions or instructions of the members in general meeting.

(5) Subject to section 145, the members in general meeting may

(a) act in a matter if the members of the board of directors are disqualified or are unable to act by reason of a deadlock on the board or otherwise;

(b) institute legal proceedings in the name of and on behalf of the company if the board of directors refuse or neglect to do so;

(c) ratify or confirm an action taken by the board of directors; or

(d) make recommendations to the board of directors regarding an action to be taken by the board.

(6) An amendment of the constitution of a company shall not invalidate a prior act of the board of directors which would have been valid if that amendment had not been made.

Major transactions

145. (1) A company shall not enter into a major transaction unless the transaction is

(a) approved by special resolution; or

(b) contingent on approval by special resolution.

(2) For the purposes of this section,

(a) 'assets' include property of any kind whether tangible or intangible;

(b) 'major transaction' means

(i) the acquisition of, or an agreement to acquire, whether contingent or otherwise, assets, the value of which is more than seventy-five percent of the value of the assets of the company before the acquisition; or

(ii) the disposition of, or an agreement to dispose of, whether contingent or otherwise, assets of the company the value of which is more than seventy-five percent of the value of the assets of the company before the disposition; or

(iii) a transaction that has or is likely to have the effect of the company acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is seventy-five percent of the value of the assets of the company before the transaction; and

(c) the assets of the company as regards major transactions under paragraph *(b)*, include the assets of the company and that of the subsidiaries.

(3) The provisions of paragraphs *(a)* and *(b)* of subsection (2) shall not affect an agreement entered into by a company to give a charge secured over the assets of that company the value of which is more than seventy-five percent of the assets of the company, for the purpose of securing the repayment of money or the performance of an obligation.

(4) In assessing the value of a contingent liability for the purposes of subparagraph (iii) of paragraph *(b)* of subsection (2), the directors

(a) shall have regard to every circumstance that the directors know, or ought to know, affects, or may affect, the value of the contingent liability;

(b) may rely on estimates of the contingent liability that are reasonable in the circumstances; and

(c) may take account of

(i) the likelihood of the contingency occurring; and

(ii) any claim the company is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.

(5) The provisions of this section do not apply to a major transaction entered into by a receiver appointed pursuant to an instrument that creates a charge over the whole of or a substantial part of the property of a company.

Delegation to committees and managing directors

146. Except otherwise provided in the constitution of a company, the board of directors may

(a) exercise their powers through committees consisting of a member or members of the board as the board of directors think fit, and

(b) from time to time appoint one or more of the members of the board to the office of managing director and may delegate all or any of the powers of the board of directors to that managing director.

Acts of the company

147. (1) An act of the members in general meeting, of the board of directors, or of a managing director while carrying on in the usual way the business of the company, is the act of the company; and accordingly, the company is criminally and civilly liable for that act to the same extent as if the company were a natural person.

(2) For the purposes of subsection (1),

(a) the company does not incur civil liability to a 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, did not have the power to act in the matter or had acted in an irregular manner or if, having regard to the position with, or relationship to, the company, that person ought to have known of the absence of the power or of the irregularity; or

(b) if in fact a business is being carried on by the company, the company shall not escape liability for acts undertaken in connection with that business merely because, the business in question was not among the businesses authorised by the constitution of the company.

Acts of officers or agents

148. (1) Except as provided in section 147, the acts of an officer or agent of a company are not acts of the company, unless,

(a) the company, acting through the members in general meeting, the board of directors, or managing director, has expressly or impliedly authorised that officer or agent to act in the matter; or

(b) the company, acting under paragraph *(a)* has represented to the officer or agent as having the authority of the company to act in the matter, in which event the company is civilly liable to a person who has entered into the transaction in reliance on that representation, unless that person had actual knowledge that the officer or agent did not have the authority, or unless, having regard to the position with, or relationship to, the company, that person ought to have known of the absence of authority.

(2) The authority of an officer or agent of the company may be conferred before action is taken by that officer or agent or by subsequent ratification.

(3) The knowledge of action by that officer or agent and acquiescence in that action by

(a) the members for the time being entitled to attend general meetings of the company,

(b) the directors for the time being, or

(c) the managing director for the time being,

is equivalent to ratification by the members in general meeting, by the board of directors, or by the managing director.

(4) This section does not derogate from the vicarious liability of a company for the acts of the employees while acting within the scope of their employment.

No constructive notice of registered documents

149. Except as provided in section 121, regarding particulars in the register of particulars of charges, a person shall not be deemed to have knowledge of any particulars, documents, or the contents of documents by reason only that those particulars or documents are registered by the Registrar or referred to in any particulars or documents so registered.

Presumption of regularity

150. (1) A person having dealings with a company or with any other person who derives title under the company is entitled to assume that,

(a) the company has been duly incorporated under this Act;

(b) a person described in the particulars filed with the Registrar pursuant to sections 13 and 216 as a director, managing director or Company Secretary of the company, or represented by the company, acting through the 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 Company 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) the Company Secretary, and any 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; or

(d) a document has been duly authenticated by the company if it

(i) 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 Company Secretary of the company; or

(ii) is certified by what purports to be the signatures of two directors and the Company Secretary of the company

and the company and those deriving title under the document are estopped from denying the truth of that assumption.

(2) For the purposes of subsection (1),

(a) a person is not entitled to make any of those assumptions if that person had actual knowledge to the contrary or if,

having regard to the position with, or relationship to, the company, that person ought to have known the contrary; or

(b) a person is not entitled to assume that any one or more of the directors of the company has or have been appointed to act as a committee of the board of directors or that an officer or agent of the company has the authority of the company by reason only that the constitution of the company provides 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

151. Where, in accordance with sections 147 to 150, a company would be liable for the acts of an officer or agent, the company is liable although the officer or agent has acted fraudulently or forged a document purporting to be sealed by, or signed on behalf of, the company.

Form of contracts

152. A contract on behalf of a company may be made, varied or discharged if the contract, if made between individuals would

(a) by law be required to be in writing under seal, or could be varied or discharged by writing under seal only, or may be made, varied or discharged in writing;

(b) by law be required to be in writing or to be evidenced in writing by the parties to be charged therewith or could be varied or discharged only by writing or written evidence signed by the parties to be charged, may be made, evidenced, varied or discharged, in writing signed acting under the authority of the company express or implied in the name or on behalf of the company; or

(c) be valid although made orally only and not reduced to writing or could be varied or discharged orally, may be made, varied or discharged, orally on behalf of the company acting under the authority of the company express or implied as if it were under the seal of the company.

Bills of exchange and promissory notes

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

made, accepted or endorsed in the name of the company or if expressed to be made, accepted or endorsed on behalf or on account of the company.

(2) The company and the successors are bound if the company is, in accordance with sections 147 to 151, liable for the acts of those who made, accepted or endorsed in the name or on behalf or account, and a signature by a director or the Company Secretary on behalf of the company shall not be deemed to be a signature by procuration for the purposes of section 23 of the Bills of Exchange Act, 1961 (Act 55).

Authentication of documents

154. (1) A document or proceeding requiring authentication by a company may be signed on behalf of the company by an officer of the company.

(2) For the purposes of this section, an "officer" means a director, Company Secretary or any other person authorised by the board of directors or Managing Director of a company to sign a document on behalf of the company.

Execution of deeds abroad

155. (1) A company may, by an instrument in writing executed in accordance with paragraph *(d)* of subsection (1) of section 150 empower a person generally or in respect of a specified matter, as the attorney to execute deeds on behalf of the company in a place outside the country.

(2) A deed signed by that attorney on behalf of the company in respect of the instrument binds the company.

Official seal for use abroad

156. (1) A company may, by the constitution of the company, authorise for use in a territory, district, or place not located in the country, an official seal which is a fascimile of the common seal of the company with the addition on the face of the seal the name of the territory, district or place where the seal is to be used.

(2) The company may, by writing under the common seal of the company, authorise an agent appointed for that purpose to affix the official seal to a document to which the company is a party in the territory, district or place.

(3) The directors may provide for the safe custody of the seal, which shall only be used by the authority of the board of directors or of a committee of the directors authorised by the board of directors in that behalf, and an instrument to which the seal is affixed shall be signed by a director, and shall be countersigned by the Company Secretary or by a second director or by some other person appointed by the directors for the purpose.

(4) The company may exercise the powers conferred under this section with regard to having an official seal for use abroad, and those powers shall be vested in the board of directors.

(5) A person dealing with an agent of the company in reliance on a writing conferring the authority is entitled to assume that the authority of the agent continues during the period mentioned in the writing or, if a period is not there mentioned, until that person has actual notice of the revocation or determination of the authority.

(6) The person affixing the official seal shall, by writing signed personally by that person, certify on the document to which the seal is affixed, the date on which and the place at which the seal is affixed.

Part P: General Meetings and Resolutions

Annual general meetings

157. (1) Except as provided in subsection (4), a company shall

(a) in each year hold a general meeting as the annual general meeting of the company in addition to any other meetings in that year, and

(b) specify the meeting as the annual general meeting in the notice calling the meeting.

(2) Not more than fifteen months shall elapse between the date of one annual general meeting and the next.

(3) If a company holds the first annual general meeting within eighteen months of incorporation, the company is not required to hold the annual general meeting in the year of incorporation or in the following year.

(4) The annual general meeting shall be held not earlier than twenty-one days after the financial statements, the consolidated financial statements, and the reports of the directors and auditors on the financial statements of the company have been despatched to members and debenture holders of the company in accordance with section 128; and

the financial statements, and reports shall be laid before the annual general meeting for consideration.

(5) If the auditors of the company and the members of the company entitled to attend and vote at an annual general meeting agree in writing that an annual general meeting shall be dispensed with in any year, it shall not be necessary for that company to hold an annual general meeting that year.

(6) If the annual general meeting is not held in accordance with subsection (5), the Registrar may, on a motion by the Registrar or on the application of an officer or a member of the company, call, or direct the calling of, an annual general meeting of the company, and may give the ancillary or consequential directions that the Registrar thinks fit, including directions modifying or supplementing, in relation to the venue, calling, holding and conducting of that meeting, the operation of

(a) section 159,
(b) paragraphs 1 to 3 of the Eighth Schedule,
(c) paragraphs 8, 9, 12, 13 of the Eighth Schedule,
(d) paragraphs 15 to 19 of the Eighth Schedule, and
(e) the constitution of the company where applicable.

(7) Where a meeting held in pursuance of subsection (6) is not held in the year in which the default in holding the annual general meeting of the company occurred, the meeting so held shall be treated as the annual general meeting for that year, but shall not be treated as the annual general meeting for the year in which the meeting is held unless, at that meeting, the company resolves that it shall be so treated.

(8) Where a company passes a resolution pursuant to subsection (5) or (7), a copy of the resolution shall, within twenty-eight days of the passage of the resolution, be forwarded to the Registrar for registration.

(9) If an annual general meeting of the company is not held in

(a) accordance with subsection (1),
(b) compliance with the directions of the Registrar under subsection (6), or
(c) compliance with subsection (4), (7) or (8) of this section, the company and every officer of the company that is in default is liable

to pay to the Registrar an administrative penalty of one hundred and fifty penalty units.

Extraordinary general meetings

158. (1) An extraordinary general meeting may be convened by the directors whenever the directors think fit.

(2) If at any time there are not within the Republic sufficient directors capable of acting to form a quorum, a director may convene a meeting.

(3) An extraordinary general meeting of a private company may be requisitioned in accordance with section 299 and an extraordinary general meeting of a public company may be requisitioned in accordance with section 324.

Place of meetings

159. Unless the constitution of a company otherwise provides, the general meetings shall be held in the Republic.

Notice on proxy

160. (1) In every case in which a member is entitled to appoint a proxy to attend and vote pursuant to paragraph 9 of the Eighth Schedule to this Act, instead of that member, 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 that member and that, the proxy need not be a member of the company.

(2) If there is a default in complying with this section in respect of a meeting, every officer of the company who is in default is liable to pay to the Registrar an administrative penalty of one hundred and fifty penalty units.

Compliance with proxy arrangements

161. (1) A person shall comply with the proxy arrangements for voting and attendance of meetings in accordance with paragraph 9 of the Eighth Schedule.

(2) An officer of the company who knowingly authorises or permits a breach or non-observance of subparagraphs *(g), (h), (i)* or *(k)* of paragraph 9 of the Eighth Schedule, is liable to pay to the Registrar an administrative penalty of two hundred and fifty penalty units; and in the event of a refusal to permit inspection in accordance with subparagraph *(g)* of paragraph 9 of the Eighth Schedule, the Courtmay by order compel an immediate inspection.

Power of Court to order meeting

162. (1) If for a good reason it is impracticable to call a meeting of a company in a manner in which meetings of that company may be

called, or to conduct the meeting of the company in the manner prescribed by the constitution of the company, the Court may on the application of a director, a member of the company or the Registrar order a meeting of the company to be called, held and conducted in the manner that the Court considers fit.

(2) Where that order is made, the Court may give any ancillary or consequential directions that the court considers expedient.

(3) A meeting called, held and conducted in accordance with the order is, for the purpose of this Act, a meeting of the company duly called, held and conducted.

Written resolutions

163. (1) Except as provided in subsection (5), a resolution in writing signed by all the members for the time being entitled to attend and vote on the resolution at a general meeting, or being bodies corporate by the duly authorised representatives of the bodies corporate, is as valid and effective, for the purposes of this Act as if the resolution had been passed at the general meeting of the company duly convened and held.

(2) Subsection (1) applies where the company has only one member entitled to vote.

(3) A resolution described as a "special resolution" is a special resolution within the meaning of this Act.

(4) A resolution is passed on the date on which the resolution was signed by the last member to sign, and where the resolution states a date as being the date of the signature by a member, that statement is sufficient evidence that the resolution was signed by that member on that date.

(5) Subsections (1) and (4) do not apply to a resolution to remove an auditor, which can be passed only at a general meeting in accordance with section 141, or to remove a director, which can be passed only at a general meeting in accordance with section 176.

Application of provisions on general meetings to class meetings

164. (1) The provisions on general meetings in accordance with section 163 and the provisions of the Eighth Schedule apply to meetings of a class of members in like manner as they apply to general meetings of companies, but the necessary quorum shall be as set out in subsection (2) and a member of the class present in person or by proxy may demand a poll.

(2) At a meeting of a class of members, the necessary quorum shall be,

(a) if there are not more than two members of that class, one member present in person or by proxy; or

(b) in any other case, two members, present in person or by proxy, holding not less than one-third of the total voting rights of that class.

(3) The constitution of a company may provide for a larger, but not for a smaller quorum for the purposes of subsection (2).

Registration of copies of certain resolutions

165. (1) A certified true copy of a special resolution of a general meeting or of a class of members and of a resolution

(a) to which a specified proportion of a class of members have consented in writing, and

(b) which would not have been effective for the purpose, unless the written consent had been given, without the passing of a special resolution,

shall be forwarded to the Registrar for registration within twenty-eight days after the passing of the resolution or the making of the copy.

(2) The copy shall be printed, typewritten, or be in some other legible form acceptable to the Registrar.

(3) A copy of a special resolution of a general meeting of the company for the time being in force shall be embodied in or annexed to a copy of the constitution of the company after the passing of the resolution, but where the sole effect of the special resolution is to amend a constitution, this subsection is sufficiently complied with if a copy of the constitution adopted after the passing of the resolution embodies the effect of the amendment and refers to the date of the passing of the special resolution.

(4) Where a company fails to comply with this section, the company and every officer of the company that is in default is liable to pay to the Registrar an administrative penalty of twenty-five penalty units for each default.

Minutes of general meetings

166. (1) A company shall cause minutes of the proceedings of general meetings and meetings of a class of members to be entered in a book or books kept for the purpose.

(2) A minute under subsection (1), if purporting to be signed by the chairperson of the meeting at which the proceedings took place or of the next succeeding meeting, is sufficient evidence of the proceedings.

(3) Where minutes have been made in accordance with this section, until the contrary is proven, the meeting shall be deemed to be duly held, convened and conducted.

(4) Where a company fails to comply with subsection (1), the company and each officer of the company that is in default is liable to pay to the Registrar an administrative penalty of two hundred and fifty penalty units.

Inspection of minutes books

167. (1) The books containing the minutes of proceedings of a general meeting or class meetings of a company shall be kept at the registered office of the company and shall, during business hours, subject to reasonable restrictions that the constitution of a company may impose, be open to the inspection of a member without charge.

(2) Not less than two hours in each day other than a Saturday or a Sunday or a public holiday shall be allowed for inspection under subsection (1).

(3) A member is entitled to be furnished at a cost determined by the company, within ten days after the member has made a request in that behalf to the company, with a copy of the minutes.

(4) If an inspection required under this section is refused or if a copy required under this section is not sent within the proper time, the company and every officer of the company that is in default is liable in respect of each default to pay to the Registrar an administrative penalty of twenty-five penalty units for each day during which the default continues and the Court may, by order, compel an immediate inspection or furnishing of a copy.

Circulars of members

168. (1) A company shall circulate resolutions of members and supporting circulars and circulars of members in accordance with paragraphs 5 and 6 of the Eighth Schedule.

(2) Despite subsection (1), a company is not required to circulate a resolution or statement in accordance with paragraph 5 or 6 of the Eighth Schedule if, on application of the company or of any

other person who claims to be aggrieved, the Court is satisfied that the rights conferred by paragraph 5 or 6 of the Eighth Schedule are being abused to secure needless publicity for defamatory matter.

(3) The Court may order the costs of the company to be paid in whole or in part by the member making the request, although that member is not a party to the application.

(4) Where a company defaults in complying with subsection (1), every officer of the company who is in default is liable to pay to the Registrar an administrative penalty of one hundred and fifty penalty units.

Proceedings at meetings

169. Except as otherwise provided by the constitution of a company, the provisions specified in the Eighth Schedule shall govern the proceedings at meetings of a company except to the extent that, the registered constitution of the company makes provision for the matters that are expressed in that Schedule to be subject to the registered constitution of the company.

Part Q: Directors, Company Secretary and Other Officers of a Company

Meaning of "directors"

170. (1) For the purposes of this Act "directors" means those persons, by whatever name called, who are appointed to direct and administer the business of the company.

(2) A person, not being a duly appointed director of a company,

(a) who holds out as a director or knowingly allows 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,

is subject to the same duties and liabilities as if that person were a duly appointed director of the company.

(3) Subsection (2) shall not derogate from the duties or liabilities of the duly appointed directors, including the duty not to act on the directions or instructions of any other person.

(4) Where a person, who is not a duly appointed director of a company, holds out as a director or knowingly allows to be held out as a director of the company, or if the company holds out that person, or knowingly allows that person to hold out as a director of the company, that person or the company, is liable to pay to the Registrar, an administrative penalty of two hundred and fifty penalty units.

(5) For the purposes of subsections (2), (3) and (4), a person who is described as director of a company, whether the description is qualified by the word "local", "special", "executive"' or in any other way, shall be deemed to be held out as a director of that company.

Number of directors

171. (1) A company incorporated after the commencement of this Act shall have at least two directors, one of these directors being ordinarily resident in Ghana.

(2) If at any time the number of directors is less than two in contravention of subsection (1), and the company continues to carry on business for more than four weeks after that time, the company, the director and each member of the company that is in default is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the company so carries on business after the expiration of the four weeks without having at least two directors.

(3) Every director and every member of the company who is cognisant of the fact that the company is carrying on business with fewer than two directors are jointly and severally liable for the debts and liabilities of the company incurred during that time.

(4) Subject to this section, the number of directors may be fixed by, or in accordance with, the constitution of the company.

Appointment of directors and filling of vacancy

172. (1) The first directors of a company shall be named in an application for incorporation.

(2) A person shall not be appointed as a director of a company unless the person has, before the appointment

(a) made a statutory declaration submitted to the company and subsequently filed with the Registrar to the effect that, the person has not within the preceding five years of the application for incorporation been

(i) charged with or convicted of a criminal offence involving fraud or dishonesty;

(ii) charged with or convicted of a criminal offence relating to the promotion, incorporation or management of a company; or

(iii) a director or senior manager of a company that has become insolvent or if the person has been, the date of the insolvency and the particular company; and

(b) consented in writing to be a director and filed the consent within twenty-eight days.

(3) Subject to this section and to sections 173 and 174, the appointment of directors shall be regulated

(a) by section 300 in the case of a private company, and

(b) by sections 325 and 326 in the case of a public company except as otherwise provided in the constitution of a company.

(4) The constitution of a company may provide for the appointment of a director or directors by a class of shareholders, debenture holders, creditors, employees or any other person.

(5) Despite a provision to the contrary in the constitution of a company, a casual vacancy in the number of directors may be filled by,

(a) the continuing directors or director although the number of directors may have been reduced below that fixed as the necessary quorum of directors; or

(b) an ordinary resolution of the company in general meeting.

(6) In exercising the power to fill a vacancy under subsection (5), the directors shall observe the rules laid down in sections 190 and 191 and shall not appoint a person to be a director unless the directors have taken reasonable steps to satisfy themselves of the integrity and suitability of the person to be a director of the company.

(7) Where the casual vacancy filled under subsection (5) is one which, under the terms of the constitution of a company, should be filled by an appointment by a class of shareholders, debenture holders, creditors, employees, or any other person, the director appointed by the continuing directors or by an ordinary resolution of the company in general meeting, shall cease to hold office as soon as any other director is duly appointed in accordance with the constitution.

(8) In the event that

(a) there are no directors of a company, or the number of directors is less than the quorum required for a meeting of the board; and

(b) it is not possible or practicable to appoint directors in accordance with the constitution of the company a shareholder or creditor of the company may apply to the Court to appoint one or more persons as directors of the company, and the Court may make an appointment if the Court considers that it is in the interest of the company to do so.

(9) An appointment by the Court under subsection (8) may be made on such terms and conditions as the Court considers fit.

Qualification of directors

173. (1) The following persons are not qualified to be appointed or to act as directors of a company:

(a) an infant;

(b) a person adjudged to be of unsound mind;

(c) a body corporate;

(d) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of a company as a result of an order made under section 177 so long as the order remains in force unless leave to act as director has been granted by the Court in accordance with that section; and

(e) an undischarged bankrupt, unless that bankrupt has been granted leave to act as director by the Court by which that person was adjudged bankrupt.

(2) Where a person specified in subsection (1), other than a body corporate, or a person of unsound mind, acts as a director of a company or agrees to be appointed a director, that person commits an offence and is liable on summary conviction to a fine of not less than five hundred penalty units and not more than one thousand penalty units or to a term of imprisonment of not less than two years and not more than five years or to both the fine and the imprisonment.

(3) Where a body corporate acts as a director or agrees to be appointed a director, the body corporate and every officer of that body that knowingly permitted the body corporate so to act or to be appointed is liable to pay to the Registrar, an administrative penalty of one thousand penalty units.

(4) Where a company appoints a person as director in contravention of this section, the company and every director of the company

that is in default is liable to pay to the Registrar, an administrative penalty of one thousand penalty units.

(5) The constitution of a company may provide that, classes of persons additional to those provided in subsection (1) are incompetent to be directors of the company.

Share qualification of a director

174. (1) Except as otherwise provided in the constitution of a company, a director is not required to be a member of the company or hold a share in the company.

(2) Where the constitution of a company requires a director to hold a specified share qualification, every director shall obtain that qualification within two months after appointment as director or a shorter period that may be fixed by the constitution.

(3) The office of director shall be vacated if the director fails to hold the specified share qualification within two months after appointment or if at any time after the expiration of that period that person ceases to hold that qualification.

(4) Where a company amends the constitution so as to introduce or increase the requirement of a share qualification, every director holding office at the date of the amendment shall have two months within which to obtain the qualification and shall not vacate office under this section unless that director fails to do so.

(5) A person who vacates office under this section is not qualified to be re-appointed a director of the company until that person has obtained the qualification.

Vacation of office of director

175. (1) The office of director shall be vacated if the director

(a) becomes incompetent to act as a director by virtue of section 173,

(b) ceases to hold office by virtue of section 174, or

(c) resigns from office by notice in writing to the company.

(2) The constitution of a company may provide for the termination or vacation of office in circumstances additional to those specified in subsection (1).

Removal of directors

176. (1) Subject to section 327 and to this section, a company may by ordinary resolution at a general meeting remove from office all or any of the directors despite anything in the constitution of that company or in an agreement with the director.

(2) A resolution to remove a director shall not be moved at a general meeting unless notice of the intention to move the resolution has been given to the company not less than thirty-five days before the meeting at which the resolution is to be moved.

(3) If after notice of the intention to move the resolution is given to the company, a meeting is called for a date thirty-five days or less after the notice has been given, the notice is properly given for the purposes of subsection (2).

(4) The company shall give the members notice of the resolution at the same time and in the same manner as the company gives notice of meeting or, if that is not practicable, shall give the members notice of the resolution in the same manner as notices of meetings are required to be given not less than twenty-one days before the meeting.

(5) On receipt of notice of an intended resolution to remove a director under this section, the company shall immediately send a copy of the notice to the director concerned and that director, whether or not is a member of the company, is entitled,

(a) to be heard on the resolution at the meeting; and

(b) to send to the company a written statement, copies of which the company shall send with each notice of the general meeting or, if the statement is received too late, shall immediately circulate to each person entitled under subparagraph *(f)* of paragraph 1 of the Eighth Schedule, to notice of the meeting in the same manner as notices of meetings are required to be given.

(6) The company is not required to send or circulate the statement if

(a) the statement is received by the company less than seven days before the meeting; or

(b) the Court, on an application by the company or any other person who claims to be aggrieved, so orders on being satisfied that

(i) the statement is unreasonably long, or

(ii) the rights conferred by this section are being abused to secure needless publicity for defamatory matter;

and the Court may order the costs of the applicant to be paid in whole or in part by the director although the director is not a party to the application.

(7) Without limiting the rights of the director to be heard orally on the resolution, the director may, unless the Court makes an order, also require that the written statement by the director be read to the meeting.

(8) A vacancy created by the removal of a director under this section, if not filled at the meeting at which the director is removed, may be filled as a casual vacancy in accordance with section 172.

(9) This section does not deprive a director who has a service agreement with the company of a right to

(a) compensation to which the director may lawfully be entitled under that agreement on the termination of the directorship, or

(b) damages if the removal from the directorship constitutes a breach of the service agreement.

Restraining fraudulent persons from managing companies

177. (1) Where,

(a) a person is convicted, whether in the Republic or elsewhere, o f

(i) an offence involving fraud or dishonesty,

(ii) an offence in connection with the promotion, formation or management of a body corporate,

(iii) an offence involving insider dealing, or

(iv) any other criminal offence which is not a misdemeanour;

(b) a person is adjudged bankrupt whether in the Republic or elsewhere;

(c) a person has been culpable of a criminal offence, whether convicted or not, in relation to a body corporate or of fraud or breach of duty in relation to a body corporate;

(d) it appears that a person is debarred by the competent

authority from being a member of a recognised professional body as the result of a disciplinary inquiry; or

(e) there is an ongoing investigation by a criminal investigating body or by the Registrar or the equivalent in a foreign jurisdiction regarding the matters in paragraphs *(a)* to *(d)*;

the Court, on its own motion or on the application of a person referred to in subsection (6), may order that that person shall not, without the leave of the Court, be a director of**,** or in any way, whether directly or indirectly, be concerned or take part in the management of a company or act as auditor, receiver or liquidator of a company for the period specified in the order.

(2) Without limiting subsection (1), a person is automatically disqualified for appointment as director or to act as a director of a company for a period of five years if that person has

(a) been convicted within the last five years of an offence involving fraud or dishonesty, or relating to the promotion, formation or running of a company,

(b) has been a director or senior executive of a company that has become insolvent within the last five years on account of or partly as a result of the culpable activities of that director, or

(c) has been disqualified to act as Company Secretary, receiver, manager or liquidator of a company.

(3) Where a person referred to in paragraph *(a)* of subsection (2) is subsequently subject to a

(a) second conviction, that person shall be automatically disqualified for a period of ten years; and

(b) third conviction, that person shall be permanently disqualified as a director or to act as a director.

(4) An order under paragraph *(a)* of subsection (1) may be made by a court in the country before which the person is convicted.

(5) A person referred to in paragraph *(a)* of subsection (2) may apply to the Court for re-instatement before the expiration of the ten year automatic disqualification period imposed under subsection (3).

(6) An application for an order under this section may be made by

(a) any member or officer of the company,
(b) a person who can demonstrate an interest in the case,
(c) the Registrar or by the Official Trustee,
(d) the trustee in bankruptcy of the person concerned, or
(e) by the liquidator of a body corporate.

(7) A person who intends to apply for an order under this section shall give not less than twenty-eight days written notice of that intention to the person against whom the order is sought, and to the Registrar.

(8) On the hearing of an application under this section, the applicant, the person against whom the order is sought, the Registrar and the Official Trustee may appear, and give evidence and call witnesses.

(9) A person against whom an order is made under this section who intends to apply for leave to act as a director or in the management of a company shall give at least twenty-eight days written notice of that intention to the Registrar, and the Registrar, the Official Trustee, and that person on whose application the order was made or who appeared at the hearing at which the order was made, may appear and give evidence and call witnesses and draw the attention of the Court to any relevant matters.

(10) Where an order is made or leave is granted under this section, the Court making the order or granting leave shall forward a copy to the Registrar who shall publish a summary of the order in the *Companies Bulletin*.

(11) The Registrar shall maintain a register of orders made under this section and shall enter in the register, particulars of each order and of the leave granted.

(12) The register shall be open to the inspection of a person on payment of a fee determined by the Registrar for each inspection.

(13) A person who acts in contravention of an order made

under this section commits an offence and is liable on summary conviction, in respect of each offence to a fine of not less than two hundred and fifty penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than one year and not more than two years or to both the fine and the imprisonment.

(14) For the purpose of this section

(a) "insider dealing" means buying or selling securities in a company by persons who have access to non-public information about the company; and,

(b) "senior executive" means an employee who acts in the top hierarchy of the management of the company.

Duty of director to report disqualification

178. (1) On becoming aware of the disqualification to act as director, the director concerned shall immediately report the disqualification to the Board, and the Company Secretary in writing.

(2) A director who refuses to disclose or misreports the disqualification within twenty-one days of the disqualification, commits an offence and is liable on summary conviction to a fine of not less than five hundred penalty units and not more than one thousand penalty units or to a term of imprisonment of not less than two years and not more than five years or to both the fine and the imprisonment.

(3) A vacancy created by the disqualification of a director under this section, may be filled as a casual vacancy in accordance with section 172.

Duty of company to fill vacancy of disqualified director

179. (1) Where a company ceases to have the minimum number of directors, the board of directors of the company shall fill the vacancy of a disqualified director in accordance with section 172.

(2) The board of directors shall deliver or cause to be delivered to the Registrar for registration, notice in an approved form of the change in the directors of that company as a result of a disqualification of a director.

(3)The notice shall be delivered to the Registrar within twenty-eight days after the company becomes aware of the disqualification or the relevant court order is made and shall be accompanied with

(a) a statutory declaration of the new director, to be a director; and

(b) a consent form signed by the new director to signify acceptance to be a director.

(4) If the company contravenes the provisions of this section, the company and any director and member of the company that is in default is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the company so carries on business after the expiration of the specified period without filling the vacancy and subsequently notifying the Registrar.

Substitute directors

180. (1) Except as otherwise provided in the constitution of a company, a company may appoint substitute directors in accordance with this section.

(2) A substitute director is one who is appointed to act as a deputy for another named director and as the substitute in the absence of that director.

(3) A substitute director shall not be counted as a director for the purposes of a provision in this Act or the constitution of a company prescribing a minimum or maximum number of directors, other than a provision relating to quorum.

(4) A substitute director is not entitled to vote at a meeting of directors or a committee of directors at which the director for whom that person is a substitute is present.

(5) Subject to subsections (3) and (4), a substitute director is a full director of the company for all purposes and shall be appointed and may be removed in the same way as directors are required to be appointed and removed.

(6) Subject to subsections (3) and (4) a substitute director shall not cease to be a director by reason of the fact that the director for whom that person is a substitute ceases to be a director.

Alternate directors

181. (1) Except as otherwise provided in the constitution of a company, a director may, appoint another director or any other person approved by a resolution of the board of directors, as an alternate director to act as a director in respect of a period not exceeding six months in which that director is absent from the Republic or unable for a reason to act as a director.

(2) The appointment shall be in writing signed by the appointor and appointee and lodged with the company.

(3) An alternate director so appointed

(a) is, for the period of the appointment, and for all purposes, a director and officer of the company and not the agent of the appointor;

(b) shall not be required to hold a share qualification although, under the constitution of the company, directors may be so required;

(c) is not entitled to appoint an alternate director; and

(d) shall not be counted as a director for the purposes of a provision of this Act or the constitution of a company relating to the minimum or maximum number of directors, other than a provision relating to quorum.

(4) The company is not liable to pay additional remuneration by reason of the appointment of an alternate director.

(5) The registered constitution of a company may provide that

(a) the alternate director shall be entitled to receive from the company during the period of the appointment, the remuneration to which the appointor, but for the appointment, would have been entitled, and

(b) the appointor shall not be entitled to remuneration for that period.

(6) In the absence of a provision in the registered constitution referred to in paragraph *(b)* of subsection (5), the alternate director is not entitled to be remunerated otherwise than by the director appointing the alternate director.

(7) An alternate director who is personally a director, shall have an additional vote for each director for whom the alternate director acts as alternate director at every meeting of the directors.

(8) The appointment of an alternate director shall cease

(a) at the expiration of the period for which the appointment was made,

(b) if the appointor gives written notice to that effect to the company,

(c) if the appointor ceases for any reason to be a director, or

(d) if the alternate director resigns by notice in writing to the company.

(9) Until the cessation of the appointment of an alternate director, both the appointor and appointee are and may act as directors of the company, but an alternate director, unless personally a director, shall not attend or vote at a meeting of the directors or a committee of directors at which the appointor is present.

Residence of directors in the country

182. (1) At least one director of the company shall at all times be resident in the Republic.

(2) In the event of a wilful breach of subsection (1), the company and every director of the company that is in default is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the default continues.

(3) The rights of the company concerned under or arising out of a contract made during the time that a director of the company is not resident in the Republic are not enforceable by action or any other legal proceedings.

(4) For the purposes of subsection (3)

(a) the company may apply to the Court for relief against the disability imposed by subsection (3) and the Court, on being satisfied that it is just and equitable to grant relief, may grant the relief generally or as regards a particular contract and on the conditions that the Court may impose;

(b) the rights of any other party as against the company, or any other person in respect of the contract are not limited; and

(c) if an action or a proceeding is commenced by any other party against the company to enforce the rights of that party

in respect of the contract, subsection (3) does not preclude the company from enforcing in that action or proceeding by way of counterclaim, set off or otherwise, the rights that the company may have against that party in respect of that contract.

Executive directors

183. Except as otherwise provided in the constitution of a company,

(a) a director may hold any other office or place of profit under the company, other than the office of an auditor, in conjunction with the office of director;

(b) the directors may from time to time appoint one or more of their body to any other office for the period and on the terms that the directors may determine and, subject to the terms of an agreement entered into in a particular case, may revoke the appointment;

(c) subject to compliance with section 185 and subject to section 214, that office may be remunerated by way of salary, commission, share of profits, participation in pension and retirement schemes, or partly in one way and partly in another, as the directors may determine; and

(d) in exercising the powers under this section, the directors shall observe the rules laid down in sections 190 and 191 and, in particular, in determining the amount of remuneration, shall satisfy themselves that the amount of the remuneration is reasonably related to the value of the services of the holder of the office.

Managing directors

184. Except as otherwise provided in the constitution of a company,

(a) the directors may from time to time appoint one or more of their body to the office of managing director and section 183 shall apply to that appointment;

(b) the appointment of a managing director shall be automatically determined if the holder of the office ceases from a cause to be a director and, unless the agreement entered into in a particular case otherwise provides, the determination shall not constitute a breach of the contract with the company; and

(c) the directors may entrust to and confer on a managing director any of the powers exercisable by them on the terms and with the restrictions that the directors think fit, and collaterally with, or to the exclusion of the powers of the directors and, subject to the terms of an agreement entered into in a particular case, may from time to time revoke or vary all or any of those powers.

Remuneration and other benefits of directors

185. (1) Subject to this section, the fees and any other remuneration including salary payable to the directors in whatever capacity, shall be determined from time to time by ordinary resolution of the company, and not by a provision in an agreement.

(2) The fees payable to the directors as directors shall be determined from time to time by ordinary resolution of the company and not in any other way.

(3) Unless otherwise resolved, the fees payable to directors accrue from day to day and the directors are entitled to be paid the travelling and other expenses properly incurred by the directors in attending and returning from meetings of the directors or a committee of the directors or general meeting of the company or otherwise in connection with the business of the company.

(4) Where a director holds any other office or place of profit under the company in accordance with section 183 or 184, the terms of the appointment may provide for the remuneration in respect of the appointment but that director is not entitled to a remuneration additional to the fees to which that person is entitled as director unless the terms of the appointment to that office have been approved by ordinary resolution of the company.

(5) The registered constitution of a company may make provision for benefits payable to directors including

(a) compensation for loss of employment as director or former director;

(b) insurance benefits; and

(c) other indemnities.

Publication of names of directors

186. (1) A company incorporated in the country shall state in legible characters in the trade circulars and business letters of the company on or in which the name of the company appears,

(a) the present forenames and surname; and *(b)* any former forenames or surname

of every director, including substitute directors appointed in accordance with section 180 but excluding alternate directors appointed in accordance with section 181.

Prohibition of assignment of offices

187. A provision in the constitution of a company or in an agreement purporting to empower

(a) a director to assign the office of that director, or

(b) any other officer to assign the office of that officer to another person is void.

Proceedings and minutes of meetings of directors

188. (1) The directors of a company shall meet at least once every six months in each year to consider financial and operational affairs of the company.

(2) Subject to a contrary provision in the constitution of a company,

(a) the directors may

(i) meet together in the country or elsewhere for the despatch of business,

(ii) adjourn and otherwise regulate the meetings of the directors as the directors think fit, and

(iii) delegate any of the powers of the directors to committees consisting of the member or members of their body that the directors think fit; but a committee so formed shall in the exercise of the powers so delegated conform to the regulations that may be imposed on the committee by the directors;

(b) a director may, and the Company Secretary on the requisition of a director shall, at any time summon a meeting of directors, and a director being a member of a committee may, and the Company Secretary on the requisition of that

director shall, at any time summon a meeting of the committee;

(c) it is necessary to give notice of a meeting of directors or of a committee of directors to a director for the time being absent from the country;

(d) the quorum necessary for the transaction of business of the directors and of a committee of directors may be fixed by the directors, and unless so fixed shall be two, or, in the case of a one-person committee, one;

(e) except as provided in paragraph *(f)*, a business shall not be transacted in the absence of a quorum although a quorum was present at the commencement of the meeting;

(f) the continuing directors may act despite a vacancy in their body but, if and so long as the number of directors is reduced below the number fixed as the necessary quorum, the continuing directors or director may act for four weeks after the number is so reduced, but after the four weeks may act only for the purpose of increasing the number of directors to that number or of summoning a general meeting of the company and for no other purpose;

(g) the directors and a committee of directors may elect a chairperson of their meetings and determine the period for which the chairperson is to hold office, but if a chairperson is not elected, or if at a meeting, the chairperson is not present within five minutes after the time appointed for holding the meeting, those present may choose one of their number to be chairperson of the meeting;

(h) questions arising at a meeting of the directors or a committee of directors shall be decided by a majority of votes and in the case of an equality of votes the chairperson shall have second or casting vote;

(i) attendance and voting by proxy is not permitted at meetings of directors or committees of directors; and

(j) a resolution in writing, signed by the directors for the time being entitled to receive notice of a meeting of the directors, or of a committee of directors, is as valid and effectual as if it had been passed at a meeting of the directors or a committee of directors duly convened and held.

(3) A company shall cause minutes of the proceedings of meetings of the directors and a committee of directors to be entered in a book or books kept for the purpose.

(4) A minute kept under subsection (1), if purporting to be signed by the chairperson of the meeting at which the proceedings took place or of the next succeeding meeting, is prima facie evidence of the proceedings.

(5) Where minutes have been kept in accordance with this section, until the contrary is proved, the meeting is duly convened, held and conducted and the appointments of directors are valid.

(6) Where a company fails to comply with subsection (1), the company and every officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of five hundred penalty units.

Limitations on the powers of directors

189. (1) Subject to this Act, the directors of a company with shares shall not, without the approval of

(a) an ordinary resolution of the company,

(i) issue any new or unissued shares, other than treasury shares, in the company unless the shares have first 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 may be to their existing holdings;

(ii) make voluntary contributions to a charitable or any other fund, other than pension funds for the benefit of employees of the company or an associated company, of the amounts the aggregate of which will, in a financial year of the company, not exceed two per cent of the retained earnings of the company at the end of the preceding financial year; or

(b) a special resolution, pursue a major transaction under section 145.

(2) A resolution of the company shall not be effective as approving a transaction as is referred to in subparagraph (i) of para-

graph *(a)* of subsection (1), unless the resolution authorises in terms the specific transaction proposed by the directors.

(3) A resolution of the company shall not be effective as approving a transaction as is referred to in paragraph *(b)* of subsection (1), if passed more than one year before the issue of the shares, unless the 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 genuinely in the employment of the company or any of the associated companies.

(4) Subsection (3) shall not apply to a public company which has some or all of the equity shares of that public company being dealt in on an approved stock exchange.

(5) Despite a provision of this Act or in the constitution of a company, or in a resolution of the company in general meeting, new or unissued shares or treasury shares shall not be issued to a director or past director of the company or of an associated company or to the nominee of that director or to a body corporate controlled by that director, unless the shares have first been offered on the same terms and conditions to

(a) all the existing shareholders,

(b) all the holders of the shares of the class or classes being issued in proportion to their existing holdings, or

(c) to members of the public in the case of a public company.

(6) Subsection (5) may be disapplied with the approval of an ordinary resolution of a public company if some or all of the equity shares of that public company are dealt in on an approved stock exchange or in respect of which an application has been made to an approved stock exchange for permission to deal in those shares.

(7) For the purposes of subsection (5), a body corporate is controlled by a director if the body corporate or the directors of the body corporate are accustomed to act in accordance with the directions or instructions of that director or a nominee of that director or if at a general meeting of the body corporate, that director or a nominee of that director is entitled to exercise or control the exercise of one-third or more of the voting powers.

(8) This section does not prohibit,

(a) the issue of shares under a genuine underwriting agreement, or

(b) the issue to a director at a fair price payable in cash of the shares, if under the constitution of the company, that director is required to hold by way of share qualification.

(9) Except as otherwise provided in the constitution of a company, the directors of a company with shares shall not, without the approval of an ordinary resolution of the company, exercise the powers of the company to borrow money or to charge any of the assets of the company where the moneys to be borrowed or secured, together with the amount remaining undercharged of moneys already borrowed or secured, apart from temporary loans obtained from the bankers of the company in the ordinary course of business, will exceed the stated capital for the time being of the company.

(10) A person dealing with the company in good faith or registering a disposition of, or title to, property shall not be concerned to see whether the conditions of this section have been fulfilled, and sections 147 to 151 shall apply to a transaction of the type referred to in this section although the conditions have not been fulfilled.

Duties of directors

190. (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 a transaction with or on behalf of the company.

(2) A director shall always act in what the director believes is the best interest of the company as a whole so as to preserve the assets, further the business, and promote the purposes for which the company was formed, in the manner that a faithful, diligent, careful and ordinarily skilful director would act in the circumstances and in doing so shall have regard to

(a) the likely consequence of any decision in the long term,

(b) the impact of the operations of the company on the community and the environment, and

(c) the desirability of the company maintaining a reputation for high standards of business conduct.

(3) A director of a company shall

(a) act in accordance with the constitution of a company, and

(b) only exercise powers for the purposes for which the powers are conferred.

(4) In considering whether a particular transaction or course of action is in the best interests of the company as a whole, a director may consider the interests of the employees, as well as the members, of the company, and, where 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.

(5) A director shall exercise independent judgment.

(6) A provision, whether contained in the constitution of a company, or in a contract, or in a resolution of a company shall not relieve a director from the duty to act in accordance with this section or relieve the director from a liability incurred as a result of a breach of a provision of this section.

Exercise of powers of directors

191. (1) The directors shall not, without the approval of an ordinary resolution of the company, exceed the powers conferred on the directors by this Act, and the constitution of the company, or exercise those powers for a purpose different from that for which those powers were conferred, although the directors may believe the exercise of those powers is in the best interests of the company.

(2) Where a director

(a) fails to take reasonable steps to comply with subsection (1), or

(b) acts or omits to act in contravention of subsection (1), the director is personally liable to pay to the company or to any other person, the amount of moneys lost to the company or to the other person or the monetary value of the damages caused to, or suffered by, the company or that person as a result of the failure, act or omission of the director.

(3) Where the directors

(a) fail to take reasonable steps to comply with subsection (1), or

(b) act or omit to act in contravention of subsection (1), the directors are jointly and severally liable to pay to the company or to any other person, the amount of moneys lost to the company or to that other person, or the monetary value

of the damages caused to, or suffered by, the company or that other person as a result of the failure, act or omission of the directors.

(4) An amount of money due and payable by virtue of subsection (2) or (3) may be recovered as a civil debt by the company or that other person.

(5) This section is in addition to, and not in derogation of, sections 192 and 193.

Conflicts of duty and interest

192. (1) Despite a provision in the constitution of a company to the contrary, a director shall not, without the consent of the company in accordance with section 193, place that director in a position in which the duties of the director to the company conflicts or may conflict with the personal interests or the duties to other persons, and in particular, without that consent**,** a director shall not,

(a) use to the advantage of that director any money or property of the company or use, otherwise than in accordance with section 198, any confidential information or special knowledge obtained by that director in the capacity of director;

(b) be interested directly or indirectly, otherwise than merely as a shareholder or debenture holder in a public company, in a business which competes with that of the company; or

(c) be personally interested, directly or indirectly, in a contract or any other transaction entered into by the company except as provided by section 194.

(2) The duty of a director to avoid conflict is not infringed if

(a) the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or

(b) the matter has been authorised by the directors.

(3) Authorisation may be given by the directors

(a) where the company is a private company and nothing in the constitution of the company invalidates the authorisation, by the matter being proposed to and authorised by the directors; or

(b) where the company is a public company and the constitution of the company includes provisions enabling the directors to authorise the matter, by the matter being proposed to and authorised by the directors in accordance with the constitution.

(4) The authorisation is effective only if

(a) any requirement as to the quorum at the meeting at which the matter is considered is met without counting the director in question or any other interested director, and

(b) the matter was agreed to without the voting of the directors or would have been agreed to if the votes of the directors had not been counted.

(5) Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

Consent of company

193. (1) For the purposes of section 192, the company does not consent unless, after full disclosure of the material facts, including the nature and extent of the interests of the directors, the transaction concerned has been specifically authorised by an ordinary resolution of the company which has been agreed to by the members of the company entitled to attend and vote at a general meeting or has been passed at a general meeting at which neither the director concerned nor the holders of the shares in which the director is beneficially interested, directly or indirectly, have voted as members on the resolution.

(2) Consent in accordance with subsection (1) may be given before or after the occurrence of the transaction to which the consent relates.

(3) A resolution of the company ratifying a transaction or a series of related transactions which has or have already taken place shall not be effective for the purposes of subsection (2) unless the resolution was passed not later than fifteen months after the date when the transaction or the first of those transactions took place.

Contracts in which directors are interested

194. (1) Except as otherwise provided in the constitution of a company, a director, despite section 192 is entitled to enter into a contract with the company and, subject to compliance with section 190 and with subsections (2) to (7) of this section, the contract or any other

contract by the company in which a director is in any way interested, shall not be liable to be avoided nor is a director liable to account for a profit made by reason of the director holding that office or of the fiduciary relationship so established.

(2) A director who is directly or indirectly, interested in a 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 the interest at a meeting of the directors of the company.

(3) In the case of a proposed contract, the declaration required by subsection (2) to be made by a director shall be made

(a) at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or

(b) if the director was not at the date of that meeting interested in the proposed contract, at the next meeting after the director 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 the director is a member of a specified company or firm, and is to be regarded as interested in a contract which may, after the date of the notice, be made with that company or firm, is a sufficient declaration of interest in relation to a contract or proposed contract so made or to be made, if

(a) the notice states the nature and extent of the interest of the director in that company or firm;

(b) at the time the question of confirming or entering into a contract is first taken into consideration the extent of the interest of the director in that company or firm is not greater than is stated in the notice;

(c) the general notice is not effective unless it is given at a meeting of the directors, or the director giving the notice takes reasonable steps to secure that it is brought up and read at the next meeting of directors after the notice is given; and

(d) the general notice is not effective for more than twelve months but may from time to time be renewed.

(5) A director of a company shall not enter into a contract on behalf of the company in which the director knows or has knowledge, that any other director of the company or an associated company is materially interested, whether directly or indirectly, until a resolution has been passed by the directors approving the contract.

(6) In the case of a proposed contract in which the director is interested, the director shall, before the consideration of the matter, disclose the nature and extent of the interest of the director in the proposed contract at a meeting of directors or by written notice given to the directors and shall cause that interest to be registered in the Interests Register and to be disclosed to the Board of the company in accordance with section 195.

(7) A director shall neither be present nor vote in respect of a contract or an arrangement at a meeting in which that director is materially interested or be counted in the quorum required for that business.

(8) Subsection (7) shall not apply to

(a) an arrangement for giving a director a security and indemnity in respect of money lent by the director to obligations undertaken by the director for the benefit of the company;

(b) an arrangement for the giving by the company of a security to a third party in respect of a debt or obligation of the company for which the director personally has assumed responsibility in whole or in part under a guarantee or indemnity or by the deposit of a security; or

(c) a contract by a director to subscribe for or underwrite shares or debentures of the company.

(9) A copy of a declaration made and of a notice given in pursuance of this section shall, within three days after the making or giving of the declaration or notice, be entered in a book kept for this purpose.

(10) For the purposes of this section, an interest merely as holder of debentures, or of not more than two per cent of the shares or a class of shares, of a public company is not a material interest.

Disclosure of interest by directors

195. (1) A director of a company who has an interest that is likely to create a conflict of interest between that director and the company shall

(a) cause to be entered that interest in the Interests Register established under section 196; and

(b) disclose that interest to the Board of the company at a meeting or by written notice given to the directors immediately after becoming aware of the fact of that interest.

(2) The director shall disclose the nature and extent of the interest.

(3) A director who fails to comply with a provision of this section

commits an offence and is liable on summary conviction to a fine of not less than two hundred and fifty penalty units and not more than five hundred penalty units.

Company to maintain Interests Register

196. (1) A company shall maintain an Interests Register which shall record the interests that directors disclose under subsection (6) of section 194.

(2) The Interests Register shall state the place where any document that contains the details of the interest may be inspected.

(3) The Interests Register shall be kept at the same place as the register of members maintained in accordance with section 35.

(4) The Interests Register shall be opened for inspection during business hours, subject to the reasonable restriction that the constitution of the company may impose.

(5) The Interests Register shall be open for inspection

(a) not less than two hours in each day, other than a Saturday, a Sunday or a public holiday; and

(b) during the continuance of a general meeting to a person attending the meeting.

(6) The provisions of this section shall not apply if the members of a company by ordinary resolution so determine.

(7) Where a company or an officer of a company fails to comply with this section, the company and every officer of the company that is in default is liable to pay to the Registrar, an administrative penalty

of five hundred penalty units and if an inspection required under subsection (5) is refused, the Court may by order compel an immediate inspection of the register.

Directors to act professionally

197. Except as otherwise provided in the constitution of a company, a director may, despite section 192, act personally or by the firm of that director in a professional capacity for the company, except as auditor, and the director or the firm of the director is entitled to proper remuneration for professional services as if the director were not a director, provided that disclosure is made under subsection (6) of section 194.

Use of company information

198. (1) A director of a company who has information in the capacity of that director as a director or employee of the company, being information that would not otherwise be available to that director, shall not disclose that information to any person, or make use of or act on the information, except

(a) for the purposes of the company;

(b) as required by law;

(c) in accordance with subsection (2); or

(d) in any other circumstances

(i) authorised by the constitution of that company; or

(ii) approved by the company by a written resolution circulated to all the members and signed by three fourths of all members entitled to attend and vote on the resolution at a general meeting; or

(iii) approved by the company by an ordinary resolution of the company passed at a general meeting at which neither the director concerned, nor the holder of any share in which the director is beneficially interested, directly or indirectly, has voted as member on the resolution or where the holder has voted and the vote is not counted.

(2) The approval under subparagraph (iii) of paragraph *(d)* may be given before or after the occurrence of the transaction to which the approval relates.

(3) The Board may authorise a director to disclose, make use of, or act on information where the board is satisfied that to do so is not likely to affect the company.

(4) A director of a company may, if authorised by the Board under subsection (3), disclose information to

(a) a person whose interests the director represents; or

(b) a person in accordance with whose directions or instructions the director may be required or is accustomed to act in relation to the powers and duties of the director,

subject to the director entering the particulars of the authorisation and the name of the person to whom the information is disclosed in the Interests Register.

(5) Any monetary gain made by a director from the use of information which a director has in the capacity of that director as a director shall be accounted for to the company.

Civil liabilities for breach of duty

199. Where a director commits a breach of duty under sections 190 to 192,

(a) the director and any other person who knowingly participated in the breach are liable to compensate the company for the loss the company suffers as a result of the breach;

(b) the director shall account to the company for a profit made by the director as a result of the breach; and

(c) a contract or any other transaction entered into between the director and the company in breach of that duty may be rescinded by the company.

Legal proceedings to enforce liabilities

200. (1) Proceedings may be instituted by the company or by a member of the company to

(a) enforce the liabilities referred to in section 199;

(b) restrain a threatened breach of a duty under sections 190 to 192; or

(c) recover from a director of the company a property of the company.

(2) Proceedings may be instituted by the company on the authority of the board of directors or of a receiver and manager or liquidator of the company, or of an ordinary resolution of the company which has been agreed to by the members of the company entitled to attend and vote at a general meeting or has been passed at a general meeting.

(3) Subject to subsection (5) of section 19 and at a general meeting for the purposes of subsection (2), neither the proposed defendants nor the holders of shares in which all or any of them are beneficially interested shall vote on the resolution and if all or any of them do vote, the votes shall not be counted.

(4) After an investigation of the affairs of the company, proceedings may pursuant to section 234 be instituted in the name of the company by the Registrar.

(5) Where proceedings are instituted by a member, that member may either bring a derivative action under section 201 or a representative action under section 205 on behalf of that member and all other members, except members who are defendants to the action, and shall join the company as a defendant; and to that representative action the provisions of section 349, shall apply.

(6) The Court, on the application of a defendant,

(a) may stay proceedings by the member if satisfied that, in all the circumstances, including the participation of that member in the transaction complained of, and the circumstances in which that member became a member, it is inequitable that the member should be allowed to have the conduct of the action,

(b) may order the member to give security for payment of the costs of the defendants, and

(c) may direct that the action or any part of the action shall be heard in chambers.

(7) A period of limitation shall not apply to proceedings under this section, but in those proceedings the Court may relieve a director from liability in whole or in part and on the terms that, in all the circumstances including lapse of time, the Court considers it equitable so to do.

(8) In proceedings under this section the Court may, in the interest of justice, order that a sum of money found to be payable by a defendant shall be restored, in whole or in part, to members or former members of the company instead of to the company.

(9) Where the Court makes an order, 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 the consequential directions that may be necessary or expedient.

(10) Proceedings under this section shall not be discontinued, settled or compromised without the approval of the Court after notice of the proposed discontinuance, settlement or compromise has been given to all members of the company and to the Registrar in the manner that the Court directs.

(11) Within the time prescribed by the notice, a member of the company and the Registrar may appear and call the attention of the Court to the matters which seem relevant and may give evidence and call witnesses.

(12) Where the Court does not approve the discontinuance or compromise, the Court may give the conduct of the action to a member willing to continue the proceedings, or to the Registrar in the name of the company, making the consequential orders regarding the parties to the action or otherwise that may be necessary or expedient.

Derivative actions

201. (1) Subject to subsection (3), the Court may, on the application of a member or director of a company, grant leave to that member or director to

(a) bring proceedings in the name and on behalf of the company or a subsidiary of the company; or

(b) intervene in proceedings to which the company or any related company is a party for the purpose of continuing, defending, or discontinuing the proceedings on behalf of the company or a subsidiary of the company, as the case may be.

(2) Without limiting subsection (1), in determining whether to grant leave under that subsection, the Court shall have regard to

(a) the likelihood of the proceedings that may follow,

(b) the costs of the proceedings in relation to the relief likely to be obtained,

(c) any action already taken by the company or a subsidiary of the company to obtain relief, and

(d) the interests of the company or a subsidiary of the company in the proceedings being commenced, continued, defended, or discontinued, as the case may be.

(3) Leave to bring proceedings or intervene in proceedings may be granted only where the Court is satisfied that either

(a) the company or related company does not intend to bring, diligently continue or defend, or discontinue, the proceedings, as the case may be; or

(b) it is in the interests of the company or a subsidiary of the company that the conduct of the proceedings should not be left to the directors or to the determination of the members as a whole.

(4) Notice of the application shall be served on the company or a subsidiary of the company.

(5) The company or related company

(a) may appear and be heard, and

(b) shall inform the Court, whether or not it intends to bring, continue, defend, or discontinue the proceedings, as the case may be.

(6) Except as provided for in this section, a member or director of a company is not entitled to bring or intervene in any proceedings in the name of, or on behalf of, a company or a subsidiary of the company.

Costs of derivative action to be met by company

202. The Court shall, on the application of the member or director to whom leave was granted under section 201 to bring or intervene in the proceedings, order that the whole or part of the reasonable costs of bringing or intervening in the proceedings, including any costs relating to any settlement, compromise, or discontinuance approved under section 201, shall be met by the company unless the Court considers that it would be unjust or inequitable for the company to bear those costs.

Powers of Court where leave is granted

203. The Court may,

(a) at any time, make any order it considers fit in relation to proceedings brought by a member or a director or in which

a member or director intervenes, as the case may be, with leave of the Court under subsection (3) of section 201, and

(b) without limiting the generality of this section,

(i) make an order authorising the member or any other person to control the conduct of the proceedings;

(ii) give directions for the conduct of the proceedings;

(iii) make an order requiring the company or the directors to provide information or assistance in relation to the proceedings; or

(iv) make an order directing that any amount ordered to be paid by a defendant in the proceedings shall be paid, in whole or part, to former and present members of the company or a subsidiary of the company instead of the company or the related company.

Compromise, settlement or withdrawal of derivative action

204. Where proceedings in which a member or a director intervenes, as the case may be, with leave of the Court are brought under subsection (5) of section 201, the proceedings shall not be settled or compromised or discontinued without the approval of the Court.

Representative actions

205. Where, under a section of this Act, it is provided that if legal proceedings are instituted by a person, that person shall sue in a representative capacity on behalf of the person and any other member of a class,

(a) that person may commence proceedings in that representative capacity without obtaining the consent and approval of any other member of the class represented and, subject to paragraph *(b)* of this section, that person shall have the sole conduct of the action and any other member of the class shall not be regarded as a party to the proceedings or liable for the costs of the proceedings;

(b) a member of the class represented may at any time before final judgement apply to the Court for leave to be made a party to the proceedings whether as co-plaintiff or otherwise and the Court may grant leave on the terms regarding

the conduct of the action or otherwise that it considers fit; and if the leave is granted the applicant shall become a party to the proceedings and liable accordingly to have an order for costs made against that applicant;

(c) a judgement given in the action shall bind and inure to the benefit of the members of the class represented, whether or not they have intervened in the proceedings in accordance with paragraph *(b)* of this section;

(d) the proceedings shall not be dismissed, settled or compromised without the leave of the Court which may order that notice of the proposed dismissal, settlement or compromise shall be given to the members of the class represented and any other persons;

(e) the proceedings under this section shall be supplemented by the provisions of section 200; and

(f) this section shall not affect the validity of an agreement between the members of the class represented, relating to contribution towards the costs of the party or parties suing in a representative capacity.

Payments to directors for loss of office

206. (1) A company shall not make a payment to a director or former director of the company or an associated company,

(a) by way of compensation for loss of an office in the company or an associated company, or

(b) as consideration for or in connection with retirement from office of that director or former director,

without particulars of the proposed payment, including the amount of the payment, being disclosed to the members of the company and the proposal being approved by an ordinary resolution of the company agreed to or passed in the manner provided by section 193.

(2) A payment shall not be made, whether by the company or otherwise, to a director or former director of a company in connection with the transfer of the whole or a part of the undertaking or property of the company or an associated company, whether the payment is expressed to be by way of compensation for loss of office or otherwise,

unless particulars of the proposed payment, including the amount of the payment have been disclosed to the members of the company and the proposal approved by an ordinary resolution of the company agreed to or passed in the manner provided by section 193.

(3) Where a payment is made in contravention of this section, the amount of the payment shall be regarded as money of the company used by a director for the advantage of the director within the meaning of section 192.

Payments to directors in connection with take-over bids

207. (1) An offer for the acquisition of shares of a company may be made on the terms that the offer is available for acceptance,

(a) by the members of the company or by the holders of shares of the class to which the offer relates, or

(b) by the holders of shares which, together with the shares already owned beneficially by the person making the offer or by a body corporate in which that person is the controlling member, confer the right to exercise or control the exercise of not less than one third of the voting power at a general meeting of the company.

(2) Where an offer for the acquisition of shares is made under subsection (1), and in connection with that offer it is proposed that a payment shall be made or a payment has been made to a director or former director of the company or an associated company, over and above the receipt by the director or former director in respect of the same price as may be receivable by other holders of the shares of the same class, that director or former director shall take reasonable steps to secure that, particulars of the payment are included in or sent with the notice of the offer made for their shares which is given to the shareholders.

(3) Where

(a) the director or former director fails to take the reasonable steps, or

(b) a person who has been properly required by that director or former director to include the particulars in or send them with the notice fails to do so,

that director or former director or that person acting on the directives

of the director or former director under paragraph *(b)* commits an offence and is liable on summary conviction to a fine of not less than two hundred penalty units and not more than four hundred penalty units.

(4) The payment shall be distributed in the manner provided by subsection (5) unless

(a) the requirements of subsection (1) are complied with, and

(b) the making of the payment is, before the transfer of shares in pursuance of the offer, approved by an ordinary resolution,

(i) agreed to by the holders of the shares to which the offer relates, or

(ii) passed at a meeting, summoned for that purpose by notice complying with subsection (7), of the holders at which neither the director concerned nor the holders of the shares in which the director or former director is beneficially interested, directly or indirectly, have voted on the resolution.

(5) Where a payment is to be distributed in accordance with subsection (4), the person making or proposing to make the payment and the director or former director to whom it is made or proposed to be made are jointly and severally liable to distribute the payment among the persons who have sold their shares as a result of the offer in proportion to the number of shares sold by them, and if a director or former director receives the payment, that director or former director shall hold the payment in trust for those persons.

(6) For the purposes of subsection (5),

(a) the expenses incurred in distributing the payment shall be borne by the persons liable to make the distribution and not retained out of the payment;

(b) if, in proceedings instituted before the expiration of three months from the first transfer of shares in pursuance of the offer, the Court awards or approves the payment of damages to the director or former director for breach of a valid service agreement, the amount of the damages, but not the costs or expenses incurred in connection with proceedings, shall be paid to or retained by the director or former director out of the payment and only the balance of the payment shall be distributable.

(7) The notice of a general meeting summoned for the purposes of subsection (4) shall be convened, held and conducted as nearly as may be in accordance with this Act or the constitution of a company relating to general meetings of the company.

(8) The notices convening the meeting shall state that if the resolution approving the payment is not passed, the payment will be distributable among the persons who have sold their shares in pursuance of the offer except to the extent that the Court may award or approve the payment to the director or former director concerned with damages for breach of a valid service agreement.

(9) An offer referred to in subsection (1) shall not be made conditional on approval of a payment or proposed payment to a director or former director and, if an offer is expressed to be made subject to that condition, the condition is void.

(10) For the purposes of paragraph *(b)* of subsection (1),

(a) where the offer is made by a body corporate, the shares are owned beneficially by that body corporate if the shares are owned beneficially by the body corporate or by any of its associated companies or by any controlling member of the body corporate; and

(b) a person is a controlling member of a body corporate if that body corporate or directors of that body corporate are accustomed to act in accordance with the directions or instructions of that person or a nominee of that person or if, at a general meeting of that body corporate, that person is entitled to exercise or control the exercise of one-third or more of the voting power.

Provisions supplemental to sections 206 and 207

208. (1) For the purposes of sections 206 and 207 and of this section, the expression "payment" includes a benefit or an advantage whether in cash or in kind.

(2) Sections 206 and 207 shall not render unlawful, or apply to, the payment of damages awarded or approved by a court of competent jurisdiction for breach of a valid service agreement or the genuine payment of a pension or superannuation benefit in respect of past services in accordance with a valid service agreement.

(3) For the purposes of subsection (4) of section 207 and of subsection (2) of this section, a service agreement is not valid if the service agreement has been entered into in contemplation of a transfer referred to in subsection (2) of section 206 or of an offer referred to in subsection (1) of section 207 and unless the contrary is proven, the service agreement shall be deemed to have been entered into in contemplation of that transfer or offer if the service agreement is made within one year before or contemporaneously with, or at any time after the date of the agreement to transfer or the making of the offer.

(4) For the purposes of sections 206 and 207,

(a) a payment, which is not a remuneration properly payable in accordance with section 185, is received by a director or former director within a period of one year before, or two years after the date of the agreement to make the transfer referred to in subsection (2) of section 206 or of the date of making an offer referred to in subsection (1) of section 207, and

(b) the company or the person to whom the transfer or by whom the offer was made was privy to the making of the payment,

the payment shall be deemed to have been received by the director or former director in connection with the transfer or offer unless the director or former director proves that, the payment would have been received by the director or former director whether or not the transfer or offer had been made.

Duties of directors in sales or purchases of securities of the company

209. (1) Where a director of a company, having acquired as a director of the company special information which may substantially affect the value of the shares or debentures of the company or an associated company, buys or sells those shares or debentures without disclosing that information to the seller or purchaser of the shares or debentures, the purchase or sale is voidable at the option of the seller or purchaser within twelve months after the date of the agreement to sell or buy.

(2) For the purposes of subsection (1), the shares or debentures bought or sold shall be deemed to have been bought or sold by a

director if the interest of the director in the shares or debentures would normally require recording in relation to that director in the register maintained in accordance with section 210, unless it is proven that the sale or purchase was not made by that director or on the instructions or advice of that director or on the instructions or advice of any other person to whom that director had disclosed a special information affecting the value of the shares or debentures obtained by that director in the capacity as director of the company.

(3) This section does not affect the right of the company to proceed against a director for breach of sections 192 and 198.

Register of holdings of directors

210. (1) A company shall keep a register showing, in respect of each director of the company,

(a) the number and description of shares in the company or an associated company; and

(b) the amount of the debentures of the company or an associated company of which that director is the holder or in which that director has, directly or indirectly, a beneficial interest or right to acquire, or of which that director has an option to buy or sell.

(2) Despite subsection (1), the register need not include shares in a body corporate which is the wholly owned subsidiary of another body corporate.

(3) The nature and extent of the interest of a director in the shares or debentures recorded in relation to that director in the register shall, if the director so requires, be indicated in the register.

(4) Where the shares or debentures fail to be or cease to be recorded in the register in relation to a director by reason of a transaction entered into after the commencement of this Act, and while that director is a director, the register shall also show the date of, and the price or any other consideration for the transaction; and where there is an interval between the agreement for that transaction and the completion of the transaction, the date shown shall be that of the agreement.

(5) The register shall be kept at the same place as the register of members maintained in accordance with section 35, and shall be open

to inspection during business hours, subject to the reasonable restrictions that the constitution of that company may impose, by a member or debenture holder or a former member or debenture holder or by the auditor of the company or by the Registrar.

(6) Not less than two hours in each day, other than a Saturday, a Sunday or a public holiday, shall be allowed for inspection.

(7) The register shall be produced at the commencement of a general meeting of the company and remain open and accessible during the continuance of the meeting to a person attending the meeting.

(8) A director of the company shall give notice to the company of the matters relating to that director that may be necessary for the purposes of complying with subsections (1) and (4).

(9) The notice shall be in writing and shall be given within twenty-eight days after the commencement of this Act and within twenty-eight days after the occurrence of a transaction which requires recording.

(10) If the notice is not given at a meeting of directors, the director who should have given it shall take reasonable steps to secure that the notice is brought up and read at the next meeting of directors after the notice is given.

(11) Where a director fails to comply with subsections (8), (9) and (10), that director is liable to pay to the Registrar,

(a) an administrative penalty of five hundred penalty units; and

(b) five hundred penalty units for each day that the failure occurs.

(12) Where a person fails to comply with subsection (1), (4), (5), (6) or (7), the company and every officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of five hundred penalty units and if an inspection required under subsections (5) and (7) is refused, the Court may by order compel an immediate inspection of the register.

(13) The company shall not, by virtue of anything done for the purposes of this section, be affected with notice of, or put upon enquiry as to, the right of a person in relation to any shares and debentures.

(14) For the purposes of this section, a director is beneficially interested in shares or debentures if a body corporate holds the shares or debentures, or has a right in or over the shares or debentures, and that body corporate or the directors of that body corporate are accustomed to act in accordance with those directions or instructions of the director, or that director is entitled to exercise or control the exercise of one-third or more of the voting power at a general meeting of that body corporate.

Company Secretary

211. (1) A company shall have a Company Secretary who shall possess the qualification specified in subsection (3).

(2) The Company Secretary may be a body corporate except that the body corporate must have as one of its promoters, subscribers, directors or operating officers, a person who is qualified to be a Company Secretary.

(3) The directors shall not appoint a person as a Company Secretary unless that person

(a) has obtained a professional qualification or a tertiary level qualification that enables that person to have the requisite knowledge and experience to perform the functions of a Company Secretary,

(b) has held office, before the appointment, as a Company Secretary trainee or has been articled under the supervision of a qualified Company Secretary for a period of at least three years,

(c) is a member in good standing of

(i) the Institute of Chartered Secretaries and Administrators, or

(ii) the Institute of Chartered Accountants, Ghana,

(d) having been enrolled to practice, is in good standing as a barrister or solicitor in the Republic, or

(e) by virtue of an academic qualification, or as a member of a professional body, appears to the directors as capable of performing the functions of secretary of the company.

(4) For the purpose of paragraph *(a)* of subsection (3), a

professional or tertiary level qualification is a discipline with an offering in company law practice and administration.

(5) Unless the constitution of a company otherwise provides, the Company Secretary shall be appointed by the directors for the term, at the remuneration and on the conditions that the directors consider fit, and may be removed by them, subject to the right of the Company Secretary to claim damages from the company if removed in breach of contract.

(6) Where a company carries on business for more than six months without a Company Secretary, the company and every officer of the company that is in default is liable to pay to the Registrart an administrative penalty of twenty-five panalty units for each day that the company continues to carry on business without a Company Secretary after the expiration of the period of six months.

(7) An act required or authorised to be done by or to the Company Secretary may, if the office is vacant or there is not for any other reason, a person capable of acting as Company Secretary, be done by or to an assistant or a deputy Company Secretary or any other officer of the company appointed by the directors to be acting Company Secretary.

(8) The Company Secretary shall, before assuming office, lodge with the company for onward transmission to the Registrar, the written consent to serve as a Company Secretary.

Duties of a Company Secretary

212. The duties of a Company Secretary include

(a) assisting the Board to comply with the constitution of the company and with any relevant enactment;

(b) keeping the books and records of the company;

(c) ensuring that the minutes of the meetings of the shareholders and the directors are properly recorded in the form required by this Act;

(d) preparing and issuing out notices in the name of the company;

(e) ensuring that the annual financial statements of the com-

pany are despatched to every person entitled to the statements as required by this Act;

(f) ensuring that all statutory forms and returns are duly filed with the Registrar;

(g) maintaining the statutory registers of the company;

(h) providing the Board with guidance as to the duties, responsibilities and powers of the Board and on the changes and development in the laws affecting the operation of companies;

(i) informing the Board of legislation relevant to or affecting meetings of shareholders and directors and their failure to comply with the legislation and reporting accordingly at any meeting; and

(j) advising the directors on their responsibilities as directors.

Avoidance of acts in dual capacity as director and Company Secretary

213. Where a person acts as both director and Company Secretary of a company, a provision requiring or authorising an act to be done by or to a director and a Company Secretary shall not be considered as done if the act is done by or to that person acting in both capacities.

Prohibition of tax-free payments

214. (1) A company shall not pay a director or Company Secretary of the company remuneration free of income tax or otherwise calculate that remuneration by reference to or varying the amount of the income tax payable by the director or Company Secretary.

(2) A provision contained in

(a) the constitution of a company;

(b) a resolution of a company or of the directors of a company; or

(c) a contract entered into by a company

for the payment of remuneration shall have effect as if the provision requires the payment as a gross sum, subject to income tax, of the net sum for which the provision actually requires.

Register of directors and Company Secretary

215. (1) A company shall keep at the registered office of the company

(a) a register of the directors of the company; and

(b) a register of the Company Secretaries.

(2) The register of directors referred to in subsection (1) shall include a record of substitute directors appointed in accordance with section 180 but shall not include a record of alternate directors appointed in accordance with section 181.

(3) The register shall contain with respect to each director,

(a) the present forenames and surname;

(b) any former forename or surname;

(c) the usual residential address;

(d) the business occupation; and

(e) particulars of any other directorships, other than alternate directorships held by the director.

(4) The register shall contain with respect to the Company Secretary or, where there are joint Company Secretaries, with respect to each of them,

(a) in the case of an individual, the particulars required by paragraphs *(a)* to *(d)* of subsection (3); and

(b) in the case of a body corporate, its corporate name and registered or principal office.

(5) Where all the partners in a firm are joint Company Secretaries, the name and principal office of the firm may be stated instead of the residential address of each partner.

(6) The register shall, during business hours, subject to the reasonable restrictions that the company may by the constitution of the company impose, be open to the inspection of a member of the company without charge and any other person on payment of a prescribed fee, for each inspection.

(7) Not less than two hours in each day, other than a Saturday, Sunday or a public holiday shall be allowed for inspection under subsection (6).

(8) If an inspection required under this section is refused or where there is a default in compliance with subsection (1), (2), (3) or (4), the company and every officer of the company that is in default is liable to pay to the Registrar, an administative penalty of five hundred penalty units and in the case of a refusal the Court may by order compel an immediate inspection of the register.

(9) For the purposes of this section and of sections 186 and 216,

(a) in the case of a person usually known by a title different from the surname, the expression "surname" means that title; and

(b) references to a former name do not include,

(i) in the case of a person usually known by a title, the name by which that person was known before the succession to that title;

(ii) a name changed or disused before the person bearing the name attained the age of eighteen years or changed or disused for a period of not less than twenty years; or

(iii) in the case of a married person, the name by which that person was known before the marriage.

Registration of particulars of directors and Company Secretaries

216. (1) A company shall, within twenty-eight days of a change occurring among the directors or in the Company Secretary or in any of the particulars contained in the register, other than those required under paragraph *(e)* of subsection (3) of section 215, send to the Registrar for registration notification in the prescribed form of the change, specifying the date of the change.

(2) Where a company defaults in complying with subsection (1), the company and every officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the default continues.

(3) A director or Company Secretary who resigns from office is in default unless notification of the resignation is duly given to the company.

General saving of existing law relating to officers

217. The rights, duties and liabilities of officers and agents of companies shall continue to be governed by the rules of the common law and equity relating to principal and agent, and master and servant except in so far as those rules are not inconsistent with the express provisions of this Act.

Injunction or declaration in the event of illegal or irregular activity

218. (1) The Court on the application of a member may by injunction restrain the company,

(a) from doing an act or entering into a transaction which is illegal or beyond the power or capacity of the company or which infringes a provision of the constitution of the company, or

(b) from acting on a resolution not properly passed in accordance with this Act or the constitution of the company, and may declare that act, transaction or resolution already done, entered into, or passed to be void.

(2) Subsection (1) does not derogate from the protection afforded by a provision of this Act to a person dealing with the company.

(3) In relation to acts beyond the capacity or power of the company, this section is subject to section 19 and does not limit its application.

(4) The right afforded to a member to apply to the Court, does not limit the right that member may have to institute proceedings against a director of the company pursuant to section 200 or to apply to the Court under section 219.

(5) In proceedings by a member under this section, the Court may order the member to give security for the costs of the company and may direct that the application shall be heard in chambers.

Remedy against oppression

219. (1) A member or debenture holder of a company or, in a case falling within section 234, the Registrar may apply to the Court for an order under this section on the ground that

(a) the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or debenture holders or in disregard of the proper interests of those members, shareholders, officers, or debenture holders of the company; or

(b) an act of the company has been done or is threatened or that a resolution of the members, debenture holders or a class of them has been passed or is proposed which unfairly discriminates against, or is otherwise unfairly prejudicial to, one or more of the members or debenture holders.

(2) Where on the application, the Court is of opinion that either of the grounds set out in subsection (1) is established, the Court may, with a view to bringing to an end or remedying the matters complained of, make an appropriate order; and, without limiting the effect of this subsection, the Court may by order,

(a) direct or prohibit an act or cancel or vary a transaction or resolution;

(b) regulate the conduct of the affairs of the company in future; or

(c) provide for the purchase of the shares or debentures of any members or debenture holders of the company by other members or debenture holders of the company or by the company itself; and in the case of purchase of shares by the company without regard to the limitations imposed by sections 61 to 65, other than subsections (4), (5) and (6) of section 61.

(3) Where an order under this section makes an amendment in or addition to any provisions of the constitution of a company, then, despite anything in this Act but subject to the provisions of the order, the company shall not without the leave of the Court, make a further amendment in or addition to the constitution inconsistent with the provisions of the order.

(4) An official copy of an order under this section amending or adding to the constitution of the company shall, within twenty-eight days after the making of the order, be delivered by the company to the Registrar for registration.

(5) Where a company defaults in complying with subsection (4), the company and an officer of the company that is in default is

liable to pay to the Registrar, an administrative penalty of two hundred and fifty penalty units.

(6) On an application under this section by a member or debenture holder of the company, the Court may order the applicant to give security for the costs of the company and may direct that the application shall be heard in chambers.

Member requiring company to purchase shares

220. (1) Despite sections 64 and 65 a member may require a company to purchase the shares of that member where members of a company by special resolution resolve to

(a) amend the constitution of the company with a view to varying or dispensing with the business activities or objects of the company;

(b) approve

(i) a major transaction under section 145;

(ii) an arrangement, compromise, merger or division of the company under Part T of Chapter Two of this Act; or

(iii) the variation of class rights under section 50.

(2) A sale and distribution in pursuance of a special resolution under subsection (1) is binding on the company.

(3) A member of the company is entitled to have the shares of that member bought under the provisions of this Act, only if that member voted wholly against the resolution for matters specified in subsection (1).

(4) A special resolution pursuant to paragraph *(a)* and paragraphs *(b)* (i), (ii) and (iii) of subsection (1), may only be rescinded by a special resolution.

(5) For the purposes of

(a) subsection (2), if within one year from the date of the passage of the special resolution, the company has been unable to carry out the proposed objects or any of the business activities specified in paragraph *(b)* of subsection (1), a member is entitled to apply to have the respective shares reinstated; and

(b) this section, a "special resolution" is deemed to include, in the case of a variation of class rights, the prior written consent of the holders of at least three-fourths of the issued shares of the class of shares affected.

Notice requiring purchase of shares

221. (1) A member of a company who requires the company to purchase the shares of that member under section 220 shall, within fourteen days of the passage of the resolution at a meeting of the members of the company, give written notice to the company requiring the company to purchase those shares.

(2) On receipt of the notice, the Board shall

(a) arrange for the purchase of the shares by the company;

(b) arrange for some other person to purchase the shares;

(c) arrange for the resolution to be rescinded in accordance with subsection (4) of section 220; or

(d) apply to the Court for an order exempting the Board from the purchase of the shares of the member.

(3) The Board shall within twenty-eight days upon receipt of the notice give written notice to the member of the decision of the Board.

Purchase of shares by company

222. (1) Where the Board agrees under paragraph *(a)* of subsection (2) of section 221 to the purchase of the shares by the company, it shall within seven days of issuing notice under subsection (3) of section 221,

(a) state a fair and reasonable price as at the close of business on the day before the day the resolution is passed for the shares to be acquired; and

(b) give written notice of the price to the member.

(2) A member who considers that the price stated by the Board is not fair and reasonable, shall forthwith, but at any rate, not later than fourteen days after receipt of the notice, give written notice of the objection to the company.

(3) Where the member agrees to the price stated by the Board without objection, the company shall, on the date the company and the member mutually agree, or in the absence of any agreement, as soon as practicable, purchase all the shares at the stated price.

Determination of fair and reasonable price for purchase of shares by company

223. (1) Where a member raises an objection to the price of shares stated by the board of directors under subsection (2) of section 222, the company shall

(a) pay to the member concerned, a provisional price in respect of each share equal to the price stated by the Board of directors, and

(b) refer the matter to an auditor to determine a fair and reasonable price for the shares within seven days.

(2) When the payment of the provisional price is made, the member concerned shall take the steps required to transfer the shares to the company.

(3) Where after fourteen days, the auditor is unable to determine a fair and reasonable price for the shares,

(a) the member concerned and the Board shall each appoint an arbitrator; and

(b) the member and the Board shall agree on an umpire.

(4) The company shall bear the costs for the appointment of an arbitrator under subsection (3).

(5) Where the member and Board are unable to agree on the appointment of a third arbitrator as umpire, the Court may appoint the umpire.

(6) A reference to arbitration under this section, shall be deemed to be a submission to arbitration in accordance with the Alternative Dispute Resolution Act, 2010 (Act 798).

(7) The arbitrator shall expeditiously determine a fair and reasonable price for the shares on the day before the date on which the members determined by special resolution authorising the respective action under subsection (1) of section 220 excluding any appreciation or depreciation directly or indirectly induced by the action or the proposal.

(8) The price determined by the arbitrator shall be binding on the company and the member concerned.

(9) Where the price of shares to be determined are listed on a Stock Exchange or traded on a stock market, the arbitrator shall

determine the price for the shares as being the price at which shares of that kind are traded on the Stock Exchange or stock market as at the close of business on the day before the date on which the members determined by special resolution for the authorising of the respective action excluding any appreciation or depreciation directly or indirectly induced by the action or the proposal unless a price determined in accordance with this subsection would be clearly unfair, in all the circumstances to the member concerned.

(10) Where the price determined in accordance with a provision of this section

(a) exceeds the provisional price, the company shall immediately pay the outstanding balance to the respective member; or

(b) is less than the provisional price paid, the company may recover from the respective member the excess paid.

(11) The arbitrator may award interest on any balance payable or in excess to be repaid under subsection (10) at the rate that the arbitrator thinks fit, having regard to whether the provisional price paid or the reference to arbitration, as the case may be, was reasonable.

Application to Court for exemption on grounds of insolvency

224. (1) A company shall apply to the Court for an order exempting the company from the obligation to purchase the shares of the company, where

(a) a notice is given to the company under section 221;

(b) the Board has resolved that the purchase by the company of the shares to which the notice relates would result in the company becoming insolvent as defined in the First Schedule; and

(c) the company has, following reasonable efforts to do so, been unable to arrange for the shares to be purchased by another person in accordance with paragraph *(b)* of subsection (2) of section 221.

(2) Where the Court is satisfied that the purchase of the shares would result in the company becoming insolvent and the company has made reasonable efforts to arrange for the shares to be purchased by an-

other person in accordance with paragraph *(b)* of subsection (2) of section 221, the Court may make

(a) an order exempting the company from the obligation to purchase the shares;

(b) an order suspending the obligation to purchase the shares; or

(c) any other order that the court considers fit, including an order referred to in subsection (2) of section 227.

Purchase of shares by third party

225. (1) Section 222 shall apply to the purchase of shares by a person with whom the company has entered into an arrangement for purchase in accordance with paragraph *(b)* of subsection (2) of section 221 subject to the necessary modification.

(2) Every holder of shares that are to be purchased in accordance with the arrangement shall be indemnified by the company in respect of loss suffered by reason of the failure by the person who has agreed to purchase the shares to purchase them at the price nominated or fixed by arbitration, as the case may be.

Reinstatement of shares

226. (1) Where a former member wishes for shares to be reinstated pursuant to subsection (5) of section 220, the former member shall give written notice to the company within twenty-eight days after the one year period requiring the repurchase of the shares by that former member.

(2) On the receipt of the notice, the Board shall within seven days notify the former member in writing if the Board agrees to the purchase and indicate a specific date for payment of the price of the shares.

(3) Within seven days after receipt of a notice under subsection (2), the former member shall make payment for the shares at the purchase price of the shares at the time that former member received payment for those shares.

(4) The former member who applies to the company for reinstatement of shares is entitled to receive the correlative dividends or other distributions made during the one year period.

(5) When payment for the shares is made by the former member under subsection (3), the company shall

(a) forthwith deliver to that former member an executed instrument of transfer of the shares together with any relevant share certificate; or

(b) take the necessary steps required to transfer the shares to that former member.

Application to court for exemption

227. (1) A company to which a notice has been given under section 221, may apply to the Court for an order exempting the company from the obligation to purchase the shares to which the notice relates, on the grounds that

(a) the purchase would be disproportionately damaging to the company;

(b) the company cannot reasonably be required to finance the purchase; or

(c) it would not be just and equitable to require the company to purchase the shares.

(2) On an application under this section, the Court may make an order to relieve the company in whole or in part and on the terms that the Court considers fit from the liability to purchase the shares if in the circumstances, including lapse of time, the Court considers it equitable to do so.

(3) An order of the Court under subsection (2) may include

(a) setting aside a resolution of the members;

(b) directing the company to take, or refrain from taking, any action specified in the order; or

(c) requiring the company to pay compensation to the members affected.

Part S: Inspection and Investigation of Companies

Enquiries by the Registrar

228. (1) In order to ensure that the provisions of sections 127 to 137 regarding the maintenance and auditing of accounts are being duly complied with, the Registrar may by written order call on a company to produce for the inspection of the Registrar all or any of the books of the company.

(2) Where it appears to the Registrar that there are circumstances suggesting, in relation to a company, that

(a) a provision of this Act is not being complied with, or

(b) a document which the company is required to send to the Registrar under this Act does not disclose a full and fair statement of the matters to which the document purports to relate, or

(c) the business of the company is being conducted with intent to defraud creditors of the company or the creditors of any other person or otherwise for a fraudulent or unlawful purpose, or

(d) the business of the company is being conducted or the powers of the directors are being exercised in a manner oppressive to a part of the members or debenture holders or in disregard of their proper interests as members, shareholders, officers or debenture holders, or

(e) persons concerned with the formation or the management of the affairs of the company have in connection with the formation or management been guilty of a breach of duty towards the company or members of the company, or

(f) the members of the company have not been given the information with respect to its affairs that the member might reasonably expect,

the Registrar may by written order call on the company to produce for the inspection of the Registrar all or any of the books of the company or to furnish in writing the information or explanation that the Registrar may specify in the order.

(3) Where the Registrar makes an order under subsection (1) or (2), the company shall comply with the order within the time specified in the order, and the persons who are or have been officers of the company shall so far as it lies within their power, produce the books or furnish the information or explanation.

(4) Where the company defaults in complying with subsection (3), the company and an officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of two hundred and fifty penalty units and if an officer or former officer of the company

defaults in complying with subsection (3), that officer is liable to pay to the Registrar, an administrative penalty of two hundred and fifty penalty units.

(5) Unless the books, information, or explanations produced or given to the Registrar in accordance with this section satisfy the Registrar that further action is not needed, the Registrar shall

(a) proceed in accordance with section 234, or

(b) report the circumstances in writing to the Court.

Appointment of inspector under order of the Court

229. (1) The Court may order the Registrar to appoint one or more inspectors to investigate the affairs of a company and to report on the affairs to the Registrar in the manner that the Court directs,

(a) on a report by the Registrar after enquiries by the Registrar in accordance with section 228;

(b) on the application of the Registrar; or

(c) on the application of not less than one hundred members, or of members holding not less than one-tenth of the issued shares, or of members not less than one-tenth in number of the total members.

(2) Where the application is made under paragraph *(c)* of subsection (1),

(a) the application shall be supported by the evidence that the Court requires for the purpose of showing that the applicants have good reason for requiring the investigation;

(b) the Court may, before ordering the appointment of an inspector, require the applicants to give security to an amount determined by the Court for payment of the costs of the investigation; and

(c) at least fourteen days previous notice of the application shall be given to the Registrar who shall be entitled to be represented at the hearing and to give evidence and call witnesses.

(3) An application under this section shall be heard in chambers and at least fourteen days previous notice of the application shall be given to the company which shall be entitled to be represented at the hearing and to give evidence and call witnesses.

Appointment of inspector on special resolution of the company

230. The Registrar shall appoint one or more competent inspectors to investigate the affairs of a company and to report on the affairs to the Registrar in the manner that the Registrar directs if the company by special resolution declares that the affairs ought to be investigated by an inspector appointed by the Registrar.

Power to carry investigation into the affairs of associated companies

231. Where an inspector appointed under section 229 or section 230 to investigate the affairs of a company finds it necessary for the purposes of the investigation to investigate also the affairs of any other body corporate which is or has at any relevant time been an associated company, the inspector may do so, and shall report on the affairs of the other body corporate so far as the inspector considers the results of the investigation relevant to the investigation of the affairs of the first mentioned company.

Production of documents and evidence

232. (1) The officers and agents of the company and the officers and agents of any other body corporate whose affairs are investigated by virtue of section 231

(a) shall produce to the inspectors the books and the documents of or relating to the company or the other body corporate which are in the custody or power of those officers and agents, or

(b) shall otherwise give to the inspectors the assistance in connection with the investigation which the officers and agents are reasonably able to give.

(2) An inspector may examine on oath the officers and agents of the company or other body corporate in relation to the business of the company or that other body corporate and may administer an oath accordingly.

(3) Where an officer or agent of the company or other body corporate,

(a) destroys or refuses to produce to the inspectors a book or document which is the duty of that officer or agent under this section so to produce, or

(b) refuses to answer a question which is put to that officer or agent by the inspectors with respect to the affairs of the company or other body corporate,

the inspectors may certify the facts in writing to the Court, and the Court may inquire into the case, and after hearing the witnesses who may be produced against or on behalf of the alleged offender, and after hearing the statement which may be offered in defence, punish the offender, where found liable, as if the offender had been guilty of contempt of the Court.

(4) Where an inspector considers it necessary for the purposes of the investigation that a person whom the inspector does not have a power to examine on oath should be so examined, the inspector may apply to the Court and the Court may order that person to attend and be examined on oath before the Court on a matter relevant to the investigation.

(5) On examination,

(a) the inspector may take part personally or be represented by a legal practitioner;

(b) the Court may put the questions that the Court considers appropriate to the person examined; and

(c) the person examined shall answer the questions that the Court may put or allow to be put to that person who may at a personal cost employ a legal practitioner, who shall be at liberty to put to that person questions that the Court may consider just for the purpose of enabling that person to explain or qualify an answer given by that person; and notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may be used in evidence against that person.

(6) Despite anything in paragraph *(c)* of subsection (5), the Court may allow costs to the person examined, and the costs so allowed shall be paid as part of the expenses of the investigation.

(7) In this section, a reference to officers or to agents includes past, as well as present, officers or agents, and for the purposes of this section, "agents" in relation to a company or other body corporate includes the bankers or legal practitioners of the company or other body corporate and a person employed by the company or other body corporate as auditor.

Report of inspectors

233. (1) The inspectors may, and, if so directed by the Registrar, shall, make interim reports to the Registrar, and upon the conclusion of the investigation, shall make a final report to the Registrar.

(2) The report shall be written or printed, as the Registrar directs.

(3) The Registrar may cause the report to be printed and published, and shall, unless in the opinion of the Registrar, it is undesirable in the public interest,

(a) forward a copy of the report made by the inspectors to the registered office of the company;

(b) furnish a copy of the report on request and on payment of a reasonable charge, to any other person who is a member of the company or of any other body corporate dealt with in the report by virtue of section 231 or, whose interests as a creditor of the company or of that other body corporate appear to the Registrar to be affected;

(c) where the inspectors are appointed under section 229, furnish a copy of the report to the Court; and

(d) where the inspectors are appointed under paragraph *(c)* of subsection (1) of section 229, furnish, at the request of the applicants for the investigation, a copy of the report to them.

(4) A copy of the report authenticated by the seal of the Registrar is admissible in legal proceedings as evidence of the opinion of the inspectors in relation to a matter contained in the report.

Proceedings after investigations

234. Where as a result of information obtained in accordance with section 228, or as a result of a report made under section 233, it appears to the Registrar that,

(a) a person may have committed an offence for which that person is criminally liable, the Registrar shall refer the matter to the Attorney-General for necessary action;

(b) a company ought to be wound up or that an application should be made to the Court under section 219, the Registrar may petition the Court to wind up the company, if the Registrar thinks it just and equitable to do so, or may apply to the Court under section 219; or

(c) proceedings ought in the public interest to be brought by a

company against a director or former director of a company under section 200 or against a person to recover property, damages or compensation to which a body corporate is entitled, the Registrar may bring proceedings for that purpose in the name of the company or body corporate but, subject to section 235 shall indemnify the company or body corporate against the costs or expenses incurred by the company or body corporate in connection with those proceedings.

Expenses of investigations

235. (1) The expenses of, and incidental to, an investigation by the Registrar under section 228 or by inspectors appointed by the Registrar under section 229 or 230 shall be defrayed in the first instance by the Registrar, but the following persons are, to the extent mentioned, liable to repay the Registrar:

(a) a person who is convicted on a prosecution instituted by virtue of paragraph *(a)* of section 234, or who is ordered to restore property or pay damages or compensation in proceedings brought by virtue of paragraph *(c)* of section 234 may in the same proceedings be ordered to pay the expenses to the extent specified in the order;

(b) a body corporate in whose name proceedings are brought by virtue of paragraph *(c)* of section 234 is liable to the amount or value of any sums of money or property recovered by the body corporate as a result of those proceedings, and the expenses shall be a first charge on those sums or property; or

(c) a body corporate dealt with by the report of an inspector appointed under section 229 or 230 and the applicants, other than the Registrar, for the investigation where the inspector was appointed under section 229 is liable to the extent that the Registrar shall direct.

(2) The report of an inspector may, if the inspector deems fit, and shall if the Registrar so directs, include a recommendation as to the directions which the inspector considers appropriate to be given under paragraph *(c)* of subsection (1).

(3) For the purposes of this section, the costs or expenses incurred by the Registrar in connection with proceedings brought under

paragraph *(b)* or *(c)* of section 234 shall be treated as expenses of the investigation giving rise to the proceedings.

(4) As between the persons specified in paragraphs *(a)*, *(b)* and *(c)* of subsection (1) of this section, liability to repay the Registrar shall be borne, to the extent to which these persons are respectively liable under the paragraphs specified, in the first instance by those liable under paragraph *(a)*, by those liable under paragraph *(b)*, and finally by those liable under paragraph *(c)*.

Request for information on persons interested in shares or debentures

236. (1) Where it appears to the Registrar that there is reasonable cause to investigate the ownership of any shares in or debentures of a company, or where the directors of a company so request in writing, the Registrar may carry out the investigation or by written order appoint one or more inspectors to carry out the investigation in a manner provided by this section.

(2) The Registrar or an inspector appointed by the Registrar may require a person whom the Registrar or the inspector has reasonable cause to believe,

(a) to be or to have been interested in those shares or debentures, or

(b) to act or to have acted in relation to those shares or debentures as the agent or adviser of a person interested in those shares or debentures,

to give the Registrar or inspector information which that person has or can reasonably be expected to obtain as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares and debentures.

(3) For the purposes of this section, a person has an interest in a share or debenture if that person has a right to acquire or dispose of the share or debenture, or an interest in or right to vote in respect of the share or debenture, or if the consent of that person is necessary for the exercise of any of the rights of other persons interested in the share or debenture, or if other persons interested in the share or debenture can be required or are accustomed to exercise their rights in accordance with the instructions of that person.

(4) A person who fails to give information required of that person under this section, or who, in giving that information makes a

statement which is false, commits an offence and is liable on summary conviction to a fine of not less than three hundred and twenty-five penalty units and not more than seven hundred and fifty penalty units or to a term of imprisonment of not less than three months and not more than six months or to both the fine and imprisonment unless, in the case of a false statement, it is proven that that person believed on reasonable grounds that the statement was true.

(5) Where it appears to the Registrar that there is difficulty in finding out the relevant facts about those shares or debentures, 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 give accurate information as required by this section, the Registrar may by order direct that the shares or debentures shall, until further order, be subject to the restrictions imposed by subsection (6).

(6) Where shares or debentures are directed to be subject to the restrictions imposed by the direction referred to in subsection (5),

(a) a transfer of those shares or debentures or of the right to be issued with those shares or debentures and an issue of those shares or debentures is void;

(b) voting rights shall not be exercisable in respect of those shares or debentures;

(c) further shares or debentures shall not be issued in respect of those shares or debentures or in pursuance of an offer made to the holders of those shares or debentures; and

(d) except in a liquidation, a payment shall not be made of the sums of money due from the company on those shares or debentures.

(7) Where the Registrar makes an order directing that shares or debentures shall be subject to the restrictions, or refuses to make an order directing that they shall cease to be subject to those restrictions, a person having an interest in the shares or debentures may apply to the Court and the Court may direct that the shares or debentures shall cease to be subject to those restrictions or any of them.

(8) A person who,

(a) exercises or purports to exercise a right to dispose of shares or debentures which, to the knowledge of that person, are

for the time being subject to the restrictions or any of them, or of a right to be issued with those shares or debentures,

(b) votes, whether as holder or proxy, or appoints a proxy to vote in respect of shares or debentures which, to the knowledge of that person are for the time being subject to the restriction, those voting rights shall not be exercisable in respect of those shares or debentures, or

(c) being the holder of shares or debentures fails to notify of the restrictions any other holder or proxy for a holder whom that holder does not know to be aware of the restrictions,

commits an offence and is liable on summary conviction to a fine of not less than three hundred and twenty-five penalty units and not more than seven hundred and fifty penalty units or to a term of imprisonment of not less than three months and not more than six months or to both the fine and imprisonment, and where shares or debentures in a company are issued in contravention of the restriction, the company and every officer of the company that is in default is liable to a fine of not more than seven hundred and fifty penalty units.

(9) A prosecution shall not be instituted under subsection (8) except by, or with the consent of, the Attorney-General.

(10) Where an inspector is appointed to carry out an investigation under this section, the inspector shall report in writing to the Registrar on the result of the investigation.

(11) The Registrar may

(a) furnish to a person or the persons who the Registrar thinks fit, a copy of the report referred to in subsection (10), or of part or parts of the copy and may cause the copy or those parts of the copy to be printed and published;

(b) divulge to a person or the persons who the Registrar thinks fit, any information obtained by the Registrar as a result of the investigation of the Registrar or the inspector and may publish that information.

(12) The expenses of an investigation under this section shall be defrayed by the Registrar.

Exemption from disclosure by legal practitioners and their clients and bankers and their customers

237. Sections 228 to 236 do not require disclosure to the Registrar or to an inspector appointed by the Registrar,

(a) by a legal practitioner of privileged communication made to the legal practitioner in that capacity except as regards the name and address of the client; or

(b) by the bankers of a body corporate in their capacity as bankers of the body corporate of information relating to the affairs of any of their customers other than the body corporate.

Part T: Arrangements, Compromises, Mergers and Divisions

Arrangement or merger by sale of undertaking

238. (1) Despite any other provisions on arrangements or mergers in this Act, a company may, with a view to effecting an arrangement or merger, resolve by special resolution that,

(a) the company be put into a voluntary liquidation of members, and

(b) the liquidator be authorised,

(i) to sell the whole or part of the undertaking or assets of a company to another body corporate, whether a company within the meaning of this Act or not, in this Part called the transferee company, in consideration or part consideration of fully paid shares, debentures or other like interests in the transferee company, and

(ii) to distribute those shares, debentures or other like interests in specie among the members of the company in accordance with their rights in the liquidation.

(2) A sale and distribution in pursuance of a special resolution is binding on the company and the members of the company, and each member shall be deemed to have agreed with the transferee company to accept the fully paid shares, debentures or other like interests to which that member is entitled under the distribution.

(3) For the purposes of subsection (2), if

(a) within one year from the date of the passage of the special resolution, an order is made under section 219 or for the winding up of the company under the Bodies Corporate

(Official Liquidations) Act, 1963 (Act 180), the arrangement or merger and the sale and distribution shall not be valid unless sanctioned by the Court; or

(b) a member of the company, by notice in writing addressed to the liquidator and left at the registered office of the company within twenty-eight days after the passage of the resolution, dissents from the arrangement or merger in respect of all of the shares held by that member, the liquidator shall abstain from carrying the resolution into effect or shall purchase the shares at a price to be determined in a manner provided by subsections (4), (5) and (6) of this section.

(4) Where the liquidator elects to purchase the shares of a member who has expressed dissent in accordance with subsections (2) and (3) of this section, the price payable for the shares shall be determined by agreement or, in default of agreement, by a single arbitrator appointed by the Institute of Chartered Accountants in the country in accordance with the Alternative Dispute Resolution Act, 2010 (Act 798).

(5) The price shall be determined by estimating what the member concerned would have received had the whole of the undertaking of the company been sold as a going concern for cash to a willing buyer and the proceeds, less the costs of liquidation, been divided amongst the members in accordance with their rights.

(6) The purchase money shall be paid before the company is dissolved and raised by the liquidator in the manner that may be determined by the special resolution or, in default of a direction in the special resolution, in the manner that the liquidator thinks fit as part of the expenses of the winding-up.

(7) This section does not authorise a variation or an abrogation of the rights of the creditors of the company.

(8) If a company otherwise than under this section

(a) sells or resolves to sell the whole or a part of the undertaking or assets of the company to another body corporate in consideration or part consideration of shares, debentures or other like interest in that body corporate, and

(b) resolves to distribute the proceeds in specie among the members of the company, whether in a liquidation or by way of dividend,

a member of the company may, by notice in writing addressed to the company and left at the registered office of the company within twenty-eight days after the passage of the resolution authorising the distribution, require the company to abstain from carrying the resolution into effect or to purchase any of the shares of that member at a price to be determined in the manner provided by subsections (4), (5) and (6).

(9) Subsection (8) does not authorise a company to

(a) purchase the shares of the company except in accordance with sections 61 to 66; or

(b) make a distribution to the shareholders except in accordance with section 72 and sections 75 to 82 or in a liquidation.

Arrangement or compromise with Court approval

239. (1) Where an arrangement or compromise is proposed between a company and the creditors, or any class of the creditors, or members or any class of members of the company, the Court, on application of

(a) the company or a member or creditor of the company,

(b) the liquidator in the case of a company being wound up,

(c) the administrator where an administration order in relation to the company is still in force, or

(d) any other person interested in the matter

may order that meetings of the various classes of members and creditors be summoned in the manner that the Court directs.

(2) Where a majority in number, representing seventy-five percent in value, of each class of members concerned and a majority in number representing seventy-five percent in value of each class of creditors concerned approve the arrangement or compromise, the approval shall be referred to the Registrar by the persons concerned.

(3) The Registrar shall recommend to the Court, the appointment of a reporter who shall be a qualified insolvency practitioner, to investigate the fairness of the arrangement or compromise.

(4) The remuneration of the reporter shall be fixed by the Registrar and the proper expenses of the investigation shall be borne by the company or any other party to the application that the Court orders.

(5) Where the Court, after considering the report, makes an order confirming the arrangement or compromise, with or without modifications, the arrangement or compromise as confirmed is binding

on the company and on all members and creditors of the company and its validity shall not subsequently be impeachable in any proceedings.

(6) On the hearing by the Court of the application to confirm the arrangement or compromise, a member or creditor of the company claiming to be affected by the arrangement or compromise is entitled to be represented and to object.

(7) The Court may prescribe the terms that the Court considers fit as a condition of its confirmation including a condition that any member shall be given rights to require the company to purchase the share of the company at a price fixed by the Court or to be determined in a manner provided in the order.

(8) Where the Court is satisfied that the arrangement or compromise involves the transfer of the whole or part of the undertaking or assets of a company to another company, the Court may

(a) exercise its powers under section 240 or 255; or

(b) order the transfer in accordance with this Part.

(9) An arrangement or compromise may be carried out in accordance with this section although it could have been accomplished under section 238 or any other provision of this Act.

(10) Despite subsection (9), sections 78 to 82 shall also be complied with if the arrangement or compromise is one which, by virtue of section 78, requires the confirmation of the Court in accordance with those sections.

(11) An order made under subsection (5) of this section shall not have effect until a certified true copy of the order has been delivered to the Registrar who shall register the order and publish it in the *Companies Bulletin*.

(12) A copy of the order shall be annexed to every copy of the constitution of the company issued by the company after the order has been made.

(13) If a company defaults in complying with subsection (12), the company and every officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units in respect of each copy issued contrary to subsection (12).

Powers of the Court in facilitating arrangements or compromise

240. (1) Where an application is made to the Court under section 239 and the Court is satisfied that under the arrangement or compromise

the whole or a part of the undertaking or assets of a company, in this section referred to as a transferor company, is to be transferred to another company, in this section referred to as the transferee company, the Court may, by the order sanctioning the arrangement or compromise or by a subsequent order, make provision for all or any of the following matters:

(a) the transfer to the transferee company of the whole or a part of the undertaking, assets and liabilities of the transferor company;

(b) the allotting or appropriation by the transferee company of shares, debentures or other like interests in that company which, under the arrangement or compromise, are to be allotted or appropriated by that company to or for a person;

(c) the continuation by or against the transferee company of legal proceedings pending by or against a transferor company;

(d) the dissolution, without winding up, of a transferor company;

(e) the provision to be made for any person who, within the time and in the manner that the Court directs, dissents from the arrangement or compromise; or

(f) the incidental, consequential and supplemental matters that are necessary to secure that the arrangement or compromise is fully and effectively carried out.

(2) Where an order under subsection (1) provides for the transfer of property or liabilities

(a) that property shall, by virtue of the order, be transferred to and vest in, and

(b) those liabilities shall, by virtue of the order, be transferred to and become liabilities of,

the transferee company, and in the case of a property, if the order so directs, shall be freed from a charge which, by virtue of the arrangement or compromise, is to cease to have effect.

(3) Where an order is made under subsection (1), a company in relation to which the order is made shall deliver a certified true copy of the order to the Registrar for registration within twenty-eight days after the making of the order.

(4) Where the company defaults in complying with subsection (3), the company and every officer of the company that is in default

is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the default continues.

(5) In this section,

"property" includes property, rights and powers of every description; and

"liabilities" includes duties of every description although the rights, powers and duties are of a personal character which could not under the general law be assigned or performed vicariously.

Mergers

241. (1) Sections 259 to 274 do not apply where a company, in respect of which an arrangement or compromise is proposed, is being wound up.

(2) Two or more companies referred to in sections 259 to 274 as "the merging companies" may be parties to a merger as defined in this Act and continue as one company.

(3) In sections 259 to 274, a reference to a "merging company" is

(a) in relation to a merger by absorption, to the transferor and transferee companies; and

(b) in relation to a merger by formation of a new company, to the transferor company.

Merger proposal

242. (1) A merger proposal shall set out the terms of the scheme and provide at least for the following:

(a) in respect of each transferor company and the transferee company,

(i) the name of the company,

(ii) the address of the registered office of the company, and

(iii) the type of company;

(b) the number of shares in the transferee company to be allotted to members of a transferor company for a given number of their shares referred to as the "share exchange ratio";

(c) the amount of any cash payment;

(d) the terms relating to the allotment of shares in the transferee company;

(e) the date from which the holding of shares in the transferee company will entitle the holders to participate in profits,

and any special conditions affecting that entitlement;

(f) the date from which the transactions of a transferor company are to be treated for accounting purposes as being those of the transferee company;

(g) any rights or restrictions attaching to shares or other securities in the transferee company to be allotted under the scheme to the holders of shares or other securities in a transferor company to which any special rights or restrictions attach, or the measures proposed concerning them;

(h) the name of the transferee company where it is the same as the name of one of the merging companies;

(i) the full name and residential address of each director and the secretary of the transferee company;

(j) the address for service of the transferee company;

(k) the shareholding structure of the transferee company, specifying the

(i) number of authorised shares of the company; and

(ii) rights, privileges, limitations, and conditions attached to each share of the company;

(l) the manner in which the shares of each transferor company are to be converted into shares of the transferee company;

(m) where the shares of a transferor company are not to be converted into shares of the transferee company, the consideration that the holders of those shares are to receive instead of shares of the transferee company;

(n) any payment to be made to a member or director of the transferor company, other than a payment of the kind described in paragraph *(m)*;

(o) details of any arrangement necessary to complete the merger and to provide for the subsequent management and operation of the transferee company; and

(p) a copy of the proposed constitution of the transferee company, if any.

(2) A merger proposal may specify the date on which the merger is intended to become effective.

(3) Where the shares of one of the merging companies are held by or on behalf of another merging company, the merger proposal shall

(a) provide for the cancellation of those shares without payment or for any other consideration when the merger becomes effective; and

(b) not provide for the conversion of those shares into shares of the transferee company.

Approval of merger proposal

243. (1) The directors of each of the merging companies shall resolve that

(a) in their opinion, the merger is in the best interest of the company; and

(b) the directors are satisfied on reasonable grounds that the transferee company shall be solvent immediately after the merger becomes effective.

(2) The directors who vote in favour of a resolution under subsection (1) shall sign a certificate stating

(a) that, in their opinion, the conditions set out in that subsection have been satisfied; and

(b) the grounds for the opinion of the directors.

(3) The directors of each of the merging companies shall send to each member of the transferor company, not less than twenty-eight days before the merger is proposed to take effect,

(a) a copy of the merger proposal;

(b) copies of the certificates given by the directors of each transferor company;

(c) a summary of the principal provisions of the constitution of the transferee company, if any;

(d) a statement that a copy of the constitution of the transferee company shall be supplied to any member of the company upon request;

(e) a statement setting out the rights of members pursuant to the merger including the number of shares in the transferee company to be allotted to members of a transferor company for a given number of their shares and the amount of any cash payment;

(f) a statement of any material interest of the directors in the proposal, whether in that capacity or otherwise; and

(g) any other information and explanation that may be necessary to enable a member of the company to understand the nature and implications for the transferor company and its members of the proposed merger.

(4) The directors of each transferor company shall, not less than twenty-eight days before the merger is proposed to take effect,

(a) send a copy of the merger proposal to every secured creditor of the company; and

(b) give public notice of the proposed merger, including a statement that

(i) copies of the merger proposal are available, at the registered offices of the merging companies and at any other place as may be specified during normal business hours, for inspection by a member or creditor of a merging company or any other person to whom a merging company owes that obligation; and

(ii) a member or creditor of a transferor company or any other person to whom a merging company owes an obligation to supply a copy of the merger proposal, is entitled to be supplied, free of charge, with a copy of the merger proposal upon request to a merging company.

(5) The merger proposal shall be approved by a majority in number, representing seventy-five percent in value, of each class of

(a) members of each of the merging companies, present and voting either in person or by proxy at a meeting;

(b) creditors of each of the merging companies; and

(c) members or an interest group where the merger proposal or the constitution of a transferor company, requires the approval of that class of members or interest group.

Short form merger

244. (1) A company and one or more other companies that are directly or indirectly wholly owned by the company may merge and

continue as one company without complying with section 259 or 261 where

(a) the merger is approved by a resolution of the directors of each of the merging companies; and

(b) each resolution provides that the

(i) shares of each merging company, other than the transferee company, shall be cancelled without payment or other consideration;

(ii) constitution of the transferee company, shall be the same as the constitution of the transferor company; and

(iii) directors of each of the merging companies are satisfied on reasonable grounds that the transferee company shall be solvent, immediately after the merger becomes effective.

(2) Two or more companies, each of which is directly or indirectly wholly owned by the same company, may merge and continue as one company without complying with section 259 or 261 where

(a) the merger is approved by a resolution of the directors of each of the merging companies; and

(b) each resolution provides that

(i) the shares of all but one of the merging companies shall be cancelled without payment or other consideration;

(ii) the constitution of the transferee company, shall be the same as the constitution of the merging company whose shares are not cancelled; and

(iii) the directors are satisfied on reasonable grounds that the transferee company shall, immediately after the merger becomes effective, satisfy the solvency test.

(3) The directors of each of the merging companies shall, not less than twenty-eight days before the merger is proposed to take effect, give written notice of the proposed merger to every secured creditor of the company.

(4) The resolutions approving a merger under this section, taken together, shall be deemed to constitute a merger proposal that has been approved.

(5) The directors who vote in favour of a resolution under subsection (1) or (2), as the case may be, shall sign a certificate stating

(a) that, in their opinion, the conditions set out in subsection (1) or (2) are satisfied; and

(b) the grounds for the opinion of the directors.

(6) A director who fails to comply with subsection (5) is liable to pay to the Registrar an administrative penalty of three hundred and fifty penalty units.

Registration of merger proposal

245. For the purpose of effecting a merger, the following documents shall be delivered to the Registrar for registration:

(a) the approved merger proposal;

(b) any certificate required under subsection (2) of section 244 or subsection (5) of section 245;

(c) a certificate signed by the directors of each transferor company stating that the merger has been approved in accordance with this Act and the constitution of the company, if any;

(d) where the transferee company is a new company or the merger proposal provides for a change of the name of the transferee company, a copy of the notice reserving the name, if any, of the company;

(e) a certificate signed by the directors, or proposed directors of the transferee company stating that, where the proportion of the claims of creditors of the transferee company in relation to the value of the assets of the company is greater than the proportion of the claims of creditors of a transferor company in relation to the value of the assets of that transferor company, no creditor shall be prejudiced by that fact;

(f) a document in the prescribed form signed by each of the persons named in the merger proposal as a director or secretary of the transferee company consenting to act as a director or secretary of the company, as the case may be; and

(g) a report regarding the fairness of the merger and issued by an insolvency practitioner appointed by each company unless dispensed with under section 247.

Approval of constitution of transferee company formed from a merger

246. A transferor company shall approve by ordinary resolution, the constitution or draft constitution of a transferee company that is a new company.

Exemption from publication of reports and other requirements of law

247. (1) The Court may, on the application of a merging company, a member of a merging company or a creditor of a merging company, exempt that merging company from the publication of the report, issued by an insolvency practitioner pursuant to paragraph *(g)* of section 245, or any other requirement under this Act if the Court considers it appropriate.

(2) Despite subsection (1), the requirement for a report issued by an insolvency practitioner may be dispensed with only if the merging companies agree in writing to the dispensation.

Certificate of merger

248. (1) The Registrar shall, within seven days from the date of receipt of the documents referred to under section 245.

(a) in the case of a merger by absorption, issue a certificate of merger; or

(b) in the case of a merger by formation of a new company,

(i) enter the particulars of the transferee company in the register; and

(ii) issue a certificate of merger together with a certificate of incorporation.

(2) Where a merger proposal specifies a date on which the merger is intended to become effective, and that date is the same as or later than the date on which the Registrar receives the documents, the certificate of merger and certificate of incorporation issued under subsection (1) shall be expressed to have effect on the date specified in the merger proposal.

Effect of certificate of merger

249. (1) A merger shall be effective on the date shown in the certificate of merger.

(2) Where the name of the transferee company is the same as one of the merging companies, the transferee company shall have the name specified in the merger proposal.

(3) Subject to subsections (4) and (5), the Registrar shall dissolve, without winding up, the merging companies other than the transferee company retained under subsection (2).

(4) The property, rights, powers, and privileges of each of the merging companies which have been dissolved under subsection (3) shall continue to be the property, rights, powers and privileges of the transferee company.

(5) The transferee company shall continue to be liable for the liabilities and obligations of each of the merging companies and a proceeding instituted by or against a transferor company shall be continued by or against the transferee company.

(6) A conviction, ruling, order, or judgment in favour of or against a transferor company may be enforced by or against the transferee company.

(7) A provision of the merger proposal that provides for the conversion of the shares or rights of members in the merging companies shall have effect in accordance with the tenor of the merger proposal.

Registers

250. (1) Subject to this section, where a merger becomes effective, the Registrar or any other person charged with the keeping of books or registers shall not be obliged, solely by reason of the merger becoming effective, to change the name of a transferor company to that of a transferee company in the books or registers or any other document kept by the Registrar or any other authorised institution.

(2) Subject to subsection (3), the presentation to the Registrar or any other person charged with the keeping of a book or register, of any instrument, whether or not comprising an instrument of transfer, by the transferee company

(a) executed or purporting to be executed by the transferee company;

(b) relating to any property held immediately before the merger by a transferor company; and

(c) stating that that property has become the property of the transferee company by virtue of this Part and producing the relevant certificate of merger issued under section 248,

shall, in the absence of evidence to the contrary, be sufficient evidence that the property has become the property of the transferee company.

(3) Despite any other enactment or the provisions of any instrument, where a security issued by a person or any rights or interests accrued in respect of a property of any person has, by virtue of this Part, become the property of a transferee company, that person shall,

(a) on presentation of a certificate signed by the chairperson and secretary on behalf of the directors of the transferee company, and

(b) on the authority of a resolution of the directors of the transferee company stating that that security or any such rights or interests have, by virtue of this Part, become the property of the transferee company,

register the transferee company as the holder of that security or as the person entitled to the rights or interests, as the case may be.

Powers of Court in respect of a merger proposal

251. (1) Where the Court is satisfied that giving effect to a merger proposal would unfairly prejudice a member or creditor of a transferor company or any other person to whom a transferor company owes an obligation, the Court may, on the application of that person, make an order

(a) directing that effect shall not be given to the proposal,

(b) modifying the proposal in a manner as may be specified in the order,

(c) directing the company or the directors of the company to reconsider the proposal or any part of it, and

(d) in relation to the proposal that the Court considers fit, at any time before the date on which the merger becomes effective.

(2) The Court may make an order under subsection (1) on the conditions that the Court considers appropriate.

Divisions

252. A reference in this Part to a company involved in a division, is to the transferor company and any existing transferee company.

Modification of sections 240 and 242 to 252 in relation to a company involved in a division

253. Section 240 and sections 242 to 252 shall apply to a company involved in a division with the necessary modifications unless otherwise stated in this Act.

Liability of transferee companies formed from a division

254. (1) Subject to this section, where a company is involved in a division, each transferee company is jointly and severally liable for any liability transferred to any other transferee company under the scheme to the extent that the other company has defaulted in satisfying that liability.

(2) If a majority in number representing seventy-five percent in value of the creditors or any class of creditors of the transferor company, present and voting either in person or by proxy, at a meeting summoned for the purposes of agreeing to the scheme, agrees to the scheme, subsection (1) does not apply in relation to the liabilities owed to the creditors or that class of creditors.

(3) A transferee company is not liable under this section for an amount greater than the net value transferred to that transferee company under the scheme.

(4) For the purposes of this section, "net value transferred" means the value at the time of the transfer of the property transferred to a transferee company under the scheme less the amount at the date of transfer of the liabilities.

Powers of Court in facilitating arrangements, compromises, mergers and divisions

255. (1) Despite any provision of this Act or the constitution of a company, the Court may,

(a) on the application of a company, or

(b) with leave of

(i) the Court,

(ii) a member or creditor of a company,

order that an arrangement, compromise, merger or division shall be binding on the company, and on any other person or classes of persons as the

Court may specify and any such order may be made on the terms and conditions that the Court considers appropriate.

(2) Before making an order under subsection (1), the Court may,

(a) on the application of

(i) the company,

(ii) a member or creditor of the company,

(iii) any other person who appears to the Court to be interested in the matter, or

(b) on its own motion,

make any one or more of the orders specified in subsection (3).

(3) An order referred to under subsection (2) consist of

(a) an order that notice of the application, together with any information relating to the order as the Court considers appropriate, is given

(i) in a form and manner, and

(ii) to the persons or classes of persons,

that the Court may specify;

(b) an order directing the holding of a general meeting of

(i) the members of a company,

(ii) any class of members of a company determined by the Court,

(iii) the creditors of a company, and

(iv) any class of creditors of a company determined by the Court,

to consider and approve in the manner as the Court may specify, the proposed arrangement, compromise, merger or division;

(c) an order requiring that a report on the proposed arrangement, compromise, merger or division is,

(i) prepared by a person specified by the Court; and

(ii) if the Court considers it appropriate, furnished to the members or any class of members or creditors or any class of creditors of a company or any other person who appears to the Court to be interested;

(d) an order as to the payment of the costs incurred in the preparation of any such report; and

(e) an order specifying the person who is entitled to appear and be heard on the application to approve the arrangement, compromise, merger or division.

(4) An order made under this section shall have effect on the date specified in that order.

(5) The directors of the company shall, within fourteen days of an order made by the Court, ensure that a copy of the order is filed with the Registrar for registration.

Additional orders of Court

256. (1) The Court may, for the purpose of giving effect to any arrangement, compromise, merger or division under sections 253 to 257 or by any subsequent order, provide for, and prescribe the terms and conditions relating to

(a) the vesting of real property, personal property or assets;
(b) the transfer of rights, powers, interests, liabilities, contracts, or engagements;
(c) the issue of shares, securities, or policies of any kind;
(d) the continuation of legal proceedings;
(e) the dissolution, without winding up, of a transferor company;
(f) the provisions to be made for persons who
(i) voted against the arrangement, compromise, merger or division at any meeting called in accordance with an order made under this Act; or
(ii) appeared before the Court in opposition to the application to approve the arrangement, compromise, merger or division; and
(g) any other matters that are necessary or desirable to give effect to the arrangement, compromise, merger or division.

(2) The directors of a company concerned shall, within fourteen days of an order being made by the Court, ensure that a copy of the order is filed with the Registrar for registration.

(3) Where a company defaults in complying with subsection (2), the company and every officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of ten penalty units for each day during which the default continues.

Interpretation

257. Under the sections relating to "arrangements, compromises, mergers and divisions", unless the context otherwise requires,

'liabilities' includes duties; and

'property' includes rights and powers of every description.

Information on arrangements and compromises,mergers or divisions

258. (1) Where notice of a resolution to approve an arrangement or compromise under section 239 or any other provision relating to arrangements, compromises, mergers or divisions is sent to members or creditors of a company, there shall be sent also a statement explaining the effect

(a) of the arrangement or compromise and in particular stating the material interests of the directors of the company, whether as directors or members or creditors of the company or otherwise, and

(b) on those interests of the arrangement or compromise in so far as it is different from the effect on the like interests of other persons.

(2) In a notice of the resolution which is given by advertisement, there shall be included the statement referred to in subsection (1) or a notification of the place at which, and the manner in which members or creditors to whom the notice is addressed may obtain copies of the statement.

(3) The member or creditor shall, on making an application in the manner indicated in the notice, be furnished by the company, free of charge, with a copy of the statement.

(4) Where the arrangement or compromise affects the rights of debenture holders of the company, the statement shall give the like explanation to the trustees of a deed for securing the debentures as it is required to be given to the directors of the company.

(5) Where a company defaults in complying with a requirement of this section, the company and each officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of seven hundred and fifty penalty units.

(6) For the purposes of subsection (5)

(a) a liquidator of the company or a trustee of a deed securing

debentures of the company is an officer of the company;

(b) a person is not liable under that subsection if that person shows that the default was due to the refusal of any other person to supply the necessary particulars as to those material interests; and

(c) that subsection does not derogate from the power of the Court under section 218 or 219 to declare ineffective a special resolution passed pursuant to section 238.

(7) A director of the company and of a trustee for debenture holders of the company, shall give notice to the company of the matters relating to that director or trustee as may be necessary for the purposes of this section, and a director or trustee who defaults in complying with this subsection is liable to pay to the Registrar, an administrative penalty of one hundred and fifty penalty units.

Acquiring shares of minority on acquisition of subsidiary company

259. (1) Where a body corporate, whether a company within the meaning of this Act or not, in this section referred to as the "transferee company", has made an offer to the holders of shares in a company, in this section referred to as the "transferor company", if the conditions specified in subsection (2) are duly fulfilled, the transferee company may compulsorily acquire the shares in the transferor company in the manner specified in this section.

(2) This section applies if,

(a) the offer by the transferee company is made to the holders of the whole of the shares in the transferor company, other than those already held by the transferee company or any of the associated companies of the transferee company or by nominees for the transferee company or any of the associated companies of the transferee company;

(b) the consideration for the acquisition is

(i) the allotment of shares in the transferee company, or

(ii) at the option of the holders, a payment of cash;

(c) the same terms are offered to the holders of the shares to whom the offer is made or, where there are different classes of shares, to the holders of shares of the same class;

(d) within four months after the making of the offer, it has been accepted in respect of not less than nine-tenths of the

whole of the shares and of not less than nine-tenths of the shares of each class, other than shares already held by the transferee company or any of the associated companies of the transferee company or by nominees of the transferee company or any of the associated companies of the transferee company and the holders of those shares are not less than three-fourths in number of the holders of those shares and of each class of those shares.

(3) Where the conditions specified in subsection (2) are fulfilled, the transferee company may, within two months after the conditions are fulfilled, give notice in the prescribed form to a member who has not accepted the offer in respect of the shares of that member that the transferee company desires to acquire those shares.

(4) When the notice under subsection (3) is given, the transferee company is entitled and bound to acquire those shares on the terms of the offer, unless on an application made by the member in accordance with subsection (5), the Court orders otherwise.

(5) At any time within a period of two months from the service of the notice referred to in subsection (3), a member to whom notice has been given in accordance with subsection (3), may apply to the Court and the Court may order that the transferee company shall not be entitled to acquire the share of that holder or that the transferee company shall be bound to acquire those shares on any other terms that the Court may order.

(6) On an application to the Court under subsection (5) the Court, before making an order, may on the recommendation of the Registrar appoint one or more reporters to investigate the fairness of the offer and to report on the fairness to the Court.

(7) The remuneration of the reporters shall be fixed by the Registrar and the remuneration and the proper expenses of the investigation shall be borne by the transferee company or by the applicant or both as the Court shall order.

(8) Where the Court makes an order under subsection (5), that the transferee company shall be bound to acquire the shares concerned on terms different from those of the original offer, the transferee company shall give notice in the prescribed form, of the amended terms, to the other holders of shares of the same class and to the former holders of shares of the same class who accepted the original offer, unless the Court otherwise orders.

(9) At any time within two months of the giving of the notice,

(a) a member is entitled to require the transferee company to acquire the shares on the same terms as those ordered by the Court, and

(b) a former member is entitled to require the transferee company to pay or transfer to that former member the additional consideration to which the former member would have been entitled had the shares been acquired on the terms ordered by the Court.

(10) Where notice is given by the transferee company under subsection (3) and the Court has not, on an application by the member under subsection (5), ordered to the contrary, the transferee company shall,

(a) on the expiration of two months from the date on which notice is given, or

(b) if an application by the member under subsection (5) is then pending after that application has been disposed of,

transmit a copy of the notice to the transferor company together with an instrument of transfer executed on behalf of the member by a person appointed by the transferee company and on its own behalf by the transferee company, and transfer to the transferor company the shares, or if the member has exercised the cash option, pay to the transferor company the cash, representing the consideration payable by the transferee company for the shares which by virtue of this section the transferee company is entitled to acquire.

(11) After receipt of payment under subsection (10), the transferor company shall register the transferee company as the holder of those shares.

(12) The sums of money received by the transferor company under subsection (10) shall be paid into a separate bank account and the sums of money and the shares so received shall be held by the transferor company in trust for the several persons entitled to the shares in respect of which the sums of money and shares were received.

Rights of minority on acquisition of subsidiary company

260. (1) Where, as a result of an offer to the members of a company or any member, shares in that company are transferred to another

body corporate, whether a company within the meaning of this Act or in this section called the transferee company, or a nominee of the transferee company and those shares, together with any other shares in the first mentioned company held by the company or a nominee for the transferee company, or by a nominee for, any of the associated companies at the date of the transfer, comprise or include three-fourths of the shares in the first named company or any class of those shares,

(a) the transferee company shall within one month from the date of the transfer, unless on a previous transfer has already complied with this requirement, give notice of that fact in the prescribed form to the holders of the remaining shares or of the remaining shares of the class; and

(b) any of those holders may within three months from the giving of the notice to the holder require the transferee company to acquire all or any of the shares of that holder.

(2) Where a member under subsection (1) requires the transferee company to acquire shares, the transferee company is entitled and bound to acquire those shares on the terms of the offer or on any other terms that may be agreed or as the Court, on the application of the transferee company or the member, may order.

(3) On an application to the Court under subsection (2), the Court may on the recommendation of the Registrar appoint one or more reporters to investigate the fairness of the offer and in that event subsections (6) and (7) of section 259 shall apply.

Part U: Receivers and Managers

Eligibility for appointment as receiver or manager

261. (1) The Registrar may appoint a receiver or manager.

(2) The Registrar shall, in appointing a receiver or a manager, take into account the following:

(a) professional competence;

(b) relevant experience in insolvency proceedings; and

(c) ability to manage the case load and ensure quality and timely execution.

(3) The following persons are not eligible to be appointed or to act as receivers or managers of a property or an undertaking of a company:

(a) an infant;

(b) a person found by a court of competent jurisdiction to be of unsound mind;

(c) a body corporate other than the office of the Registrar;

(d) a person in respect of whom an order has been made under section 177, for as long as the order remains in force unless leave to act as receiver or manager of the property or undertaking of the company concerned has been granted by the Court in accordance with that section; or

(e) an undischarged bankrupt, unless that bankrupt person has been granted leave to act as receiver or manager of the property or undertaking of the company concerned by the Court by which that person was adjudged bankrupt.

(4) A person is not eligible to be appointed or to act as a receiver or manager unless that person has in the opinion of the Registrar the requisite expertise, skill, and experience to manage and administer a company in receivership.

(5) A director or an auditor of a company is not eligible for appointment as a receiver or manager of a property or an undertaking of that company.

(6) An appointment made in contravention of this section is void and if a person named in subsection (4) or (5) or in paragraphs *(a)*, *(c)*, *(d)* or *(e)* of subsection (3) acts as a receiver or manager, that person commits an offence and is liable on summary conviction, to a fine of not less than three hundred and twenty-five penalty units and not more than seven hundred and fifty penalty units or, in the case of an individual, to a fine of not less than three hundred and twenty-five penalty units and not more than seven hundred and fifty penalty units or to a term of imprisonment of not less than three months and not more than six months or to both the fine and imprisonment.

Power to appoint Official Trustee

262. Where an application is made to the Court to appoint a receiver or manager on behalf of secured creditors or debenture holders of a company which is being wound up under the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180), the Official Trustee may be appointed.

Duties of receivers

263. (1) A receiver shall exercise the powers of that receiver in good faith and for proper purpose.

(2) In the exercise of the powers conferred under subsection (1), and section 266, the receiver or manager in the case of a receiver or manager appointed out of Court may give special, but not exclusive, consideration to the interests of those on whose behalf the appointment is made.

(3) Pursuant to subsections (1) and (2), a receiver shall exercise the powers of that receiver with reasonable regard to the interests of

(a) secured creditors,

(b) the company,

(c) any person claiming through the company, an interest in the property in receivership,

(d) unsecured creditors of the company, and

(e) any surety that may be called on to fulfil obligations of the company.

(4) A receiver that exercises a power of sale of property in receivership shall obtain the best price reasonably obtainable as at the time of sale.

(5) Where a receiver appointed out of Court acts or refrains from acting in accordance with any directions given by the person in whose interests that receiver was appointed, the receiver

(a) is not in breach of the duty referred to in subsection (3), but

(b) is still liable for any breach of the duty referred to in subsection (1).

(6) A receiver shall keep money relating to the property in receivership separate from other moneys received in the course of, but not relating to, the receivership and from other moneys held by or under the control of the receiver.

(7) A receiver shall at all times keep accounting records that correctly record and explain the receipts, expenditure and other transactions relating to the property in receivership.

(8) A receiver shall retain accounting records for at least six years after the receivership is determined.

Duties of managers

264. A person appointed manager of the whole or a part of the undertaking of a company shall manage the undertaking with a view to the beneficial realisation of the security of those on whose behalf the appointment is made.

Absence of defence or immunity

265. Despite a provision of any enactment, rule of law or any provision contained in the deed or agreement by or under which a receiver is appointed

(a) it is not a defence to proceedings against a receiver for a breach of duty in connection with the sale of property that, the receiver was acting as an agent of the company or under a power of attorney from the company; and

(b) a receiver is not entitled to compensation or indemnity from the property in receivership or the company in respect of any liability incurred by the receiver arising from a breach of the duty in connection with the sale of property.

Powers of receivers and managers

266. (1) A person appointed receiver of a property of a company shall, subject to the rights of any prior incumbrances

(a) take possession of and protect the property,

(b) receive the rents and profits,

(c) discharge the outgoings in respect of the property, and

(d) realise the security of those on whose behalf that person is appointed,

but unless also appointed manager, that person shall not carry on a business or an undertaking.

(2) From the date of appointment of a receiver or manager, the powers of the directors or liquidators in the voluntary liquidation of a member to deal with the property or undertaking over which the receiver or manager is appointed shall cease until the receiver or manager is discharged.

(3) Where, on the appointment of a receiver or manager, the company is being wound up under the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180), or the property concerned is in the hands of any other officer of the Court, the liquidator or officer is not bound to relinquish control of the property to the receiver or manager except under an order of the Court.

Receivers and managers appointed by Court

267. (1) A receiver or manager of a property or an undertaking of a company appointed by the Court is, for the purposes of this Act, an officer of the Court and not of the company and shall act in accordance with the directions and instructions of the Court.

(2) A person appointed manager of the whole or a part of the undertaking of a company shall manage the undertaking with a view to the beneficial realisation of the security of those on whose behalf the appointment is made.

Receivers and managers appointed out of Court

268. (1) A receiver or manager of a property or an undertaking of a company appointed out of Court is, for the purposes of this Act and subject to section 269, an agent of the person or persons on whose behalf the appointment is made.

(2) A receiver or manager who is appointed manager for the whole or a part of the undertaking of a company is, for the purposes of this Act, an officer of that company and stands in a fiduciary relationship to the company, and section 190 shall apply to the manager as if the manager were a director of the company.

(3) The receiver or manager may apply to the Court for directions in relation to a matter arising in connection with the performance of functions under this section; and on that application the Court may give the directions, or make an order declaring the rights of persons before the Court or otherwise, that the Court considers fit.

(4) The Court may, on the application of the company or a liquidator of the company, by order, fix the amount to be paid by way of remuneration to the receiver or manager; and may on an application made by the company or liquidator or by the receiver or manager, vary or amend the order.

(5) The power of the Court under subsection (4) shall, where a previous order has not been made with respect to that power under that subsection,

(a) extend to fixing the remuneration for a period before the making of the order or the application for the order;

(b) be exercisable although the receiver or manager has died or ceased to act before the making of the order or the application for the order; and

(c) extend to requiring the receiver or manager or the personal representative of the receiver or manager to account for the excess or that part of the excess that may be specified in the order where the receiver or manager has been paid or has retained for the remuneration payable to the receiver or manager for a period before the making of the order an amount of money in excess of that so fixed for that period.

(6) The power conferred by paragraph *(c)* of subsection (5) shall not be exercised regarding a period before the making of the application for the order unless, in the opinion of the Court, there are special circumstances making it proper for the power to be so exercised.

Liabilities of receivers and managers on contracts

269. (1) A receiver or manager of a property or an undertaking of a company is personally liable on a contract entered into by the receiver or manager except as the contract otherwise expressly provides.

(2) As regards contracts entered into by the receiver or manager in the proper performance of the functions of office, the receiver or manager, subject to the rights of a prior incumbrance, is entitled to an indemnity in respect of liability on those contracts out of the property over which the appointment was made to act as receiver or manager.

(3) A receiver or manager appointed out of Court is entitled, as regards contracts entered into by the receiver or manager with the express or implied authority of those making the appointment, to an indemnity in respect of liability on those contracts from those making the appointment to the extent to which the receiver or manager is unable to recover in accordance with subsection (2).

Notification that receiver or manager has been appointed

270. (1) Where a receiver or manager of a property or an undertaking of a company is appointed, notice shall be given to the Registrar in accordance with section 119 and any invoice, order or business letter issued by or on behalf of the company or the receiver or manager or the liquidator of the company, which is a document on or in which the name of the company appears, shall contain a statement that a receiver or manager has been appointed.

(2) Where there is a default in complying with the requirements of subsection (1) relating to invoices, orders or business letters, the company and any officer, liquidator, receiver or manager of the company that is in default commits an offence and is liable on summary conviction to a fine of not less than five hundred penalty units and not more than one thousand penalty units.

Accounts where manager appointed to enforce a floating charge

271. (1) Where a manager is appointed of the whole or substantially the whole of the undertaking of a company on behalf of the holders of debentures secured by a floating charge, the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) shall apply as regards the submission of a statement of affairs and of periodical accounts by the manager as if the company had been ordered to be wound up under that Act and as if the manager had been appointed liquidator.

(2) A person who defaults in complying with the requirements of subsection (1) commits an offence and is liable on summary conviction to a fine of not less than ten penalty units and not more than twenty-five penalty units for each day during which the default continues.

Delivery to Registrar of accounts of receivers

272. (1) Except where section 271 applies, a receiver or manager of a property of a company shall,

(a) within one month, or a longer period that the Registrar may allow, after the expiration of the period of twelve months from the date of the appointment and of every subsequent period of twelve months until the receiver or manager ceases to act, deliver to the Registrar for registration an abstract in the prescribed form showing receipts and payments of the receiver or manager during that period of twelve months; or

(b) within one month, or a longer period that the Registrar may allow, after the receiver or manager ceases to act as receiver or manager, deliver to the Registrar for registration an abstract in the prescribed form showing receipts and payments of the receiver or manager during the period from the end of the twelve months to which the last abstract relates, and the aggregate of those receipts and payments during the whole period of the appointment.

(2) A receiver or manager who defaults in complying with the requirements of subsection (1) commits an offence and is liable on summary conviction to a fine of not more than twenty-five penalty units for each day during which the default continues.

Enforcement of duties of receivers

273. (1) Where a receiver or manager of a property or an undertaking of a company,

(a) having defaulted in filing, delivering or making any return, account, or other document or in giving a notice which the receiver or manager is by a provision of this Act required to file, deliver, make or give, fails to make good the default within twenty-eight days after the service on the receiver or manager, of a notice by the company, member, creditor, liquidator of the company or Registrar requiring the receiver or manager to make good the default, or

(b) having been appointed out of Court under the powers contained in an instrument, has, after being required at any time by the liquidator of the company so to do, failed to render proper accounts of the receipts and payments of the receiver or manager and to vouch the same and to pay over to the liquidator the amount properly payable to the receiver or manager,

the Court may, on an application made for the purpose, make an order directing the receiver or manager to make good the default within the period specified in the order and may provide that, the costs of, and incidental to the application, shall be borne by the receiver or manager.

(2) An application for the purposes of subsection (1) may, in the case of a default mentioned in paragraph *(a)* of that subsection, be made by the company or a member, creditor or liquidator of the company or by the Registrar, and in the case of a default mentioned in paragraph *(b)* of that subsection, be made by the liquidator.

Part V: Winding up

Modes of winding up

274. (1) The winding up of a company may be

(a) by an official liquidation in accordance with the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180), or

(b) by a private liquidation in accordance with this Part.

(2) The company shall, from the commencement of the winding up cease to carry on business except so far as may be required for the beneficial winding up of the company, but the corporate state and corporate powers of the company shall continue until the company is dissolved.

(3) Where a company is being wound up by way of a private liquidation, any invoice, order or business letter issued by or on behalf of the company or a liquidator of the company or a receiver or manager of a property of the company, which is a document in or on which the name of the company appears, shall contain a statement that the company is being wound up under this Part.

(4) Where default is made in complying with subsection (3), the company and an officer of the company and a liquidator, receiver or manager that is in default commits an offence and is liable on summary conviction to a fine of not less than fifty penalty units and not more than one hundred penalty units.

Affidavit of solvency

275. (1) Where it is proposed to wind up a company by way of a private liquidation, the directors of the company or, in the case of a company having more than two directors, the majority of the directors shall, at a meeting of the directors, make an affidavit to the effect that they have made a full enquiry into the affairs of the company, and that, having done so, they have formed the opinion that the company will be able to pay its debts and liabilities in full within a period of not more than twelve months from the commencement of the winding up that may be specified in the affidavit.

(2) An affidavit made under subsection (1) does not have effect for the purposes of this Act unless,

(a) it is made within five weeks immediately preceding the date of the passage of the resolution for the winding up of the company by way of private liquidation and is delivered to the Registrar for registration on or before that date; and

(b) it embodies a statement of the assets and liabilities of the company at the latest practicable date before the making of the affidavit.

(3) A director of a company who makes an affidavit under this section without having reasonable grounds for the opinion that the company will be able to pay its debts and liabilities in full within the period specified in the affidavit, commits an offence and is liable on summary conviction to a fine of not less than three hundred and twenty-five penalty units and not more than seven hundred and fifty penalty units or to a term of imprisonment of not less than six months and not more than one year or to both the imprisonment and the fine.

(4) Where the company is wound up in pursuance of the resolution for the winding up of the company by way of private liquidation passed within the period of five weeks after the making of the affidavit, but the debts and liabilities of the company are not paid or provided for in full within the period stated in the affidavit, it shall be presumed, until the contrary is proven, that the director did not have reasonable ground for the opinion stated in the affidavit.

Procedure on resolution for liquidation

276. (1) A company may be wound up by way of private liquidation if,

(a) the company resolves by special resolution that it shall be wound up by way of private liquidation, and

(b) before the date of the resolution, an affidavit declaring that the company is solvent is made in accordance with section 275.

(2) The private liquidation commences at the time of the passing of the resolution.

(3) Where a company passes a resolution for a private liquidation the company shall, within fourteen days after the passage of the resolution, send to the Registrar a copy of the resolution and the Registrar shall publish the resolution in the *Companies Bulletin*.

Statements and accounts of final financial year

277. (1) For the purposes of sections 127 to 143, the final financial year of a company in liquidation under this Part ends immediately before the date of the commencement of the winding up, and, subject to subsection (2), the provisions of those sections shall continue to apply to the preparation, auditing and despatch of the statements, accounts and report referred to in those sections.

(2) For the purposes of subsection (1),

(a) a copy of the documents referred to in section 128 shall be sent to the liquidator appointed in accordance with section 278 as well as to every member and debenture holder of the company in accordance with section 128; and

(b) a copy of those documents shall be sent to the persons referred to in paragraph *(a)* within three months after the date of commencement of the winding up.

Resolution for appointment and removal of liquidator

278. (1) The resolution for the private liquidation of a company shall include the appointment as liquidator of a person named in the resolution and the resolution is not valid for the purposes of this Part unless the person named has previously consented in writing to the appointment.

(2) Where a vacancy occurs by death, resignation or otherwise in the office of liquidator, the company in general meeting may fill the vacancy and for that purpose a general meeting may be convened by a member or if there is more than one liquidator, by the continuing liquidators.

(3) The Court may, on the application of a member of the company or of the Registrar, remove a liquidator and appoint another in the place of the removed liquidator or appoint a liquidator if, for a sufficient cause, a liquidator is not acting.

(4) The company or the Court, shall give notice to the Registrar of the removal or appointment of a liquidator, and the Registrar shall register the notice and publish the notice in the *Companies Bulletin*.

Remuneration of liquidator

279. For the purposes of a private liquidation, the company shall, in general meeting, fix the remuneration to be paid to a liquidator appointed for the purpose of liquidation and where the appointment of a liquidator is made by the Court the remuneration of the liquidator shall be fixed by the Court.

Disqualification of liquidator

280. (1) The following persons are not eligible to be appointed or to act as liquidators of a company under this Act:

(a) an infant;

(b) a person found by a court of competent jurisdiction to be a person of an unsound mind;

(c) a body corporate;
(d) a person convicted, whether in Ghana or elsewhere, of an offence involving fraud or dishonesty, or of an offence in connection with the promotion, formation or management of a body corporate; and
(e) an undischarged bankrupt or any other person subject to insolvency proceedings under the Insolvency Act, 2006 (Act 708).

(2) Despite subsection (1), a person convicted of an offence under paragraph *(d)* of subsection (1) is eligible to be appointed as a liquidator or to act as a liquidator of a company if ten years or more have passed since the end of the sentence.

(3) A director of a company shall not be eligible for appointment as a liquidator of that company.

(4) An auditor of a company shall not be eligible to be appointed as a liquidator in a private liquidation of that company.

(5) An appointment made in contravention of this section is void.

(6) Where a person named in paragraph *(a)*, *(c)*, *(d)*, or *(e)* of subsection (1) or in subsection (2) acts as liquidator of a company, that person commits an offence and is liable on summary conviction to a fine of not less than three hundred and twenty-five penalty units and not more than seven hundred and fifty penalty units or in the case of an individual to a fine of not less than three hundred and twenty-five penalty units and not more than seven hundred and fifty penalty units or to a term of imprisonment of not less than two years and not more than five years or to both the fine and the imprisonment.

Status of liquidator

281. A liquidator appointed for the purposes of a private liquidation stands in a fiduciary relationship to the company as if that liquidator were a director of the company and accordingly sections 190 to 217 shall, with the necessary modifications apply.

Cessation of powers of directors

282. On the appointment of a liquidator for the purposes of a private liquidation, the powers of the board of directors shall vest in the liquidator and the powers and authority of every director shall cease, except in so far as

(a) the company in general meeting or the liquidator sanctions their continuance; or
(b) it is necessary to enable the directors to prepare statements and accounts of the company.

Powers of liquidator

283. (1) A liquidator in a private liquidation may exercise the power of the liquidator in an official winding up under the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) and any other relevant enactment.

(2) Where several liquidators are appointed, a power given by this Act may be exercised by any one or more of the liquidators as may be determined at the time of their appointment, or, in default of that determination, by a number not less than two.

(3) The Court shall have the same powers in relation to the liquidator in a private liquidation as are by the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) conferred on the Court in relation to official liquidation.

(4) The liquidator may apply to the Court for directions in relation to a matter arising in connection with the performance of the functions of office or to exercise all or any of the powers which the Court might exercise if the company were being wound up under the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) and on that application, the Court may give appropriate directions or make an appropriate order.

Books and accounts during private liquidation

284. (1) The liquidator in a private liquidation shall keep
(a) proper records and accounting records with respect to the
(i) acts and dealings of the liquidator,
(ii) conduct of the winding up, and
(iii) receipts and payments by the liquidator; and
(b) a distinct account of the trading so long as the liquidator carries on the business of the company.

(2) In the event of the winding up continuing for more than a year, the liquidator shall
(a) summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within three months of the end of the year or a longer period that the Registrar may allow, and

(b) lay before the meeting an account of acts and dealings of the liquidator and of the conduct of the winding up during the preceding year and of the trading during the time that the business of the company has been carried on, and within twenty-eight days after the meeting, shall send a copy of the accounts to the Registrar for registration.

(3) When the affairs of the company are fully wound up, the liquidator shall

(a) prepare and deliver to every member of the company final accounts of the winding up showing how the winding up has been conducted, the result of the trading during the time that the business of the company has been carried on, and how the property of the company has been disposed of, and

(b) convene a general meeting of the company for the purpose of laying before the company the accounts and of giving an explanation of the accounts.

(4) Within twenty-eight days after the meeting referred to in subsection (3), the liquidator shall deliver to the Registrar for registration, copies of the accounts laid before the meeting and a statement of the holding of the meeting and of the date of the meeting.

(5) Where a quorum was not present at the meeting, the liquidator shall, in place of the statement mentioned, deliver a statement that the meeting was duly convened and that a quorum was not present at the meeting.

(6) The records, books and accounts shall be in the form that the Registrar may prescribe and shall give a true and fair view of the matters recorded in them and of the administration of the affairs of the company and of the winding up.

(7) The accounts referred to in subsections (2) and (3) shall be audited by the auditors of the company before being laid before the company in general meeting in accordance with those subsections, and the auditors shall state in a report annexed to the accounts whether, in their opinion and to the best of their information,

(a) they have obtained the information and explanations necessary for the purpose of their audit;

(b) proper books and records have been maintained by the liquidator in accordance with this Act; and

(c) the accounts are in accordance with the books and records and give

(i) the information required by this Act in the manner required by this Act, and

(ii) a true and fair view of the matters stated in the accounts.

(8) For the purposes of this section, the audit and report of the auditors shall not be required if,

(a) the liquidator, or one of the liquidators, if more than one, is duly qualified under section 138 for appointment as auditor of a public company; and

(b) on or after the appointment as liquidator, the company resolved by special resolution that the accounts should not be required to be audited in accordance with subsection (7).

(9) Meetings required to be convened under this section shall be convened and held, so far as may be, in accordance with the provisions of this Act and the constitution of a company relating to general meetings.

(10) The liquidator shall preserve the books and papers of the company and of the liquidator for a period of five years from the dissolution of the company, but after that period, may destroy those books and papers unless the Registrar otherwise directs, in which event, the liquidator shall not destroy them until the Registrar consents in writing.

(11) A liquidator who fails to comply with a provision of this section commits an offence and is liable on summary conviction to a fine of not less than one hundred and twenty-five penalty units and not more than two hundred and fifty penalty units.

(12) For the purposes of this section, the delivery of a document shall be considered as effective if delivered in the

(a) hard copy form; or

(b) electronic version, supported by evidence of same.

Private liquidation account

285. (1) The liquidator shall open the private liquidation account, with a bank nominated by the company in general meeting for the purposes of the private liquidation.

(2) The receipts and payments by or on behalf of the liquidator in respect of the company shall be credited or debited, to the private liquidation account.

(3) Where, on the application of the company or any other person interested in the liquidation proceedings, it appears to the Court before the termination of the liquidation, that assets have been lost to the estate by reason of a default by the liquidator, the Court may order that the private liquidation account be credited with the sum of money that the Court considers just.

Duty of liquidator in case of insolvency

286. (1) Where in a private liquidation the liquidator is at any time of the opinion that the company may not be able to pay its debts in full within the period stated in the affidavit made under section 275, the liquidator shall forthwith give notice of that fact, together with a statement of the liabilities and assets of the company to the Registrar.

(2) The notice and statement shall be in the prescribed form.

(3) The Registrar, whether or not makes an order under section 5 of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180), shall register both the notice and the statement and cause a copy of the notice to be published in the *Companies Bulletin* and the liquidator shall proceed in the same manner, so far as the provisions are applicable, as a liquidation under an order of the Court pursuant to the Bodies Corporate (Official Liquidations) Act 1963 (Act 180).

(4) Where the liquidator fails to comply with this section, the liquidator is liable to pay to the Registrar, an administrative penalty of seven hundred and fifty penalty units.

Stay of proceedings

287. (1) At any time during the course of a private liquidation and before the dissolution of the company, the company in general meeting may, by special resolution, resolve that, subject to the confirmation of the Court, the liquidation proceedings shall be stayed.

(2) After the passing of the special resolution

(a) an application may be made to the Court by the liquidator or a member of the company; and

(b) the Court may, and subject to terms and conditions that the

Court deems fit, order that

(i) the liquidation be stayed,

(ii) the liquidator be discharged, and

(iii) the directors be permitted to resume the management of the company.

(3) At least twenty-eight days before the hearing of the application under subsection (2), written notice of the application shall be given by the applicant to the Registrar, to the directors of the company and to a liquidator of the company, and the Registrar shall publish the notice in the *Companies Bulletin*.

(4) The Registrar, a director, liquidator, member or creditor of the company is each entitled to appear on the hearing of the application and to call witnesses and give evidence.

(5) Where an order confirming the resolution is made by the Court, the company shall send an official copy of the order to the Registrar and the Registrar shall register the order and publish a copy in the *Companies Bulletin* and on that publication, the liquidation shall cease and the company shall continue to be a going concern subject to the terms or conditions of the order.

Dissolution and restoration of companies

288. (1) Where the Registrar is satisfied that the winding up of the company is complete, the Registrar shall strike the name of the company off the register and publish the record of the strike off in the *Companies Bulletin*.

(2) The company is dissolved as at the date of the publication of the notification in the *Companies Bulletin*.

(3) Where a company is dissolved, the Court may

(a) at any time within two years after the date of the dissolution, and

(b) upon an application made for the purpose by the Registrar or by the liquidator of the company or by a former officer, member, or creditor of the company or a person claiming through or under any of them,

make an order, on the terms that the Court considers fit, declaring the dissolution void and ordering the name of the company to be restored to the register.

(4) An official copy of an order made under subsection (3) shall be delivered to the Registrar for registration and the Registrar shall publish

the copy of the order in the *Companies Bulletin* and the name of the company shall be restored to the register.

(5) Where registration and publication under subsection (3) takes effect, the company shall be deemed to have continued in existence as if it had not been dissolved, and for the purposes of a period of limitation the period between dissolution and restoration shall not be counted.

(6) The Court may by the order give the directions and make the provisions that seem just for placing the company and any other person in the same position as nearly as may be as if the name of the company had never been struck off.

Dissolution without full winding up

289. (1) Where the Registrar, by reference to personal knowledge, or on information supplied by any officer, member or creditor of a company, has reasonable cause to believe that the company is not carrying on business or is not in operation, the Registrar may by written communication to the company enquire whether the company is carrying on business or is in operation.

(2) Where the Registrar does not receive an answer to the written communication, within two months of the communication, the Registrar may send to the company a second written communication referring to the first written communication, stating that an answer has not been received by the Registrar, and that if an answer is not received to the second written communication within two months from the date of the second written communication, a notice will be published in the *Companies Bulletin* with a view to striking the name of the company off the register.

(3) Where the Registrar receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within the specified time after sending the second written communication receive an answer to the second written communication, the Registrar may publish in the *Companies Bulletin* and send to the company by writ- ten communication a notice that at the expiration of three months from the date of that notice the name of the company shall, unless cause is shown to the contrary, be struck off the register and the company shall stand dissolved.

(4) Where a company is being wound up and the Registrar has reasonable cause to believe that a liquidator is acting but is not satisfied

that the winding up is complete, the Registrar may publish in the *Companies Bulletin* and send to the company and to the last known place of business of the person last known to have acted as liquidator, a notice as is provided in subsection (3).

(5) At or after the expiration of the time specified in the notice, the Registrar shall, unless cause is shown, strike the name of the company off the register and shall publish the notice of that fact in the *Companies Bulletin* and on that publication in the *Companies Bulletin* the company shall stand dissolved.

(6) For the purposes of subsection (5), the liability of every director or other officer and member of the company shall continue and may be enforced as if the company had not been dissolved; but the subsection does not affect the power of the Court to order the winding up of the company.

(7) When the name of a company is struck off the register under this section, at any time within twelve years after the publication in the *Companies Bulletin* in accordance with subsection (5), the Court may, on application made for this purpose by a liquidator or by a former officer, member or creditor of the company, or by a person claiming through or under any of them, make an order on the terms that the Court considers fit, declaring the dissolution void and ordering the name of the company to be restored to the register and subsection (3) shall apply as if the order was one made under this section.

(8) A notice or written communication to be sent under this section to a company

(a) may be addressed to

(i) the company at the registered office of the company,

(ii) a company at the last known place of business of the company if an office has not been registered, or

(iii) the care of an officer of the company, or

(b) may be sent to the person or each of the persons who subscribed to the incorporation of the company addressed to that person at the address mentioned in the subscription to the incorporation of the company or to the Registrar if there is no officer of the company whose name and address are known.

Service of documents by company

290. (1) A document may be served by a company on a member, debenture holder, or director of the company personally, or by sending it through the post in a prepaid letter addressed to that person at the address on the register of members, debenture holders, or directors, or if there is no registered address, at the address, supplied by that person to the company for the giving of notices, or by leaving it for that person with a person apparently over the age of sixteen years at that address.

(2) A document may be served by a company on the joint holders of a share or debenture of the company by serving it on the joint holder named first in the register of members or debenture holders in respect of the share or debenture.

(3) A document may be served by a company

(a) on the person on whom ownership of a share or debenture has devolved by reason of that person being a legal personal representative, receiver or trustee in bankruptcy of a member or debenture holder personally,

(b) by sending it through the post in a prepaid letter addressed to the person by

(i) name,

(ii) title of the representative of the deceased, receiver or trustee of the bankrupt or by any like description at the address supplied for the purpose by that person; or

(c) by leaving it for the person with a person apparently over the age of sixteen years at the address supplied for the pur- pose by the person.

(4) Where an address has not been supplied by the person for the purpose of service under this section, the document may be served in a manner which the document might have been served, if the death, receivership or bankruptcy had not occurred.

(5) Where a document is sent by post, service shall be deemed to

(a) be effected by properly addressing, pre-paying and posting a letter containing the document, and

(b) have been effected at the expiration of forty-eight hours after the letter containing the document is posted.

(6) The letter need not be despatched by registered post but where it is sent to an address outside Ghana it shall be despatched by air-mail.

(7) The service of a document on a shareholder or creditor includes sending the document by electronic mail, or facsimile machine and service shall be deemed to be effected by

(a) properly addressing, attaching and mailing the document to the electronic mail address in the case of communication by electronic mail, or

(b) sending the document to a telephone contact used by the person concerned for the transmission of documents by facsimile subject to section 292.

Service of documents on company

291. (1) A document may be served on a company by

(a) leaving it at, or sending it by post to, the registered office of the company, or the latest office registered by the Registrar as the registered address of the company,

(b) sending it to the official electronic mail address of the company registered with the Registrar, and

(c) sending it by facsimile machine to a telephone number used by that company for the transmission of documents by facsimile.

(2) A document to be served by post on a company shall be posted in the time that admits of its being delivered in due course of delivery within the time prescribed for the service of the document.

(3) In proving service it shall be sufficient to prove that a letter containing the document was properly addressed, prepaid and posted, whether or not by registered post.

(4) Where the registered office of a company cannot be traced, service on a director of the company or, if a director cannot be traced in the Republic, on a member of the company, shall be deemed good and effectual service on the company.

(5) Where it is proved that a document was in fact received by the director, managing director or Company Secretary, the document shall be deemed to have been served on the company despite the fact that service may not have been effected in accordance with subsections (1), (2), (3) or (4).

(6) This section does not derogate from a provision in this Act

relating to the service of a document, or from the power of a Court to direct how service shall be effected of a document relating to legal proceedings before that Court.

(7) Paragraphs *(b)* and *(c)* of subsection (1) shall not apply to the service of legal proceedings on a company except otherwise determined by the Rules of Court.

Additional provisions relating to service

292. (1) Subject to subsection (2), and for the purposes of sections 290 and 291

(a) where a document is to be served by delivery to a natural person, service shall be made

(i) by handing the document to the person; or

(ii) where the person refuses to accept the document, by bringing it to the attention of, and leaving it in a place accessible to, the person;

(b) a document sent by facsimile machine is deemed to have been received on the working day following the day on which it was sent; and

(c) in proving service of a document by facsimile machine, it is sufficient to prove that the document was properly transmitted by facsimile to the person concerned.

(2) Where a liquidator sends documents

(a) to the last known address of a shareholder or creditor who is a natural person; or

(b) to the address for service of a shareholder or creditor that is a company,

and the documents are returned unclaimed on two consecutive times, the liquidator need not send further documents to the shareholder or creditor but shall forthwith circulate a notice in a daily newspaper of national circulation requesting the shareholder or creditor to convey to the liquidator within ten working days after publication of the notice, the relevant new address.

(3) A document may be sent to a shareholder or creditor by electronic means of communication provided that

(a) the shareholder or creditor has consented in writing to that form of communication being used by the company or other person providing the communication; and

(b) the shareholder or creditor has provided an electronic address to which such communication may be sent.

(4) Any consent under subsection (3) may be revoked at any time on the provision of five days' notice in writing to the person sending the document.

(5) A document shall not be deemed to have been served or sent or delivered to a person where the person proves that, through no fault on the part of the person, the document was not received within the time specified.

Books and registers

293. (1) A register, minute book or accounting record required by this Act to be kept by a company may be kept by making entries in bound volumes, or by a system of mechanical, electronic or other recording.

(2) Where the register, minute book or accounting record is not kept by making entries in bound volumes, adequate precautions shall be taken for guarding against the risk of falsification that might arise from the method of recording and for facilitating discovery and retrieval.

(3) Where a system of recording is adopted, adequate arrangements shall be made for making the information in the recording available in an intelligible form to a person lawfully inspecting the register, minute book or accounting record.

(4) Where there is a default in complying with subsection (2) or (3), the company and an officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of two hundred and fifty penalty units.

Part X: Invitations to the Public

Control of public invitations

294. (1) A person shall not make an invitation to the public,

(a) to acquire or dispose of any shares or debentures of a company, or

(b) to deposit money with a company for a fixed period or payable at call, whether bearing or not bearing interest,

unless the company concerned is a public company and the appropriate provisions contained in Part A of Chapter Four are duly complied with.

(2) Subsection (1) does not render unlawful the sale of shares or debentures by or under the supervision of the Court.

(3) Where an invitation to the public is made in breach of subsection (1), the person who made the invitation and an officer of a body corporate who made the invitation each commits an offence and is liable on summary conviction

(a) in the case of a body corporate, to a fine of not less than five hundred penalty units and not more than one thousand penalty units, and

(b) in any other case to a fine of not less than five hundred penalty units and not more than one thousand penalty units or to a term of imprisonment of not less than one year and not more than two years or to both the fine and imprisonment.

(4) Where as a result of an invitation to the public in breach of subsection (1), a person acquires or disposes of shares or debentures or deposits money with a company, that person is entitled to rescind the transaction and in addition to or instead of rescinding, may recover compensation for a loss sustained by that person from a person who is liable, whether convicted or not, in respect of the breach.

(5) Where, in accordance with subsection (4), a person claims to rescind a transaction, that person shall do so with reasonable promptitude and is not entitled to rescind a transaction with the company or to recover compensation from the company unless that person takes steps to rescind before the commencement of the winding up of the company.

Meaning of "invitations to the public"

295. (1) For the purposes of this Act, an invitation is made to the public if an offer or invitation to make an offer is

(a) advertised or disseminated in the Republic by newspaper, broadcasting, cinematograph, electronic communication or any other means;

(b) made to or circulated among persons whether selected as members or debenture holders of the company concerned or as clients of the persons making or circulating the invitation or in any other manner;

(c) made to one or more persons on the terms that the person or persons to whom it is made may renounce or assign the

benefit of the invitation or of shares or debentures to be obtained under the invitation in favour of any other person; or

(d) made to one or more persons to acquire shares or debentures dealt in on a stock exchange or in respect of which the invitation states that application has been or will be made for permission to deal in those shares or debentures on a stock exchange subject to subsection (5).

(2) Subsection (1) does not require an invitation to be treated as made to the public if the invitation can properly be regarded in all the circumstances as being a domestic concern of the persons making and receiving it.

(3) For the purposes of subsection (1), an invitation made by or on behalf of a private company exclusively to the existing shareholders and debenture holders of the company, which is not greater in number than is prescribed by subsection (5) of section 7 and its existing employees is not an invitation to the public unless the invitation is of the type referred to in paragraph *(c)* or *(d)* of subsection (1).

(4) For the purposes of subsection (1), the issue of a form of application for shares or debentures or of a form to be completed on the deposit of money with a company is an invitation to acquire those shares or debentures or to deposit money.

(5) For the purposes of sections 329 to 342 the expression "invitation to the public" bears the meaning assigned to it in this section but an invitation made on behalf of an external or non-Ghanaian company, exclusively to its existing shareholders and debenture holders, which is not greater in number than is prescribed by subsection (5) of section 7, and its existing employees is not an invitation to the public unless the invitation is of the type referred to in paragraph *(c)* or *(d)* of subsection (1).

Offers for sale deemed to be made by company

296. (1) Where a company allots or agrees to allot any of the shares or debentures of the company to a person with a view to the public being invited to acquire any of those shares or debentures, for the purposes of this Act, an invitation so made is an invitation to the public made by the company as well as by the person actually making the invitation.

(2) A person who acquires any of the shares or debentures in response to the invitation under subsection (1) is an allottee from the company of those shares or debentures.

(3) For the purposes of subsection (1), where

(a) an invitation to the public is made in respect of shares or debentures within six months after the allotment or agreement to allot, or

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

it shall be assumed, unless the contrary is proven, that the allotment or agreement to allot was made by the company with a view to an invitation to the public being made in respect of those shares or debentures.

(4) This section applies to an invitation to the public made in respect of shares or debentures of external and non-Ghanaian companies.

CHAPTER THREE

ADDITIONAL PROVISIONS APPLICABLE TO PRIVATE COMPANIES ONLY

Default in complying with conditions constituting a private company

297. (1) Where a private company defaults in complying with a condition by virtue of its incorporation as required by section 7, sections 323 and 328 shall apply to the company as if the company were a public company.

(2) When the Court is satisfied that the failure to comply with a condition, specified in subsection (1), was accidental or due to inadvertence or to any other sufficient cause, or that on other grounds it is just and equitable to grant relief, the Court may, on the application of the company or an officer or a member of the company, and on the terms and conditions that the Court considers just and expedient, order that the company be relieved of the consequences of the default.

Documents to be annexed to the annual return of a private company

298. (1) With the annual return required by section 126, a private company shall send to the Registrar for registration,

(a) a certification that the company has not, since the date of the last return, or, in the case of the first return, since the date of incorporation of the company, issued an invitation to the public to acquire shares or debentures of the company or to deposit money with the company; and

(b) a certification that the number of members and debenture holders of the company does not exceed fifty or that an excess over fifty consists solely of persons who are genuinely in the employment of the company and persons, who, having been formerly genuinely in the employment, of the company were, while in that employment, and have continued after the determination of that employment to be, members or debenture holders of the company.

(2) In addition to complying with subsection (1), a private company shall send to the Registrar for registration,

(a) a copy of every statement of financial position and consolidated financial statements circulated to the members and debenture holders pursuant to section 128 during the period to which the return relates, and a copy of the report of the directors and of the report of the auditors accompanying those accounts; or

(b) a written statement by the auditors of the company that, to the best of the knowledge and belief of the auditors, the financial statements and reports referred to in section 128 have been sent to the members and debenture holders in accordance with that section; and

(c) a copy of the report so sent; and

(d) a certificate that to the best of the knowledge and belief of the persons signing the certificate, a body corporate is not or has not been at any time beneficially interested, otherwise than by way of security, in an issued share of the company, or that if a body corporate is or has been so interested, it is an exempted body corporate as defined in subsection (6).

(3) The certification required by paragraphs *(a)* and *(b)* of subsection (1) and paragraph *(b)* of subsection (2) shall be signed by a director and by the Company Secretary.

(4) The copies required by paragraph *(a)* of subsection (2) shall be certified by a director and by the Company Secretary to be true copies.

(5) The copy of the report of the auditors required by paragraph *(b)* of subsection (2) shall be certified by the auditors to be a true copy and the statement referred to in that paragraph shall be signed by the auditors.

(6) For the purposes of this section, a body corporate is an exempted body corporate if,

(a) it is not a public company;

(b) it has not at any time issued an invitation to the public to acquire any of its shares or debentures or to deposit money with the body corporate; and

(c) at all times since it became beneficially interested in any shares of the company,

(i) it has not had more than fifty members and debenture holders, not including persons who are genuinely in the employment of the body corporate and persons who, having been formerly genuinely in the employment of the company were, while in that employment, and continued after the determination of that employment to be, members or debenture holders of the company; and

(ii) another body corporate, other than an exempted body corporate, has not been beneficially interested, other than by way of security, in any issued shares of the body corporate.

Requisitioning extraordinary general meetings of a private company

299. (1) The directors of a private company, despite a provision in the constitution of that private company, shall duly convene an extraordinary general meeting of the company on the requisition of

(a) two or more members of the company or a single member holding not less than one-tenth of the shares of the company; or

(b) in the case of a company limited by guarantee, one-tenth of the total voting rights of the members of the company.

(2) The requisition shall state the nature of the business to be transacted at the meeting and shall be signed by the requisitionists and sent to or delivered at the registered office of the company.

(3) If the directors do not, within seven days from the date of receipt of the requisition at the registered office of the company, proceed duly to convene a meeting for a date not later than twenty-eight days after the receipt of the requisition, the requisitionists or any of them may themselves convene a meeting, but a meeting so convened shall be held within four months from that date.

(4) The reasonable expenses incurred by the requisitionists by reason of the failure of the directors to duly convene a meeting shall be repaid to the requisitionists by the company and the sum of money so repaid shall be retained by the company out of the fees or other remuneration of the directors who were in default.

(5) For the purposes of this section, the directors have not proceeded duly to convene a meeting if they do not, within seven days after the receipt of the requisition at the registered office, cause notices of the meeting, to transact the business specified in the requisition, to be given in accordance with paragraphs 1 to 3 of the Eighth Schedule.

Appointment and removal of directors of private companies

300. (1) The appointment and removal of directors of a private company may, subject to sections 171 to 176, be regulated by the registered constitution of the company.

(2) In the absence of a contrary provision in a registered constitution of the company, each of the existing directors shall continue to hold office until the director vacates office under section 175, or is removed under section 176.

(3) A company may at any time by ordinary resolution fill a vacancy in the number of directors and may at any time by ordinary resolution increase the number of directors, but the total number of directors shall not exceed the maximum prescribed by the registered constitution of that company if it has one.

Unanimous agreement by shareholders

301. (1) Where all shareholders of a private company agree to or concur in any action which has been taken or is to be taken by the company

(a) the taking of that action is deemed to be validly authorised

by the company despite any provision in the registered constitution of the company; and

(b) the provisions in any of the constitutions referred to in the Second, Third and Fourth Schedules shall not apply in relation to that action.

(2) Without limiting the matters which may be agreed to or concurred in under subsection (1), that subsection shall apply where all the shareholders of a private company agree to or concur in

(a) the issue of shares by the company;

(b) the making of a distribution by the company;

(c) the repurchase or redemption of shares in the company;

(d) the giving of financial assistance by a company for the purpose of, or in connection with, the purchase of shares in the company;

(e) the payment of remuneration to a director, or the granting of a loan to a director or a member or the conferral of any other benefit on a director or member;

(f) the making of a contract between an interested director or a member and the company;

(g) the entry into a major transaction; or

(h) the ratification after the event of any action which could have been authorised under this section.

Conversion of private company to public company

302. (1) A private company shall be converted into a public company

(a) if the company alters its capacity to operate as a private company, and

(b) where the company alters its registered constitution in a manner that is appropriate to a public company and not required in order to constitute a private company.

(2) Within twenty-eight days after the date of the special resolution to alter its capacity to operate as a private company or alter the registered constitution, the company shall deliver to the Registrar for registration a copy of the resolution in accordance with section 165.

(3) The Registrar shall publish notice of the conversion of the company in the *Companies Bulletin*.

(4) Where there is a default in complying with subsection (1) or (2), the company and an officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of five hundred penalty units.

CHAPTER FOUR

ADDITIONAL PROVISIONS APPLICABLE TO PUBLIC COMPANIES ONLY

Part A: Prospectuses and Statements in lieu of Prospectus

Statement in lieu of prospectus

303. (1) A public company shall, within twenty-eight days after incorporation, or after its conversion from a private company in accordance with section **302**, deliver to the Registrar for registration a statement in lieu of prospectus, signed by every person who is named in the statement as a director or a proposed director of the company or by the agent of that person authorised in writing, in the form and containing the particulars set out in Part One of the Ninth Schedule and, in the cases mentioned in Part Two of that Schedule, accompanied by the financial statements and reports specified in the Schedule.

(2) A copy of the statement in lieu of prospectus shall be delivered to the Commission.

(3) A statement in lieu of prospectus delivered under subsection (1) shall, where the persons making the report specified in Part Two of the Ninth Schedule have made any adjustments as are mentioned in paragraph 27 of that Schedule, have endorsed on the statement or attached to the statement a written statement signed by those persons setting out the adjustments and giving the reason for the adjustments.

(4) Where a company contravenes subsection (1), or (3), the company and an officer of the company who is in default is liable to pay to the Registrar, an administrative penalty of five hundred penalty units.

(5) Where a statement in lieu of prospectus delivered to the Registrar under subsection (1) includes an untrue statement or omits truth-

fully to state any of the particulars required to be stated by virtue of the Ninth Schedule then,

(a) a person, which expression for the purposes of this subsection does not include the company itself, who authorised the delivery of the statement in lieu of prospectus for registration commits an offence and is liable on summary conviction to a fine of not less than two hundred and fifty penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than one year and not more than two years or to both the fine and the imprisonment, unless that person proves that the untrue or omitted statement was immaterial or that that person had reasonable grounds to believe and did, up to the time of delivery for registration of the statement in lieu of prospectus, believe that the untrue statement was true;

(b) an allottee who acquired shares or debentures in the company in reliance on the statement in lieu of prospectus, and who was misled by the untrue statement or omission, is entitled to rescind the allotment of those shares or debentures and to recover from a person guilty of an offence under paragraph *(a)* whether convicted or not, compensation for a loss which the allottee has suffered by reason of that reliance; or

(c) a person who acquires shares or debentures in the company from an allottee in reliance on the statement in lieu of prospectus, and who was misled by the untrue statement or omission, is entitled to recover from a person guilty of an offence under paragraph *(a)*, whether convicted or not, compensation for a loss which that person has suffered by reason of that reliance.

Prospectus on invitations to the public to acquire or dispose of securities

304. (1) Despite section 294, an invitation to the public to acquire or dispose of any shares or debentures of a public company may be made if,

(a) within six months before the making of the invitation there has been delivered to the Commission for examination and approval by the Commission in accordance with section 308, a prospectus relating to the shares or debentures com-

plying in all respects with relevant provisions of sections 305 to 307 and that prospectus has been registered with the Registrar;

(b) except as provided in subsection (2) of this section, a person to whom the invitation is made is supplied with a true copy of the prospectus at the time when the invitation is first made to that person; and

(c) a copy of the prospectus states on its face that it has been approved by the Commission and the date of the approval indicated.

(2) Electronic media with the prior consent in writing of the Commission or a newspaper may publish an advertisement or otherwise a summary of the contents of a prospectus, duly approved in accordance with section 308, so long as the summary

(a) does not contain a form of application for any shares or debentures which has not been approved by the Commission or, in respect of shares or debentures dealt in or to be dealt in on an approved stock exchange by that stock exchange; and

(b) states with reasonable prominence where copies of the full prospectus may be obtained and the fact that it has been approved and the date of approval.

General and restricted invitations to the public

305. (1) Except as provided in section 306, where the invitation invites the public to acquire shares or debentures of a public company, the prospectus referred to in section 304 shall state the matters specified in Part One of the Tenth Schedule and set out the reports specified in Part Two of that Schedule.

(2) Subsection (1) shall not apply to,

(a) an invitation by a company in respect of shares or debentures of that company or any of the associated companies made solely to the existing shareholders or debenture holders of that company; or

(b) an invitation by a company in respect of shares or debentures of that company which are in all respects uniform with shares or debentures of that company previously issued and for the time being dealt in on an approved stock exchange.

(3) A prospectus relating to an invitation to the public to acquire or dispose of shares or debentures of a public company, which is an invitation not falling within subsection (1) because it does not invite the public to acquire shares or debentures, or because it is excluded from the ambit of that subsection by virtue of subsection (2) need not state the matters or set out the reports specified in the Tenth Schedule.

(4) The prospectus referred to in subsection (3) shall not contain an untrue statement and, if the shares or debentures to which the prospectus relate are dealt in on a stock exchange, whether in the Republic or elsewhere, or if an application has been, or is being made to a stock exchange for permission to deal in those shares or debentures the prospectus, shall

(a) state that the shares or debentures are dealt in on that stock exchange or that application has been or is to be made for permission to deal in those shares or debentures on that stock exchange;

(b) state whether or not that stock exchange is an approved stock exchange within the meaning of this Act; and

(c) contain the particulars and information required by that stock exchange; and in any other case shall state that the shares or debentures are not dealt in on a stock exchange.

(5) An invitation falling within

(a) subsection (1) is in this Act described as a general invitation; and

(b) subsection (3) is in this Act described as a restricted invitation.

Certificates of exemption

306. (1) Where it is proposed to make a general invitation to the public to acquire shares or debentures of a public company, the Commission may, on the request of the applicant, grant exemption in respect of compliance with any of the requirements of the Tenth Schedule, having regard to the proposals as stated in the request as to the size and other circumstances of the invitation, compliance with the requirements of the Tenth Schedule would be burdensome.

(2) A certificate of exemption specified in this section shall state that having regard to the proposals as stated in the request as to the size

and other circumstances of the invitation, compliance with the requirements of the Tenth Schedule would be unduly burdensome.

(3) Where a certificate of exemption is granted and the proposals are adhered to, a prospectus containing the particulars and information required by the Commission if duly published in the manner required by the Commission, shall be deemed to be a prospectus complying with the Tenth Schedule.

Consent of expert

307. (1) Where a prospectus relating to an invitation to the public in respect of shares or debentures of a public company, whether a general invitation or a restricted invitation, includes a statement purporting to be made by an expert, the prospectus shall not be delivered for approval unless,

(a) the expert has given a written consent, and has not, before delivery of the prospectus for examination and approval in accordance with section 308, withdrawn the consent, to the publication of the prospectus with the inclusion of the statement in the form and context in which it is included; and

(b) a statement that the expert has given and not withdrawn the consent appears in the prospectus.

(2) Where, after delivery of the prospectus to the Commission for examination and approval, the expert withdraws the consent, the person who delivered the prospectus for approval shall immediately notify the Commission.

(3) In this section the expression "expert" includes lawyer, engineer, valuer, accountant, assayer and any other person whose profession or calling gives authority to a statement by that person.

Registration of prospectus

308. (1) A prospectus delivered to the Commission pursuant to section 304 shall be delivered in triplicate.

(2) Where a general invitation is being made by or on behalf of a company in respect of the shares or debentures of the company, one copy of the prospectus delivered to the Commission shall be signed by every person who is named in the invitation as a director or proposed director of the company or by the agent of that person authorised in writing as well as being signed, in the manner referred to in subsections (3) and (4), by or on behalf of any other person also making the invitation.

(3) In every case one copy of the prospectus so delivered shall be signed by the person making the invitation or by the agent of that person authorised in writing.

(4) Where the person making the invitation is a firm or body corporate, it is sufficient if the prospectus is signed by or on behalf of the firm or body corporate by not less than half the partners or by not less than two directors of the body corporate, and any of those partners or directors may sign by the agent of that partner or director authorised in writing.

(5) One copy of the prospectus so delivered shall have endorsed on it or attached to it,

(a) a consent of an expert required by section 307; and

(b) in the case of a prospectus relating to a general invitation, a certified copy or translation of each of the documents required to be available for inspection in accordance with paragraph 45 of the Tenth Schedule, or, where a certificate of exemption has been granted pursuant to section 306 required to be available for inspection under the regulations of the approved stock exchange but if a copy or translation of the document has already been delivered by the company to the Registrar for registration, the Registrar may dispense with the need to endorse or attach a further copy of the document, where in the opinion of the Registrar, the copy originally delivered is readily identifiable and accessible.

(6) Where the prospectus relates to shares or debentures dealt in on an approved stock exchange or states that application has been or will be made to an approved stock exchange for permission to deal in the shares or debentures to which the prospectus relates, there shall be delivered to the Commission with the prospectus a certificate by or on behalf of that approved stock exchange that

(a) the prospectus has been scrutinised by the stock exchange; and

(b) its requirements relating to the contents of the document have been satisfied;

and the Registrar shall register the prospectus within forty-eight hours of the approval by the Commission of the prospectus.

(7) In a case which does not fall within subsection (5) or (6), the

Registrar may, for the purposes of reaching an opinion on whether a prospectus

(a) does not comply with this Act,
(b) contains an untrue statement,
(c) omits to state a material fact,
(d) is otherwise incomplete or misleading,

refer the prospectus to the Commission for the opinion of the Commission, and the Commission shall give its opinion within twenty-one days after the reference, in relation to the prospectus.

(8) A copy of a prospectus which has been delivered for registration in accordance with this section shall state at its head the following:

"A copy of this prospectus has been delivered to the Securities and Exchange Commission in accordance with subsection (8) of section 308 of the Companies Act, 2019 (Act 992). For the financial soundness of the company or the value of the securities on offer investors are advised to consult a dealer, investment adviser or any other professional for the appropriate advice.".

(9) For the purposes of this Act, and until the contrary is shown, the first publication of the prospectus is the date of registration.

Waiting period

309. (1) For the purposes of this Act, "waiting period" means a period of twenty-one days after the first publication of a registered prospectus or a longer period that is stated in the prospectus as the period before the expiration of which applications, offers or acceptances in response to the prospectus will not be accepted or treated as binding.

(2) For the purposes of subsection (1),

(a) where the shares or debentures to which the invitation relates are dealt in on a stock exchange or where the prospectus states that application has been or will be made for permission to deal in the shares or debentures on a stock exchange, and
(b) to comply with the requirements of that stock exchange it is necessary to advertise the prospectus in one or more daily newspapers of national circulation,

then unless the prospectus is advertised there has not been a publication of the prospectus.

(3) A binding contract or legally enforceable obligation shall not be entered into in response to an invitation to the public in respect of the shares or debentures of a public company until after the expiration of the offer period, and an application, offer or acceptance by a person in response to the invitation is revocable by that person at any time before the expiration of the offer period.

(4) Subsection (3) does not invalidate a genuine underwriting agreement in respect of those shares or debentures.

Withdrawal of applications after the offer period

310. Where a general invitation is made to the public in respect of the shares or debentures of a public company, an application for the shares or debentures is not revocable during a period of seven days immediately after the expiration of the offer period unless, before the expiration of the period of seven days, a person responsible for the prospectus has, in accordance with section 313, given public notice having the effect under that section of excluding or limiting the responsibility of the person giving it.

Invitations in respect of securities to be dealt in on a stock exchange

311. (1) Where a prospectus, issued in connection with a general or restricted invitation to the public to acquire shares or debentures in a public company states that application has been or will be made for permission for the shares or debentures to be dealt in on a stock exchange, an agreement to acquire those shares or debentures made in pursuance of that prospectus shall become void if the application is refused by that stock exchange or if permission to deal in the shares or debentures is not granted within twenty-eight days after the expiration of the offer period.

(2) Where an agreement becomes void in accordance with subsection (1), the person or persons making the invitation shall forthwith repay and restore without interest the money and other property received from a person in response to the invitation.

(3) Where the money or other property is not repaid or restored in accordance with subsection (2) within eight days after it becomes

repayable or returnable, the person or persons making the invitation and, in the case of a body corporate, the directors of that body corporate is or are jointly and severally liable to repay that money or restore that property with interest at the yearly interest rate of a ninety-one day government treasury bill on the amount or value from the expiration of the eighth day.

(4) A director is not liable under subsection (3) if the director proves that the default in the repayment of the money was not due to the misconduct or negligence of the director.

(5) So long as the person making the invitation may become liable to repay the money in accordance with subsection (2), the moneys received in response to the invitation shall be kept in a separate bank account and shall be held on trust to give effect to this section; and where there is a default in complying with this subsection, the persons making the invitation and, in the case of a body corporate, every officer of the body corporate who is in default is liable to pay to the Registrar, an administrative penalty of seven hundred and fifty penalty units.

Minimum subscription

312. (1) Where a public company makes a general invitation to the public to subscribe for any of the shares or debentures of the company, the amount of money payable on application for the shares or debentures shall not be less than twenty per cent of the subscription price.

(2) Unless, within twenty-eight days of the expiration of the offer period, the amount stated in the prospectus as the minimum amount of money which, in the opinion of the directors, must be raised in order to provide for the matters specified in subparagraph *(b)* of paragraph 22 of the Tenth Schedule, in this section called the minimum subscription, has been subscribed and the amount payable on application for the minimum subscription has been paid to and received by the company, an agreement to subscribe for those shares or debentures shall become void at the expiration of the twenty-eight days.

(3) Where an agreement becomes void in accordance with subsection (2), the company shall repay without interest the moneys received from any persons in response to the invitation.

(4) If the money is not repaid in accordance with subsection (3) within eight days after it becomes repayable, the directors of the company are jointly and severally liable to repay that money with interest at the yearly interest rate of a ninety-one day government treasury bill on the amount or value from the expiration of the eighth day.

(5) A director is not liable under subsection (4) if the director proves that the default in the repayment of the money was not due to the misconduct or negligence of the director.

(6) So long as the company may become liable to repay the money in accordance with subsection (3), the moneys received in response to the invitation shall be kept in a separate bank account and shall be held on trust to give effect to this section and where there is a default in complying with this subsection the company and every officer of the company who is in default is liable to pay to the Registrar, an administrative penalty of seven hundred and fifty penalty units.

Civil remedy for mis-statements or omissions in a prospectus

313. (1) Where a prospectus published in connection with a general or restricted invitation to the public in respect of shares or debentures of a public company contains an untrue statement or omits to state any of the particulars or to set out any of the reports which, under this Act, it is required to state or set out, subject to this section, a person specified in subsection (2) is liable to pay compensation to the persons who acquire or dispose of the shares or debentures on the faith of the prospectus for the loss they may have sustained by reason of the untrue statement or omission.

(2) Subject to this section, the following persons are liable to pay compensation in accordance with subsection (1):

(a) a person making the invitation to which the prospectus relates;

(b) a person who was a director of a body corporate making the invitation at the time when the prospectus was published;

(c) where the invitation was made by the company to whose shares or debentures the invitation relates,

(i) a person who has personally authorised to be named and is named in the prospectus as a director or as having agreed to become a director, immediately or after an interval of time; or

(ii) a promoter of the company who was a party to the preparation of the prospectus; and

(d) a person who, pursuant to section 307 has consented to the publication of the prospectus containing a statement by that person as an expert.

(3) A person is not liable under subsections (1) and (2) if that person proves

(a) that as regards an untrue statement, not purporting to be made on the authority of an expert, other than that person, or of a public official document or statement, that person had reasonable grounds to believe and did believe up to the time of the publication of the prospectus or, where a waiting period applies, up to the expiration of the waiting period, that the statement was true;

(b) that as regards an omission, that person was not cognisant of the omission up to the time of the publication of the prospectus or, where a waiting period is applicable, up to the expiration of the waiting period;

(c) that as regards an untrue statement purporting to be a statement by an expert, other than that person, or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and that that person had reasonable grounds to believe and did believe up to the time of the publication of the prospectus that the person making the statement was competent to make it and had given the consent required by section 307 and had not withdrawn that consent before the date of registration of the prospectus;

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

(e) that after the publication of the prospectus but before the expiration of a waiting period that person, on becoming aware of an untrue statement in the prospectus or omission

from the prospectus withdrew the consent given to the prospectus and gave reasonable public notice of the withdrawal and of the reason for the withdrawal; or

(f) that the prospectus was published without the knowledge of, and that, on becoming aware of the publication, that person forthwith gave reasonable public notice that it was published without the knowledge of that person.

(4) A person specified in subparagraph *(i)* of paragraph *(c)* of subsection (2) is not liable under subsections (1) and (2) if that person proves that having consented to being named as a director or as having agreed to become a director the consent was withdrawn before the registration of the prospectus and that it was published without the authority or consent of that person.

(5) A person specified in paragraph *(d)* of subsection (2) is not liable under subsections (1) and (2) of this section,

(a) if the untrue statement or omission was not made by that person;

(b) if that person proves

(i) that as regards an untrue statement made by that person, that person was competent to make the statement and had reasonable grounds to believe and did believe, up to the date of publication of the prospectus or, where a waiting period applies, up to the expiration of the waiting period, that the statement was true;

(ii) that having given the consent under section 307 that person withdrew the consent in writing before delivery of the prospectus for registration; or

(iii) that, after delivery of the prospectus for registration but before publication of the prospectus, or, where a waiting period applies, before the expiration of the waiting period, that person, on becoming aware of the untrue statement or omission, withdrew the consent in writing and gave reasonable public notice of the withdrawal, and of the reason for the withdrawal.

(6) Where,

(a) a person is named in a prospectus as a director of a company or as having agreed to become a director of a company,

and that person has not consented to become a director or has withdrawn that consent before the publication of the prospectus and has not authorised or consented to the publication, or

(b) the consent of a person is required under section 307 to the publication of the prospectus and that person has not given that consent or has withdrawn the consent before the publication of the prospectus,

a person making the invitation to which the prospectus relates and a person who was a director of a body corporate making the invitation at the time when the prospectus was published, except a person without whose knowledge or consent the prospectus was published, is liable to indemnify the person referred to in paragraph *(a)* or *(b)* of this subsection against the damages, costs and expenses to which that person may be made liable by reason of the name having been inserted in the prospectus or of the inclusion in the prospectus of a statement purporting to be made by that person as an expert, or in contesting legal proceedings brought against that person in respect of the prospectus.

Recission for mis-statements in a prospectus

314. (1) Where a person acquires shares or debentures of a public company from that company or disposes of shares or debentures of a public company to that company as a result of an untrue statement of a material fact made, whether innocently or fraudulently, in a prospectus published in connection with an invitation to the public made by or on behalf of that company, that person is, subject to subsection (2), entitled to rescind the acquisition or disposition of the shares or debentures.

(2) A person is not entitled to rescission unless that person claims to rescind with reasonable promptitude after discovering that the untrue statement was made and, in any case, before the commencement of the winding up of the company.

Voting rights of shares offered to the public

315. (1) An invitation shall not be made to the public to acquire shares in a public company unless the voting rights attached to the shares of the company are stated as required by sections 52 and 53.

(2) Where a person makes an invitation to the public in breach of subsection (1), that person is liable to pay to the Registrar, an administrative penalty of one thousand penalty units and if the invitation is made by or on behalf of the company, the company and each officer of the company who is in default, is liable to a like penalty.

Public invitations to deposit money with public companies

316. (1) Despite section 294, an invitation to the public to deposit money with a public company may be made if,

(a) the public company is licensed, under the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930) and Non-Bank Financial Institutions Act, 2008 (Act 774), to carry on banking business; or

(b) before the making of the invitation the written consent of the Commission has been obtained to the making of the invitation and the invitation is made in accordance with the conditions and restrictions that the Registrar has imposed.

(2) The Commission may grant or withhold the consent and without limiting the generality of this subsection, may require the registration with and approval by the Registrar of an advertisement or a circular to be used in connection with the invitation.

(3) Where an advertisement or a circular used in connection with the invitation contains an untrue statement then, subject to subsection (4), a person who made the invitation and a person who was a director of a body corporate making the invitation at the time when the advertisement or circular was published, is liable to pay compensation to the persons who deposited money with the public company on the faith of the advertisement or circular for the loss they may have sustained by reason of the untrue statement.

(4) A person is not liable under subsection (3) if that person proves,

(a) that that person had reasonable grounds to believe and did believe up to the time of publication of the advertisement or circular that the statement was true; or

(b) that the advertisement or circular was published without the knowledge of, and that on becoming aware of its publication, that person forthwith gave reasonable public notice that the advertisement or circular was published without the knowledge of that person.

(5) Where a person deposits money with a public company as a result of an untrue statement of a material fact made, whether innocently or fraudulently in an advertisement or a circular published in connection with an invitation to the public made by or on behalf of that company,

that person is entitled to require the company immediately to repay the money with interest at the yearly rate of five per cent, or a higher rate as may have been agreed to be paid on the deposit.

Prohibition of waiver and notice clauses

317. A condition purporting to require or bind a person to waive compliance with a section of this Part, or purporting to affect that person with notice of a contract, document or matter, not specifically referred to in a prospectus or statement in lieu of prospectus, advertisement or circular, is void.

Criminal liability for mis-statements

318. (1) Where a prospectus, an advertisement or a circular published in relation to an invitation to the public to acquire or dispose of shares or debentures of a company or to deposit money with a company,

(a) contains an untrue statement, or

(b) omits truthfully to state any of the matters which, under a section of this Part, it is required to state,

a person who authorised the publication of the prospectus, advertisement or circular commits an offence and is liable on summary conviction to a fine of not less than five hundred penalty units and not more than one thousand penalty units or to a term of imprisonment of not less than one year and not more than two years or to both the fine and imprisonment, or in the case of a body corporate to a fine of not less than five hundred penalty units and not more than one thousand penalty units, unless that person proves that, the untrue or omitted statement was immaterial or that, that person had reasonable grounds to believe and did believe, up to the time of publication of the prospectus that, the statement was true.

(2) For the purposes of subsection (1), a person has not authorised the publication of a prospectus by reason only of that person having given the consent required by section 307 and the Registrar has not authorised the publication of an advertisement or circular by reason of the Registrar having given the consent referred to in section 316.

Commission to waive or modify the application of Part A of Chapter Four

319. (1) Despite any other provision of this Act, the Commission may waive or modify the requirements of a provision of Part A of Chapter Four in relation to an invitation to the public to acquire or dispose of shares or debentures of a company or to deposit money with the com-

pany for a fixed period or payable at call whether bearing or not bearing interest.

(2) An invitation and a prospectus relating to that invitation shall be deemed to comply with this Act to the extent that the Commission has waived or modified any of the requirements.

Part B: Dividends and Transfers

Limitation on liability of members in public companies to restore illegal dividends

320. Where a public company pays a dividend in contravention of subsection (1) of section 72, a member of the company is not liable to restore to the company the amount received by the member in respect of the dividend if the member proves that, at the time when the member received the money, the member did not know that the payment contravened the subsection.

Interim dividends

321. (1) The directors of a public company with shares may, unless the registered constitution of the company otherwise provides, pay to the member of the company interim dividends on account of dividends to be declared by the company in accordance with section 76.

(2) For the purposes of subsection (1),

(a) a dividend shall not be paid in contravention of subsection (1) of section 72; and

(b) if a payment is made in contravention of subsection (1) of section 72, the person specified in subsection (2) of section 72 is liable to restore the money to the company with interest in accordance with the subsection as qualified by this section.

Restrictions on the transferability of securities of public companies

322. (1) Despite subsection (2) of section 98, the constitution of a public company shall not impose a restriction on the right to transfer shares of the company and if the constitution purports to impose that restriction, it shall be void.

(2) Subsection (1) shall not,

(a) prohibit a restriction on the right to transfer shares on which there is an unpaid liability; or

(b) preclude a company from refusing to register a transfer of shares to a person who is an infant or to a person found by a court of competent jurisdiction to be of unsound mind.

(3) Despite subsection (2) of section 100, a public company shall not issue a debenture of the company which imposes a restriction on the right to transfer the debenture and if the debenture purports to contain that restriction, it shall be ineffective.

Part C: Documents Accompanying Annual Returns

Documents to be annexed to annual returns of a public company

323. The annual return of a public company required by section 126 shall be accompanied by a copy, certified by a director and the Company Secretary to be a true copy, of each statement of financial position, statement of comprehensive income, statement of changes in equity and statement of cash flows, report of directors and report of auditors sent to members and debenture holders of the company in accordance with section 128 during the period to which the return relates.

Part D: Extraordinary General Meetings

Extraordinary general meetings of public companies

324. (1) The directors of a public company, despite anything in the constitution of that company, shall on the requisition of members of the company holding not less than one-twentieth of the shares of the company, or, in the case of a company limited by guarantee, members of the company representing not less than one-twentieth of the total voting rights of the members of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.

(2) The requisition shall

(a) state the nature of the business to be transacted at the meeting, and

(b) be signed by the requisitionists and sent to or deposited at the registered office of the company.

(3) The requisition may consist of several documents in the like form each signed by one or more requisitionists.

(4) If the directors do not, within twenty-eight days from the

date of receipt of the requisition at the registered office of the company, proceed duly to convene a meeting for a date not later than twenty-eight days after the receipt, the requisitionists, or any of them, may themselves convene a meeting but a meeting so convened shall not be held after the expiration of four months from that date.

(5) The reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and the sum of money so repaid shall be retained by the company out of the fees or other remuneration of any of the directors who were in default.

(6) For the purposes of this section, the directors have not proceeded duly to convene a meeting if they do not, within twenty-eight days of the receipt of the requisition at the registered office, give notices of the meeting to transact the business specified in the requisition in accordance with paragraphs 1 to 3 of the Eighth Schedule.

Part E: Directors

Rotation of directors of a public company

325. Subject to sections 172 to 176 and sections 326 and 327and except as otherwise provided in a registered constitution of a company, the following rules shall apply to the retirement and appointment of directors of a public company:

(a) at the first annual general meeting of the company every director 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 the number of directors is not three or a multiple of three, then the number nearest one-third, shall retire from office;

(b) the directors to retire in every year shall be those who have served longest in office since their last election, but, as between persons who became directors on the same day those to retire shall, unless the directors otherwise agree among themselves, be determined by lot;

(c) a director appointed to the office of managing director shall not, while holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors;

(d) a retiring director is eligible for re-election;

(e) the company, at the annual general meeting at which a director retires as provided in this section, may fill the vacated office by electing a person to that office, and in default the retiring director shall, if offering to stand for re-election, be deemed to have been re-elected unless at the meeting it is expressly resolved not to fill the vacated office or unless a resolution for the re-election of the director has been put to the meeting and lost;

(f) a person is not eligible for election to the office of director unless not less than three days and not more than twenty-eight days before the date appointed for the general meeting, a notice in writing

(i) of the intention to propose that person for election, signed by a member entitled to attend and vote at the meeting; and

(ii) of the consent to be elected as a director, signed by the person proposed, is lodged at the registered office of the company; and

(g) on an increase or a decrease in the number of directors, the company may, by ordinary resolution determine in what rotation the increased or decreased number is to retire from office.

Voting for directors of a public company

326. (1) At a general meeting of a public company, other than a company limited by guarantee, a resolution for the appointment of two or more persons as directors of the company by a single resolution shall not be moved unless a resolution that it shall be so moved has first been carried unanimously.

(2) A resolution moved in contravention of subsection (1) is void, whether or not the resolution being so moved was objected to at that time.

(3) For the purposes of this section, a resolution approving appointments or nominating persons for appointment shall be treated as a resolution for appointment.

(4) This section shall not apply where a registered constitution of a company provides for cumulative voting in accordance with section 327.

Cumulative voting for directors of a public company

327. (1) The registered constitution of a public company may provide that directors shall be elected by cumulative voting.

(2) Where the registered constitution of a company provides for cumulative voting,

(a) although there is a provision to the contrary in the constitution of the company, the minimum number of directors of the company shall not be less than three and the whole of the directors, including a managing director, shall retire from office at each annual general meeting;

(b) the votes of each member shall, for the purposes of electing directors to fill the resulting vacancies, be multiplied by the number of vacancies;

(c) a member may cast the resulting votes of that member in favour of one candidate for election or may distribute the resulting votes among as many candidates as that member thinks fit;

(d) the candidates receiving the highest number of votes up to the number of directors to be elected, shall be declared elected;

(e) despite section 176, unless the whole board of directors is removed by an ordinary resolution duly passed in accordance with that section, a director may not be removed under that section if the votes cast against the removal would, when multiplied by the total number of directors, have been sufficient to secure the return of that director at an election of the whole board conducted in accordance with the rules contained in paragraphs *(a), (b), (c)* and *(d)* of this subsection.

Prohibition of loans by public companies to directors

328. (1) A public company shall not grant a loan to a person who is a director or a director of an associated company, or enter into a guarantee or provide a security in connection with a loan made to that person by any other person.

(2) Subsection (1) does not apply,

(a) to the making of a loan to an associated company or the entering into a guarantee or the providing of a security in connection with a loan made to an associated company by any other person; or

(b) subject to subsection (3), in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, to anything done by the company in the ordinary course of that business.

(3) Paragraph *(b)* of subsection (2) does not authorise the making of loans or the entering into a guarantee or the providing of a security, unless the total amount lent, guaranteed and secured in respect of loans to those persons does not exceed one per cent of the net assets of the company.

(4) Where a company defaults in complying with this section, the company and any officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of five hundred penalty units, and the directors authorising the making of the loan or the entering into the guarantee or the providing of the security are jointly and severally liable to indemnify the company against the loss arising from the default.

(5) For the purpose of subsection (3), "net assets" means the assets less the liabilities of the company as shown in the last audited statement of financial position of the company.

CHAPTER FIVE

PROVISIONS APPLICABLE TO EXTERNAL COMPANIES

Meaning of "external company"

329. (1) Sections 330 to 342 apply to external companies as defined in this section.

(2) An external company is a body corporate formed outside the Republic which, has an established place of business in the country.

(3) The expression "established place of business" means a branch, management, share, transfer, or registration office, factory, mine, or any other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to

negotiate and conclude contracts on behalf of the body corporate or maintains a stock of merchandise belonging to that body corporate from which the agent regularly fills orders on behalf of the body corporate.

(4) For the purposes of subsection (3),

(a) a body corporate does not have an established place of business in the Republic merely because the body corporate carries on business dealings in the Republic through a genuine broker or general commission agent acting in the ordinary course of business as a broker or general commission agent; or

(b) the fact that a body corporate has a subsidiary which is incorporated, resident, or carrying on business in the Republic, whether through an established place of business or otherwise, does not of itself constitute the place of business of that subsidiary, an established place of business of that body corporate.

Documents to be delivered to Registrar by external company

330. (1) An external company which establishes a place of business in the country shall, within one month of the establishment of the place of business, deliver to the Registrar for registration

(a) a copy of the certificate of incorporation and where applicable a copy of the constitution, charter, statutes, regulations, memorandum and articles, or any other instrument constituting or defining the constitution of the company, in a language acceptable to the Registrar;

(b) a statement duly notarised in the jurisdiction of origin of the company giving the following particulars regarding the company:

(i) the name;

(ii) the nature of business or businesses or other main objects of the company, if any;

(iii) the present forename and surname and a former forename or surname, and the address and business occupation of one person or more persons, in this Act referred to as a local manager, authorised to manage the business of the company in the Republic;

(iv) if the company has shares, the number and nominal value of the authorised and issued shares, the amount paid up on the shares and the amount remaining payable on the shares distinguishing between the amounts paid and payable in cash and the amounts paid and payable otherwise than in cash;

(v) the address of the registered or principal office or website in the country of incorporation;

(vi) the address of the principal place of business in Ghana including an electronic mail address, digital address, the post office box number and the telephone contact; and

(vii) the name and address in Ghana of a person, in this Act referred to as a process agent, authorised by the company to accept service of process and other documents on behalf of the company; and

(c) a statement duly notarised in the jurisdiction of origin of the company giving the following particulars regarding the beneficial owners of the company:

(i) the full name and any former or alternate name;

(ii) the date and place of birth;

(iii) the telephone number;

(iv) the nationality and national identity number or passport number or any other appropriate identification;

(v) the residential and postal address;

(vi) the nature of the interest including the details of any legal, financial, security, debenture or informal arrangement giving rise to the beneficial ownership; and

(vii) a confirmation as to whether the beneficial owner is a politically exposed person; and

(d) the particulars, and copies, of the charges on the property of the company that are required to be delivered for registration in accordance with section **337**, or, if there are no charges, a statement in the prescribed form to that effect.

(2) The Registrar shall register the documents in the register of external companies and publish the particulars contained in the statement referred to in paragraph *(b)* of subsection (1) in the *Companies Bulletin*.

(3) For the purposes of paragraphs *(b)* and *(c)* of subsection (1)

(a) in the case of a person usually known by a title different from the surname, the expression "surname" includes that title; and

(b) reference to a former name does not include,

(i) in the case of a person usually known by a title, the name by which that person was known before the succession to that title;

(ii) a name changed or disused before the person bearing the name attained the age of eighteen years, or changed or disused for a period of not less than twenty years; or

(iii) in the case of a married woman, the name by which she was known before the marriage.

Notice of alteration of registered particulars

331. (1) Where an alteration is made in the certificate of incorporation and where applicable a copy of the constitution, charter, statutes, regulations, memorandum and articles, or any other instrument referred to in paragraph *(a)* of subsection (1) of section 330, the company shall deliver to the Registrar for registration, notice in the prescribed form giving details of the alteration within two months of the effective date of the alteration.

(2) Where an alteration is made in any of the particulars contained in the statement referred to in paragraph *(b)* or *(c)* of subsection (1) of section **330**, the company shall deliver to the Registrar for registration notice in the prescribed form giving details of the alteration within the times prescribed by subsection (3) or (4).

(3) In the case of an alteration in any of the particulars referred to in subparagraph (i), (ii), (iv) or (v) of paragraph *(b)* or *(c)* of subsection (1) of section 330, the notice required by subsection (2) shall be delivered to the Registrar within two months after the effective date of the alteration.

(4) In the case of an alteration in any of the particulars referred

to in subparagraph (iii), (vi) or (vii) of paragraph *(b)* of subsection (1) of section 330, the notice required by subsection (2) shall be delivered to the Registrar within twenty-eight days of the date of the alteration, and the Registrar shall publish the particulars in the notice in the *Companies Bulletin*.

Local manager

332. (1) An external company may appoint a person as the local manager of the external company in a statement or notice delivered to the Registrar under this Act.

(2) A person is eligible to be appointed a local manager of an external company if that person is eligible to be appointed a director of a company formed in the Republic under this Act.

(3) The acts of a person registered as the local manager of an external company while carrying on the business in the Republic of that company shall bind the company unless the local manager does not have authority so to act, and the person with whom the local manager was dealing had actual knowledge of the absence of authority, or, having regard to the position of the local manager with or relationship to the company, ought to have known of the absence of authority.

(4) The scope of authority of the local manager shall be filed with the Registrar.

Service on external company

333. (1) A process or any other document shall be sufficiently served on an external company if

(a) delivered or sent through an electronic address provided by the company to the Registrar or delivered or sent by post to the person last registered as the process agent of the company at the last registered address of that agent, even if the process agent refuses to accept service or the company has ceased to maintain a place of business in the Republic; or

(b) sent by facsimile machine to a telephone number used for the transmission of documents by facsimile at the registered office of the company, or address for service or the head office or principal place of business of the company.

(2) Subsection (1) does not apply to service of a document,

(a) if the company was struck off the register of external companies under section 340 more than six years previously;

(b) if one person was last registered as process agent and that person is dead or, in the case of a body corporate, dissolved; or

(c) if two or more persons were last registered as process agents and each of those persons is dead, or in the case of a body corporate, dissolved.

(3) Where,

(a) a registration of the name and address of a person as the process agent of an external company has not been effected, or

(b) subsection (1) does not apply by reason of paragraph *(b)* or

(c) of subsection (2),

a process or any other document shall be sufficiently served on the company if delivered or sent by post to a place of business of the company in the Republic or, if the company has ceased to have a place of business in the Republic, to the registered office or principal place of business of the company in the country of incorporation.

(4) A document to be served by post on an external company shall be posted within a period that will admit of the document being delivered in due course of delivery within the time prescribed for the service of the document.

(5) In proving service, it shall be sufficient to prove that a letter containing the document was properly addressed, prepaid, and posted, whether or not by registered post.

(6) Where it is proved that a document was in fact received by

(a) a local manager or a process agent,

(b) the board of directors of the external company, or

(c) the managing director or Company Secretary of the external company,

the document shall be deemed to have been served on that company although service may not have been effected in accordance with subsections (4) and (5).

(7) This section shall not derogate from the power of a Court to direct how service shall be effected of a document relating to legal proceedings before that Court.

Financial statements of external company

334. (1) An external company shall, once in every year at intervals of not more than fifteen months, make out and deliver to the Registrar for registration, a statement of financial position, statement of comprehensive income, statement of changes in equity and statement of cash flows, in the form and containing the particulars of financial statements which, under paragraph *(a)* of subsection (1) of section 128, the directors would have been required to send to the members and debenture holders of the company if it were a company formed in Ghana under this Act.

(2) The Registrar may accept for registration statement of financial position, statement of comprehensive income, statement of changes in equity and statement of cash flows prepared in the form required under the law of the place of the incorporation of the company if, in the opinion of the Registrar, the financial statements give substantially the same, or greater, information as that required to be given in the financial statements referred to in section 128.

(3) The financial statements mentioned in subsection (1) shall be in the English language.

(4) Although the statement of financial position and the statement of comprehensive income prepared in the form required under the law of the place of the incorporation of the company do not give substantially as much information as that required in the statement of financial position referred to in section 130, the Registrar may, nevertheless agree to accept the financial statements for registration in compliance with subsection (1) but in that event, subject to subsection (7), the company shall also deliver to the Registrar for registration, in the English language

(a) a statement of comprehensive income, made out as nearly as may be in the form and containing the particulars required by section 129 and giving a true and fair view of the profit or loss, during the period to which the statement relates, on the operations of the company in the Republic as if the operations had been conducted by a separate company formed in the Republic under this Act;

(b) a statement as at the end of the financial year of the company showing the assets of the company locally situated in

the Republic classified, distinguished and valued in accordance with section 130 and Part Two of the Sixth Schedule, and the nature and amount of the specific charges on the assets; and

(c) a report on the account and statement referred to in paragraphs *(a)* and *(b)* of this subsection by an auditor qualified in accordance with section 138 stating that in the opinion of the auditor and to the best of the information available the accounts and statements are in accordance with the books and records of the company and give the information required by this Act in the manner required and give a true and fair view of the matters stated.

(5) Subsection (4) does not apply to a company which,

(a) has at any time made in the Republic an invitation to the public to acquire any of shares or debentures of the company or to deposit money with the company; or

(b) has issued shares or debentures which are for the time being dealt in on a stock exchange in the Republic.

(6) In the statement of comprehensive income referred to in paragraph *(a)* of subsection (4), the company is entitled to make the apportionments and to add the notes and explanations that, in the opinion of the company, are necessary or desirable in order to give a true and fair view of the profit or loss on the operations of the company in the Republic and for this purpose may debit a reasonable rate of interest on capital employed in the Republic.

(7) Although the Registrar agrees to accept a statement of financial position, statement of comprehensive income, statement of changes in equity and statement of cash flows under subsection (4), the Registrar may waive compliance with paragraphs *(a), (b)* and *(c)* of that subsection or any of those paragraphs if satisfied that compliance with any of them is impracticable having regard to the nature of the operations of the company in the Republic.

(8) In relation to the accounts and statements referred to in this section, the Registrar shall have the same powers to modify the requirements of Parts One, Two and Three of the Sixth Schedule as the Registrar has in relation to companies formed in the Republic under this Act.

(9) The Minister may, in the public interest and by legislative instrument, modify in relation to an external company any of the requirements in this section for purpose of adapting them to the circumstances of the external company but a modification shall not derogate from the obligations imposed by this section to give a true and fair view of the profit or loss of the company.

Obligation to state name of external company

335. (1) An external company shall,

(a) conspicuously exhibit on every place where it carries on business in Ghana the company name, the country in which the company is incorporated, and, if the liability of the members is limited, the fact that it is so limited; and

(b) state the name of the company and of the country in which the company is incorporated and if the liability of the members is limited that fact that it is so limited, in legible letters at the head of the business letters of the company despatched in Ghana.

(2) Where the name of the company is in a foreign language, the requirements of this section relating to the name of the company are fulfilled if the company exhibits and states a translation of the name in a language acceptable to the Registrar.

(3) The fact that the word "limited", or its equivalent in a foreign language, forms part of the name of the company is not sufficient compliance with the obligations imposed by this section relating to the exhibition and stating of the fact that the liability of the members is limited.

Publication of names of local managers

336. (1) An external company shall, in its trade circulars and business letters on or in which the name of the company appears and which are despatched in the Republic by or on behalf of the company, state in legible letters with respect to each local manager,

(a) the present forename or initial and the present surname of the local manager, and

(b) any former forename or surname of the local manager.

(2) If special circumstances exist which render it in the opinion of the Registrar expedient that an exemption should be granted, the

Registrar may, in consultation with the Board, grant, subject to the conditions specified in the *Companies Bulletin*, exemption from the obligations imposed by this section in respect of a company.

(3) Subsection (3) of section 330 applies to this section.

Registration of particulars of charges

337. (1) Part L of Chapter Two extends to charges on property in the Republic which are, or have been, created, and to charges on property in the Republic which is acquired, by an external company.

(2) For the purposes of subsection (1), particulars of charges created before the date when the external company had an established place of business in the Republic, shall be deemed to be duly registered if particulars of those charges are duly delivered to the Registrar for registration in accordance with section 330 and the failure to register any of the charges shall not affect the validity of the charge.

Winding up of external company

338. (1) Where, in the case of an external company,

(a) a winding up order is made by a court of the country in which the company is incorporated, or

(b) a resolution is passed or other appropriate proceedings are taken in that country to lead to the voluntary winding up of the company, or

(c) the company is dissolved or otherwise ceases to exist according to the law of the country in which it was incorporated,

the local manager or process agent of the company shall, within twenty-four hours after that event, give notice in the prescribed form of that event to the Registrar who shall register same and publish the particulars contained in the notice in the *Companies Bulletin*, and in any other medium.

(2) Where an event referred to in paragraph *(a)* or *(b)* of subsection (1) has occurred, the local manager of the company shall, on every invoice, order or business letter issued in the Republic by or on behalf of the company, which is a document on or in which the name of the company appears, indicate in legible letters to the effect that the company is being wound up in the country where it is incorporated.

(3) Where a person has served the Registrar with a notice in accordance with section (1), that person shall cease to carry on business or purport to carry on business on behalf of a company specified in subsection (1).

(4) A person who in the Republic carries on, or purports to carry on, business on behalf of the company after the date on which it was dissolved or has otherwise ceased to exist in the country in which it was incorporated, is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which that person continues so to do.

(5) This section does not derogate from the provisions of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) enabling an external company, whether or not the external company has been dissolved or has otherwise ceased to exist according to the law of the country in which it was incorporated, to be wound up under that Act.

(6) A liquidator of an external company or a person exercising the powers and functions of such a liquidator shall

(a) before any distribution of the assets of the external company is made, by advertisement in a newspaper circulating generally in each country where the external company had been carrying on business before the liquidation and where no liquidator has been appointed for that place, invite all creditors to make their claims against the external company within a reasonable time before the distribution;

(b) not, subject to the provisions of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180), without leave of the Court, pay out any creditor to the exclusion of any other creditor; and

(c) unless the Court otherwise directs, only recover and realise the assets of the external company in Ghana and shall subject to paragraph *(b)* and to the provisions of the Bodies Corporate (Official Liquidations Act) 1963, (Act 180) pay the net amount so recovered and realised to the liquidator of that external company for the place where the external company was formed or incorporated after paying any debts and satisfying any liabilities incurred in Ghana by the external company.

(7) Where an external company has been wound up so far as the

assets of the external company in Ghana are concerned and there is no liquidator for the place of the incorporation or origin of the company, the liquidator may apply to the Court for directions as to the disposal of the net amount recovered under paragraph *(c)* of subsection (6).

(8) Where a report has been made by an inspector under this Act regarding an external company, the Registrar may apply to the Court for an order for the winding-up of the affairs of the company in so far as they relate to the assets of the company in Ghana.

(9) Where on an application, an order is made for the affairs of the company to be wound up, so far as assets in Ghana are concerned, the company shall not carry on business or establish or keep a place of business in Ghana unless the Court directs otherwise.

Winding up of external company in specified business

339. In the case of an external company that is

(a) a deposit-taking business under the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930);

(b) a collective investment scheme; or

(c) a life insurance company under the Insurance Act, 2006 (Act 724)

the Court, shall, after providing for all interested parties to have the opportunity of being heard, determine whether the assets of the company in Ghana should be segregated in order to first effect payment rateably of the debts of the company in Ghana and the amounts payable to depositors, investors in the mutual fund company and life insurance beneficiaries, in priority to any payment being made in relation to debts and liabilities to other parties outside Ghana.

Cessation of business of external company

340. (1) Where an external company ceases to have an established place of business in the Republic, it shall within twenty-eight days after so ceasing, give notice of the cessation to the Registrar in the prescribed form in duplicate and the Registrar shall register the cessation and publish a copy of the notice in the *Companies Bulletin*.

(2) The Registrar shall then strike the name of the company off the register of external companies.

(3) After notice is given to the Registrar in accordance with subsection (1) and so long as the company does not have an established place of business in the Republic except as provided in subsection (6), a person

shall not be under an obligation to deliver a document relating to the company to the Registrar pursuant to sections 329 to 338.

(4) Where the Registrar has reasonable cause to believe that an external company has ceased to have a place of business in the Republic, the Registrar may send by registered post to the registered local manager and process agent and, if more than one, to all of those persons, a letter enquiring whether the company is maintaining an established place of business in the Republic.

(5) Where the Registrar receives an answer to the effect that the company has ceased to have an established place of business in the Republic or does not, within three months, receive a reply, the Registrar may strike the name of the company off the register of external companies.

(6) At any time within six years after the date on which the company was struck off, the register of external companies under subsections (1) and (2) or (4) and (5), a person has the right to inspect the documents relating to that company.

(7) During the six years after the date on which the company was struck off the register of external companies, the company shall, despite subsection (3) continue to be under the obligation imposed by section 331 to give notice of an alteration in the names of the process agent of the company.

Penalties and disabilities

341. (1) Where an external company or a local manager or process agent of an external company fails to comply with any of the obligations imposed on that external company or that local manager or process agent by sections 330 to 337, the external company and a local manager or process agent that is in default is liable to pay to the Registrar, an administrative penalty of two hundred and fifty penalty units or, in the case of a continuing default, five penalty units for each day during which the default continues.

(2) Where there is a default in delivering to the Registrar a document for registration pursuant to sections 330 to 340, the rights of the external company concerned under or arising out of a contract made in the Republic during the time that the default continues shall not be enforceable by action or any other legal proceedings.

(3) For the purposes of subsection (2),

(a) the external company may apply to the Court for relief against the disability imposed by that subsection and the Court, on being satisfied that it is just and equitable to grant relief, may grant a relief generally or as respects a particular contract and on the conditions that the Court may impose;

(b) that subsection does not affect the rights of any other parties against the external company in respect of the contract;

(c) if an action or a proceeding is commenced by any other party against the external company to enforce the rights of that party in respect of that contract, subsection (2) shall not preclude the external company from enforcing in that action or proceeding by way of counterclaim, set off or otherwise, the rights that external company has against that party in respect of that contract.

Control of public invitations relating to external companies

342. (1) Where a person makes in the country an invitation to the public to acquire or dispose of shares or debentures of an external company or to deposit money with an external company for a fixed period or payable at call, whether bearing or not bearing interest, subject to any other provisions of this Act, Part X of Chapter Two and Part A of Chapter Four shall apply as if the external company were a public company within the meaning of this Act.

(2) An invitation and a prospectus relating to that invitation shall be deemed to comply with this Act to the extent that the Commission has waived or modified any of the requirements.

(3) Where the invitation to the public is a general invitation within the meaning of section 305, the prospectus, in addition to complying with the Tenth Schedule subject to the modifications made in accordance with subsection (2) and subject to section 306, shall also contain particulars with respect to

(a) the instrument constituting or defining the constitution of the company;

(b) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected;

(c) an address in the Republic where copies of the documents referred to in paragraphs *(a)* and *(b)* or, if those documents are in a foreign language, certified translations of those documents can be inspected; and

(d) the date on which and the country in which the company was incorporated.

(4) A prospectus registered and an advertisement or a circular published in connection with that invitation shall state the country in which the external company is incorporated and the address of the principal place of business in the Republic.

(5) Unless this section is complied with, the making of the invitation is a breach of section 294.

Control of public invitations relating to other non-Ghanaian companies

343. (1) For the purposes of this section and of section 295 the expression "non-Ghanaian company" means an association incorporated or to be incorporated outside the Republic which is not an external company as defined in section 329.

(2) Where a person makes in Ghana an invitation to the public which is,

(a) a general invitation, as defined by section 305 to acquire shares or debentures of a non-Ghanaian company, or

(b) an invitation to deposit money with a non-Ghanaian company for a fixed period or payable at call whether bearing or not bearing interest,

subject to any other provision of this Act, Part X of Chapter Two and Part A of Chapter Four shall apply as if the non-Ghanaian company were a public company within the meaning of this Act, and subsections (2) and (3) of section 342 apply as if that company were an external company.

(3) A prospectus, an advertisement or a circular registered or published in connection with that invitation shall state the country in which the non-Ghanaian company is incorporated and, if the liability of the members is limited shall so state.

(4) Unless this section is complied with, the making of the invitation is a breach of section 294.

(5) Sections 313, 314, 317 and 318 shall apply in relation to an invitation to the public to acquire or dispose of any shares or debentures of a non-Ghanaian company, whether or not an invitation of the types referred to in subsection (2) and sections 316, 317 and 318 shall apply in relation to an invitation to the public to deposit money with a non-Ghanaian company, as if the company were a public company within the meaning of this Act.

CHAPTER SIX—SUPPLEMENTARY

Part A: Miscellaneous Offences

Inducing persons to invest

344. (1) A person who by a statement, promise or forecast which is untrue, misleading, false or deceptive induces or attempts to induce another person to enter into or offers to enter into,

(a) an agreement for or with a view to acquiring, disposing of, or underwriting, securities, or lending or depositing money to or with a body corporate, or

(b) an agreement the purpose or purported purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities,

commits an offence and is liable on summary conviction to a term of imprisonment of not less than three years and not more than seven years unless the accused person proves that the accused person had reasonable grounds to believe and did believe that the statement was true or that the promise or forecast was not misleading, false or deceptive.

(2) A person who, by a dishonest concealment of material facts induces or attempts to induce another person to enter into any of the transactions referred to in subsection (1) commits an offence and on summary conviction is subject to the punishment prescribed by subsection (1).

Penalty for false statements

345. (1) A person who in any return, report, certificate, account, or other document required under a provision of this Act to be sent to the Registrar wilfully makes a false statement, knowing it to be false, commits an offence and is liable on summary conviction to a fine of not less than two hundred and fifty penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than one year and not more than two years or to both the fine and the imprisonment.

(2) Subsection (1) does not affect the liability of a body corporate or any other person under any other section of this Act or any other enactment but the penalties imposed by this section shall be alternative, and not additional, to the penalties imposed by the other section or enactment.

Penalty for improper use of "incorporated" or "limited"

346. Where any person trades or carries on business in the Republic under a name or title of which

(a) the words "incorporated", "corporation" or any contraction or imitation of those words or an equivalent in any other language forms part, or

(b) the word "limited" or a contraction or an imitation of those words or an equivalent in any other language is the last word,

that person is, unless duly incorporated under this Act or any other enactment and, where "limited" or a contraction or an imitation of that word is the last word, unless duly incorporated with limited liability, liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which that name or title has been or is used.

Publication of misleading statements regarding shares or capital

347. (1) A body corporate shall not state the number of the authorised or issued shares or the amount of the stated capital in any notice, advertisement, business letter or other publication of the body corporate unless the statement includes with equal prominence accurate particulars of the number of shares issued, and of the stated and paid up capital of the body corporate.

(2) In the event of a breach of subsection (1), the body corporate and an officer of the body corporate that is in default is liable to pay to the Registrar, an administrative penalty of seven hundred and fifty penalty units.

Costs in actions by limited companies

348. Where a body corporate with limited liability is the plaintiff in legal proceedings the Court may, if it appears by credible evidence that there is reason to believe that the body corporate will be unable to pay the costs if the defendant is successful, require sufficient security to be given for the costs, and may stay the proceedings until the security is given.

Contribution between joint wrongdoers

349. (1) Where more than one officer of a body corporate or any other persons are liable to pay damages, costs, compensation, debt, or monetary penalty under, or in respect of a breach of a section of this Act, the persons shall have a right of contribution amongst themselves.

(2) In an action to enforce liability or in an action to recover contribution, the Court may award contribution on the terms that it considers equitable in all the circumstances and may exempt a person from liability to make contribution, or direct that the contribution to be recovered from any persons shall amount to a complete indemnity.

Power to grant relief

350. (1) Where in proceedings against a member, an officer or an auditor of a company for a default or a breach of duty under this Act, or against a trustee for debenture holders in respect of a breach of duty or trust, it appears to the Court hearing the case that the member, officer, auditor or trustee is or may be liable but that the member, officer, auditor or trustee has acted honestly and reasonably and that, having regard to the circumstances of the case, that person ought fairly to be excused, the Court may relieve that person in whole or in part from that liability on the terms that the Court considers fit.

(2) Where the member, officer, auditor or trustee has reason to believe that a claim may be made against that person in respect of a breach of duty or trust, that person may apply to the Court for relief.

(3) The Court on the application, shall have the same power to relieve that person as under this section as it would have had if it had been a court before which proceedings against that person for breach of duty or trust had been brought.

(4) Written notice of an application to the Court under subsection (2) shall be given to the Registrar at least twenty-one days before the date of the hearing of the application and the Registrar may appear at

the hearing of the application and call evidence and make the representations that the Registrar deems fit.

Part C: Establishment of the Office of the Registrar of Companies

Establishment of the Office of the Registrar of Companies

351. (1) There is established by this Act, the Office of the Registrar of Companies as a body corporate with perpetual succession.

(2) The Office of the Registrar of Companies may, for the performance of the functions under this Act, acquire and hold property and enter into a contract or any other transaction.

(3) Where there is a hindrance to the acquisition of immovable property, the property may be acquired for the Office of the Registrar of Companies under the State Lands Act, 1962 (Act 125) and the cost shall be borne by the Office of the Registrar of Companies.

(4) The Registrar shall have a seal which shall bear the words "Registrar of Companies, Ghana".

Status of the Office of the Registrar of Companies

352. The Office of the Registrar of companies has financial autonomy subject to the provisions of this Act.

Object and functions of the Office of the Registrar of Companies

353. (1) The object of the Office of the Registrar of Companies is to register and regulate all types of businesses in conformity with this Act and any other relevant enactments.

(2) To achieve the object, the Office of the Registrar of Companies shall

(a) register
- (i) business names in accordance with the Registration of Business Names Act, 1962 (Act 151),
- (ii) companies,
- (iii) partnerships in accordance with the Incorporated Private Partnerships Act, 1962 (Act 152), and
- (iv) professional bodies pursuant to the Professional Bodies Registration Act, 1973 (N.R.C.D. 147), other than professional bodies established by an Act of Parliament;

(b) appoint inspectors, a receiver or manager to ensure the effective compliance with the Act;

(c) discharge duties and perform functions of the Office as the Official Liquidator under the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180); and

(d) manage the finances and fixed assets of the Office of the Registrar.

(3) The Registrar shall appoint a receiver or manager in accordance with subsection (2) of section 261.

(4) Without limiting subsection (1), the Office of the Registrar has the duty to undertake public education programmes to educate the general public engaged in business activities on the operation of companies, partnerships and business names.

Governing body of the Office of the Registrar of Companies

354. (1) The governing body of the Office of the Registrar of Companies is a Board consisting of

(a) a chairperson nominated by the President,

(b) one representative of the Office of the Attorney-General not below the rank of a Principal State Attorney,

(c) one representative of the Ministry of Trade and Industry not below the rank of a Director nominated by the Minister,

(d) one representative of the Securities and Exchange Commission nominated by the governing body of the Commission,

(e) one representative of the Private Enterprise Federation nominated by the Federation,

(f) one lawyer with at least ten years' experience in corporate law practice, nominated by Ghana Bar Association,

(g) two other persons with expertise in corporate law practice, at least one of whom is a woman, nominated by the President,

(h) one representative from the Institute of Chartered Accountants, Ghana nominated by the Council of the Institute,

(i) one representative from Ghana Association of Restructuring and Insolvency Advisors nominated by the governing body of the Association, and

(j) the Registrar of Companies appointed under section 362.

(2) The members of the Board shall be appointed by the President in accordance with article 70 of the Constitution.

(3) The President shall in appointing the members of the Board take into account gender balance.

(4) A member of the Board has the same fiduciary relationship with the Office of the Registrar and the same duty to act with loyalty and in good faith as a director of a company in accordance with section 190.

(5) The Board shall ensure the proper and effective performance of the functions of the Office of the Registrar.

Tenure of office of members

355. (1) A member of the Board shall hold office for a period of four years and is eligible for re-appointment for another term only.

(2) Subsection (1) does not apply to the Registrar of Companies.

(3) A member of the Board may at any time resign from office in writing addressed to the President through the Minister.

(4) A member of the Board, other than the Registrar of Companies, who is absent from three consecutive meetings of the Board without sufficient cause ceases to be a member of the Board.

(5) The President, may by letter addressed to a member revoke the appointment of that member.

(6) Where a member of the Board is, for a sufficient reason, unable to act as a member, the Minister shall determine whether the inability would result in the declaration of a vacancy.

(7) Where there is a vacancy

(a) under subsection (3) or (4) or subsection (2) of section 357,

(b) as a result of a declaration under subsection (6), or

(c) by reason of the death of a member,

the Minister shall notify the President of the vacancy and the President shall appoint a person to fill the vacancy.

Meetings of the Board

356. (1) The Board shall meet at least once every three months for the despatch of business at the time and place determined by the chairperson.

(2) The chairperson shall at the request in writing of not less than one-third of the membership of the Board convene an emergency general meeting of the Board at the time and place determined by the chairperson.

(3) The chairperson shall preside at meetings of the Board and in the absence of the chairperson, a member of the Board elected by the members present from among their number shall preside.

(4) The quorum at a meeting of the Board is five members of the Board.

(5) Matters before the Board shall be decided by a majority of the members present and voting and in the event of an equality of votes, the person presiding shall have a casting vote.

(6) The Board may co-opt a person to attend a Board meeting but that person shall not vote on a matter for decision at the meeting.

(7) Proceedings of the Board shall not be invalidated by reason of a vacancy among the members of the Board or by a defect in the appointment of the members.

(8) Subject to this section, the Board shall determine the procedure for its meetings.

Disclosure of interest

357. (1) A member of the Board who has an interest in a matter for consideration by the Board shall

(a) disclose the nature of the interest and the disclosure shall form part of the record of the consideration of the matter; and

(b) not participate in the deliberations of the Board in respect of that matter.

(2) A member ceases to be a member of the Board, if that member has an interest in a matter before the Board and

(a) fails to disclose that interest, or

(b) participates in the deliberations of the Board in respect of the matter.

Establishment of committees

358. (1) The Board may establish committees consisting of members of the Board or non-members or both to perform a function.

(2) Section 357 applies to members of committees of the Board.

(3) A committee of the Board composed of non-members of the Board shall be advisory.

Fees and allowances

359. Members of the Board and members of a committee of the Board shall be paid fees or allowances to be determined by the Minister in consultation with the Minister responsible for Finance.

Regional offices

360. (1) The Board shall establish regional offices of the Office of the Registrar in each regional capital within a period that the Board may determine.

(2) The Board may on the recommendation of the Registrar of Companies appointed under section 362, shut down or direct the cessation of the operation of a regional office established under subsection (1) where the exigencies so require.

(3) A regional office of the Office of the Registrar shall perform the functions of the Office of the Registrar in the region that the Board on the advice of the Registrar may direct.

Policy directives

361. The Minister may give general policy directives in writing to the Board and the Board shall comply.

Part D: Administrative and Financial Provisions of the Office of the Registrar

Appointment of Registrar of Companies

362. (1) The President shall in accordance with article 195 of the Constitution appoint a person other than the Registrar General as the Registrar of Companies to perform the functions vested by or under this Act or any other enactment.

(2) The Registrar of Companies shall hold office on the terms and conditions specified in the letter of appointment of the Registrar.

(3) Anything authorised or required to be done under this Act by the Registrar may be done by the Deputy Registrar or an Assistant Registrar and is as valid and effectual as if done by the Registrar.

Appointment of other staff

363. (1) The President shall in accordance with article 195 of the Constitution appoint

(a) two Deputy Registrars,
(b) Assistant Registrars, and
(c) any other staff

for the Office of the Registrar that are necessary for the proper and effective performance of the functions of the Office.

(2) The President may delegate the power of appointment of public officers in accordance with clause (2) of article 195 by directions in writing to the Board.

(3) Other public officers may be transferred or seconded to the Office of the Registrar or may otherwise give assistance to the Office.

(4) The lawyers of the Office of the Registrar are members of the Legal Service and shall enjoy the salaries and benefits attached to the respective posts.

(5) The Office of the Registrar may engage the services of experts and consultants on the recommendations of the Board.

(6) The Office of the Registrar shall designate an officer as the Secretary to the Board.

Funds of the Office of the Registrar

364. The funds of the Office of the Registrar include

(a) moneys approved by Parliament,

(b) fees and charges accruing to the Office of the Registrar in the performance of the functions consisting of,

(i) fees and charges in respect of services rendered by the Office of the Registrar, and

(ii) proceeds from the sale of the *Companies Bulletin* and other publications of the Office of the Registrar;

(c) donations and grants,

(d) interests from investment, and

(e) income from any other source approved by the Minister in consultation with the Minister responsible for Finance.

Management of the finances of the Office of the Registrar

365. (1) The Registrar shall manage the finances of the Office of the Registrar, subject to the directives of the Board and in accordance with the Public Financial Management Act, 2016 (Act 921).

(2) Despite the Ministries, Departments and Agencies (Retention of Funds) Act, 2007 (Act 735), the Public Financial Management Act, 2016 (Act 921), the Earmarked Funds Capping and Realignment Act, 2017 (Act 947) and any other relevant enactment, the Office of the Registrar is authorised to retain all moneys realised in the performance of the functions of the Office of the Registrar.

(3) The preparation and submission of estimates and the reporting and accounting of estimates are subject to the Public Financial Management Act, 2016 (Act 921).

(4) Despite any other provision in any enactment to the contrary, internally generated funds

(a) can only be utilised when the activities on which the expenditure will be incurred have been programmed and approved in the expenditure budget of the Office of the Registrar, and

(b) shall not be used for the payment of salaries, staff benefits and other allowances except where the allowances are directly related to the provision of services that will lead to increased revenue.

(5) The Office of the Registrar shall have an Internal Audit Unit in accordance with section 83 of the Public Financial Management Act, 2016 (Act 921).

Loans, bank accounts and investments

366. (1) Subject to the Public Financial Management Act, 2016 (Act 921), the Office of the Registrar may obtain loans and credit facilities that the Office requires for the implementation of the functions of the Office.

(2) The Board shall with the approval of the Controller and Accountant-General open bank accounts that the Board considers necessary, except that a bank account opened outside the country shall be subject to paragraph *(b)* of clause (2) of article 183 of the Constitution.

(3) The Office of the Registrar may make prudent investments in government securities as the Office considers necessary.

Accounts and audit

367. (1) The Board shall keep books of account, records, returns and other documents relevant to the accounts in the form approved by the Auditor-General.

(2) The Board shall submit the accounts of the Office of the Registrar to the Auditor-General for audit at the end of the financial year.

(3) The Auditor-General shall, within six months after the end of the immediately preceding financial year, audit the accounts, submit the report to Parliament and forward a copy each of the audit report to the Minister and the Board.

(4) The financial year of the Office of the Registrar is the same as the financial year of the Government.

Annual report and other reports

368. (1) The Board shall within one month after the receipt of the audit report, submit an annual report to the Minister covering the activities and the operations of the Office of the Registrar for the year to which the report relates.

(2) The annual report shall include the report of the Auditor-General, and the periodic report of the Registrar of Companies referred to in section 369, where the periodic report is due.

(3) The Minister shall, within one month after the receipt of the annual report, submit the report to Parliament with a statement that the Minister considers necessary.

(4) The Board shall also submit to the Minister any other reports which the Minister may require in writing.

Part E: General Provisions

Submission of periodic reports by Registrar

369. (1) The Registrar shall, every two years, prepare and submit a report on the operation of this Act to the Minister who shall present the report to Parliament.

(2) In the report, the Registrar shall

(a) in addition to giving general statistical information relating to the registration and dissolution of companies, report on the exercise by the Registrar of the powers of the Registrar under this Act, and

(b) in particular, refer to the cases in which the Registrar has, under the powers conferred by this Act, waived compliance with, or modified, any of the normal provisions of this Act, and give stated reasons in each case for so doing.

Companies Bulletin

370. (1) There is established by this Act an official bulletin known as the *Companies Bulletin*.

(2) The Registrar shall

(a) keep and maintain the *Companies Bulletin* in an accurate form as determined by the Board; and

(b) ensure the accessibility of the *Companies Bulletin* in the hard copy format and the electronic format.

(3) The *Companies Bulletin* shall also be maintained as a secured electronic database.

Fees

371. (1) The Office of the Registrar shall, in accordance with the Fees and Charges (Miscellaneous Provisions) Act, 2009 (Act 793), prescribe fees chargeable under this Act.

(2) The Registrar shall publish in the *Companies Bulletin* the fees payable.

Documents to be translated

372. Where, under a section of this Act, a document is required to be prepared or registered, that document shall, unless the section otherwise provides, be in the English language.

Registration of documents

373. (1) There is established by this Act a register to be known as the Central Register to capture beneficial ownership data of legal persons and arrangements.

(2) The Registrar shall

(a) keep and maintain the Central Register both in manual and electronic formats; and

(b) enter in the Central Register,

(i) particulars required to be submitted for registration under subsection (2) of section 13;

(ii) particulars required to be submitted for registration under subsection (6) of section 35;

(iii) particulars required to be submitted for registration under paragraph *(c)* of subsection (1) of section 330; and

(iv) particulars required to be submitted for registration under subsection (2) of section 331;

(v) any other information that the Registrar may require including, information on beneficial ownership.

(3) The Registrar shall

(a) collaborate with other authorities for purpose of maintaining, verifying and updating the Central Register;

(b) on request and in a timely manner, make information entered in the Central Register available to the relevant authorities for inspection; and

(c) in line with open data best practices, make an electronic format of the Central Register available to members of the public for inspection.

(4) Subject to section 378 where, under a section of this Act, a document or particulars are required to be registered by the Registrar, registration shall be effected by inserting the document or making the appropriate entries of the particulars in the register maintained at the Office of the Registrar.

(5) For the purposes of a provision of this Act, a document has not or particulars have not, been delivered to the Registrar for registration until the appropriate registration fee has been paid to the Registrar.

(6) Where the Registrar is of opinion that the document or particulars delivered to the Registrar for registration,

(a) contain any matter contrary to law,

(b) by reason of an error, omission or a mis-description have not been duly completed,

(c) do not otherwise comply with the requirements of this Act, or

(d) contain an error,

the Registrar may request that the document or particulars be appropriately amended or completed and re-submitted, and may refuse to register the document or particulars until appropriately amended or completed; and in that event the document has not or the particulars have not, been delivered for registration until re-submitted as appropriately amended or completed.

(7) For the purpose of this section, "competent authority" means public authorities with designated responsibilities for combating money laundering or terrorist financing, in particular, the Financial Intelligence Centre and the authorities that have the functions of investigating or prosecuting money laundering and associated predicate offences and terrorist financing.

(8) The Minister may, by legislative instrument, make Regulations to prescribe the

(a) mode and format for the submission of particulars required to be entered in the Central Register;

(b) procedure for companies to maintain up to date and accurate records of beneficial ownership;

(c) procedure for collection, authentication, verification or rectification of information entered in the Central Register; and

(d) penalty for a default in complying with reporting requirements in respect of the Central Register.

Prescribed forms

374. (1) Subject to section 378 where a section of this Act provides that a document shall be in the prescribed form, the document shall be in the form prescribed by the Registrar by legislative instrument.

(2) Where a section of this Act provides that a document shall be delivered to the Registrar for registration, the Registrar may refuse to accept the document if in the opinion of the Registrar, the document is insufficiently legible or is written on paper insufficiently durable to be suitable for registration.

(3) Where the Registrar, refuses to accept a document for registration, the document is not, for the purposes of this Act, duly delivered to the Registrar within the time prescribed by that subsection or within the extended time that the Registrar may allow for the delivery of a copy of the document, unless a copy of the document is in a form acceptable to the Registrar and duly delivered within the time prescribed or other prescribed time that the Registrar may allow for the delivery of a copy.

Inspection, copies and evidence of registered documents

375. (1) A person may,

(a) inspect the register of particulars of charges and a docu-

ment registered by the Registrar on payment of the fee prescribed for that purpose by the Registrar for each inspection of the register and documents relating to one company; or

(b) require a certificate of the incorporation of a company or a copy of any other document, or a part of any other document, registered by the Registrar to be signed by the Registrar, on payment of the fees prescribed by the Registrar.

(2) A disclosure under this section is subject to the Data Protection Act, 2012 (Act 843) and any other relevant enactment.

(3) A process for compelling the production of a document kept by the Registrar shall not issue from a Court except with the leave of that Court, and a process if issued shall bear on the process a statement that it is issued with the leave of the Court.

(4) A copy of, or extract from, a document registered by the Registrar, certified by the Registrar to be a true copy, the official position, proof of which shall not be necessary, is admissible in legal proceedings in evidence as of equal validity with the original document.

Authentication of documents issued by Registrar

376. (1) The documents purporting to be orders, certificates, licences, approvals or revocations of those documents made or issued by the Registrar for the purposes of this Act, and purporting to be sealed with the seal of the Registrar, or be signed by the Registrar, or by a properly authorised officer, shall be received in evidence without further proof of validity unless the contrary is proven.

(2) A certificate that an order made, certificate issued, or an act done by the Registrar is the order, certificate, or act of the Registrar, is conclusive evidence of the fact so certified.

Enforcement of duty to make returns

377. (1) The Registrar or a member or a creditor of a body corporate may apply to the Court, where the body corporate or an officer or a liquidator of a body corporate, having defaulted in complying with a provision of this Act which requires the body corporate or the officer or the liquidator of a body corporate, to deliver a return, a financial state-

ment, or any other document, or to give notice of a matter, fails to end the default within twenty-eight days after the service of a notice on the body corporate or the officer or liquidator requiring the returns, financial statement or other document or the officer or liquidator to do so.

(2) The Court may

(a) make an order directing the body corporate and an officer of the body corporate or the liquidator to make good the default within the time that is specified in the order; and

(b) provide that the costs of, and incidental to, the application shall be borne by the body corporate or by the officer or liquidator of the body corporate responsible for the default.

Electronic transactions

378. (1) Despite a provision of this Act and any other enactment, the Registrar may authorise

(a) the incorporation or the registration of a company;
(b) the reservation of a company name;
(c) the filing of particulars;
(d) the conversion of a company;
(e) the filing of annual returns and financial statements;
(f) the keeping and maintenance of a register;
(g) arrangements, compromises, mergers, divisions and sale of undertakings;
(h) the removal of the name of a company from the register upon cessation, dissolution or liquidation of the company;
(i) reports on statistical data on companies;
(j) the inspection of a register;
(k) the registration of debentures;
(l) the transfer of debentures;
(m) the alteration of debentures;
(n) the registration of a contract or agreement with respect to the issue of shares;
(o) the registration of charges;
(p) keeping of accounting records;
(q) a service of a notice or document;
(r) the dissolution of a company;
(s) searches on a company register;

(t) an offer to be made to the public or an invitation to make an offer to the public;
(u) payment of fees;
(v) the filing of any notice or document; and
(w) the performance of any act or thing required to be done in relation to paragraphs *(a)* to *(v)*

to be effected electronically in the manner and through an electronic system approved by the Registrar subject to subsection (5).

(2) With effect from the date as may be published in the *Companies Bulletin*, the Registrar may direct that any matter, act or thing referred to in subsection (1), or required to be done under this Act, shall be submitted or done electronically.

(3) For the purpose of facilitating the operation of a system of dematerialised or immobilised securities electronically, a security shall not have a distinctive number.

(4) Every new company incorporated after the commencement of this Act, that has a website, shall endeavour to post on that website any information required to be filed with the Office of the Registrar.

(5) The Registrar shall inform clients that desire to transact business with the Registrar electronically, of the electronic system intended to be used as the medium for the electronic communication and obtain the written consent of the client concerned to use the designated electronic system.

(6) Without limiting subsections (2) and (3), a document or information may be sent in electronic form to a person, a company, member or officer of a company, by the Registrar through an electronic system for the performance of any act or thing under this Act if

(a) the intended recipient has consented in writing to the despatch and receipt of the document or information as a substitute for the hard copy form, at a designated electronic address to and from the party responsible for sending it; or
(b) it is required by law to receive a document or information in electronic form.

(7) The Minister may by legislative instrument make Regulations
(a) to prescribe the mode of electronic transactions
(i) between companies and the general public;
(ii) between companies and regulatory agencies;

(iii) between companies; and
(iv) within a company;

(b) for application procedures for incorporation and registration matters by electronic filing;

(c) to provide for the use of documents reproduced electronically or by other means by the Registrar as original documents despite any enactment to the contrary;

(d) for electronic record keeping of documents by companies;

(e) for procedures for the authentication of electronic documents by companies;

(f) for the use of websites and electronic filing addresses for the purposes of this Act;

(g) for the format for electronic filing of statutory forms and documents;

(h) to prescribe the payment systems for electronic filing, electronic searches and electronic downloads of requested documents from the Registrar;

(i) for the destruction of any documents that has been recorded or stored electronically or by other means;

(j) to give effect to and ensure the efficient operation of any device or facility of the kind referred to in subsection (1); and

(k) required for the purposes of electronic transactions under this Act.

(8) Where in an enactment a person is required to provide evidence of a transaction in respect of a matter specified in this Act, proof of that matter as transacted electronically in the manner approved by the Registrar shall suffice.

(a) For purposes of this section,

"electronic transaction" means a transaction by an electronic agent;

"electronic agent" means a computer programme or an electronic or other automated means used independently to initate an action or respond to electronic records or performances in whole or in part, in an automated transaction; and

"automated transaction" means an electronic transaction conducted or performed in whole or in part, by means of electronic records in which the conduct or electronic records of one or both parties are not reviewed by an individual in the ordinary course of business or employment of the individual.

Power of Registrar to obtain directions of the Court

379. The Registrar may apply to the Court for directions in relation to a matter arising in connection with the functions of the Registrar under this Act, and on that application, the Court may give the appropriate directions or make the appropriate order.

Extension to bodies corporate not registered under this Act

380. The Minister may, by legislative instrument, direct that any of the provisions of this Act shall apply to a body corporate formed in the Republic otherwise than under this Act or to certain classes of those bodies corporate or to certain named bodies corporate formed in the Republic, as specified in the instrument, as if they were companies registered under this Act.

Regulations

381. (1) The Minister may on the advice of the Board, by legislative instrument, make Regulations regulating the exercise by the Registrar of any of the powers and discretions conferred on the Registrar by this Act.

(2) Regulations made under subsection (1) shall include regulations

(a) to provide for the payment to the Registrar of moneys for the publication of matters required by this Act to be published in the *Companies Bulletin* by the Registrar,

(b) in respect of matters required to be prescribed by the Registrar,

(c) for classifying companies as large, medium or small to grant waivers and exemptions under this Act,

(d) to prescribe the template for beneficial ownership data required to be submitted to the Registrar,

(e) to amend Part One of the Ninth Schedule in respect of statement in lieu of prospectus and financial position and report to accompany the statement,

(f) to prescribe thresholds for the effective application of section 373 of this Act; and

(g) to prescribe administrative and other penalties for offences committed under this Act.

(3) Without limiting subsection (1), the Minister may, on the advice of the Board, by legislative instrument, make Regulations to provide for any other matter necessary for the effective implementation of the provisions of this Act.

Guidelines

382. (1) The Registrar of Companies may issue directives and guidelines to give full effect to the provisions of this Act.

(2) The guidelines shall be published in the Companies *Bulletin* and any daily newspaper of national circulation.

Interpretation

383. In this Act, unless the context otherwise requires, the expressions defined in the First Schedule have the meanings assigned to them in that Schedule.

Repeals and savings

384. (1) The Companies Act, 1963 (Act 179) as amended by

(a) the Companies (Amendment) Act, 1994 (Act 474),

(b) the Companies (Amendment) Act, 1997 (Act 531),

(c) the Companies (Amendment) Act, 2012 (Act 835), and

(d) the Companies (Amendment) Act, 2016 (Act 920)

are hereby repealed.

(2) Despite the repeal of the Companies Act, 1963 (Act 179), the Regulations, by-laws, notices, orders, directions, appointments or any other act lawfully made or done under the repealed enactment and in force immediately before the commencement of this Act, shall be considered to have been made or done under this Act and shall continue to have effect until reviewed, cancelled or terminated.

(3) Any register, fund and account kept immediately before the commencement of this Act and every document prepared or issued under the Companies Act, 1963 (Act 179) shall continue in force as if kept, prepared or issued under the corresponding provision of this Act.

Transitional provisions

385. (1) On the commencement of this Act, the Office of the Registrar established under section 351, shall assume the status of a Category III subvented agency as classified under the Subvented Agencies Act, 2006 (Act 706) and operate under the Ministry responsible for Justice.

(2) The rights, assets and liabilities accrued in respect of the properties vested in the Registrar-General's Department established under the Civil Service (Structure) Regulations, 1961 (L.I. 139) in relation to the registration and regulation of companies in existence immediately before the commencement of this Act are transferred to the Office of the Registrar established under section 351 of this Act and accordingly proceedings relating to the establishment or regulation of companies taken by or against the Registrar-General may be continued by or against the Office of the Registrar.

(3) The President shall, in accordance with the advice of the Board given in consultation with the Public Services Commission and within a period the President shall determine on the commencement of this Act, transfer to the Office of the Registrar the number as the President may determine, of personnel seconded to or employed for or by the Registrar-General's Department immediately before the commencement of this Act.

(4) Where a person to whom subsection (3) applies is not transferred under that subsection, the Legal Service shall deal with the appointment as it considers fit.

(5) The President may delegate the power of appointment under subsection (3) in accordance with clause (2) of article 195 of the Constitution.

(6) A transfer to the Office of the Registrar shall for the purposes of pension and other retirement benefits constitute a continuous service in the Legal Service.

(7) The terms and conditions of service of a person transferred to the Office of the Registrar under subsection (3) shall not be less favourable than those applicable to that person immediately before the commencement of this Act.

(8) A contract relating to the establishment and regulation of companies subsisting between the former Registrar-General's Department and another person and in effect immediately before the commencement of this Act shall subsist between the Office of the Registrar and that other person.

(9) A matter specified under section 378 in respect of which a transaction may be effected electronically on the commencement of this Act, shall after five years from the commencement date of this Act be effected electronically only.

(10) Section 378 does not affect the validity of anything done manually relating to the operation of companies established before the commencement of this Act.

Application of the Electronic Transactions Act, 2008 (Act 772)

386. The Electronic Transactions Act, 2008 (Act 772) shall be read as one with section 378 of this Act and where there is a conflict between section 378 and Act 772, section 378 of this Act shall prevail.

Commencement

387. The Office of the Registrar of Companies shall be established within two years of the coming into force of this Act.

FIRST SCHEDULE

(Section 383) Definitions

In this Act, unless the context otherwise requires,

"acquire" in relation to securities,

(a) means that securities are obtained whether from the body corporate whose securities they are or from a former holder and whether for cash or for a consideration other than cash or for no consideration, and

(b) except where the context otherwise requires, includes an agreement to acquire;

"alternate director" has the meaning assigned to it by section 181;

"annual return" means the return required to be made under section 126;

"approved stock exchange" means a body corporate approved as a stock exchange under the Securities Industry Act, 2016 (Act 929);

"arrangement" includes a reorganisation of the authorised shares of a company by the

(a) consolidation of shares of different classes;

(b) division of shares into shares of different classes; or

(c) combination of the methods referred to in paragraphs *(a)* and *(b)*;

"asset" means any kind of property or any legal or equitable right;

"associated company" where used in this Act to describe the relationship of one body corporate to another means that the body corporate so described is the subsidiary or holding company of that other, or a subsidiary of that other's holding company, or a holding company of that other's subsidiary;

"beneficial owner" means an individual

(a) who directly or indirectly ultimately owns or exercises substantial control over a person or company;

(b) who has a substantial economic interest in or receives substantial economic benefits from a company whether acting alone or together with other persons;

(c) on whose behalf a transaction is conducted; or

(d) who exercises significant control or influence over a legal person or legal arrangement through a formal or informal agreement;

"benefits" in relation to a director

(a) includes a fee, percentage or other payment, and the monetary value of any consideration, allowance or perquisite, given directly or indirectly, to the director in relation to the management of the affairs of the company or of a related company, whether as a director or otherwise; but

(b) does not include an amount given in payment or reimbursement of out-of-pocket expenses incurred for the benefit of the company;

"body corporate" means a corporation formed under this Act or otherwise and whether in Ghana or elsewhere but does not include a corporation sole such as an incorporated office;

"book" includes any account, deed, writing or document, and any other record of information however compiled, recorded or stored;

"buy", in relation to securities means

(a) an acquisition of the securities for cash; or

(b) an agreement to acquire those securities;

"calls" means a sum which the company has validly resolved to call up in respect of any shares issued with an unpaid liability and whereby the terms of issue of a share a sum becomes payable on application, allotment or at any fixed date that sum is a call duly made and payable on the date on which by the terms of issue the same become payable;

"capitalisation issue" has the meaning assigned to it by subsection (1) of section 77;

"charge" includes a security on property or a mortgage whether legal or equitable statement to the effect that it is a true and complete copy of the original or, an accurate translation of the original, under the seal of the company or signed by a director and the Company Secretary;

"Commission" means the Securities and Exchange Commission;

"company" means a body formed and registered under this Act; "company limited by shares" and "company limited by guarantee" have the meanings assigned to them in section 7;

"Company Secretary" includes a person occupying the position of secretary by whatever name called;

"compromise" means an agreement between a company and its creditors including

(a) cancelling all or part of a debt of the company;

(b) varying the

(i) rights of creditors; or

(ii) terms of a debt of the company; and

(c) relating to an alteration of the constitution of the company, that affects the ability of the company to pay a debt of the company.

"constitution" includes

(a) a registered constitution of a company duly delivered in accordance with section 23; and

(b) the constitution of a company as specified in the Second, Third and Fourth Schedules;

"contribution" in relation to a pension scheme, includes the payment of an insurance premium, paid for the purposes of the scheme by or in respect of persons rendering services in respect of which pensions will or may become payable under the scheme, but does not include a payment in respect of two or more persons if the amount paid in respect of each of them is not ascertainable;

"Court" means the High Court;

"debenture" includes

(a) a written acknowledgment of indebtedness issued by a company in respect of a loan made or to be made to it or to any other person or money deposited or to be deposited with the company or any other person or the existing indebtedness of the company or any other person whether constituting a charge on any of the assets of the company or not;

(b) debenture stock;

(c) convertible debenture;

(d) a bond or an obligation;

(e) loan stock;

(f) an unsecured note; or

(g) any other instrument executed, authenticated, issued or created in consideration of such a loan or existing indebtedness;

(h) but does not include

(i) a bill of exchange;

(ii) a promissory note;

(iii) a letter of credit;
(iv) an acknowledgment of indebtedness issued in the ordinary course of business for goods or services supplied;
(v) a policy of insurance; or
(vi) a deposit certificate, pass book or other similar document issued in connection with a deposit or current account at a banking company;

"default" means the failure to comply with a provision of this Act and being liable to a fine or penalty or to pay damages or compensation or to discharge a debt or obligation;

"delivery"includes electronic delivery;

"derivative actions" has the meaning assigned to it in section 201;

"director" in relation to a company, has the meaning assigned to it by section 170 and in relation to any other body corporate means a person whose position in relation to that body corporate is one that that person would be a director of the body corporate if that body corporate were a company;

"dispose" in relation to any securities means

(a) that the securities are parted with whether to the body corporate to which the securities belong or to any other person and whether for cash or for a consideration other than cash or for no consideration; or

(b) an agreement to part with securities except where the context otherwise requires;

"distribution test" includes circumstances where

(a) a company is able to pay its debts as they fall due; and

(b) the amount or value of any payment, return or distribution made by the company does not exceed its retained earnings immediately before the making of the payment, return or distribution;

"division" means a scheme by which the undertaking, property and liabilities of a company, in respect of which a compromise or an arrangement is proposed, are to be divided among and transferred to two or more companies which are either

(a) existing companies; or

(b) new companies;

"document" includes

(a) a written expression in any form;

(b) writing on any material;
(c) a book, graph or drawing; and
(d) information recorded or stored by any electronic or other technological means and capable, with or without the aid of equipment, of being reproduced;

"equity share" has the meaning assigned to it by section 51;
"external company" has the meaning assigned to it by section 329;
"financial statement" in relation to a company includes a
(a) statement of financial position;
(b) statement of comprehensive income;
(c) statement of changes in equity;
(d) statement of cash flows; and
(e) description of significant accounting policies, and explanatory notes to the financial statement of a company prepared in compliance with International Financial Reporting Standards approved or adopted by the Institute of Chartered Accountants, or any other standards approved or adopted by the Institute;

"financial year" means the period covered by the statement of comprehensive income of the company in accordance with section 129;
"floating charge" has the meaning assigned to it by section 90;
"in default" means that the person concerned knowingly authorises or permits the default, refusal or contravention mentioned in the section;
"infant" means a natural person under the age of eighteen years or any other age that is declared by an enactment to be of full age for legal purposes;
"insolvency practitioner' means a person who
(a) acts as a receiver under this Act;
(b) acts as a manager under this Act;
(c) acts as an administrator under this Act;
(d) acts as a trustee in bankruptcy under the Insolvency Act, 2006 (Act 708); or
(e) acts as a liquidator in bankruptcy under the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180); and
(f) demonstrates proof of a professional indemnity insurance;

"liquidator" means the person appointed to wind up a body corporate;
"local manager" in relation to an external company, has the meaning assigned to it by section 332;
"major transaction" has the meaning assigned to it in section 145;

"manager" includes a receiver and a person appointed to perform the functions referred to in subsections (1) and (2) of section 266;

"managing director" means a director to whom has been delegated the powers of the board of directors, to direct and administer the business of the company;

"merger" includes merger by

(a) absorption by which the undertaking, property and liabilities of one or more companies, including the company in respect of which a scheme is proposed, are to be transferred to another existing company; or

(b) formation of a new company by which the undertaking, property and liabilities of two or more companies, including the company in respect of which the scheme is proposed, are to be transferred to a new company and the consideration envisaged for the transfer is shares in the transferee company receivable by a member of the transferor company with or without any cash payment to that member;

"Minister" means the Minister responsible for Justice;

"non-Ghanaian" means an association incorporated or to be incorporated outside the Republic ;

"notarise" means to officially witness and sign a document required for certification that may be used as proof or evidence of certain facts;

"Office of the Registrar" means the body corporate established as the Office of the Registrar of Companies established under section 351 of this Act;

"officer" in relation to a body corporate includes any director, secretary or employee of that body corporate and a receiver and manager of a part of the undertaking of that body corporate, appointed under a power contained in an instrument, and a liquidator of a company appointed in a members' voluntary winding up, but does not include a receiver, not being a manager, a receiver and manager appointed by the Court, or a liquidator appointed under the provisions of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180), or an auditor of a company;

"Official Trustee" means the Registrar of Companies;

"ordinary resolution" means a resolution passed by a simple majority of votes cast by the members of the company who, being entitled so to do, vote in person or, where proxies are allowed, by proxy at a general meeting;

"payment in cash" has the meaning assigned to it by section 48;

"penalty unit" means the pecuniary value of a fine provided for in the Interpretation Act, 2009 (Act 792);

"pension" means any superannuation allowance, superannuation

gratuity, or similar payment;

"pension scheme" means a scheme for the provision of pensions in respect of services as an officer of a company which is maintained in whole or in part by contributions;

"politically exposed person" includes

(a) a person who is or has been entrusted with a prominent public function in this country, a foreign country or an international organisation including

(i) senior political party official, government, judicial or military official;

(ii) a person who is or has been an executive of a State owned company;

(iii) a senior political party official in a foreign country; and

(b) an immediate family member or close associate of a person referred to in paragraph *(a);*

"preference share" has the meaning assigned to it by section 51;

"prescribed form" has the meaning assigned to it by section 374;

"private company" and "public company" have the meanings assigned to them in section 7;

"private liquidation" has the meaning assigned to it by section 276;

"process agent" in relation to external companies has the meaning assigned to it by section 330;

"Producer Price Index" means an index that measures the average change over time in the prices received by domestic producers of goods and services in the wholesale market as calculated by the Ghana Statistical Service;

"professional body" means a professional body registered under the Professional Bodies Registration Act, 1973 (N.R.C.D. 143);

"purchase" in relation to securities means an acquisition of securities for cash and except where the context otherwise requires, includes an agreement to buy;

"receiver" includes a manager and a person appointed to perform the functions referred to in subsection (1) of section 266;

"registration" has the meaning assigned to it by section 373;

"registration officer" has the meaning assigned to it by subsection (12) of section 35;

"registered constitution" means the document registered with the Registrar under section 23 as representing the constitution of a company;

"Registrar" includes

(a) the Office of the Registrar of Companies; and
(b) the Registrar of Companies appointed in accordance with section 362 where the context otherwise requires;

"representative actions" has the meaning assigned to it in section 205;
"Republic" means the Republic of Ghana;
"reserves" has the meaning assigned to it by section 70;
"resolution requiring confirmation" has the meaning assigned to it by subsection (2) of section 78;
"retained earnings" has the meaning assigned to it by section 71;
"seal" means the common seal of a company;
"securities" include

(a) shares or debentures;
(b) securities of the Government or any country or territory outside Ghana;
(c) rights or interests, whether described as units or otherwise under a unit trust; and
(d) rights, whether actual or contingent in respect of money lent to or deposited with, a person that is not a body corporate licensed, under the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930) or any other enactment to carry on banking business;

"sell" in relation to securities means a disposal of securities for cash and except where the context otherwise requires, includes an agreement to sell;
"shares" mean the interests of members of a body corporate who are entitled to share in the capital or income of the body corporate;
"solvent" in relation to a body corporate means the ability to pay its debts as they fall due;
"special resolution" has the meaning assigned to it in paragraph 14 of the Eighth Schedule;
"stated capital" has the meaning assigned to it by section 68;
"stock exchange" means any body corporate or association of persons operating an exchange or market on which securities are acquired and disposed of;
"subscribe" in relation to securities includes

(a) the purchase of those securities from the body corporate whose securities they are, and
(b) an agreement to purchase those securities from the body corporate whose securities they are;

"subscriber" in relation to a body corporate means a person who

applies for the incorporation of a company;

"subsidiary" and "holding company" means a body corporate that is the subsidiary of another and that other is its holding company if,

(a) that other body corporate by the exercise of a power directly or indirectly vested in it, whether by virtue of the beneficial ownership of shares or otherwise, can appoint or remove or procure the appointment or removal of all or not less than half of its directors for the time being or can prevent the appointment or removal of all or not less than half of its directors; but

(i) a power exercisable in a fiduciary capacity for another person shall be treated as exercisable by that other person and not by the fiduciary;

(ii) a power exercisable by virtue of shares held by way of security only for the purpose of a transaction entered into in the ordinary course of business of that other body corporate shall be disregarded; and

(iii) a body corporate has a power to appoint a director of another body corporate if the appointment of that person as director of that other body corporate necessarily follows from that person's appointment as director or other officer of that first named body corporate; or

(b) it is a subsidiary of a body corporate which is that other's subsidiary;

"substitute director" has the meaning assigned to it by section 180;

"treasury shares" has the meaning assigned to it by subsection (5) of section 61;

"unlimited company" has the meaning assigned to it in section 7;

"untrue statement" means a statement which is false or misleading in the form, context or circumstances in which it was made having regard to a failure to state other facts;

"vendor" means a person who has entered into a contract, absolute or conditional, for the sale or leasing, of a property or for the granting of an option to purchase or lease, a property;

"wholly owned subsidiary" means where a holding company is beneficially entitled, whether the registered holder or not, to all the issued shares of any of its subsidiaries that subsidiary is the wholly owned subsidiary of that holding company;

"winding up under an order of a Court" has the meaning assigned to it by section 274;

"written" includes

(a) the recording of words in a permanent or legible form; and

(b) the display of words by any form of electronic or other means of communication in a manner that enables the words to be readily stored in a permanent form and with or without the aid of any equipment to be retrieved and read; and

"written communication" includes communication by registered post, and electronic communication, but excludes oral communication.

SECOND SCHEDULE

(Sections 24, 25, 27 and 301)
Constitution for a Private Company Limited by Shares

1. Pursuant to section 18 of this Act, a company has the powers of a natural person of full capacity.
2. The powers of the board of directors are limited in accordance with sections 189 and 195 of this Act.
3. The liability of the members of the company is limited.
4. The company is a private company and accordingly,
   (a) the right to transfer shares is restricted in that the directors may, in their absolute discretion and without assigning a reason, decline to register a transfer of a share;
   (b) the number of members and debenture holders of the company, exclusive of persons who are genuinely in the employment of the company and of persons who having been formerly genuinely in the employment of the company were while in that employment and have continued after the determination of the employment to be members or debenture holders of the company, is limited to fifty, but where two or more persons hold one or more shares or debentures jointly, they shall for the purposes of this clause be treated as a single member;
   (c) the company is prohibited from making an invitation to the public to acquire any of the shares or debentures of the company;
   (d) the company is prohibited from making an invitation to the public to deposit money for fixed periods or payable at call whether bearing or not bearing interest.

Shares and variation of rights

5. The company may, by a special resolution amend this constitution
   (a) to increase the number of the shares by creating new shares;
   (b) to reduce the number of shares of the company by cancelling shares which have not been taken or agreed to be taken by a person, or by consolidating the existing shares, whether issued or not, into a smaller number of shares;

(c) to provide for different classes of shares by attaching to certain of the shares preferred, deferred or other special rights or restrictions whether with regard to dividend, voting, repayment or otherwise, but the voting rights of equity shares shall comply with sections 34 and 53 of this Act and the voting rights of preference shares shall comply with sections 34 and 52 of this Act; and

(d) in accordance with section 61 of this Act to create preference shares which are, at the option of the company liable, to be redeemed on the terms and in the manner that may be provided, but subject to compliance with sections 62 to 65 of the Act.

6. (1) The company shall not issue any new or unissued shares for cash unless the shares are offered in the first instance to the members or to the members of the class or classes of shares being issued in proportion as nearly as may be to the existing holdings of the members.

(2) The offer to the existing members shall be by notice specifying the number of shares to which a member is entitled to subscribe and within a specified time, not being less than twenty-eight days after the date of service of the notice, after the expiration of which the offer, if not accepted, will be deemed to be declined.

(3) After the expiration of that time, or on receipt of an intimation from the member that the member declines to accept the shares offered, the board of directors may, subject to the terms of a resolution of the company and to section 189 of this Act dispose of the shares at a price not less than that specified in the offer in the manner that the board of directors think most beneficial to the company.

(4) This clause is not alterable except with the unanimous consent of the members of the company.

7. Where the shares are divided into different classes, the rights attached to a class may be varied with the written consent of the holders of at least three-fourths of the issued shares of that class or the sanction of special resolution of the holders of the shares of that class.

8. Subject to compliance with sections 62 to 65 of this Act, the company may exercise the powers conferred by section 61 of this Act to,
   (a) purchase its own shares;
   (b) acquire its own shares by a voluntary transfer to the company or nominees of the company;
   (c) forfeit in accordance with this constitution any shares issued with an unpaid liability for non-payment of calls or other sums payable in respect of those shares.

9. The company may pay commission or brokerage to a person in consideration of that person subscribing or agreeing to subscribe or agreeing to procure subscriptions for any shares in the company provided that, the payment does not exceed ten percent of the price at which the shares are issued.

10. Share certificates shall be issued in accordance with section 55 of this Act.

Calls on shares

11. (1) Where shares are issued on the terms that a part of the price payable for the shares is not payable at a fixed time, the board of directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares, provided that, a call shall not be payable less than twenty-eight days from the date fixed for the payment of the last preceding call, and each member shall, subject to receiving not less than fourteen days notice specifying the time and place of payment, pay to the company at the time and place so specified, the amount called upon the shares of that person.

    (2) A call may be revoked or postponed as the directors may determine.

12. A call is made at the time when the resolution of the directors authorising the call is passed and may be required to be paid by instalments.

13. The joint holders of a share are jointly and severally liable to pay all calls in respect of that share.

14. If a sum called in respect of a share is not paid before or on the day appointed for payment, the person from whom the sum is due shall pay interest on that sum from the date appointed for payment to the time of actual payment at the yearly rate not exceeding five percent as the board of directors may determine, but the board of directors shall be at liberty to waive payment of the interest in whole or in part.

15. A sum which by the terms of issue of a share becomes payable on application for the shares or on allotment, or at a fixed date is, for the purposes of this constitution, a call duly made and payable on the date on which by the terms of issue the sum becomes payable, and in the case of non-payment, all the relevant provisions of this constitution as to payment of interest and expenses, forfeiture, sale or otherwise shall apply as if the sum had become payable by virtue of a call duly made and notified.

16. As between shares of the same class the company shall not differentiate between the holders as to the amount of calls to be paid or the times of payment.

17. If the company receives from a shareholder all or any part of the moneys not presently payable or called upon any shares held by the member, the sum shall not be treated as a payment in respect of the shares until the sum becomes due and payable on those shares and in the meantime, shall be deemed to be a loan to the company upon which the company may pay interest at the rate prevailing as may be agreed between the board of directors and the member.

Forfeiture of shares

18. Where a shareholder fails to pay any call or instalment of a call, including a sum which is a call under clause 15, the board of directors may at any time after the failure during the time that a part of the call or instalment remains unpaid, serve a notice on the member requiring payment of so much of the call or instalment as is unpaid, together with the interest which may have accrued.

19. The notice shall state a further day not earlier than the expiration of fourteen days from the date of service of the notice on or before which the payment required by the notice is to be made, and shall state that, in the event of non-payment at or before the times appointed, the shares in respect of which the call was made will be liable to be forfeited.

20. If the requirements of the notice are not complied with, a share in respect of which the notice was given may, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

21. A forfeited share may be cancelled by alteration of this constitution or may be retained as a treasury share until sold or otherwise disposed of on the terms and in the manner that the board of directors considers fit.

22. A person whose shares have been forfeited ceases to be a member in respect of the forfeited shares and is bound to surrender to the company for cancellation the share certificate or certificates in respect of the shares so forfeited but shall, despite that, remain liable to pay to the company the moneys which, at the date of the forfeiture, were payable by that person to the company in respect of the shares, but that liability shall cease if and when the company receives payment in full of the moneys in respect of the shares.

23. A statutory declaration in writing that the declarant is a director or the Company Secretary and that a share in the company has been duly forfeited on the date stated in the declaration, is conclusive evidence of the facts stated in the declaration as against the persons claiming to be entitled to the share.

Lien

24. (1) The company shall have a first and paramount lien on all shares issued with an unpaid liability for the moneys, whether presently payable or not, called or payable at a fixed time in respect of that share.
(2) The lien of the company extends to the dividends payable on the shares.

25. Where a sum in respect of which the company has a lien is presently payable by the board of directors, after serving the notice required by clauses 18 and 19 of this Schedule, the company may at any time before the payment required by the notice has been made, sell a share on which the company has the lien instead of forfeiting the share in accordance with clause 18.

26. (1) To give effect to a sale under clause 25, the board of directors may authorise a person to transfer the shares sold to the purchaser of those shares.
(2) The purchaser shall be registered as the holder of the share stated in the transfer and the purchaser is not bound to see to the application of the purchase money nor shall the title of the purchaser to the shares be affected by an irregularity or invalidity in the proceedings in reference to the sale.

27. The proceeds of the sale shall be received by the company and applied in payment of the part of the amount in respect of which the existing payable lien, and the residue shall, subject to a like lien for sums not presently payable, as existed upon the shares before the sale, be paid to the person entitled to the share at the date of the sale but, the company is not bound to make the payment unless and until that person has surrendered to the company for cancellation, the share certificate or certificates relating to the shares so sold.

Transfer and transmission of shares

28. Subject to clause (4) *(a)* shares shall be transferable and transfers shall be registered in the manner provided by sections 98 and 101 of this Act.

29. In the event of the death of a member or in the event of the ownership of a share devolving upon a person by reason of that person being the legal personal representative, receiver, or trustee in bankruptcy of the holder, or by operation of law, section 102 of this Act shall apply.

Dividends

30. The company may, by ordinary resolution, declare dividends in respect of a year or any other period but, a dividend shall not exceed the amount recommended by the board of directors.

31. A dividend shall not be paid unless,
    (a) the company will, after the payment, be able to pay its debts as they fall due; and
    (b) the amount of the payment does not exceed the amount of the retained earnings of the company immediately before making of the payment.

32. The board of directors may, before recommending a dividend, set aside out of the profits or retained earnings of the company, the sums that the board of directors think proper in order to provide for a known liability, including a disputed or contingent liability, or as a depreciation or replacement provision and may, carry forward any profits or retained earnings which the board of directors may consider prudent not to distribute.

33. Dividends shall be declared and paid as a fixed sum for each share and not as a proportion of the amount paid in respect of a share.

34. The board of directors may deduct from a dividend payable to a member the sums of money presently payable by the member to the company in respect of the shares of the member.

35. (1) A dividend payable in cash may be paid by cheque or warrant sent by post directed to the registered address of the member or, in the case of joint holders, to the registered address of the one who is first named on the register of members, or to the person and to the address that the holder or joint holders may in writing direct.
(2) The cheque or warrant shall be made payable to the order of the person to the whom the cheque or warrant is sent.
(3) Any one of two or more joint holders may give effectual receipts for any dividends.
(4) A dividend payment shall be accompanied by a statement showing the gross amount of the dividend, and the tax deducted or deemed to be deducted from the gross amount.

36. A dividend shall not bear interest against the company.

Capitalisation Issues and Non-Cash Dividends

37. The company, on the recommendation of the directors, may exercise the powers conferred by section 77 of this Act, to
(a) make capitalisation issues of shares in accordance with subsection (1) of section 77,
(b) resolve, in accordance with subsection (3) of section 77 that, a sum standing to the credit of the retained earnings of the company and which could have been distributed by way of

dividend shall be applied in paying up amounts for the time being unpaid on shares,

(c) direct, in accordance with subsection (4) of section 77 that, payment of a dividend shall be, wholly or partly, by distribution of securities for money or fully paid shares or debentures of another body corporate or of fully paid debentures of the company.

Accounts and audit

38. Auditors, qualified in accordance with section 138 of this Act, shall be appointed and their duties regulated in accordance with sections 139 to 143 of this Act.

39. The board of directors shall cause proper books of account to be kept and financial statements to be prepared, audited and circulated in accordance with sections 127 to 137 of this Act.

General meetings and Resolutions

40. The powers of the members in general meeting shall be as stated in section 144 of this Act.

41. Annual general meetings shall be held in accordance with section 157 of this Act.

42. Extraordinary general meetings may be convened by the directors whenever the directors think fit in accordance with section 158 of this Act and shall be convened by the directors on a requisition of members in accordance with section 299 of this Act.

43. Notice of general meetings shall be given in accordance with sections 160 and 168 and paragraphs 2 to 6 of the Eighth Schedule to the Act and accompanied by any statements required to be circulated with the notice in accordance with section 168 and paragraphs 5 and 6 of the Eighth Schedule of this Act.

44. Meetings may be attended by the persons referred to in section 157 of this Act but a member shall not be entitled to attend unless all calls or other sums presently payable by that member in respect of shares in the company have been paid.

45. The quorum required for a general meeting shall be as stated in paragraph 8 of the Eighth Schedule to this Act.

46. (1) In accordance with paragraph 9 of the Eighth Schedule of this Act, a member entitled to attend and vote at a meeting of the company is entitled to appoint another person, whether a member of

the company or not, as a proxy to attend and vote instead of that member, and the proxy shall have the same rights as the member to speak at the meeting.

(2) An instrument appointing a proxy shall be in the following form or a form as near to this form as circumstances admit.

"John Mensah & Co., Limited

I/We .....of .....being a member/ members of the above-named company hereby appoint..... of .....or failing him/her as my/our proxy to vote for me/ us on my/our behalf at the annual/extraordinary general meeting of the company to be held on the .....day of ..... 20..... and at any adjournment thereof.

Signed this day of 20.....

This form is to be used:

*In favour of resolution numbered 1 against

*In favour of resolution numbered 2 against"

[Delete if only one resolution is to be proposed; add further instructions if more than two resolutions are to be proposed.]

Unless otherwise instructed, the proxy will vote as the proxy thinks fit.

*Strike out whichever is not desired.

47. A body corporate which is a member of the company may attend and vote by proxy or by a representative appointed in accordance with paragraph 11 of the Eighth Schedule to this Act.

48. (1) Meetings shall be conducted in accordance with paragraphs 12 to 19 of the Eighth Schedule to this Act.
(2) On a poll being demanded, the chairperson of the meeting shall not be required to direct a postal ballot in accordance with sub-paragraphs *(f)*, *(g)* and *(h)* of paragraph 16 of the Eighth Schedule to this Act unless the chairperson thinks fit or an ordinary resolution to that effect is moved at the meeting and passed on a show of hands.

49. In accordance with section 163 of this Act a resolution in writing signed by the members for the time being entitled to attend and vote at general meetings, or being bodies corporate by their duly authorised representatives, and if the company has only one member entitled to attend and vote, the vote by that member shall be as valid and effective for all purposes, except as provided by section 163, as if the resolution had been passed at a general meeting of the company duly convened and held, and if described as a special resolution shall be deemed to be a special resolution within the meaning of this Act.

50. Minutes of general meetings shall be kept in accordance with section 166 of this Act.

51. If at any time the shares of the company are divided into different classes, this constitution shall apply to a meeting of a class of members in like manner as the constitution apply to general meetings but the necessary quorum shall be as set out in section 164 of the Act.

Votes of members

52. Subject to any rights or restrictions for the time being attached to a class of preference shares and which may be validly attached, that class, pursuant to section 51 of this Act,
    (a) on a show of hands each member and each proxy lawfully present at the meeting shall have one vote, and on a poll each member present in person or by proxy shall have one vote for each share held by that member; or
    (b) in the event of a postal ballot being directed pursuant to subparagraphs *(f)*, *(g)* and *(h)* of paragraph 16 of the Eighth Schedule to this Act, each member entitled to attend and vote at the meeting shall have one vote for each share held by that member.

Directors

53. The number of directors, not being less than two or more than five, shall be determined by ordinary resolution of the members in general meeting and until so determined shall be two.

54. The continuing directors may act despite a vacancy in the number of directors but if and so long as their number is reduced below two or below the number fixed by the directors as the necessary quorum, they may act for four weeks after the number is so reduced, but after that, may act only for the purpose of increasing the number of directors to that number or of summoning a general meeting of the company and for no other purpose.

55. The appointment of directors shall be regulated by sections 172 and 300 of this Act.

56. The persons referred to in section 173 of the Act shall not be competent to be appointed directors of the company.

57. A director need not hold any shares in the company.

58. The office of director shall be vacated in accordance with section 175 of this Act and a director may be removed from office in accordance with section 176 of this Act.

59. (1) The company may appoint substitute directors in accordance with section 180 of this Act and a director may appoint an alternate director in accordance with section 181 of this Act.
(2) An alternate director shall not be entitled to be remunerated otherwise than out of the remuneration of the director appointing that alternate director.

60. At least one director of the company shall at all times be resident in Ghana.

61. The remuneration payable to a director in whatever capacity shall be determined or approved by the members in general meeting in accordance with section 185 of this Act.

62. The proceedings of the directors shall be regulated by section 188 of this Act and the board of directors may delegate any of their powers to committees of the directors in accordance with that section.

63. Minutes of meetings of the board of directors and of a committee of directors shall be kept in accordance with section 188 of this Act.

Powers and duties of directors

64. (1) The business of the company shall be managed by the directors who may pay all expenses incurred in promoting and registering the company.
(2) Subject to section 189 of this Act, the board of directors may exercise the powers of the company, including power to borrow money and to mortgage or charge the property of the company and undertaking or a part of the property and undertaking and to issue debentures, which are not by the Act or this constitution required to be exercised by the members in general meeting.

65. In a transaction with the company or on behalf of the company and in the exercise of powers, the directors shall observe the duties and obligations imposed on them by sections 190 to 192 of this Act.

66. Subject to compliance with section 194 of this Act, a director may enter into a contract with the company and the contract or any other contract of the company in which a director is in any way interested, shall neither be liable to be avoided nor shall a director be liable to account for a profit made by virtue of that contract, by reason of the director holding the office of director or of the fiduciary relationship established by the status as a director.

67. A director may act personally or by the firm of that director in a professional capacity for the company, except as auditor, and the director or the firm shall be entitled to proper remuneration for professional services as if the director were not a director.

Executive and managing directors

68. The board of directors may exercise the powers conferred by section 183 of this Act to appoint one or more of the members of the board of directors to any other office or place of profit under the company, other than the office of auditor, for the period and on the terms that the board of directors may determine and, subject to the terms of an agreement entered into in a particular case, may revoke that appointment.

69. (1) The board of directors may exercise the power conferred by section 184 of this Act to appoint one or more of the members of the board of directors to the office of managing director for the period and on the terms that the board of directors may determine

and, subject to the terms of an agreement entered into in a particular case, may revoke the appointment and the appointment shall be automatically determined if the holder of the office ceases for any cause to be a director.

(2) The directors may entrust to and confer on a managing director any of the powers exercisable by the directors on the terms and with the restrictions that they think fit, and either collaterally with, or on the exclusion of, their own powers, and subject to the terms of an agreement entered into in a particular case, may from time to time revoke or vary all or any of those powers.

70. Remuneration shall not be payable to a director in respect of any office or place of profit to which the director is appointed in this constitution, unless and until, the terms of the appointment have been approved by ordinary resolution of the company in general meeting in accordance with section 185 of this Act.

Company Secretary and officers and agents

71. The Company Secretary shall be appointed by the board of directors for the time, at the remuneration, and on the conditions that board considers fit, and a Company Secretary so appointed may be removed by the board of directors, subject to the right of the Company Secretary to claim damages if removed in breach of contract.

72. A provision in this Act or this constitution requiring or authorising a thing to be done by a director and the Company Secretary shall not be satisfied by the thing being done by that person acting both as director and as, or in place of, the Company Secretary.

73. (1) The board of directors may from time to time appoint officers and agents of the company and may appoint a body corporate, firm, or body of persons, whether nominated directly or indirectly, by the board of directors, to be the attorney or attorneys of the company for the purposes and with the powers, authorities and discretions, not exceeding those vested in or exercisable by the directors in this constitution, and for the period and subject to the conditions that the board of directors may consider fit.

(2) The powers of attorney may contain the provisions for the protection and convenience of persons dealing with that attorney

that the directors may consider fit, and may also authorise that attorney to delegate all or any of the powers, authorities and discretions vested in that attorney.

Service of documents

74. A document may be served by the company on a member, debenture holder or director of the company in the manner provided by section 290 of this Act.

Winding-up

75. (1) Where the company is being wound up, the liquidator may, with the sanction of a special resolution of the company and any other sanction required by this Act or by the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180), divide amongst the members in specie or kind, the whole or a part of the assets of the company, whether they consist of property of the same kind or not, and may for that purpose set the value that the liquidator thinks fair on the property to be divided, and may determine how the division shall be carried out as between the members or different classes of members.

(2) The liquidator may, with the like sanction, vest the whole or a part of the assets in trustees upon the trusts for the benefit of the members that the liquidator, with the like sanction, thinks fit.

(3) Despite subparagraphs (1) and (2), a member shall not be compelled to accept any securities on which there is a liability.

Interpretation

76. In this constitution unless the context otherwise requires,

(a) "Act" means the Companies Act, 2019 (Act 992);
(b) words or expressions have the meanings assigned to them in this Act; and
(c) references to sections of this Act mean the sections as specified in this Act.

A private company may, in a constitution registered by the private company, exclude or modify any of the provisions of this Schedule to the extent permitted by this Act.

THIRD SCHEDULE

(sections 24, 25, 27 and 301)
Constitution for a Public Company Limited by Shares

1. Pursuant to section 18 of this Act, a company, in furtherance of its authorised businesses, has the powers of a natural person of full capacity.

2. The powers of the board of directors are limited in accordance with section 195 of this Act.

3. (1) The liability of the members of the company is limited.

(2) Without limiting any special rights previously conferred on the holders of any existing shares or class of shares, but subject to this Act, shares in the company may be issued by the directors and any such shares may be issued with the rights or restrictions that the directors may determine, subject to section 192 and any other provision of this Act, and any ordinary resolution of the company.

Shares and variation of rights

4. The company may, by special resolution amending this constitution

(a) increase the number of the shares of the company by creating new shares;

(b) reduce the number of shares by cancelling shares which have not been taken or agreed to be taken by a person, or by consolidating the existing shares, whether issued or not, into a smaller number of shares;

(c) provide for different classes of shares by attaching to some class of the shares preferred, deferred or other special rights or restrictions whether in regard to dividend, voting, repayment, or otherwise, but the voting rights of equity shares shall comply with sections 34 and 53 of this Act and the voting rights of preference shares shall comply with sections 34 and 52 of this Act; and

(d) in accordance with section 61 of this Act, create preference shares which are, or at the option of the company liable, to be redeemed on the terms and in the manner that may be provided, but subject to compliance with sections 62 to 65 of this Act.

5. On the issue of any new or unissued shares in the company, the directors shall comply with section 189 of this Act.
6. If at any time the shares are divided into different classes, the rights attached to a class may be varied with the written consent of the holders of at least three-fourths of the issued shares of that class or the sanction of a special resolution of the holders of the shares of that class.
7. Subject to compliance with sections 62 to 65 of this Act the company may exercise the powers conferred by section 61 of this Act, to,
   (a) purchase its own shares;
   (b) acquire its own shares by a voluntary transfer to the company or to nominees for it; or
   (c) forfeit in the manner appearing in this constitution any shares issued with an unpaid liability for non-payment of calls or other sums payable in respect of the shares.
8. The company may pay commission or brokerage to a person in consideration of that person subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares in the company, provided that, the payment does not exceed ten percent of the price at which the shares are issued.
9. Share certificates shall be issued in accordance with section 55 of this Act.
10. (1) Where shares are issued on the terms that a part of the price payable for the shares is not payable at a fixed time, the board of directors may from time to time make calls on the members in respect of any moneys unpaid on their shares, provided that a call shall not be payable less than twenty-eight days from the date fixed for the payment of the last preceding call, and each member shall, subject to receiving not less than fourteen days notice specifying the time and place of payment, pay to the company at the time and place so specified the amount called on the shares of that member.

    (2) A call may be revoked or postponed as the directors may determine.
11. A call is made at the time when the resolution of the directors authorising the call was passed and may be required to be paid by instalments.
12. The joint holders of a share are jointly and severally liable to pay all calls in respect of that share.

13. If a sum called in respect of a share is not paid before or on the day appointed for payment, the person from whom the sum is due shall pay interest on that sum from the date appointed for payment to the time of actual payment at the yearly rate not exceeding five percent that the board of directors may determine, but the board of directors shall be at liberty to waive payment of the interest wholly or in part.

14. A sum which by the terms of issue of a share becomes payable on application for the shares or on allotment, or at a fixed date shall for the purposes of this constitution be treated as a call duly made and payable on the date on which by the terms of issue the sum becomes payable, and in the case of non-payment the relevant provisions of this constitution as to payment of interest and expenses, forfeiture, sale or otherwise shall apply as if that sum had become payable by virtue of a call duly made and notified.

15. As between shares of the same class, the company shall not differentiate between the holders as to the amount of calls to be paid or the times of payment.

16. If the company receives from a member all or any part of the moneys not presently payable or called upon any shares held by the member, the sum shall not be treated as a payment in respect of the shares until the sum becomes due and payable on the shares and in the meantime the sum shall be treated as a loan to the company upon which the company may pay interest at the yearly rate not exceeding five percent as may be agreed between the board of directors and the member.

Forfeiture of shares

17. If a member fails to pay any call or instalment of a call, including a sum treated as a call under clause 14 of this constitution, the board of directors may at any time during the time that a part of the call or instalment remains unpaid, serve a notice on the member requiring payment of so much of the call or instalment as is unpaid, together with the interest which may have accrued.

18. The notice shall state a further day, not earlier than the expiration of fourteen days from the date of service of the notice on or before

which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the times appointed, the shares in respect of which the call was made will be liable to be forfeited.

19. If the requirements of the notice are not complied with, a share in respect of which the notice has been given may, at any time, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

20. A forfeited share may either be cancelled by amendment of this constitution or may be retained as a treasury share until sold or otherwise disposed of on the terms and in the manner the board of directors considers fit.

21. A person whose shares have been forfeited ceases to be a member in respect of the forfeited shares and that person shall surrender to the company for cancellation the share certificate or certificates in respect of the shares so forfeited but shall, nonetheless, remain liable to pay to the company moneys which, at the date of the forfeiture, were payable by that person to the company in respect of the shares, but the liability of that person shall cease if and when the company receives payment in full of the moneys in respect of the shares.

22. A statutory declaration in writing that the declarant is a director or the Company Secretary and that a share in the company has been duly forfeited on the date stated in the declaration, is conclusive evidence of the facts stated in the declaration as against a person claiming to be entitled to the share.

Lien

23. (1) The company shall have a first and paramount lien on the shares issued with an unpaid liability for the moneys, whether presently payable or not, called or payable at a fixed time in respect of the shares.
(2) The lien of the company extends to all dividends payable on the shares.

24. If a sum in respect of which the company has a lien is presently

payable, the board of directors after serving the notice required by clauses 17 and 18 of this constitution may, at any time before the payment required by the notice has been made, sell a share on which the company has a lien instead of forfeiting it in accordance with clause 19 of this constitution.

25. (1) To give effect to the sale, the board of directors may authorise a person to transfer the shares sold to the purchaser of the shares.

(2) The purchaser shall be registered as the holder of the shares stated in the transfer and the purchaser shall not be bound to see to the application of the purchase money nor shall the title to the shares be affected by an irregularity or invalidity in the proceedings in reference to the sale.

26. The proceeds of the sale shall be received by the company and applied in payment of the part of the amount in respect of which the lien exists as is presently payable, and the residue shall, subject to a like lien for sums not presently payable as existed upon the shares before the sale, be paid to the person entitled to the share at the date of the sale, but the company is not bound to make the payment unless and until that person has surrendered to the company for cancellation the share certificate or certificates relating to the shares so sold.

Transfer and transmission of shares

27. (1) The board of directors may decline to register,
(a) the transfer of a share on which there is an unpaid liability; or
(b) the transfer of a share to a person who is an infant or to a person found by a court of competent jurisdiction in Ghana to be a person of unsound mind.

(2) Subject to subclause (1), there shall be no restriction on the right to transfer any shares in the company.

28. Shares shall be transferable and transfers shall be registered in the manner provided by sections 98 and 101 of this Act.

29. In the event of the death of a member or in the event of the ownership of a share devolving on a person by reason of that person being the legal personal representative, receiver or trustee in bankruptcy of the holder, or by operation of law, section 102 of this Act shall apply.

Dividends

30. The company may by ordinary resolution declare dividends in respect of a year or other period but a dividend shall not exceed the amount recommended by the board of directors.

31. The board of directors may exercise the power conferred by section 321 of the Act to pay interim dividends.

32. A dividend shall not be paid unless,

(a) the company will, after the payment, be able to pay its debts as they fall due; and

(b) the amount of the payment does not exceed the amount of the retained earnings of the company immediately before the making of the payment.

33. The board of directors may, before recommending a dividend, set aside out of the profits or retained earnings of the company, the sums that it considers proper in order to provide for a known liability, including a disputed or contingent liability, or as a depreciation or replacement provision and may carry forward any profits or retained earnings which the board of directors may consider prudent not to distribute.

34. The dividends shall be declared and paid as a fixed sum for a share and not as a proportion of the amount paid in respect of a share.

35. The board of directors may deduct from a dividend payable to a member the sums of money presently payable by the member to the company in respect of the shares.

36. (1) A dividend payable in cash may be paid by cheque or warrant or electronic transfer sent by post directed to the registered address of the member or, in the case of joint holders, to the registered address of the person who is first named on the register of members, or to a person and to an address that the holder or joint holders may in writing direct.

(2) A cheque or warrant shall be made payable to the order of the person to whom it is sent.

(3) Any one of two or more joint holders may give effectual receipts for any dividends.

(4) A dividend payment shall be accompanied by a statement showing the gross amount of the dividend, and the tax deducted or deemed to be deducted from the gross amount.

37. A dividend shall not bear interest against the company.

Capitalisation issues and non-cash dividends

38. The company, on the recommendation of the directors, may exercise the powers conferred by section 77 of this Act,
    - *(a)* to make capitalisation issues of shares in accordance with subsection (1) of section 77;
    - *(b)* to resolve, in accordance with subsection (3) of section 77 that a sum standing to the credit of the retained earnings of the company and which could have been distributed by way of dividend shall be applied in paying up amounts for the time being unpaid on shares; or
    - *(c)* to direct, in accordance with subsection (4) of section 77 that payment of a dividend shall be wholly or partly, by distribution of securities for money or fully paid shares or debentures of another body corporate or of fully paid debentures of the company.

Branch registers

39. The company may exercise the powers conferred by sections 106 and 107 of this Act with respect to the keeping of branch registers and the board of directors may, subject to those sections, make the regulations that they think fit respecting the keeping of those registers and may vary the regulations subject to those sections.

Accounts and audit

40. The board of directors shall cause accounting records to be kept and financial statements to be prepared, audited and circulated in accordance with sections 127 to 137 of this Act.

41. Auditors, qualified in accordance with section 138 of this Act, shall be appointed and their duties regulated in accordance with sections 139 to 142 of this Act.

General meetings and resolutions

42. The powers of the members in general meeting shall be as stated in section 144 of this Act.

43. Annual general meetings shall be held in accordance with section 157 of this Act.

44. Extraordinary general meetings may be convened by the directors whenever they think fit in accordance with section 158 of this Act and shall be convened by the directors on a requisition of members in accordance with section 324 of this Act.

45. Notice of general meetings shall be given in accordance with paragraphs 1 to 6 of the Eighth Schedule to this Act and section 168 of this Act and accompanied by any statements required to be circulated with the notice in accordance with paragraphs 5 and 6 of the Eighth Schedule to this Act and section 168 of this Act.

46. Meetings may be attended by the persons referred to in paragraph 7 of the Eighth Schedule to this Act but a member is not entitled to attend unless the calls or other sums presently payable by the member in respect of shares in the company have been paid.

47. The quorum required for a general meeting shall be as stated in paragraph 8 of the Eighth Schedule to this Act.

48. (1) In accordance with paragraph 9 of the Eighth Schedule to this Act a member entitled to attend and vote at a meeting of the company is entitled to appoint another person, whether a member of the company or not, as a proxy to attend and vote instead of that member and the proxy shall have the same rights as the member to speak at the meeting.
(2) An instrument appointing a proxy shall be in the following form or a form as near to the form as circumstances admit:

"Gower McKenzie Company Limited
I/We..... of .....being a member/ members of the above-named company hereby appoint..... of.....as my/our proxy to vote for me/us on my/ our behalf at the annual/extraordinary general meeting of the company to be held on the day of.....20 ..... and at any adjournment of that meeting.

Signed this ..... day of.....20 .....
This form is to be used,

*in favour of resolution numbered 1 against
*in favour of resolution numbered 2 against"

[Delete if only one resolution is to be proposed; add further instructions if more than two resolutions are to be proposed.]

Unless otherwise instructed, the proxy will vote as the proxy thinks fit.

*Strike out whichever is not desired".

49. A body corporate which is a member of the company may attend and vote either by proxy or by a representative appointed in accordance with paragraph 11 of the Eighth Schedule to this Act.

50. (1) Meetings shall be conducted in accordance with paragraphs 12 to 19 of the Eighth Schedule to this Act.

(2) On a poll being demanded the chairperson of the meeting shall not be required to direct a postal ballot in accordance with sub- paragraphs *(f)*, *(g)* and *(h)* of paragraph 16 of the Eighth Schedule to the Act unless the chairperson thinks fit or an ordinary resolution to that effect is moved at the meeting and passed on a show of hands.

51. In accordance with section 163 of this Act, a resolution in writing signed by the members for the time being entitled to attend and vote at general meetings, or being bodies corporate by their duly authorised representatives, and if the company has only one member, by that member shall be as valid and effective for all purposes, except as provided by section 163 as if the resolution had been passed at a general meeting of the company duly convened and held, and if described as a special resolution shall be treated as a special resolution within the meaning of this Act.

52. Minutes of general meetings shall be kept in accordance with section 166 of this Act.

53. If at any time the shares of the company are divided into different classes, this constitution shall apply to meetings of a class of members in like manner as the constitution apply to general meetings but so that the necessary quorum shall be as set out in section 164 of this Act.

Votes of members

54. Subject to any rights of restrictions for the time being attached to a class of preference shares and which may be validly attached to that class pursuant to section 52 of this Act,
    (a) on a show of hands, each member and each proxy lawfully present at the meeting shall have one vote, and on a poll each member present in person or by proxy, shall have one vote for each share held by that member; or
    (b) in the event of a postal ballot being directed pursuant to subparagraphs *(f)*, *(g)* and *(h)* of paragraph 16 of the Eighth Schedule to the Act, each member entitled to attend and vote at the meeting shall have one vote for each share held by that member.

Directors

55. The number of directors, not being less than five or more than twelve, shall be determined by ordinary resolution of the members in general meeting and until so determined shall be seven.

56. The continuing directors may act despite a vacancy in their number but if and so long as the number of continuing directors is reduced below two or below the number fixed by the directors as the necessary quorum, the continuing directors may act for four weeks after the number is so reduced, but after that, may act only for the purpose of increasing their number to that number or of summoning a general meeting of the company and for no other purpose.

57. The appointment of directors shall be regulated by sections 172, 325 and 326 of this Act.

58. The persons referred to in section 173 of this Act shall not be competent to be appointed directors of the company.

59. A director need not be a member of the company or hold any shares in the company.

60. The office of director shall be vacated in accordance with section 175 of this Act and a director may be removed from office in accordance with section 176 of this Act.

61. (1) The company may appoint substitute directors in accordance with section 180 of this Act and a director may appoint an alternate director in accordance with section 181 of this Act.

(2) An alternate director is not entitled to be remunerated otherwise than out of the remuneration of the director appointing the alternate director.

62. At least one director of the company shall at all times be resident in Ghana.

63. The remuneration payable to a director in whatever capacity shall be determined or approved by the members in general meeting in accordance with section 185 of this Act.

64. The proceedings of the directors shall be regulated by section 188 of this Act and the board of directors may delegate any of their powers to committees of the directors in accordance with that section.

65. Minutes of meetings of the board of directors and of a committee of directors shall be kept in accordance with section 188 of this Act.

Powers and duties of directors

66. (1) The business of the company shall be managed by the directors who may pay all expenses incurred in promoting and registering the company.

(2) Subject to section 189 of this Act, the board of directors may exercise the powers of the company, including the power to borrow money and to mortgage or charge property and undertaking or any part of the property and undertaking of the company and to issue debentures, that are not by this Act or this constitution required to be exercised by the members in general meeting.

67. In a transaction with the company or on behalf of the company and in the exercise of their powers, the directors shall observe the duties and obligations imposed on them by sections 190 to 192 of this Act.

68. Subject to compliance with section 194 of this Act, a director may enter into a contract with the company and the contract or any other contract of the company in which a director is in any way interested, shall not be liable to be avoided, nor shall a director be liable to account for a profit made pursuant to that contract by reason of the director holding the office of director, or of the fiduciary relationship established in respect of the contract.

69. A director may act personally or by the firm of the director in a professional capacity for the company, except as auditor, and the director or the firm shall be entitled to proper remuneration for professional services as if the director were not a director.

Executive and managing directors

70. The board of directors may exercise the powers conferred by section 183 of this Act to appoint one or more of their number to any other office or place of profit under the company other than the office of auditor for the period, and on the terms that the board of directors may determine and, subject to the terms of an agreement entered into in a particular case, may revoke the appointment.

71. (1) The board of directors may exercise the power conferred by section 184 of this Act to appoint one or more of their number to the office of managing director for the period and on the terms that they may determine and, subject to the terms of an agreement entered into in a particular case, may revoke the appointment which shall be automatically determined if the holder of the office ceases from any cause to be a director.

(2) The directors may entrust to and confer on a managing director any of the powers exercisable by them on the terms and with the restrictions that the director think fit, and collaterally with, or to the exclusion of, their own power, and subject to the terms of an agreement entered into in a particular case, may revoke or vary all or any of those powers.

72. Remuneration shall not be payable to a director in respect of any office or place of profit to which the director is appointed in this constitution, unless and until the terms of the appointment have been approved by ordinary resolution of the company in general meeting in accordance with section 185 of this Act.

73. The Company Secretary shall be appointed by the board of directors for the time, at the remuneration, and on the conditions that the board of directors considers fit, and a Company Secretary so appointed may be removed by the board of directors, subject to the right of the Company Secretary to claim damages if removed in breach of contract.

74. A provision in this Act or this constitution requiring or authorising a thing to be done by a director and the Company Secretary shall not be satisfied by the thing being done by a person acting both as director and as, or in place of, the Company Secretary.

75. (1) The board of directors may appoint officers and agents of the company and may appoint a body corporate, firm of body of persons, whether nominated directly or indirectly, by the board of directors, to be the attorney or attorneys of the company for the purposes and with the powers, authorities and discretions, not exceeding those vested in or exercisable by the directors in this constitution, and for the period and subject to the conditions that the board of directors may think fit.

(2) The powers of attorney may contain provisions for the protection and convenience of persons dealing with the attorney which the directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

Service of Documents

76. A document may be served by the company on a member, debenture holder or director of the company in the manner provided by section 290 of this Act.

Winding up

77. (1) If the company is being wound up, the liquidator may, with the sanction of a special resolution of the company and any other sanction required by this Act or by the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) divide amongst the members in specie or kind the whole or part of the assets of the company, whether the assets consist of property of the same kind or not, and may for the purpose set a value that the liquidator considers fair upon the property to be divided and may determine how the division shall be carried out as between the members or different classes of members.

(2) The liquidator may, with the like sanction vest the whole or a part of the assets in trustees upon the trusts for the benefit of the members that the liquidator, with the like sanction, thinks fit.

(3) Despite any other provisions of this paragraph, a member shall not be compelled to accept any securities on which there is a liability.

Interpretation

78. In this constitution unless the context otherwise requires,
    (a) "Act" means the Companies Act, 2019 (Act 992);
    (b) words or expressions have the meaning assigned to them in this Act; and
    (c) references to sections of this Act mean the sections as specified in this Act.

FOURTH SCHEDULE

(sections 24, 25, 27 and 301)

Constitution of a Company Limited by Guarantee

1. The income and property of the Society shall be applied solely towards the promotion of the objects of the Society and a portion of the income or property shall not be paid or transferred, directly or indirectly, by way of dividend, bonus or profit to a person who is a member of the Society or of its Council, but
   (a) the constitution shall neither prevent the payment in good faith, of reasonable and proper remuneration to an officer of the Society, to a member of the Society in return for any services actually rendered to the Society, nor shall it prevent the payment of interest at a yearly rate not exceeding the Ninety-One Day treasury bill rate for each hundred on money lent, or reasonable and proper rent for premises let to the Society;
   (b) a member of the Council of the Society shall not be appointed to a salaried office of the Society or office of the Society paid by fees;
   (c) a remuneration or other benefit in money or moneys' worth shall not be given by the Society to a member of the Council except in repayment of out-of-pocket expenses and interest at the rate mentioned in paragraph *(a)* on money lent or reasonable and proper rent for premises let to the Society.
2. Pursuant to section 18 of this Act, the Society has the powers of a natural person of full capacity.
3. (1) The board of directors of the Society shall be known as the Council.

   (2) The first members of the Council are,

   (The Names of the first members)
4. The powers of the Council are limited in accordance with sections 189 and 195 of this Act.
5. The liability of the members is limited.
6. Each member of the Society undertakes to contribute to the assets of the Society in the event of the Society being wound up while

that person is a member or within one year after that person ceases to be a member, for payment of the debts and liabilities of the Society and of the costs of winding up, the amount that may be required not exceeding [five thousand cedis].

7. If upon the winding up or dissolution of the Society, there remains after the discharge of its debts and liabilities a property of the Society, the property shall not be distributed among the members but shall be transferred to any other company limited by guarantee having objects similar to the objects of the Society or applied to a charitable object, the other company or charity to be determined by ordinary resolution of the members in general meeting before the dissolution of the Society.

Ordinary members

8. (1) The subscribers to this constitution and any other persons who the Council admits to ordinary membership shall be members of the Society.

(2) The members in general meeting may by ordinary resolution prescribe qualifications for membership of the Society and unless the resolution otherwise provides, a person shall not be admitted to membership by the Council unless that person has the prescribed qualifications.

Associate members

9. (1) The society in general meeting may resolve by ordinary resolution that the Council may admit to associate membership of the Society and may prescribe qualifications for the associate membership.

(2) Associate members shall be permitted to take part in the proceedings and functions of the Society that the resolution shall prescribe or, in default of prescription, that the Council considers fit, but shall not be members of the Society in its corporate capacity and shall not have a vote on a resolution at a general meeting of the Society, or be counted towards a quorum.

Honorary membership

10. (1) The Society in general meeting may resolve by ordinary resolution that the Council may admit to honorary membership of the Society a person, whether or not an ordinary or associate member of the Society, who in the opinion of the Council has rendered significant service to the Society or to any of the objects which the Society is formed to promote.

(2) An honorary member, unless also admitted as an ordinary member of the Society, shall have the same rights as an associate member and if also admitted as an ordinary member, shall have the same rights as an ordinary member but is not liable to pay a subscription to the Society.

Resignation or exclusion of members

11. (1) Subject to compliance with section 8 of this Act, in the case of ordinary members of the Society,

(a) any ordinary, associate or honorary member may resign membership by notice in writing to the Council;

(b) the Council may exclude from membership of the Society an ordinary or associate member,

(i) if the subscription payable to the Society by the ordinary or associate member is not paid six months after the same became due and payable; or

(ii) if in the opinion of the Council the continued membership of that person would be detrimental to the interests of the Society or to the furtherance of its objects.

(2) The ordinary members of the Society may by an ordinary resolution passed at a general meeting remove from office any member of the Council.

(3) The Council may by a resolution passed at a meeting of the Council remove any member of the Society.

Subscriptions

12. (1) Ordinary and associate members shall pay the annual subscriptions that the members in general meeting on the recommendation of the Council may determine by ordinary resolution.

(2) The subscription is due and payable on admission to membership and on the first day of January in each year or on any other date that the resolution shall provide.

(3) The subscription may differ as between ordinary and associate members and a different subscription may be prescribed in the case of corporate bodies admitted to membership or in the case of a person admitted to membership, as representing an institution or unincorporated association.

Accounts and audit

13. The Council shall cause accounting records to be kept and financial statements to be prepared, audited and circulated in accordance with sections 127 to 137 of this Act.

14. Auditors, qualified in accordance with section 138 of this Act, shall be appointed and their duties regulated in accordance with sections 139 to 143 of this Act.

General meetings and resolutions

15. Annual general meetings shall be held in accordance with section 157 of this Act.

16. Extraordinary general meetings may be convened by the Council whenever the Council considers fit in accordance with section 158 of this Act, and shall be convened on the requisition of ordinary members in accordance with section 324 of this Act.

17. Notice of general meetings shall be given in accordance with section 168 and paragraphs 1 to 6 of the Eighth Schedule to this Act and accompanied by any statements required to be circulated with the notice in accordance with section 168 and paragraphs 5 and 6 of the Eighth Schedule to this Act.

18. General meetings may be attended by the persons referred to in paragraph 7 of the Eighth Schedule to this Act and the quorum required shall be as stated in paragraph 8 to the Eighth Schedule of the Act.

19. A member is not entitled to attend or vote at a general meeting by proxy.

20. A body corporate which is a member of the Society may attend and vote at a general meeting by a representative appointed in accordance with paragraph 11 of the Eighth Schedule to this Act.

21. (1) General meetings shall be conducted in accordance with paragraphs 12 to 19 of the Eighth Schedule to this Act.

(2) The President, or in the absence of the President, the Vice-President of the Society, shall preside as chairperson at general meeting but if neither is present within five minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairperson of the meeting.

(3) On a poll being demanded on a resolution at a general meeting, the chairperson of the meeting may direct a postal ballot of the ordinary members in accordance with subparagraphs *(f)*, *(g)* and *(h)* of paragraph 16 of the Eighth Schedule to this Act, and shall so direct if an ordinary resolution to that effect is moved at the meeting and passed on a show of hands or if the resolution concerned is,

(a) a special resolution, or
(b) a resolution referred to in paragraphs 8, 9, 10, 11 or 12 of this constitution.

22. In accordance with section 163 of this Act, a resolution in writing signed by the members, or being bodies corporate by the duly authorised representatives, shall be as valid and effective for all purposes, except as provided by section 163, as if the same had been passed at a general meeting of the Society duly convened and held, and if described as a special resolution, shall be deemed to be a special resolution within the meaning of this Act and this constitution.

23. Minutes of general meetings shall be kept in accordance with section 166 of this Act.

Votes of members

24. Each ordinary member present at a general meeting shall have one vote on a show of hands or a poll and if a postal ballot is directed in accordance with clause 21 and subparagraphs *(f)*, *(g)* and *(h)* of paragraph 16 of the Eighth Schedule to this Act, each ordinary member, whether or not present at the meeting, shall have one vote.

The Council

25. The number of members of the Council, not being less than two and more than twelve, shall be determined by ordinary resolution of the members in general meeting and until so determined shall be nine.

26. The continuing members of the Council may act despite a vacancy in their number but if and so long as their number is reduced below two or below the number fixed by the Council as the necessary quorum, they may act for four weeks after the number is so reduced, but after that, may act only for the purpose of increasing their number to that number or of summoning a general meeting of the Society and for no other purpose.

27. Members of the Council shall be appointed from among the ordinary members of the Society in the manner set out in this clause:

(a) at the first annual general meeting of the Society, the members of the Council shall retire from office and at the annual general meeting in a subsequent year, one-third of their number or, if their number is not three or a multiple of three, then the number nearest one-third shall retire from office;

(b) the members of the Council to retire in every year shall be those who have served longest in office since their last election, but as between persons who became members on the same day, those to retire shall, unless the members otherwise agree among themselves, be determined by lot;

(c) election to the Council shall be by secret ballot at which an ordinary member wishing to nominate another ordinary member or member for election to the Council shall notify the Secretary in writing, accompanied by the consent of the nominee in writing, at least twenty-one days before the date of the annual general meeting of the Society;

(d) a retiring member is eligible for re-election without nomination and shall be deemed to stand for re-election unless that retiring member notifies the Secretary in writing at least twenty-one days before the date of the annual general meeting, that the retiring member does not wish to stand for re-election;

(e) if the number of nominees competent for appointment as members of the Council and retiring members offering themselves for re-election exceeds the number of vacancies to be filled, the Secretary shall, at least fourteen days before the date of the annual general meeting, send to each ordinary member a ballot paper containing a list of the names of the nominees and retiring members offering themselves for re-election requesting that ordinary member to indicate by means of a distinctive mark on the ballot paper the names of the persons for whom the ordinary member votes, and each member may vote for one or more persons not exceeding in number, the number of vacancies to be filled;

(f) a ballot paper shall not be valid unless returned to the registered office of the Society not less than twenty-four hours before the time appointed for the annual general meeting and shall be counted by scrutineers appointed at the meeting who shall inform the chairperson of the meeting of the votes obtained by each candidate, and the chairperson shall announce the names of the successful candidates to the meeting;

(g) a ballot paper on which votes have been cast in excess of the number of vacancies is not valid, and in case of doubt as to the validity of a ballot paper or the intention of the voter, the decision of the chairperson of the meeting shall be final and conclusive;

(h) if the number of competent nominees and retiring members offering themselves for re-election does not exceed the number of vacancies, the chairperson of the meeting shall, subject to article 296 of the Constitution of the Republic, declare the candidates duly elected;

(i) if the number so elected is less than the number of vacancies, the remaining vacancies may be filled as casual vacancies;

(j) a casual vacancy in the number of members of the Council may be filled by the Council or by ordinary resolution of the members in general meeting in accordance with section 172 of this Act.

28. The persons referred to in section 173 of this Act are not competent to be appointed members of the Council.

29. Membership of the Council shall be vacated in accordance with section 175 of this Act and a member may be removed from the Council in accordance with section 176 of this Act.

30. (1) Proceedings of the Council shall be regulated by section 188 of this Act.

(2) At the meetings of the Council, the President or in the absence of the President, the Vice-President if present, shall be chairperson.

31. Minutes of meetings of the Council and of a committee of the Council shall be kept in accordance with section 188 of this Act.

Powers and duties of the Council

32. (1) The activities of the Society shall be managed by the Council who may pay the expenses incurred in promoting and registering the Society.

(2) Subject to section 189 of this Act, the Council may exercise all the powers of the Society, including power to borrow money and to mortgage or charge the property of the Society and to issue debentures, that are not by this Act or this constitution required to be exercised by the members in general meeting.

33. In a transaction with the Society or on behalf of the Society, the members of the Council shall, in the exercise of their powers, observe the duties and obligations imposed on them by sections 190 to 192 of this Act.

34. To the extent permitted by clause 1 of this constitution and subject to compliance with section 194 of this Act, a member of the Council may enter into a contract with the Society and the contract or any other contract of the Society in which a member of the Council is in any way interested, shall neither be liable to be avoided, nor shall a member of the Council be liable to account for a profit made as a result of that contract by reason of that member being a member of the Council or of the fiduciary relationship established by the contract.

President and Vice-President

35. (1) The Council at its first meeting and at its first meeting held after each annual general meeting, shall elect from the members a President and Vice-President of the Society who shall hold office for the ensuing year or until successors are elected.

(2) A vacancy occurring in these offices shall be filled in like manner at the next meeting of the Council held after the occurrence of the vacancy.

Committees

36. (1) The Council may appoint committees from among its own members or from the members of the Society or from a combination of both.

(2) The President, or if unable or unwilling to act, the Vice-President, shall be an ex-officio member of every committee.

(3) The terms of reference and duration of office of the committees shall be prescribed by the Council and the committees are committees of the Council for the purposes of this Act.

Secretary and treasurer and officers

37. (1) The Council shall appoint a secretary and a treasurer or a secretary/ treasurer who may be a member of the Council or a member of the Society or neither.
(2) Where a member of the Council is appointed the office shall be an honorary one without remuneration.
(3) The Council may also appoint any other officer and agent as may be necessary or expedient.

The Seal

38. (1) The Council is empowered to adopt a common seal for use by the Society and shall provide for the safe custody of the seal.
(2) The seal shall only be used by the authority of the Council or of a committee of the Council authorised by the Council in that behalf, and an instrument to which the seal is affixed shall be signed by a member of the Council and shall be countersigned by the Secretary or a second member of the Council or by some other person appointed by the Council for the purpose

39. A document may be served by the Society on an ordinary member, debenture holder or member of the Council in the manner provided by section 290 of this Act and may be served in like manner on an associate or honorary member either personally or at the address provided by that member to the Society for the purpose of service of notices.

Interpretation

40. In this constitution, unless the context otherwise requires,
    (a) "Act" means the Companies Act, 2019. (Act 992);
    (b) words or expressions have the meaning assigned to them in this Act; and
    (c) references to sections of this Act mean the sections as specified in this Act.

FIFTH SCHEDULE

(Section 126)

CONTENTS OF ANNUAL RETURN

1. The name of the company.
2. The nature of the authorised business or businesses of the company or, if the company is not formed for the purpose of carrying on a business, the nature of its objects.
3. The address of the registered office of the company, the number of the post office box of the registered office and the telephone contact of the company.
4. The address of the principal place of business of the company in Ghana and where applicable the website address.
5. The particulars with respect to the persons who at the date of the return are the directors and Company Secretary of the company as are required by section 215 of this Act to be contained in the register of directors and Company Secretaries.
6. The following personal particulars of every member of the company:
    (a) the names and surnames and all former forenames and surnames;
    (b) the nationality;
    (c) residential and postal addresses;
    (d) business occupation; and
    (e) the number of shares held at the date of the return.
7. The following particulars of each beneficial owner of the company;
    (a) the full name and any other former or other name;
    (b) the date and place of birth;
    (c) the telephone number;

(d) the nationality, national identity number, passport number or other appropriate identification, and proof of identity;
(e) residential, postal and e-mail address, if any;
(f) place of work and position held;
(g) the nature of interest including the details of the legal, financial, security, debenture or informal arrangement giving rise to the beneficial ownership; and
(h) confirmation as to whether the beneficial owner is a politically exposed person.

8. Particulars of shares transferred since the last return by persons who are still members of the company, that is, the number of the shares and the date of registration of the transfer.

9. Particulars of shares transferred since the last return by persons who have ceased to be members of the company, that is, the number of the shares and the date of registration of the transfer and the folio of the register containing particulars of that member.

10. If the register of members of the company is kept and maintained elsewhere than at the registered office of the company, the address at which it is kept.

11. If the company maintains a register of debenture holders elsewhere than at the registered office of the company, the address at which it is kept.

12. Particulars of the total amount of the indebtedness of the company in respect of the charges, particulars of which are required to be registered with the Registrar pursuant to Part L of Chapter Two of this Act.

13. The names, countries of incorporation, and nature of the businesses of the subsidiaries of the company and of the bodies corporate in which the company is beneficially entitled to equity shares conferring the right to exercise more than twenty-five percent of the votes exercisable at a general meeting of the body corporate, but the infor-

mation required by this paragraph need not be given if, and to the extent that, the information would conflict with a direction given by the Registrar under subsection (6) of section 136 of this Act.

14. The number of directors meetings held within the year.

15. The date of the last Annual General Meeting and the number of Extraordinary General Meetings held within the year.

16. The financial statements and the audited independent report.

17. If the company has shares,

(a) the amount of the stated capital, distinguishing between the amounts attributable to each of the items specified in subsection (1) of section 68 of this Act;

(b) the number of the authorised shares of each class;

(c) the number of issued shares of each class;

(d) the number of treasury shares of each class;

(e) the total amount of any unpaid instalments or calls which are due and payable and the number and class of shares concerned;

(f) the total number of shares of each class which have been forfeited;

(g) in the case of a company limited by shares,

(i) the total amount of the unpaid liability, on the shares of each class, which is not yet due for payment, and

(ii) the amount, if any, of the unpaid liability on the shares which, pursuant to section 57 of this Act, the company has resolved shall not be capable of being called up except in the event, and for the

purpose of the company being wound up.

18. The date of filing the last Annual Returns.

19. Unclaimed dividends.

SIXTH SCHEDULE

(Sections 129, 130, 131, 334 (4) (b) and 334 (8))

FINANCIAL STATEMENTS

PART ONE
PROVISIONS AS TO PROFIT AND LOSS ACCOUNT OR STATEMENT OF COMPREHENSIVE INCOME

1. There shall be separately shown,
   - *(a)* gross sales, less discounts, returns, and allowances, or where appropriate, the amount of operating or other equivalent revenues;
   - *(b)* the cost of goods sold as normally computed under the International Financial Reporting Standards or, where appropriate, the operating or other equivalent expenses;
   - *(c)* selling, general and administrative expenses, and any other expenses that, under the International Financial Reporting Standards, would normally be deducted in arriving at the trading profit;
   - *(d)* income from investments distinguishing between, income from
     - (i) associated companies;
     - (ii) other trade investments; and
     - (iii) other investments;
   - *(e)* income from any other sources, distinguishing between each significant source of income;
   - *(f)* the amount charged to revenue by way of provision for the loss, diminution in value, depreciation, renewal or replacement of assets, in the Schedule referred to as depreciation or replacement provision in respect of property, plant and equipment;
   - *(g)* interest on the debentures and other loans of the company other than those classified in the statement of financial position as current liabilities;
   - *(h)* interest in respect of other loans and indebtedness of the

company;

(i) the aggregate of the amounts paid or payable by the company to the directors of the company for the financial year required to be disclosed in accordance with section 132 of this Act, together with a statement, by way of note, of the amounts paid or payable by other persons than the company;

(j) the remuneration of the auditors of the company including the sums paid by the company in respect of the expenses of the auditors;

(k) the amounts of the charges and credits for income tax showing, by way of note or otherwise, the amounts of each distinct tax with a description of the tax and a statement of the period in respect of which the tax is payable;

(l) the amounts of charges and credits in respect of discount or premiums on debentures;

(m) a profit or loss arising on the sale, realisation or disposal of property, plant and equipment;

(n) any preliminary expenses, and expenses incurred on the issue of shares or debentures, including the sums paid by way of commission or brokerage on the issue of shares or debentures;

(o) the amount of the voluntary contributions to any charitable or other funds, other than pension funds for the benefit of employees of the company or an associated company; and

(p) any other expenses, distinguishing between each significant class of expense.

2. If any of the items shown in the profit and loss account or statement of comprehensive income are stated net of income tax relating to the account, this shall be indicated.

3. There shall be stated by way of note or otherwise, any material respects in which any items shown in the profit and loss account or statement of comprehensive income are affected by

(a) a change in the basis of accounting;

(b) an amount relating to an earlier financial year; and

(c) an adjustment arising from the over or under statement of revenue or expenses in the profit and loss account or state-

ment of comprehensive income of an earlier financial year; and a statement made under this paragraph shall indicate the amount by which the profit and loss account or statement of comprehensive income has been affected and whether that represents an addition to or a deduction from the profit that would otherwise have been shown.

4. If an item in the profit and loss account or statement of comprehensive income includes an amount in respect of money provided under paragraph *(c)* of section 60 of this Act, this fact shall be indicated by way of note or otherwise and the amount of the item stated, and so far as any money provided under that subsection is included in the amount stated in accordance with section 132 of this Act, the amount so included shall also be indicated.

5. The balance of the profit and loss account or statement of comprehensive income after the inclusion of the items required by paragraphs 1 to 4 so far as these are relevant to the figures in the account, shall be transferred to an account to be called the retained earnings.

6. An amount shall not be credited to the profit and loss account or statement of comprehensive income that cannot properly enter into the composition of the retained earnings in accordance with section 71 of this Act.

7. An amount shall not be debited to the profit and loss account or statement of comprehensive income in respect of an addition to a reserve other than by way of transfer of the balance of the profit and loss account or statement of comprehensive income for the financial year to the retained earnings, clearly indicated and in particular amount shall not be debited to the profit and loss account or statement of comprehensive income other than as a transfer to the retained earnings, unless it is the amount of an actual money outlay or is in the opinion of the directors reasonably necessary in order to provide for known future expenditure or for a known liability, which term includes a disputed or contingent liability, or for a known or estimated loss in value of current assets, or as a depreciation or replacement provision.

8. An amount shall not be credited to the profit and loss account or statement of comprehensive income in respect of a withdrawal from a reserve other than by way of transfer of the balance of the profit and loss account or statement of comprehensive income for the financial year to the retained earnings clearly indicated.

9. If a company is under an obligation to transfer or set aside a sum to reserve out of profits of the company, this obligation is fulfilled if the sum is transferred to stated capital or if a note is made upon the statement of financial position in accordance with paragraph 35 of this Schedule to the effect that the company is under an obligation to withhold from distribution as dividend a corresponding part of the retained earnings.

10. Except in the case of the first profit and loss account or statement of comprehensive income drawn up after the commencement of this Act the corresponding amount of each item for the immediately preceding financial year shall be shown.

11. Where the amount of an item shown in the profit and loss account or statement of comprehensive income or included in an amount shown cannot be determined with substantial accuracy, an estimated amount described as an estimate shall be included in respect of that item and shall be distinguished, by way of note or otherwise, together with a description of the item.

12. A provision of this Schedule with respect to the information to be shown in the profit and loss account or statement of comprehensive income does not require the amount of an item that is of no material significance to be shown separately.

PART TWO

PROVISIONS AS TO STATEMENT OF FINANCIAL POSITION

General

13. The assets and liabilities shall be classified under headings appropriate to the business of the company, distinguishing between current and non-current assets including property, plant and equipment, and between current liabilities and other liabilities, and each class shall be described in a way adequate to indicate the general nature of the assets or liabilities included in that class in accordance with the International Financial Reporting Standards and consistent with industry best practice.

Assets

14. Without limiting paragraph 13, the following classes of assets shall, so far as they are appropriate to the affairs of the company, be distinguished:
    - *(a)* interests in land, distinguishing between land owned absolutely and land held for a term of years or other period;
    - *(b)* goodwill, patents, trade-marks, development expenditure, and other intangible assets of a like nature;
    - *(c)* trade investments;
    - *(d)* loans and advances;
    - *(e)* trading inventory, distinguishing where practicable between,
        - (i) inventory of raw materials and components;
        - (ii) work-in-progress;
        - (iii) inventory of finished products; and
        - (iv) other inventory;
    - *(f)* trade debtors;
    - *(g)* bills of exchange and promissory notes;
    - *(h)* payments-in-advance;
    - *(i)* marketable securities; and
    - *(j)* cash in hand and in the bank.
15. A class of assets shall not stand in the statement of financial position at a value, which, after deduction of the aggregate depre-

ciation or replacement provision relating to the assets is in the opinion of the directors greater than,

(a) the value which those assets could reasonably be expected to realise in the market after deduction of any expenses incurred in order to realise them, or

(b) the value which is reasonably justified by the expected contribution of those assets to the business, whether by sale in the ordinary course of business or otherwise; but in the case of a company whose sole or main object is that of carrying on the business of extracting a mineral deposit, the Registrar may, on the application of the company, and on the conditions that the Registrar considers appropriate, authorise a wasting asset held for the purpose of the business in question to be shown in the statement of financial position at cost.

16. (1) Assets shall be shown at a value after deduction of the aggregate depreciation or replacement provision relating to those assets or at a value before this deduction, in the Schedule described as the gross value.

(2) If shown at the gross value the aggregate depreciation or replacement provision relating to that value shall be shown as a separate item and shall be so described as to identify it with the class of assets to which it refers.

17. (1) There shall be included in or attached to the statement of financial position in respect of each class of property, plant and equipment shown in the statement of financial position, a statement containing the following information:

(a) the gross value;

(b) the original cost, if this differs from the gross value;

(c) the aggregate depreciation or replacement provision;

(d) if the gross value differs from the original cost, a statement explaining how the gross value has been calculated, and as at what date;

(e) whether the depreciation or replacement provision has been calculated on the basis of,

(i) the original cost of the assets;

(ii) the replacement value of the assets;

(iii) some other basis;

and where the depreciation or replacement provision is not based on original cost, the general principle used in calcu-

lating the replacement cost or other valuation on which it is based shall be stated;

(f) a statement reconciling both the gross value and the aggregate depreciation or replacement provision with the equivalent figures at the end of the immediately preceding financial year, and in particular showing,

(i) the amount of an addition to the gross value and to a depreciation or replacement provision relating to the addition indicating the nature of the addition; and

(ii) the amount of a deduction from the gross value and from the aggregate depreciation or replacement provision relating to that amount arising from sale or otherwise, indicating the reason for the deduction and showing any profit or loss arising from the transaction.

(2) So far as information required to be shown by this paragraph relating to matters arising before the commencement of this Act cannot be ascertained without unreasonable delay or expense, the paragraph may be modified with respect to that information as the directors consider appropriate, and in that case the statement in or attached to the statement of financial position in accordance with this paragraph, shall indicate in what respects the information shown has been modified as the result of the operation of this paragraph.

18. There shall be included in or attached to the statement of financial position, statements reconciling respectively, the amounts stated in accordance with sub-sub paragraph *(f)* of subparagraph (1) of paragraph 17 of this Schedule in respect of additions to and deductions from the depreciation or replacement provision with the amount stated in the profit and loss account or statement of comprehensive income for depreciation or replacement provision in accordance with subparagraph *(f)* of paragraph 1 of Part One of this Schedule, and reconciling a profit or loss on the sale, realisation or disposal

of any property, plant and equipment stated in accordance with paragraph 17 with the amount stated in the profit and loss account or statement of comprehensive income in accordance with sub-paragraph *(m)* of paragraph (1) of Part One of this Schedule.

19. For each class of current assets there shall be provided, by way of note or otherwise, information sufficient to indicate the basis of valuation and in particular the nature of the valuation procedure followed in arriving at the statement of financial position value.
20. Assets in respect of which different methods or basis of valuation or provision for depreciation or replacement are used shall for the purposes of this Schedule, be regarded as assets of different classes.
21. There shall be shown the aggregate of the amounts due to the company at the end of the financial year which are included in the sums disclosed in accordance with section 133 of this Act together with a statement, by way of note, of the other information required to be disclosed by that section.
22. There shall be shown the aggregate of the amounts due to the company in respect of advances made in accordance with section 60 of this Act.
23. The amount of any preliminary expenses, and expenses incurred on the issue of shares or debentures, including any sums paid by way of commission or brokerage on the issue of shares or debentures, shall be debited to the profit and loss account and shall not be treated as an asset.
24. The expenses incurred on the issue of shares when determined to be direct and incremental shall be deducted from the total proceeds on issue and any other expenses that are not direct and incremental shall be debited to the profit and loss account or statement of comprehensive income.

Liabilities

25. For the purposes of this Act, current liabilities are liabilities due and payable, other than liabilities, the payment of which may, at the option of the company, be postponed within twelve months of the date of the statement of financial position together with any other liabilities that are under the International Financial Reporting

Standards appropriately so classified.

26. Without limiting paragraph 13 of this Schedule, each of the following classes of liabilities shall, so far as they are applicable to the business of the company, be distinguished:
    (a) bank borrowings and overdrafts;
    (b) bills of exchange and promissory notes payable;
    (c) trade creditors;
    (d) the net amount payable to members in respect of dividends declared or recommended;
    (e) any amounts due to directors and other officers of the company other than items arising in the ordinary course of business;
    (f) income tax, distinguishing between different taxes and between amounts due in respect of different fiscal periods;
    (g) debts secured by debentures, other than those shown under subparagraph *(a)* stating in respect of each class of debentures the date or dates on or after which the company has the option of redemption, and the date or dates on or before which the company is under the obligation finally to redeem the loans or debentures or any part of the loans or debentures specifying in each case the proportion of the total issue that may or must be redeemed, and the redemption price;
    (h) any borrowing other than those stated in this paragraph; and
    (i) other accrued liabilities.
27. A liability shall not stand in the statement of financial position at a value less than the amount at which the liability is repayable other than at the option of the company, at the statement of financial position date or, if the liability is not then repayable at the amount at which the liability will first become so repayable at an earlier date after that date, where appropriate, a reasonable deduction for discount until that date.
28. If a liability of the company is secured otherwise than by the operation of law on any assets of the company, the fact that the

liability is so secured shall be stated, together with a statement of the assets upon which it is secured, and, where more than one class of liabilities is so secured, their relative priorities with respect to payment of interest and redemption.

29. If any of the debentures of the company have been beneficially acquired by the company or by a nominee acting on behalf of the company, the amount of these debentures, calculated on the same basis as the total amount standing in the statement of financial position in respect of the debentures of that class, shall, unless the debentures so purchased are cancelled, be shown as a deduction from that total; and if the amount of the debentures purchased is greater or less than the amount expended upon purchase, the difference shall be shown in the profit and loss account or statement of comprehensive income as if it were a premium or discount on debentures.

30. There shall be stated by way of note or otherwise, particulars of any debentures of the company that have been redeemed or purchased by or on behalf of the company which the company has power to re-issue.

31. There shall be included in or attached to the statement of financial position in respect of each class of liabilities referred to in subparagraphs *(f)* and *(g)* of paragraph 26 of this Schedule that is shown in the statement of financial position at the end of the immediately preceding financial year, a statement containing the following information:

    (a) the balance shown at the end of the immediately preceding financial year;
    (b) the amounts of additions to, and deductions from, the statement of financial position during the financial year ending on the date of the statement of financial position, with particulars of the additions and deductions sufficient to identify clearly the source of each item; and
    (c) the balance at the date of the statement of financial position.

Reserves

32. There shall be recorded in an account, to be called the reserves account, the amount by which the reserves, as defined in section 70 of this Act, exceeds the credit balance on the share deals account plus the balance on the retained earnings if a credit, or minus if that balance is a debit.

33. (1) There shall be shown

(a) the stated capital of the company distinguishing between amounts relating to different classes of shares;

(b) the amount standing to the credit of the reserves account;

(c) the amount standing to the credit of the share deals account;

(d) the balance of retained earnings, and if that balance is a debit balance, it shall be deducted from the sum of the three preceding amounts.

(2) There shall be included in or attached to the statement of financial position in respect of each item referred to in subparagraph (1) of this paragraph that is shown in the statement of financial position at the end of the immediately preceding financial year, a statement containing the following information:

(a) the balance shown at the end of the immediately preceding financial year;

(b) the amounts of any additions to, and deductions from, that balance during the financial year, with particulars of the additions and deductions sufficient to identify clearly the source of each item; and

(c) the balance at the date of the statement of financial position.

(3) The aggregate amounts of dividends paid or recommended, net of the tax deductible from those amounts distinguishing between dividends on different classes of shares, shall be debited to retained earnings.

34. There shall be shown in the statement of financial position, or in a schedule attached to the statement of financial position,

(a) the amount of stated capital attributable to each of the items specified in subsection (1) of section 68 of this Act, distin-

guishing, in the case of items (a) and (b) between different classes of shares;

(b) the number of authorised shares of each class;

(c) the number of issued shares of each class;

(d) the number of treasury shares of each class;

(e) the amount of any unpaid instalments or calls on shares which are due and payable and the number and class of shares concerned;

(f) in the case of a company limited by shares,

(i) the amount of the unpaid liability, on the shares of each class, which is not yet due for payment; and

(ii) the amount of the unpaid liability which, pursuant to section 57 of this Act, the company has resolved shall not be capable of being called up except in the event and for the purpose of the company being wound up;

(g) in respect of any shares on which there are any arrears of fixed dividends, the total amount of the arrears, stating whether the amount is net or gross of the tax that may be deducted;

(h) if an issue of shares has been made in contemplation of the redemption of preference shares out of the proceeds of the issue, a statement to that effect and of the total amount made available for use in the redemption; and

(i) the number of shares which a person has an option to subscribe for, distinguishing those in respect of which the option can be exercised by directors of the company, together with the following particulars of each option:

(i) the period or periods during which it is exercisable; and

(ii) the price or prices during each period to be paid for shares subscribed for under the option.

35. There shall be stated by way of note an amount standing to the

credit of the retained earnings which the company is, in accordance with paragraph 9 of this Schedule or otherwise, under an obligation not to distribute by way of dividend.

Supplementary

36. There shall be stated by way of note or otherwise,
    (a) the basis on which foreign currencies have been converted into Ghanaian currency;
    (b) particulars of a charge on the assets of the company to secure the liabilities of any other person, including a statement of the amount or estimated amount secured;
    (c) the general nature of any contingent liabilities not provided for and not otherwise disclosed and the amount or estimated amount of those liabilities;
    (d) the general nature of contracts for capital expenditure not provided for and the amount or estimated amount of those contracts; and
    (e) the general nature of any credit facilities available to the company under a contract, other than trade credit available in the ordinary course of business, and not taken up at the end of the financial year.
37. Except in the case of the first statement of financial position drawn up after the commencement of this Act there shall be shown the corresponding amount of each item for the immediately preceding financial year.
38. Where an item shown in the statement of financial position or included in amounts shown in the statement of financial position cannot be determined with substantial accuracy, an estimated amount described as such shall be included in respect of that item and shall be distinguished, by way of note or otherwise, together with a description of the item.
39. A provision of this Schedule with respect to the information to be shown in the statement of financial position does not require the

amount of an item that is of no material significance to be shown separately.

PART THREE

PROVISIONS APPLICABLE TO HOLDING COMPANIES

40. This Part of this Schedule shall apply where the company is a holding company as defined in the First Schedule.

41. There shall be stated by way of note or otherwise,

    (a) the total number of shares held by or on behalf of the company in each of its associated companies, and

    (b) the total number of the shares and amount of debentures of the company held by or on behalf of subsidiaries, but excluding in both cases shares and debentures held as personal representative or as trustee of a trust in which neither the company nor any of the associated companies is beneficially interested otherwise than by way of security in the ordinary course of business, distinguishing shares and debentures of different classes, and stating the total number of shares and the amount of debentures of each class in issue at the date of the balance sheet.

42. Where it is reasonably practicable, the amount included under each head of revenue or expense shown in the income statement that is received or receivable from, or paid or payable to, an associated company shall be distinguished.

43. The amount included in each class of assets shown in the statement of financial position in respect of financial interests in associated companies shall be distinguished.

44. The amount included in each class of liabilities shown in the statement of financial position in respect of indebtedness to associated companies shall be distinguished.

45. Where consolidated financial statements are not prepared, there shall be attached to the statement of financial position, a statement showing,

    (a) the reasons why subsidiaries are not dealt with in the

consolidated financial statements;

(b) the net aggregate amount, so far as it concerns the interests of the holding company, of the balances transferred from the income statements of the subsidiaries to the retained earnings accounts of the holding company, or the equivalent amount in the case of foreign or other subsidiaries not having retained earnings accounts,

(i) for the respective financial years of the subsidiaries ending with or during the financial year of the company giving, so far as is practicable, the same information with respect to that amount as is required by paragraph 3 of this Schedule to be given with respect to the statement comprehensive income of the company;

(ii) for the total period covered by the previous financial years of the subsidiaries since they respectively became the subsidiaries of the holding company so far as it has not been dealt with in the accounts of the company of a previous financial year;

(c) the net aggregate amount so transferred so far as this amount is dealt with in the accounts of the company for the financial year; and

(i) any qualifications contained in the report of the auditors of the subsidiaries on the financial statements of the subsidiaries for their respective financial years ending as stated in subparagraph (i) of paragraph *(b)*, and any note or saving contained in those financial statements to call attention to a matter which, apart from the note or saving, would properly have been referred to in that qualification in so far as the matter, which is the subject of the qualification or note is not covered by the financial statements of the company, and is material from the point of view of the interest of the company, or, in so far as the information required by this para-

graph is not obtainable, a statement that it is not obtainable.

46. Subparagraphs *(b)* and *(c)* of paragraph 45 shall apply only to the amounts that could properly enter into the composition of the retained earnings of the holding company.

47. There shall be stated by way of note, in accordance with subsection (9) of section 131 of this Act, in relation to subsidiaries, whose financial years do not coincide with that of the company,

    (a) the reasons why the directors of the company consider that the financial years of the subsidiaries should not coincide; and

    (b) the name of each subsidiary whose financial year does not coincide with that of the holding company and the date on which its relevant financial year ended.

48. The consolidated financial statements, if prepared as consolidated financial statements, shall combine the information contained in the separate statement of financial position and income statements of the holding company and of the subsidiaries dealt with by the consolidated financial statements with the adjustments, that the directors consider appropriate, and the consolidated financial statements shall, in giving the information, comply so far as is practicable, with the requirements of this Act as if they were the financial statements of a single company.

49. Where consolidated financial statements are prepared and the financial statements of some subsidiaries are not incorporated in the consolidated financial statements, the consolidated financial statements shall incorporate with respect to those subsidiaries, information equivalent to that required to be given in the financial statements of the holding company.

50. Where consolidated financial statements are prepared other than in the form of consolidated financial statements, they shall provide the same information, so far as is relevant and material, as would

have been provided by consolidated financial statements.

PART FOUR

EXEMPTIONS FOR SPECIAL CLASSES OF COMPANIES

51. Paragraphs, 4, 5, 6, 9, 22, 32, 33, 34 and 35 of this Schedule shall not apply to a company limited by guarantee.

52. (1) A company licensed to carry on the business of banking shall not be subject to Part One or Two of this Schedule other than paragraphs 1 *(f)*, *(g)*, *(i)*, *(j)* and *(p)*, 2, 3 *(a)* and paragraphs 4, 5, 9, 10, 11, 12, 13, 15, 16, 21, 22, 23, 27, 29, 30, 34, 35, 37, 38 and 39.

(2) Where a banking company as is referred to in subparagraph (1) has reserves which are not separately stated in the statement of financial position, a heading in the statement of financial position stating an amount arrived at after taking into account that reserve or a transfer to, or from, that reserve shall be so framed or marked as to indicate that fact, and the statement of comprehensive income shall indicate by appropriate words the manner in which the amount stated for the profit or loss of the company has been arrived at.

53. (1) The Minister may, in the national interest and by legislative instrument, prescribe that, companies of a class described in the instrument shall be exempt from any of the provisions of this Schedule, but a company taking advantage of this paragraph shall be subject to the conditions prescribed in the instrument as to matters to be stated in the financial statements, or by way of note to the financial statements and as regards information to be furnished to the Minister or to the Registrar.

(2) If the Minister is satisfied that any of the conditions has not been complied with in the case of a company, the Minister may direct that so long as the direction remains in force, the company shall be excluded from the exemption, wholly or to the extent speci-

fied in the direction, although the company is a company of the class prescribed in the instrument.

54. Despite an exemption conferred by or under this Part of this Schedule, the financial statements of a company shall give the true and fair view required by this Act, but the financial statements shall not be regarded as not giving a true and fair view by reason of the fact that the financial statements do not comply with any of the provisions of this Schedule from which the company is exempt by reason of this Part of this Schedule or an instrument made under the Schedule.

55. Where the company entitled to an exemption under this Part of this Schedule is a holding company, the consolidated financial statements, if prepared as consolidated financial statements, shall be regarded as complying with the requirements of this Act if the consolidated financial statements comply with the requirements applying to the separate financial statements of the company.

SEVENTH SCHEDULE

(section 137)

Matters to be Expressly Stated in the Report of the Auditors

1. Whether the auditors have obtained the information and explanations which to the best of the knowledge of the auditors and belief were necessary for the purposes of the audit.
2. Whether, in the opinion of the auditors, proper books of account have been kept by the company, so far as appears from the examination of those books, and proper returns adequate for the purposes of the audit have been received from branches not visited by the auditors.
3. Whether the statement of financial position of the company and, unless it is designated as a consolidated profit and loss account or statement of comprehensive income, profit and loss account or statement of comprehensive income dealt with by the report, are in agreement with the accounting records and returns.
4. Whether, in the opinion of the auditors and to the best of their information and according to the explanations given to the auditors, the accounts give the information required by this Act in the manner so required and give a true and fair view,
    (a) in the case of the statement of financial position, of the state of affairs of the company at the end of the financial year, and
    (b) in the case of the profit and loss account or statement of comprehensive income, of the profit or loss for the financial year, of the statement of financial position or the profit and loss account or statement of comprehensive income subject to the non-disclosure of any matters to be indicated in the report, which by virtue of Part Four of the Sixth Schedule to this Act, are not required to be disclosed.
5. In the case of a holding company submitting group accounts,

whether, in the opinion of the auditors, the group accounts have been properly prepared in accordance with this Act so as to give a true and fair view of the state of affairs and profit or loss of the company and its subsidiaries dealt with so far as it concerns the interests of the company or so as to give a true and fair view of those affairs or of the profit or loss subject to the non-disclosure of any matters to be indicated in the report, which by virtue of Part Four of the Sixth Schedule to this Act are not required to be disclosed.

6. Whether the auditors were independent of the company under audit pursuant to section 143 of this Act.

EIGHTH SCHEDULE

(*Sections 157, 160, 161, 164, 168, 169, 176, 299, 324 (5)*)

Procedure for General Meetings

1. Notice of meetings

(a) Meetings, other than adjourned meetings, shall be convened by notice in writing to the persons who are, under subparagraph *(f)*, entitled to receive notice of general meetings.

(b) Subject to subparagraphs *(c)* and *(d)*, at least twenty-one days notice, or in the case of a special resolution under section 2 of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180), seven days notice exclusive of the day on which the notice is served, but inclusive of the day for which notice is given, shall be given.

(c) The registered constitution of a company may provide for a period of notice longer, but not shorter, than that specified in subparagraph *(b)*.

(d) A meeting of a company shall, although it is called by shorter notice than that specified in subparagraph *(b)*, or in the registered constitution of the company, be deemed to have been duly called if it is so agreed,

(i) in the case of a meeting called as the annual general meeting, by the members entitled to attend and vote at that meeting, and

(ii) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, which is a majority holding not less than ninety-five percent of the shares giving a right to attend and vote at the meeting or, in the case of a company limited by guarantee, by a ninety-five percent majority in number of the members.

(e) Where the members are entitled to vote only on some resolutions to be moved at the meeting and not on others, those members shall be taken into account for the purposes of

subparagraph *(d)* in respect of the former resolutions, and not in respect of the latter.

(f) The persons entitled to receive notice of general meetings, are,

(i) member;

(ii) person on whom the ownership of a share devolves by reason of that person being a legal personal representative, receiver or a trustee in bankruptcy of a member;

(iii) director of the company; and

(iv) auditor for the time being of the company.

2. Contents of notice

(a) The notice of a meeting shall specify

(i) the place, date and hour of the meeting,

(ii) the general nature of the business to be transacted at the meeting in sufficient detail to enable those to whom the notice is given to decide whether to attend or not; and

(iii) where the meeting is to consider a special resolution, shall set out the terms of the resolution.

(b) 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 is a sufficient specification that the business is,

(i) to declare a dividend;

(ii) consideration of the financial statements and reports of the directors and auditors;

(iii) the election of directors in the place of those retiring;

(iv) the fixing of the remuneration of the auditors; and

(v) for the removal and election of auditors and directors;

(c) A business may not be transacted at a general meeting unless notice of it has been duly given.

3. Service of notice

(a) Notice may be given by the company to a member or director personally, or by

(i) sending it through the post addressed to the member

or director at the registered address of the member or director, or

(ii) leaving it for the member or director with a person apparently over the age of sixteen years at that address, or

(iii) sending it to the member or director through electronic means.

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

(c) Notice may be given to a person on whom ownership of a share has devolved by reason of that person being a legal personal representative, receiver or trustee in bankruptcy of a member personally, or

(i) by sending the notice through the post addressed to that person by name, or

(ii) by the title of representatives of the deceased or receiver or trustee of the bankrupt, or

(iii) by any like description, at the address supplied for the purpose by that person, or

(iv) by leaving the notice for that person with a person apparently over the age of sixteen years at that address, or,

(v) until that address has been supplied, by giving the notice in a manner in which the same might have been given if the death, receivership or bankruptcy had not occurred.

(d) Where a notice is sent by post, service is effected by properly addressing, pre-paying, and posting a letter containing the notice and is considered to have been effected at the expiration of forty-eight hours after the letter containing the notice is posted.

(e) The letter need not be registered but where it is sent to an address outside Ghana the letter shall be despatched by air mail.

4. Accidental failure to give notice

The accidental omission to give notice of a meeting to, or the non-

receipt of notice of a meeting by, a person entitled to receive notice shall not invalidate the proceedings at that meeting.

5. Circulation of resolutions and supporting circulars of members

(a) A company shall, at the expense of the company, on the request in writing of a member entitled to attend and vote at a general meeting, include in the notice of that general meeting, notice of a resolution which may properly be moved and is intended to be moved at that meeting and, at the like request, include in that notice, a statement of not more than five hundred words with respect to the matter referred to in the proposed resolution or any other business to be dealt with at that meeting.

(b) If the proposed resolution is not passed at that meeting, that resolution or one substantially to that effect shall not be moved at a general meeting within three years, unless the

(i) directors otherwise agree, or

(ii) request within three years is supported in writing by members of the company representing not less than one-twentieth of the total voting rights of the members having at the date of the request a right to vote on the resolution to which the request relates.

(c) For the purposes of subparagraph *(a)*, a company is not bound to give notice of a resolution or to circulate a statement unless the written request or requests, signed by the member or members concerned, together with the resolution and statement, are deposited at the registered office of the company not less than six weeks before the meeting.

(d) If, after the documents have been deposited, a general meeting is called for a date not more than six weeks after the deposit, the documents shall be deemed to have been properly deposited.

6. Circulation of circulars of members

(a) At the request in writing of a member entitled to attend and vote at a general meeting, a company shall, unless the company otherwise resolves, but at the expense of that member, circulate to members of the company a statement of not more than one thousand words with respect to a business

to be dealt with at that meeting.

(b) The statement shall be circulated to members of the company in a manner permitted for service of notice of the meeting and, so far as practicable, at the same time as notice of the meeting, or, if that is impracticable, as soon as possible after the giving of the notice of the meeting.

(c) A company is not bound to circulate the statement unless,

(i) the written request, signed by the member concerned, together with the statement, is deposited at the registered office of the company not less than ten days before the meeting; and

(ii) there is also deposited with the request a sum of money reasonably sufficient to meet the expenses of the company in giving effect to the request.

7. Attendance at meetings

(a) Despite a provision in the registered constitution of a company to the contrary, the following persons are entitled to attend a general meeting of the company:

(i) each member of the company;

(ii) each director of the company;

(iii) the Company Secretary; and

(iv) each auditor for the time being of the company.

(b) For the purposes of subparagraph *(a)*,

(i) if the constitution of a company so provides, a member is not entitled to attend unless the calls or other sums of money presently payable by that member in respect of shares in the company have been paid; and

(ii) a member who is a holder of preference shares only is not entitled to attend if the right to do so is validly suspended in accordance with section 52.

(c) Subparagraph *(b)* does not preclude any other person from attending a general meeting with the permission of the chairperson of the meeting.

8. Quorum

(a) Subject to subparagraph *(b)*, a business shall not be trans-

acted at a general meeting unless a quorum of members is present at the time when the meeting commences, but where a quorum is present, the meeting may validly proceed with that business despite that a quorum is not present throughout.

(b) In dealing with a quorum under subparagraph *(a)*, where members present are entitled to vote only on some resolutions and not on others, those members shall be counted towards a quorum in respect of the former resolutions but not in respect of the latter.

(c) Unless otherwise provided in the constitution of a company, quorum is constituted,

(i) if the company has only one member, by that member being present in person or, where proxies are allowed, by proxy;

(ii) in any other case, by two members present in person or, where proxies are allowed, by proxy, or one member so present holding shares representing more than fifty per cent of the total voting rights of the members having a right to vote at the meeting.

(d) Unless otherwise provided in the constitution of the company, if a quorum is not present within half an hour after the time appointed for the meeting, the meeting if convened on the requisition of members in accordance with sections 299 and 324 of this Act, shall be dissolved, and in any other case, shall stand adjourned to the same day, in the next week, at the same time and place or to any other day, place and time that the directors may determine.

(e) If at the adjourned meeting a quorum is not present within half an hour after the time appointed, the member or members present shall constitute a quorum.

(f) Where the meeting is adjourned to the same day, place and time in the following week, notice is not required to be given, otherwise notice of the adjourned meeting shall be published in at least one daily newspaper circulating in the district in which the registered office of the company is

situated.

9. Proxies

(a) A member of a company entitled to attend and vote at a meeting of the company is entitled to appoint another person, whether a member of the company or not, as a proxy to attend and vote on behalf of that member, and the proxy shall have the same rights as the member to speak at the meeting.

(b) Unless the registered constitution of the company otherwise provides, subparagraph *(a)* shall not apply in the case of a company limited by guarantee.

(c) The instrument appointing the proxy shall be in writing signed personally by the appointor or the agent of the appointor duly authorised in writing or, if the appointor is a body corporate, under the seal of the body corporate or signed personally by an officer or agent duly authorised.

(d) An instrument appointing a proxy shall be in the form prescribed in the Second and Third Schedules, or in the form that the registered constitution of a company provides, but despite a provision in the constitution of the company, an instrument in the form prescribed in the Third Schedule shall be sufficient.

(e) Unless the registered constitution of the company otherwise provides, the instrument appointing a proxy and the power of attorney or other authority under which the instrument is signed or a notarised copy of that power or authority, shall be deposited with the designated receiving officer

(i) by electronic mail;

(ii) personally at the registered office of the company, or at any other place within the Republic as specified in the notice convening the meeting; or

(iii) by any other means approved by the company, not less than forty-eight hours before the time for holding the meeting or adjourned meeting, or not later than twenty-one days before the meeting or in the case of a poll,

not less than twenty-four hours before the time appointed

for the taking of the poll and in default, the instrument of proxy shall not be treated as valid.

(f) A provision contained in the registered constitution of a company is void in so far as it would have the effect of requiring the documents referred to in the constitution to be deposited more than forty-eight hours before the time for holding the meeting or adjourned meeting or, in the case of a poll, more than twenty-four hours before the time appointed for taking the poll.

(g) Where instruments of proxy have been deposited in accordance with subparagraph *(e)*, a person entitled, in the right of that person, or as proxy for another member or members, or partly in one way and partly in another, to more than ten per cent of the total voting rights of the members entitled to vote at the meeting, shall be entitled, at any time during business hours before the conclusion of the meeting, or the taking of the poll, but subject to any reasonable restrictions that the company may impose, to inspect the deposited instruments of proxy and the original or notarised copy of powers of attorney or other authority under which the instruments are signed.

(h) The appointment of a proxy shall be terminated by the death or insanity of the appointor or by the revocation of the proxy or the authority under which the proxy was executed, and the personal attendance of a member at the meeting or the later appointment of another proxy in respect of the same share shall be deemed to be a revocation.

(i) A vote taken in accordance with the terms of an instrument of proxy may be treated by the company as valid despite the termination or revocation of the appointment, so long as a notice in writing of the termination, or revocation, or of the events causing same has not been received by the company at the registered office or other place appointed for the deposit of instruments of proxy, before the commencement of the meeting or adjourned meeting or more than twenty-four hours before a poll.

(j) If, for the purpose of a meeting of a company, invitations to appoint as proxy a person, or a number of persons specified in the invitations are issued at the expense of the company, then,

(i) the invitations shall be sent to the members entitled to attend and vote at the meeting;
(ii) the invitations shall be accompanied by forms for the appointment of a proxy which shall entitle the members to direct the proxy to vote either for or against each resolution;
(iii) where instruments of proxy are duly completed and returned in accordance with the instructions in the invitation and are not revoked then, the chairperson of the meeting shall demand a poll after a vote by show of hands, unless the result on the show of hands is in accordance with the directions given in the instruments of proxy and on a poll, the votes of the members concerned shall be deemed to be cast in accordance with the directions, in the instruments of proxy despite the absence, abstention, or purported vote of the proxy to the contrary.

(k) Where a member, not having been invited so to do, requests the company to issue that member with a form of appointment of proxy or a list of persons willing to act as proxy, the company may issue the form or list to that member without doing so to the other members entitled to attend and vote, but the form or list shall be available on request in writing to that member and any forms of appointment so issued shall comply with subsubparagraph (ii) of subparagraph *(j)* and shall be deemed to be an instrument of proxy to which sub-subparagraph (iii) of sub-paragraph *(j)* applies.

10. Obtaining proxies by misrepresentation

(a) The vote of a proxy shall not be rejected at a meeting on the ground that the appointment of a proxy was obtained by misrepresentation.

(b) The Court may, on the application of
(i) the company,
(ii) a member entitled to vote at the meeting, or
(iii) the Registrar,
annul the appointment of a proxy if satisfied that the appointment was obtained by a material misrepresentation of fact whether made fraudulently or not.

(c) Where an order is made, the Court may further order that the holding of the meeting shall be postponed until the date that the Court may order and may give any ancillary or consequential directions that the Court considers fit.

11. Representation of corporations at meetings

(a) A body corporate, whether a company within the meaning of this Act or not, may, by resolution of its directors or other governing body, authorise a person that the body corporate considers fit to act as its representative,

(i) if the body corporate is a member of a company, at any meeting of the company; or

(ii) if the body corporate is a creditor, including a debenture holder, of a company, at a meeting of any creditors of the company held in pursuance of this Act or of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) or of any rules made under this Act or that Act or in pursuance of the provision contained in a debenture or trust deed.

(b) A person authorised under subparagraph *(a)*, on production of a copy of the resolution by which that person was authorised, is entitled to exercise the same powers on behalf of the body corporate which that person represents as that body corporate could exercise if the body corporate were an individual shareholder, creditor or holder of debentures of that other company.

(c) This paragraph does not preclude a body corporate from appointing a proxy to attend and vote on its behalf.

12. Chairperson of meetings

(a) Unless otherwise provided in the registered constitution of a company, the chairperson of the board of directors shall preside as chairperson at a general meeting of the company.

(b) If the board does not have a chairperson or, if the chairperson is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act, the directors present shall elect one of their number to be chairperson of the meeting.

(c) If a director is not present or willing to act, the members

present shall choose one of their number to be chairperson of the meeting.

13. Adjournments

(a) The chairperson may, with the consent of the meeting at which a quorum is present, and shall if so directed by an ordinary resolution passed at the meeting, adjourn the meeting from time to time and from place to place, but a business shall not be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place and an additional business of which due notice shall be given as in the case of an original meeting.

(b) Where a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

(c) Subject to this section, and unless the registered constitution of a company otherwise provides, it is not necessary to give notice of the adjournment of a meeting at which a quorum was present, or of the business to be transacted at the adjournment.

14. Types of resolution

(a) A resolution is an ordinary resolution when it is passed by a simple majority of votes cast by the members of the company who, being entitled so to do, vote in person or, where proxies are allowed, by proxy at a general meeting.

(b) A resolution is a special resolution when it is passed by not less than three-fourths of the votes cast by the members of the company who being entitled so to do, vote in person or, where proxies are allowed, by proxy at a general meeting of which, notice specifying the intention to propose the resolution as a special resolution, has been duly given.

(c) A reference in this Act or in the registered constitution of a company, debentures or debenture trust deed to an ordinary or special resolution of a meeting of a class of members, creditors, or debenture holders bears a like meaning to that specified in subparagraph *(a)* or *(b)* of this paragraph with the substitution of the members of the class for the members of the company.

15. Amendments

The terms of a resolution, special or ordinary, before a general meeting may be amended by ordinary resolution moved at the meeting if by the terms of the resolution as amended, adequate notice of the intention to pass the resolution can be deemed to have been given in accordance with paragraph 2.

16. Procedure on voting

(a) Unless the registered constitution of a company otherwise provides, a resolution put to vote at a meeting shall be decided on a show of hands unless a poll is, before or on the declaration of the result of the show of hands, demanded by

(i) the chairperson,

(ii) at least three members present in person or by proxy, or

(iii) a member or the members present in person or by proxy and representing not less than one-twentieth of the total voting rights of the members having the right to attend and vote on the resolution.

(b) A provision contained in the registered constitution of a company regarding voting procedure is void in so far as it would have the effect,

(i) of excluding the right to demand a poll on a question other than the election of the chairperson or the adjournment of the meeting; or

(ii) of making ineffective a demand for a poll on a question which is made by the persons specified in subparagraph *(a)* (i), (ii) or (iii).

(c) The demand for a poll may be withdrawn.

(d) On a show of hands, each member who is personally present and entitled to vote and each proxy for a member entitled to vote shall have one vote.

(e) Unless a poll is effectively demanded, a declaration by the chairperson that a resolution has, on a show of hands been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the meeting is conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against the resolution.

(f) If a poll is effectively demanded, it shall be taken at the time and in the manner that the chairperson directs.

(g) In place of directing that a poll shall be taken of those members present in person or by proxy at the poll, the chairperson may direct that voting shall be by postal ballot of the members entitled to attend and vote on the resolution.

(h) For the purposes of subparagraph *(g)*, ballot papers shall be served on the members entitled to attend and vote on the resolution in the same manner as notice of the meeting is required to be given to them, and the members may cast their votes by personally completing the ballot papers or by having the ballot papers completed by their proxies whose instrument of appointment has been deposited, in accordance with subparagraph *(e)* of paragraph 9, not less than twenty-four hours before the time appointed for the closing of the ballot.

(i) Despite subparagraph *(f)* of this paragraph, a postal ballot in accordance with subparagraphs *(g)* and *(h)* shall be directed by the chairperson if,

(i) the constitution of the company so provides, or

(ii) on, or after the chairperson has directed a poll, an ordinary resolution in favour of a postal ballot under this subparagraph is moved at the meeting and passed on a show of hands.

(j) A postal ballot in accordance with subparagraphs *(g)* and *(h)* of this paragraph shall be deemed to be a poll.

(k) Except as otherwise provided in the registered constitution of a company, on a poll each member entitled to vote shall have one vote for each share held by the member and each member of a company limited by guarantee shall have one vote.

(l) On a poll a member entitled to more than one vote, or a proxy representing more than one member or a member entitled to more than one vote, need not, in voting, use all the votes or cast all the votes the member uses in the same way.

(m) Unless the registered constitution of the company otherwise provides, in the case of an equality of votes, whether on a show of hands or a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded is entitled to a second or casting vote.

17. Voting by joint holders

In the case of joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted, to the exclusion of the votes of the other joint holders; and for this purpose, seniority shall be determined by the order in which the names stand in the register of members.

18. Votes by persons of unsound mind

A member of unsound mind may vote, whether on a show of hands or a poll, by the person appointed for the purpose by the Court and the person so appointed may vote by proxy.

19. Date of passing of resolutions

(a) A resolution is passed at an adjourned meeting, on the date on which it was in fact passed at the adjourned meeting.

(b) A resolution is passed on a poll, on the day on which the result of the poll is declared, and not on any earlier day.

NINTH SCHEDULE
(Section 303)

FORM OF STATEMENT IN LIEU OF PROSPECTUS AND FINANCIAL STATEMENT AND REPORT TO ACCOMPANY THE STATEMENT

PART ONE

FORM OF STATEMENT AND PARTICULARS TO BE CONTAINED IN THE STATEMENT

Statement in Lieu of Prospectus delivered for registration by [insert full name of company]

1. Unless more than two years have elapsed since the registration of the company

(a)	the amount or estimated amount of the expenses incidental or preliminary to the promotion and registration of the company;	*(a)*
(b)	by whom these expenses have been paid or are payable;	*(b)*
(c)	the names of the promoters;	*(c)*
(d)	the amount paid or intended to be paid to any promoter;	*(d)* Name of Promoter ..... Amount in Gh Cedis .....
(e)	the consideration for the payment;	*(e)*
(f)	any other benefit given or intended to be given to any promoter;	*(f)* Name of Promoter ..... Nature and value of benefit.....
(g)	the consideration for the giving of that benefit;	*(g)*
(h)	full particulars of the nature and extent of the interest of every director and proposed director of the company in the promotion of the company	*(h)*

2. The name, address and professional qualification of the auditors of a company, and if auditors have not been appointed a statement to that effect. 2.

3. The names and addresses of the bankers and legal practitioners of the company 3.

4. The names, countries of incorporation, and nature of the business of the subsidiaries of the company and of the bodies corporate in which the company is beneficially entitled to equity shares conferring the right to exercise more than twenty-five percent of the votes exercisable at a general meeting of the body corporate; but if, on the application of the directors of the company, the Registrar is satisfied that mention of any of the matters referred to in this paragraph would be harmful to the business of the company or any of the associated companies, the Registrar may direct that the matter need not be stated. If the company is a subsidiary, the name, country of incorporation and nature of the business of the holding company and the number of each class of shares of the company held by the holding company. 4.

5. Where the company is proposing to acquire securities in a body corporate in this Schedule called a proposed subsidiary which, by reason of the acquisition or anything to be done in consequence with the requisition or in connection with the acquisition will become a subsidiary of the company, the name, country of incorporation, and nature of the business of that proposed subsidiary. 5.

6. Where the company is proposing to acquire a business, a full description of the nature of that business. 6.

7. Whether in the opinion of the directors the working capital of the company is sufficient and, if not, how the company proposes to provide the additional working capital thought by the directors to be necessary. 7.

8. The amount of the stated capital of the company distinguishing between each of the items specified in subsection (1) of section 68 of this Act and, in the case of items *(a)* and *(b)*, between different classes of shares. 8.

9. The number and description of the 9.
   (a) authorised shares of each class, *(a)*
   (b) issued shares of each class, and *(b)*
   (c) treasury shares of each class *(c)*
   of the company

10. The amount paid on the issued shares of each class 10.
   (a) in cash, and *(a)*
   (b) otherwise than in cash. *(b)*

11. The amount remaining payable on the issued shares of each class 11.
   (a) presently due for payment, *(a)*
   (b) not yet due for payment, and *(b)*
   (c) which the company has resolved shall not be capable of being called up except in the event and for the purposes of the company being wound up. *(c)*

12. The amounts of the dividends per share paid by the company in respect of each class of share in each of the five completed financial years of the company immediately preceding the date of the statement, and particulars of any cases in which dividends have not been paid in respect of a class in any of those years. 12.

13. The number of unissued shares of each class agreed to be issued and the amount payable thereof 13.
   (a) in cash, and *(a)*
   (b) otherwise than in cash. *(b)*

14. (1) The name of each holder and, if any, beneficial owner of more than twenty-five percent of the shares of a class of share of the company; and 14. (1)
   (2) the number and description of the shares held or owned. (2)

15. The amount of the outstanding debentures issued or agreed to be issued by 15.
    (a) the company, and *(a)*
    (b) any of its subsidiaries and proposed subsidiaries. *(b)*

16. The amount of any bank overdrafts of 16.
    (a) the company, and *(a)*
    (b) any of the subsidiaries and proposed subsidiaries. *(b)*

17. The nature of the consideration for the issue of any of the shares or debentures of the company issued or agreed to be issued otherwise than for cash. 17.

18. Particulars of the shares or debentures of any of the subsidiaries and proposed subsidiaries of the company which have, within the two years immediately preceding the date of the statement, been issued or which are proposed to be issued otherwise than for cash and the nature of the consideration. 18.

19. Particulars of the shares or debentures of the company or any of the subsidiaries and proposed subsidiaries which have, within two years immediately preceding the date of the statement, been issued for cash, stating 19.
    (a) the price, and *(a)*
    (b) if not already fully paid, the dates when any instalments are payable. *(b)*

20. Where the shares or debentures of the company or any of the subsidiaries and proposed subsidiaries are under option, or agreed conditionally or unconditionally to be put under option, 20.
    (a) the number and description of the shares, *(a)*
    (b) the amount and description of the debentures, *(b)*
    (c) the period during which the option is exercisable, *(c)*
    (d) the price to be paid for the shares or debentures, *(d)*
    (e) the consideration for the grant of the option; and *(e)*
    (f) the persons to whom the option was given, or, if given to existing members or debenture holders, as members or debenture holders the relevant shares or debentures. *(f)*

21. Where a property has been acquired or is proposed to be acquired by the company or any of the subsidiaries and proposed subsidiaries, except where the contract for the acquisition was either completed and a 21.

purchase money fully paid more than two years before the date of the statement, or entered into in the ordinary course of business and there is no connection between the contract and the incorporation of the company or the conversion from a private to a public company,

(a) the names and addresses of the vendors	*(a)* Name of vendor.....
(b) the amount paid or to be paid in cash, shares, debentures or otherwise to each vendor stating	
(i) the total purchase price paid or to be paid,	(i) .....
(ii) the amount paid or to be paid in cash,	(ii) .....
(iii) the amount paid or to be paid in shares and the number and description of such shares,	(iii) Shares.....
(iv) the amount paid or to be paid in debentures and the number and denomination of such debentures, and	(iv) Amount in Debentures .....
(v) the nature of, and value attributed to, other consideration;	(v) Nature..... Value.....
	(b) Name of Vendor .....
	(i) .....
	(ii) .....
	(iii) Amount paid in shares .....
	(iv) Amount in Debentures .....
	(v) Nature..... Value.....

(c) the total amount paid or to be paid in,	*(c)*
(i) cash,	(i)
(ii) shares,	(ii)
(iii) debentures, and	(iii)
(iv) other consideration;	(iv)
(v) specifying the amount paid or to be paid for goodwill;	(v)
(d) full particulars of the nature and extent of the interest, direct or indirect, of each director or proposed director of the company or any of the subsidiaries and proposed subsidiaries in that property;	*(d)*
(e) particulars of all transactions relating to that property which were entered into or completed within the two years immediately preceding the date of the statement.	*(e)*
22. (1) The dates of, parties to, and general nature of every material contract, other than contracts entered into in the ordinary course of business, or completed more than two years before the date of this statement.	22. (1)
(2) The place and time, not being less than twenty-eight days at which such contracts or copies of the contract or, in the case of any contract not reduced into writing, a memorandum giving full particulars thereof in a language acceptable to the Registrar, may be inspected.	(2) Address Between the.....of..... and the.....of..... from.....until..... (Saturdays, Sundays and public holidays excepted)
23. Names, and the former names, addresses and business occupations of the directors of the company or proposed directors and Company Secretary, or proposed Company Secretary, and particulars of any other directorships held by the directors or proposed directors, in the manner prescribed by section 215 of this Act.	23.

DIRECTORS AND PROPOSED DIRECTORS

Name	Former Names	Address	Business Occupation	Other Directorships	Whether vetted appointed or not

COMPANY SECRETARY OR PROPOSED COMPANY SECRETARY

Name	Former Names	Address	Business Occupation	Other Directorships	Whether vetted appointed or not

24. Names, and addresses of accountants making the reports, if any, delivered for registration with this statement. 24.

(Signatures of the persons above-named as directors or proposed directors or of their agents authorised in writing) .....
.....
.....

Date .....

PART TWO

FINANCIAL STATEMENTS AND REPORTS TO ACCOMPANY STATEMENT

25. Where the company has been incorporated for more than fifteen months,

(a) copies of the financial statements, consolidated accounts and reports required to be circulated to the members and debenture holders of the company in accordance with section 128 of this Act in respect of each of the five completed financial years immediately preceding the date of the statement, or in respect of each of the financial years since the incorporation of the company, if this occurred less than five years before that date; but the accounts and reports shall not be required for a financial year in respect of which copies of the accounts and reports have been annexed to the annual return of the company in accordance with section 298 of this Act.

(b) Unless the reports of the auditors on the accounts for those financial years have been made by auditors duly qualified under section 138 of this Act to be appointed auditors of the company, if it had been a public company at the date of each report of the auditors, a report by accountants duly qualified under section 138 of this Act to be appointed auditors of the company with respect to the profits or losses of the company in each of these financial years, and with respect to the assets and liabilities of the company as at the end of the last financial year, or, if the company is a holding company, a like report with respect to the profits or losses and assets and liabilities of the company and the subsidiaries, so far as these profits or losses and assets can properly be regarded as attributable to the interests of the company.

26. Where the company, whether or not incorporated for more than fifteen months, at any time within the five years immediately preceding

the date of the statement, has acquired a business or a subsidiary, or where at the date of the statement, the company proposes to acquire a business or a proposed subsidiary,

(a) copies of the financial statements of the business, or subsidiary or proposed subsidiary in respect of each of the five financial years immediately preceding the date of the statement, or in respect of each of the financial years since the commencement of that business, or the incorporation of that subsidiary or proposed subsidiary, if that occurred less than five years before the date of the statement; but it shall not be necessary to deliver for registration, copies of the financial statements of a business or subsidiary for a financial year in respect of which the profit or losses and assets and liabilities of the business or subsidiary are dealt with in the accounts or consolidated financial statements of the company for that financial year;

(b) a report by accountants duly qualified under section 139 of this Act to be appointed auditors of the company with respect to the profits or losses of that business or subsidiary or proposed subsidiary in respect of each of the financial years for which an income statement has been delivered for registration pursuant to sub-paragraph *(a)* of this paragraph, and with respect to the assets and liabilities of that business or subsidiary or proposed subsidiary as at the end of the last financial year; but

(i) the report shall deal with the profits or losses and assets and liabilities of a subsidiary or proposed subsidiary which can properly be regarded as attributable to the interests of the company;

(ii) when the report relates to a financial year before the subsidiary became a subsidiary of the company or relates to a proposed subsidiary, only those of its profits or losses and assets and liabilities shall be regarded as attributable to the interests of the company as would have been properly attributable if the company had held the securities in the subsidiary

or proposed subsidiary which it holds at the date of the statement or proposes to acquire;

(iii) where that subsidiary or proposed subsidiary also has subsidiaries, the report shall be extended to the profits or losses and assets and liabilities of that subsidiary or proposed subsidiary and the subsidiaries so far as same can properly be regarded as attributable to the interests of the company;

(iv) the report required by this paragraph need not extend to a period in respect of which the profits or losses of that business or the appropriate part of the profits or losses of that subsidiary are dealt with in the accounts or consolidated financial statements of the company; and

(v) the report required by this paragraph need not extend to the assets and liabilities of a business or subsidiary if same or the appropriate part of the assets and liabilities are dealt with in the last statement of financial position of the company.

27. (1) In making a report that is required by paragraph 25 or 26 of this Schedule, the accountants shall make the adjustments that are in their opinion appropriate.

(2) Where the adjustments are made, the statement shall, in accordance with subsection (3) of section 303 of this Act, have endorsed on, or attached to, the statement, a written statement signed by the accountants setting out the adjustments and giving the reasons for the adjustments.

TENTH SCHEDULE

(*Sections 304, 305, 306, 307, 308, 312 and 342 (3)*)

CONTENTS OF PROSPECTUS ON GENERAL INVITATION

Pursuant to subsection (8) of section 308 of this Act, the prospectus shall state at the head a statement to the effect that,

"A copy of this prospectus has been delivered to the Securities and Exchange Commission in accordance with subsection (1) of section 308 of the Companies Act, 2019 (Act 992). For the financial soundness of the company of the value of the securities on offer, investors are advised to consult a dealer, investment advisor or any other professional for appropriate advice.".

PART ONE

MATTERS TO BE SPECIFIED

1. The full name of the company.

2. (1) A full description of the securities which the public are being invited to acquire, and of the terms on which the public are being invited to acquire the securities including,

(a) the date prior to the expiration of which applications will not be accepted or treated as binding;

(b) if securities are being offered for subscription or purchase, the total amount payable for each share or debenture and the amount payable on application, allotment, and otherwise, for each share or debenture;

(c) the policy which will be adopted if applications exceed the shares or debentures on offer.

(2) Where the securities are unsecured debentures, they shall be described as "unsecured loan stock", "unsecured notes" or the like, and not as "debentures" or "bonds".

3. Whether application has been or is being made to a stock exchange for permission to deal in the securities concerned

(a) if so, whether the stock exchange is an approved stock exchange; and

(b) if not, a statement that there will not be a market for the securities an d that a holder wishing to dispose of those securities may be unable to do so.

4. The full name, address and business occupation of each person making the invitation, if other than the company.

5. The address and the number of the Post Office Box and the digital and electronic addresses of the registered office of the company.

6. The full name, address and business occupation of each director and proposed director and of the Company Secretary or proposed Company Secretary.

7. The name, address and professional qualification of the auditors of the company.

8. The name and address of the registration officer, if any.

9. The name and address of an underwriter of the invitation.

10. The names and addresses of the bankers, stock-brokers and legal

practitioners of the company.

11. If the invitation relates to debentures, the names and addresses of any trustees for debenture holders, the date of the resolutions creating the debentures, and short particulars of the security for the debentures or, if the debentures are unsecured, a statement to that effect.

12. The authorised business or businesses of the company.

13. A brief summary of the history of the company and of any businesses to which the company has succeeded.

14. (1) The names, countries of incorporation, and nature of the businesses of the subsidiaries of the company and of the bodies corporate in which the company is beneficially entitled to equity shares conferring the right to exercise more than twenty-five percent of the votes exercisable at a general meeting of the body corporate.

(2) If the company is a subsidiary, the name, country of incorporation and nature of the business of the holding company and the number of each class of shares of the company held by the holding company.

15. Where the company is proposing to acquire securities in a body corporate, in this Schedule called a proposed subsidiary, which, by reason of the acquisition or anything to be done in consequence of, or in connection with, the requisition will become a subsidiary of the company, the name, country of incorporation, and nature of the business of that proposed subsidiary.

16. Where the company is proposing to acquire a business, a full description of the nature of that business.

17. The location, area, and tenure, including, where appropriate, the rent and unexpired term of a lease or concession, of the main places of business of the company and the subsidiaries and proposed subsidiaries.

18. A statement on,

(a) the financial and trading prospects of the company together with a material information which may be relevant to those prospects; and

(b) the material changes in the financial or trading position of the company which may have occurred since the end of the last completed financial year of the company.

19. A statement by the directors of the company that in their

opinion, the working capital of the company is sufficient or, if not, it is proposed to provide the additional working capital thought by the reductions to be necessary.

20. The amount or estimated amount of the expenses incidental and preliminary to the invitation, including the expenses of an application to a stock exchange for permission to deal in the securities concerned in the invitation, and by whom the expenses are payable.

21. Particulars of any commissions paid within the two preceding years, or payable, as commission for acquiring any shares or debentures of the company or of any of the subsidiaries and proposed subsidiaries.

22. Where the company is inviting or, under section 296 of this Act, is deemed to be inviting, the public to subscribe for any of the shares or debentures,

(a) a statement or an estimate of the net proceeds of the issue and a statement on how the proceeds were or are to be applied;

(b) the minimum amount which in the opinion of the directors of the company must be raised by the issue in order to provide sums, or, if part of the sums is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters;

(i) the purchase price of a property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;

(ii) any expenses incidental and preliminary to the invitation and issue, including the expenses of an application to a stock exchange for permission to deal in the shares or debentures, payable by the company, and the commission so payable to a person in consideration of that person agreeing to subscribe for, or of that person procuring or agreeing to procure subscriptions for, any shares or debentures of the company;

(iii) the repayment of any moneys borrowed by the company in respect of any of the matters stated in this paragraph; and

(iv) working capital; and

(c) the amounts to be provided in respect of the matters stated in subparagraph *(b)* of this paragraph otherwise than out of the proceeds of the issue and the sources out of which these amounts are to be provided.

23. Where a person other than the company is inviting the public to purchase any shares or debentures of the company, whether or not, under section 296 of this Act, the invitation is made by the company,

(a) if the shares or debentures were issued by the company for cash, a statement of the price for each share or debenture at which those shares or debentures were issued, and of the total net proceeds of the issue;

(b) if the shares or debentures were issued by the company for a consideration other than cash, a statement of the nature of the consideration and an estimate by the directors of a fair value of the consideration and of the price for each share or debenture which the consideration represents; and

(c) if the person making the invitation did not acquire the shares or debentures directly from the company on their issues,

(i) if that person purchased them for cash, a statement of the price for each share or debenture at which that person purchased the share or debenture or, if purchased over a period of time at different prices, the lowest and highest prices, and the total purchase price paid by that person; or

(ii) if that person acquired them for a consideration other than cash, a statement of the nature of the consideration and an estimate by that person of a fair value of the consideration and of the price for each share or debenture which the consideration represents.

24. The stated capital of the company, distinguishing between each of the items specified in subsection (1) of section 68 of this Act, and, in the case of paragraphs *(a)* and *(b)* between different classes of shares.

25. The number and description of the
    (a) authorised shares of each class,
    (b) issued shares of each class, and
    (c) treasury shares of each class
    of the company.

26. The amount paid on the issued shares of each class
    (a) in cash, and
    (b) otherwise than in cash.

27. The amount remaining payable on the issued shares of each class, distinguishing between the amount presently due for payment and the amount not yet due for payment and, in the latter case, stating what amount the company has resolved shall not be capable of being called up, except in the event and for the purpose of the company being wound up.

28. The number of unissued shares of each class agreed to be issued and the amount payable for the shares distinguishing between the amount payable in cash and the amount payable otherwise than in cash.

29. If the shares of the company are divided into different classes, the rights in respect of voting, repayment, dividends and any other special rights attached to the several classes, and a statement on the consents necessary for the variation of those rights.

30. The amounts of the dividends for each share paid by the company in respect of each class of share in each of the ten completed financial years of the company immediately preceding the date of publication of the prospectus and particulars of any cases in which dividends have not been paid in respect of a class of shares in any of those years.

31. If any of the shares of the company are redeemable preference shares, the earliest date on which the company has power to redeem those shares.

32. The name of every holder and beneficial owner of more than twenty-five percent of the shares or a class of shares of the company and the number and description of the shares held or owned.

33. The amount of the outstanding debentures issued or agreed to be issued by the company and any of the subsidiaries and proposed subsidiaries or, if none, a statement to that effect.

34. Particulars of any bank overdrafts of the company and any of the subsidiaries and proposed subsidiaries as at the latest practicable date, which shall be stated, or if there are no bank overdrafts, a statement to that effect.

35. The nature of the consideration for the issue of any of the shares

or debentures of the company issued or proposed to be issued otherwise than in cash.

36. Particulars of any shares or debentures of any of the subsidiaries and proposed subsidiaries of the company which have, within two years immediately preceding the publication of the prospectus, been issued, or which are proposed to be issued, otherwise than for cash and the nature of the considerations.

37. Particulars of any shares or debentures of the company or any of the subsidiaries and proposed subsidiaries which have, within two years immediately preceding the publication of the prospectus, been issued, or which are proposed to be issued, for cash, the price and terms upon which the shares or debentures have been or are to be issued and, if not already fully paid, the dates when any instalments are payable.

38. Particulars of any shares or debentures of the company or any of the subsidiaries and proposed subsidiaries which are under option, or agreed conditionally or unconditionally to be put under option, with the price to be paid for the securities under option, the duration of the option, the consideration for which the option was granted, and the name and address of the grantee, but where the option is to the members or debenture holders or a class of the members or debenture holders it shall be sufficient, so far as names are concerned, to record that fact without giving the names and addresses of the grantees.

39. Where property has been acquired or is proposed to be acquired by the company or any of the subsidiaries and proposed subsidiaries, except where the contract for acquisition of the property was completed and the purchase money fully paid, more than two years before the date of publication of the prospectus, or entered into in the ordinary course of business and there is no connection between the contract and the invitation,

(a) the names and addresses of the vendors, and

(b) the amount paid or to be paid in cash, shares, debentures or otherwise to the vendor and, where there is more than one separate vendor or the company or subsidiary or proposed subsidiary is a sub-purchaser, the amount so paid or to be paid to each vendor, distinguishing between the amounts paid or to be paid,

(i) in cash,

(ii) in shares,

(iii) in debentures,
(iv) the nature of, and value attributed to any other consideration, and
(v) the amount paid or payable for goodwill;

(c) full particulars of the nature and extent of the interest, direct or indirect, of each director or proposed director of the company or any of the subsidiaries and proposed subsidiaries in that property; and

(d) particulars of the transactions relating to that property which were entered into or completed within the two years immediately preceding the date of publication of the prospectus.

40. Unless more than two years have elapsed since the registration of the company,

(a) the amount or estimated amount of the expenses incidental or preliminary to the promotion and registration of the company and by whom those expenses have been paid or are payable;

(b) the names of the promoters of the company;

(c) the amount of the cash or securities paid, or benefit given or proposed to be given to a promoter and the consideration for the payment or benefit; and

(d) full particulars of the nature and extent of the interest of each director and proposed director in the promotion of the company.

41. Where the prospectus includes a statement purporting to be made by an expert, another statement given by that expert to the effect that the expert has given a written consent to the publication of the prospectus and has not withdrawn that consent and the statement must be included in the form and context in which the statement is required.

42. The dates of, parties to, and general nature of, every material contract, other than contracts entered into in the ordinary course of business or completed more than two years before the date of publication of the prospectus.

43. (1) A reasonable time, not being less than twenty-eight days during which, and place at which, the following documents, or certified copies of those documents may be inspected:

(a) the constitution of the company;

(b) where the invitation relates to debenture, the debenture trust deed;

(c) each contract disclosed pursuant to paragraph 42 of this Schedule or, in the case of a contract not reduced into writing, a memorandum giving full particulars of the contract;

(d) the financial statements, consolidated accounts and reports required to be circulated to the members and debenture holders of the company in accordance with section 128 of this Act, for the five financial years of the company immediately preceding the date of publication of the prospectus or, if the company has been incorporated for less than five years, for the number of years in respect of which the company has or should, in accordance with section 128, have circulated the accounts and reports;

(e) the financial statements of every subsidiary and proposed subsidiary of the company and of every business acquired or to be acquired by the company for each of the five financial years immediately preceding the date of publication of the prospectus, or, if a subsidiary or proposed subsidiary has been incorporated or a business has been carried on for less than five years, for the number of financial years completed since the incorporation or commencement except that, this subparagraph shall not apply to the financial statements of a subsidiary or business in respect of any financial years in which the profits or losses and assets and liabilities of the subsidiary or business are dealt with in the accounts or consolidated accounts of the company;

(f) the other reports, letters, balance sheets, valuations and statements by an expert any part of which is extracted or referred to in the prospectus; and

(g) a written statement, signed by the accountants making the reports required under Part Two of this Schedule, setting out the adjustments made by the accountants in arriving at the figures shown in the reports of the accountants and giving the reasons for the adjustments.

(2) If the whole or a part of any of the above-mentioned documents is in any other language, a certified translation of the document or of the parts of the document shall be made available in a

language acceptable to the Registrar for inspection instead of the original or a certified copy.

44. The names and addresses of the accountants making the reports required under Part Two of this Schedule.

PART TWO

REPORTS TO BE SET OUT

45. (1) A report by accountants duly qualified under section 138 of this Act to be appointed auditors of the company,

(a) with respect to the profits or losses of the company in respect of each of the ten completed financial years immediately preceding the publication of the prospectus, or in respect of each of the financial years since the incorporation of the company if this occurred less than ten years before the publication, and if the last financial year of the company ended more than three months before the date of the publication of the prospectus, with respect to the profits or losses from the end of the last financial year to the latest practicable date not being less than three months before the date of the publication of the prospectus;

(b) where the company is a holding company, in lieu of the report required by subparagraph *(a)* of this paragraph, a like report with respect to the profits or losses of the company and of the subsidiaries, so far as the profits or losses can properly be regarded as attributable to the interests of the company;

(c) with respect to the assets and liabilities of the company as at the end of the last financial year or, if the financial year ended more than three months before the date of publication of the prospectus, as at the latest practicable date not being less than three months before the date of publication of the prospectus;

(d) where the company is a holding company, in lieu of the report required by subparagraph *(c)* of this paragraph, a like report with respect to the assets and liabilities of the

company, and of the subsidiaries so far as the assets can properly be regarded as attributable to the interests of the company;

(e) with respect to the aggregate emoluments paid by the company to the directors of the company or an associated company during the last period for which the accounts have been made up, and the amount by which the emoluments would differ from the amounts payable under any arrangements in force at the date of publication of the prospectus; and

(f) with respect to any other matters which appear to the accountants to be relevant having regard to the purpose of the report.

(2) In making the report, the accountants shall make the adjustments that are in their opinion appropriate for the purposes of the prospectus.

46. (1) Where within the ten years immediately preceding the publication of the prospectus the company has acquired a business or a subsidiary, or where at the date of the publication of the prospectus the company proposes to acquire a business or a proposed subsidiary, a report in a manner stated in this paragraph by accountants duly qualified under section 138 of this Act to be appointed auditors of the company,

(a) with respect to the profits or losses of that business or subsidiary or proposed subsidiary in respect of each of the ten financial years immediately preceding the publication of the prospectus, or in respect of each of the financial years since the commencement of that business or the incorporation of that subsidiary or proposed subsidiary, if that occurred less than ten years before the publication of the prospectus, and if the last financial year of that business, subsidiary or proposed subsidiary ended more than three months before the date of the publication of the prospectus, with respect to the profits or losses from the end of the last financial year to the latest practicable date not being less than three months before the date of the publication of the prospectus; but

(i) the report shall deal with any of the profits or losses of a subsidiary or proposed subsidiary that can properly be regarded as attributable to the interests of the company;

(ii) where the report relates to a financial year before the subsidiary became a subsidiary of the company or relates to a proposed subsidiary only, any of the profits or losses shall be regarded as attributable to the interests of the company which would have been properly so attributable if the company had held the securities in the subsidiary or proposed subsidiary which the company holds at the date of publication of the prospectus or proposes to acquire; and

(iii) where the subsidiary or proposed subsidiary also has subsidiaries, the report shall be extended to the profits or losses of the subsidiary or proposed subsidiary and the subsidiaries so far as those profits or losses can properly be regarded as attributable to the interests of the company; and

(iv) the report required by this paragraph need not extend to a period in respect of which the profits or losses of that business or the appropriate part of the profits or losses of that subsidiary are dealt with in the report required under paragraph 45;

(b) where a business or subsidiary has been acquired since the latest date to which the accounts of the company have been prepared, or where the company proposes to acquire a business or a proposed subsidiary, with respect to the assets and liabilities of that business or that subsidiary or proposed subsidiary as at the end of the last financial year or, if the financial year ended more than three months before the date of publication of the prospectus, as at the latest practicable date not being less than three months before the date of publication of the prospectus but

(i) the report shall deal with the assets and liabilities of the subsidiary or proposed subsidiary so far as the assets and liabilities can properly be regarded as attributable to the interests of the company;

(ii) in relation to a proposed subsidiary only the assets and liabilities shall be regarded as attributable to the interests of the company which would have been

properly so attributable if the company had held the securities in the proposed subsidiary which the company proposes to acquire; and

(iii) where the subsidiary or proposed subsidiary also has subsidiaries, the report shall be extended to the assets and liabilities of that subsidiary or proposed subsidiary and the subsidiaries so far as those assets and liabilities can properly be attributable to the interests of the company; and

(c) with respect to any other matters which appear to the accountants to be relevant having regard to the purpose of the report.

(2) In making the report, the accountants shall make the adjustments, that are, in the opinion of the accountants appropriate for the purposes of the prospectus.

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