

## ACT

*Supplement to the Sierra Leone Gazette Vol. CXL, No. 36*  
*dated 13th August, 2009*

### THE COMPANIES ACT, 2009

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SIGNED this 5th day of June, 2009

DR. ERNEST BAI KOROMA,  
*President.*

No. 5



2009

**Sierra Leone****THE COMPANIES ACT, 2009.****Being an Act to provide for the registration and regulation of companies and for other related matters.** Short title.

[   ] Date of commencement.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

Interpretation.

1. In this Act unless the context otherwise requires—

“Attorney-General” means the Attorney-General and Minister of Justice.

“Commission” means the Corporate Affairs Commission established by section 2;

“Court” means the High Court;

“debenture” includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not;

“director” means a person by whatever name called duly appointed by a company to direct and manage the business of the company and includes a person held out by the company as a director;

“document” includes summons, notice, order or other legal process and registers;

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“existing company” means a company incorporated under the repealed Act;

“financial year” means the financial year of the Government;

“manager” includes any person occupying the position of a manager by whatever name called and whether under a contract of service or not;

“memorandum” means the memorandum of association of a company as originally formed or as altered;

“Minister” means the Minister responsible for trade.

“officer” includes a director, manager or secretary but does not include an auditor;

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

“Registrar” means the Registrar appointed under section 9;

“security” includes shares and debentures;

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

## PART II – CORPORATE AFFAIRS COMMISSION

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

(2) The Commission shall be—

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

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

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

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

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

Tenure of office of members of Commission.

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

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

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

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

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

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

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

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

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

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

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

Disclosure of interest.

**7.** (1) A member of the Commission who is—

- (a) directly or indirectly interested in any company or enterprise the affairs of which the Commission is deliberating upon; or
- (b) interested in any contract made or proposed to be made by the Commission,

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

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

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

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

Functions of Commission.

**8.** The functions of the Commission are to—

- (a) administer this Act including the regulation and supervision of the incorporation and registration of companies under or pursuant to this Act;

(b) establish and maintain a company's registry and offices in all the provinces as may be necessary, suitably and adequately equipped to discharge its functions under this Act or any other enactment in respect of which it is charged with responsibility;

(c) perform such other functions as may be specified by this Act or any other enactment; and

(d) undertake such other activities as are necessary or expedient for giving full effect to this Act.

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

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

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

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

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

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

Funds of  
Commission.

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

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

Accounts and  
audit.

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

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

Annual  
report.

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

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

PART III—INCORPORATION OF COMPANIES AND INCIDENTAL MATTERS

**Formation of Company**

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

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

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

(2) Nothing in this section shall apply to—

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

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

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

Capacity of individuals to form companies.

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

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

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

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

Types of companies.

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

- (a) having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed “a company limited by shares”);
- (b) having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed “a company limited by guarantee”); or

- (c) not having any limit on the liability of its members (in this Act termed “an unlimited company”).

(2) Any of the companies mentioned in subsection (1) may either be a public or private company.

**19.** (1) A private company is one which is stated in its memorandum to be a private company.

Private companies.

(2) Every private company shall, by its articles, restrict the transfer of its shares, if any.

(3) The total number of members of a private company shall not exceed 50, excluding persons who are *bona fide* in the employment of the company, or were while in that employment and have continued after the determination of that employment, to be members of the company.

(4) Where two or more persons hold one or more shares in a company jointly, they shall, for the purpose of subsection (3) be treated as a single member.

(5) A private company shall not, unless authorised by law invite the public to—

- (a) subscribe for any shares or debentures of the company; or
- (b) deposit money for fixed periods or payable at call, whether or not bearing interest.

**20.** Any company other than a private company shall be a public company and its memorandum shall state that it is a public company.

Public companies.



Unlimited company to have share capital.

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

Company limited by guarantee.

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

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

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

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

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

carrying on the business; and the company and every such officer and member shall be liable to a fine not exceeding Le500,000 for each day during which it carries on the business.

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

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

#### Memorandum of Association

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

Requirements with respect to memorandum of company.

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

- (4) The memorandum shall be signed by each subscriber in the presence of at least one witness who shall attest the signature.
- (5) The memorandum shall be stamped as if it were a deed.

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

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

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

#### **Name of company**

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

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

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

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

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

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

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

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

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

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

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

by a person named as director or secretary in the statement delivered under subsection (2) of section 32;

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

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

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

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

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

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

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

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

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

Prohibited and restricted names.

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

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

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

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

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

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

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

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

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

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

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

(5) Where a company changes its name, the Registrar shall enter the new name on the register in place of the former name and shall issue a certificate of incorporation altered to meet the circumstances of the case.

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

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

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

(9) A change of name shall not affect any right or obligation of the company, or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

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

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

#### Articles of association

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

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

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

(4) The articles shall be—

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

### Registration of companies

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

(2) There shall be delivered to the Commission—

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

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

(c) a statement containing—

- (i) the list and particulars together with the consent of the persons who are to be the first directors of the company;
- (ii) the person who is or the persons who are to be the first secretary or joint secretaries of the company;

(d) a declaration by the subscribers stating—

- (i) the names and addresses of the subscribers;
- (ii) the share capital of the company;
- (iii) the number of shares to be issued to each subscriber; and
- (iv) that twenty five percent of the shares have been subscribed;

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

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

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

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

Registration of memorandum and articles.

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

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

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

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

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

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

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

Effect of incorporation.

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

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

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

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

#### Capacity and powers of a company

Powers of companies.

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

Effect of *ultra vires* acts.

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

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

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

(4) On the application of—

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

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

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

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

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

#### Effect of memorandum and articles

Effect of memorandum and articles.

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

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

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

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

#### Member's right to copy of memorandum and articles

Member's right to copies of memorandum.

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

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

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

Copies of memorandum issued to embody alterations.

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

#### Alteration of memorandum and articles

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

Restriction on alteration of memorandum.

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

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

Alteration of memorandum.

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

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



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

Mode of alteration of business or objects.

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

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

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

(a) by the holders of not less in the aggregate than 10 per cent in nominal value of the company's issued share capital or any class thereof or, if the company is not limited by shares, not less than 10 per cent of the company's members; or

(b) by the holders of not less than 10 per cent of the company's debentures entitling the holders to object to alterations of its objects:

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

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

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

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

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

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

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

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

(a) an application is thereafter made to the court for its cancellation under this section, the company shall forthwith give notice to the Commission of the making of the application, and thereafter there shall be delivered to the Commission within 15 days from the date of its making—

(i) a certified true copy of the order in the case of refusal to confirm the resolution; or

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

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

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

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

authorised by subsection (1) except in proceedings taken for the purpose (whether under this section or otherwise) before the expiration of 21 days after the date of the resolution in that behalf; and where the proceedings are taken otherwise than under this section, subsections (9), (10), and (11) shall apply in relation thereto as if they had been taken under this section, and as if an order declaring the alteration invalid were an order cancelling or an order dismissing the proceedings were an order confirming the alteration.

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

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

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

(a) requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made; or

(b) in any way increases his liability as at that date to contribute to the company's share capital or otherwise to pay money to the company.

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

**Re-registration of companies**

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

**45.** (1) Subject to this section, a private company having a share capital may be re-registered as a public company if—

- (a) a special resolution that it should be so re-registered is passed; and
- (b) an application for re-registration is delivered to the Commission together with the documents referred to in subsection (4).

(2) The special resolution shall—

- (a) alter the company's memorandum so that it states that the company is a public company;
- (b) make such alterations in the memorandum as are necessary to bring it in conformity with the requirements of this Act with respect to the memorandum of a public company; and
- (c) make such alterations in the company's articles as are required in the circumstances.

(3) The application shall be made to the Commission in writing and signed by at least one director and the secretary of the company.

(4) The documents referred to in subsection (1) are—

- (a) a printed copy of the memorandum and articles as altered in pursuance of the resolution;
- (b) a copy of a written statement by the directors and the secretary certified on oath by them and showing that the paid-up capital of the company as at the date of the application is not less than 25 percent of the share capital as at that date;

- (c) a copy of the balance sheet of the company as at the date of the resolution or the preceding 6 months, whichever is later;
- (d) a statutory declaration by a director and the secretary of the company—
  - (i) that the special resolution required under this section has been passed; and
  - (ii) that the company's net assets are not less than the aggregate of the paid-up share capital and un-distributable reserves;
- (e) a copy of a prospectus or statement in lieu of prospectus within fourteen days of the passing of the resolution.

(5) If the Commission is satisfied that a company has complied with this section and may be re-registered as a public company, it shall—

- (a) retain the application and other documents delivered to it under this section;
- (b) register the application and other documents; and
- (c) issue to the company a certificate of incorporation stating that the company is a public company.

(6) Upon the issue of a certificate of incorporation -

- (a) the company becomes a public company; and
- (b) any alterations in the memorandum and articles set out in the resolution shall take effect.

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

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

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

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

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

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

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

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

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

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

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

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

(7) If a company fails to deliver to the Commission a certified true copy of the order as required in subsection (6), the company and any officer of the company who is in default, shall be guilty of an offence and liable to a fine not exceeding Le3,000,000.

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

- (a) retain the application and other documents delivered to it under this section;
  - (b) register the application and other documents; and
  - (c) issue the company with a certificate of incorporation as a private company.
- (9) On the issue of the certificate—
- (a) the company shall become a private company; and
  - (b) the alteration in the memorandum and articles set out in the resolution shall take effect accordingly.
- (10) The certificate shall be *prima facie* evidence that—
- (a) the requirements of this section in respect of re-registration and of matters precedent and incidental to it have been complied with; and
  - (b) the company is a private company.
- (11) This section shall not apply to public companies whose members are more than 53.

Re-registr-  
ation of  
company  
limited by  
shares as  
unlimited.

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

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

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

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

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

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

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

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

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

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

(8) On the issue of the certificate—

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

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

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

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

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

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

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

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

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

(7) On the issue of the certificate—

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

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

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

### Promoters

Persons promoting company.

**49.** Any person who undertakes to take part in forming a company with reference to a given project and to set it going and who takes the necessary steps to accomplish that purpose, or who, with regard to a newly formed company, undertakes a part in raising capital for it, shall *prima facie* be deemed a promoter of the company; but a person acting in a professional capacity for persons engaged in procuring the formation of the company shall not be deemed to be a promoter.

Duties and liabilities of promoters.

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

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

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

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

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

### PART IV—ACTS BY OR ON BEHALF OF THE COMPANY

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

Division of powers between general meeting and board of directors.

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

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

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

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

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

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

Delegation to committees and managing directors.

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

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

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

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

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

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

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



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

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

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

#### Constructive notice of registered documents

Abolition of constructive notice of registered documents.

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

Presumption of regularity.

**56.** Any person having dealings with a company or with someone deriving title under the company shall be entitled to make the following presumptions:—

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

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

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

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

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

#### Company's contracts

Form of contract.

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

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

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

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

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

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

Pre-incorporation contracts.

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

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

Common seal of company.

Official seal  
for use  
abroad.

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

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

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

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

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

Bills of  
exchange and  
promissory  
notes.

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

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

Cap 229.

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

#### PART V—MEMBERSHIP OF COMPANY

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

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

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

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

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

(b) he is an undischarged bankrupt, or

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

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

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

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

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

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

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

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

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

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

Right of member to attend meetings and vote.

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

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

Companies ceasing to have members.

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

Personation of members.

### Register of members

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

Obligation to keep up and enter register.

(2) There shall be entered in the register—

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

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

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

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

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

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

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

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

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

Location of register.

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

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

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

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

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

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

**71.** (1) Every company having more than 50 members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index of the names of the members of the company and shall, within 14 days after the date on which any alteration is made in the register of members, make any necessary alteration in the index. Index of members.

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

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

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

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

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

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

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

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

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

Inspection of register and index.

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

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

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

(4) The appropriate charge is—

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

(5) If an inspection required under this section is refused, or if a copy so required is not sent within the proper period, the company and every officer of it who is in default shall be guilty of an offence and be liable in respect of each offence to a fine not exceeding Le3,000,000.

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

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

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

Non-compliance with sections 70, 71 and 73.

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

Power to close register.

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

Power of court to rectify register.

**76.** (1) If—

- (a) the name of any person is, without sufficient cause, entered in or omitted from a company's register of members; or
- (b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,

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

(2) The court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.

(3) On an application under subsection (1), the court may decide any question relating to the title of a person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand, and generally may decide any question necessary or expedient to be decided for rectification of the register.

(4) In the case of a company required by this Act to send a list of its members to the Commission, the court, when making an

order for rectification of the register, shall by its order direct notice of the rectification to be given to the Commission.

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

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

### Liability of members

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

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

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

### Disclosure of beneficial interest in shares

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

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

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

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

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

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

- (4) Subject to subsection (5), any person who—
  - (a) fails to comply with a notice under this section; or
  - (b) in purported compliance with such a notice, makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular,

shall be guilty of an offence and liable to imprisonment for a term not exceeding 6 months or to a fine of Le500,000 for each day during which the default continues.

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

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

Obligation of disclosure by substantial shareholders in public company.

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

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

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



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

Person ceasing to be substantial shareholder to notify company.

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

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

Register of interests in shares.

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

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

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

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

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

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

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

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

## PART VI—SHARE CAPITAL

### Minimum share capital

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

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

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

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

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

#### Alteration of share capital

Alteration of share capital by consolidation etc.

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

- (a) consolidate and divide all or any part of its share capital into shares of larger amount than its existing shares;
- (b) convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination;
- (c) subdivide its shares or any of them, into shares of smaller amounts than is fixed by the memorandum, so, however, that the subdivision of the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
- (d) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

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

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

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

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

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

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

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

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

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

- (a) within 6 months of giving notice of the increase to the Commission not less than 25 per cent of the share capital including the increase has been issued; and
- (b) the directors have delivered to the Commission a statutory declaration verifying that fact.

Special resolution for reduction of share capital.

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

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

- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up;
- (b) either with or without extinguishing or reducing liability on any of its shares cancel any paid-up share capital which is lost or unrepresented by available assets; or
- (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the company's wants, and the company may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

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

### Reduction of share capital

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

Restriction on reduction of issued share capital.

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

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

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

Application to court for order of confirmation.

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

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

subsections (3), (4) and (5) shall have effect.

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

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

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

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

- (a) the company admits the full amount of the debt or claim or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;
- (b) the company does not admit, and is not willing to provide for, the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the court after the same enquiry and adjudication as if the company were being wound up by the court.

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

Court order confirming reduction.

92. (1) The court, if satisfied-

- (a) with respect to every creditor of the company who under section 91 is entitled to object to the reduction of capital that either-
  - (i) his consent to the reduction has been obtained;
  - or
  - (ii) his debt or claim has been discharged or has determined, or has been secured; and
- (b) that the share capital does not by this reduction fall below the minimum share capital,

may make an order confirming the reduction on such terms and conditions as it thinks fit.

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

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

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

Registration of order and minutes of reduction.

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

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

shall register the order and minutes.

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

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

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

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

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

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

## PART VII –SHARES

### Nature of shares

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

Rights and liabilities attached to shares.

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

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

Shares as transferable property.

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

Prohibition of non-voting and weighted shares.

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

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

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

(3) Nothing in this section shall—

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

#### Issue of shares

Power of companies to issue shares.

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

Issue of classes of shares.

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

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

Issue of shares at a premium.

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

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

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

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

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

(4) Where a company has, before the commencement of this Act issued any shares at a premium, this section shall apply as if the shares had been issued after the commencement of this Act; but any part of the premium which has been so applied that it does not at the commencement of this Act form an identifiable part of the company’s reserves within the meaning of this Act shall be disregarded in determining the sum to be included in the share premium account.

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

Issue of shares at discount.

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

- (b) the resolution specifies the maximum rate of discount at which the shares are to be issued;
- (c) the shares to be issued at a discount are issued within the month after the date on which the issue is sanctioned by the court or within such extended time as the court may allow; and
- (d) not less than one year must at the date of the issue have elapsed since the date on which the company was entitled to commence business.

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

(3) Every prospectus relating to the issue of the shares and every balance sheet issued by the company subsequent to the issue of shares, shall contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the prospectus.

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

Issue of redeemable preference shares.

**101.** Subject to section 133, a company limited by shares may, if so authorised by its articles, issue preference shares which shall, or at the option of the company, be liable to be redeemed.

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

Validation of improperly issued shares.

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

#### Allotment of shares

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

Authority to allot shares.

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

Method of application and allotment.

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

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

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

Allotment as acceptance of offer.

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

Payment on allotment.

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

Prohibition of allotment unless minimum subscription received.

**107.** (1) No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which, in the opinion of the directors shall be raised by the issue of share capital in order to provide for matters specified in subsection (6) has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company.

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

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

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

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

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

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

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



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

- 108.** (1) A company having a share capital which—
- (a) does not issue a prospectus on or with reference to its formation; or
  - (b) issued such a prospectus but has not proceeded to allot any of the shares,

shall not allot any of its shares or debentures unless at least 3 days before the first allotment of either shares or debentures there has been delivered to the Commission for registration a statement in lieu of prospectus, signed by every person who is named in it as a director or a proposed director of the company or by his agent authorised in writing in the form containing the particulars set out in the Second Schedule .

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

(3) If a company acts in contravention of this section, the company and every director of the company who knowingly authorises or permits the contravention shall be guilty of an offence and be liable to a fine not exceeding Le3,000,000.

Effect of irregular allotment.

**109.** (1) An allotment made by a company to an applicant in contravention of sections 107 and 108, shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, notwithstanding that the company is in the course of being wound up.

(2) If any director of a company knowingly contravenes or permits or authorises the contravention of any of the provisions of sections 107 and 108 with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby.

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

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

Return as to allotments.

- (a) a return of the allotments stating the number of nominal amount of the shares comprised in the allotment, the names, addresses and description of the allottees, and the amount, if any, paid or due and payable on each share; and
- (b) in the case of shares allotted as fully or partly paid up otherwise than in cash—
  - (i) a contract in writing consisting of the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped;
  - (ii) a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted; and
  - (iii) particulars of the valuation of the consideration in accordance with section 114, if any.

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

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

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

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

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

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

Power to pay commission in certain cases.

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

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

(b) subject to any enactment to the contrary, the commission paid or agreed to be paid does not exceed 10 percent of the price at which the shares are issued or the amount or rate authorized by the articles, whichever is the lesser;

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

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

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

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

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

Statement in balance sheet as to commission.

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

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

#### Call on and payment for shares

Payment for shares.

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

Meaning of payment in cash.

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

Payment other than in cash.

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

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

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

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

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

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

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

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

Power to pay different amounts on shares.

- (a) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;
- (b) accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up;

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

Reserve liability of companies having share capital.

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

#### Class of shares

Right of a preference shareholder to more than one vote.

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

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

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

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

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

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

Construction of class rights.

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

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

#### Numbering of shares

Shares to be numbered.

**121.** Each share in a company having a share capital shall be distinguished by its appropriate number; but if at any time all the issued shares in a company, or all of its issued shares of a particular class, are fully paid up and rank *pari passu* for all purposes, none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up.

#### Share certificates

Issue of share certificates.

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

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

(3) Every certificate issued by a company shall be under the company's seal and shall specify the shares to which it relates and the amount paid up on them; but in respect of shares held jointly by several persons, the company shall not be bound to issue more than one certificate, and delivery of a certificate for shares to one of several joint holders shall be sufficient delivery to all such holders.

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

(5) If any company on which a notice has been served requiring it to make good any default in complying with the provisions of subsection (1) fails to make good the default within 10 days after the service of the notice, the court may, on the application of the person entitled to have the certificate delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order; and such order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default.

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

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

Effect of  
share  
certificate.

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

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

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

Probate, etc.  
as evidence  
of grant.

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

Issue and  
effect of  
share  
warrants to  
bearer.

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

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

### Transfer and transmission of shares and debentures

**126.** (1) Notwithstanding anything in the articles of a company, it shall not be lawful for the company to register a transfer of shares in or debentures of the company, unless a proper instrument of transfer has been delivered to the company; but nothing in this section shall prejudice any power of the company to register as shareholder, any person to whom the right to any shares in the company has been transmitted by operation of law. <sup>a Transfer of shares.</sup>

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

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

(4) A person upon whom the ownership of a share or debenture devolves by reason of his being the legal representative, receiver or trustee in bankruptcy of the holder or by operation of law shall, prior to registration of himself or a transferee be entitled to the same dividends, interest and other advantages as if he were the registered shareholder and, in the case of a share, to the same rights and remedies as if he were a member of the company, except that he shall not, before being registered as a member in respect of the share, be entitled to attend and vote at any meeting of the company; but the company may at any time give notice requiring such person to elect to be registered himself or to transfer the share or debenture; and if the notice is not complied with within 90 days, the company may

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

Entry in register of transfers.

**127.** (1) On the application of the transferor of any share or interest in a company, the company shall enter in its register of members, the name of the transferee in the same conditions as if the application for the entry were made by the transferee.

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

Notice of refusal to register.

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

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

Transfer by personal representatives.

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

Recognition of executors' etc. title to shares.

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

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

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

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

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

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

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

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

Certification  
of transfers.

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

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

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

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

(5) For the purposes of this section—

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

(ii) the recognition is signed by a person authorised to recognise transfers of shares debentures on the company’s behalf by any officer or servant either of the company or of a body corporate so authorised;

(c) a recognition shall be deemed to be signed by any person if—

(i) it purports to be authenticated by his signature or initials (whether hand-written or not); and

(iv) it is not shown that the signature or initials was or were placed there by any person other than him or person authorised to use the signature or initials for the purpose of transfers on the company’s behalf.

#### Transaction by company in respect of its own shares

**133.** (1) The provisions of this section shall apply in respect of redemption by a company of any redeemable preference shares issued by it under section 101. Redemption of redeemable preference of shares.

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

(a) profits of the company which would otherwise be available for dividends; or

(b) the proceeds of a fresh issue of shares made for the purposes of the redemption.

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



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

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

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

**134.** (1) Subject to this section—

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

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

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

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

- (i) the company's principal purpose in giving the assistance is not to reduce or discharge any liability incurred by a person for the purpose of the acquisition of shares in the company or its holding company, or the reduction or discharge of such liability is but an incidental part of some larger purpose of the company; and
- (ii) the assistance is given in good faith;
- (f) a distribution of a company's assets by way of dividend lawfully made or a distribution made in the course of the winding up of the company;
- (g) the allotment of bonus shares;
- (h) anything done in pursuance of an order of the court under section 478 in relation to the power of a company to compromise with its creditors and members;
- (i) the provision of financial assistance by a company or any of its subsidiaries for the purposes of or in connection with anything done by the company for the purpose of enabling or facilitating transactions in shares in the company between and involving the acquisition of beneficial ownership of those shares by any of the following persons:-
  - (i) the *bona fide* employees or former employees of that company or of another company in the same group; or
  - (ii) the wives, husbands, widows, widowers, children or step children under the age of 18 of such employees or former employees;

- (j) the making by a company of loans to persons other than directors, employed in good faith, by the company with a view to those persons to acquire fully paid shares in the company or its holding company to be held by them by way of beneficial ownership.
- (3) The aggregate amount of any outstanding loans made under paragraph (c) of subsection (2) shall be shown as a separate item in every balance sheet of the company.
- (4) If a company acts in contravention of this section, the company and every officer of the company who is in default shall be guilty of an offence and be liable to a fine not exceeding Le5,000,000.
- (5) In this section "financial assistance" means-
  - (a) financial assistance given by way of-
    - (i) a gift, guarantee, security or indemnity other than an indemnity in respect of the indemnifier's own neglect or default or by way of release or waiver;
    - (ii) a loan or any other agreement under which any of the obligations of the person giving the assistance are to be fulfilled at a time when, in accordance with the agreement, remains unfulfilled, or by way of the novation of or assignment of rights arising under, a loan or such other agreement; or
  - (b) any other financial assistance given by a company the net assets of which are thereby reduced to a material extent or which has no net assets.

Acquisition by company of its own shares.

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

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

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

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

Conditions for purchase by a company of its own shares.

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

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

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

- (c) no purchase shall be made in breach of section 135.

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

Limit on number of shares acquired.

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

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

Disclosure by company of purchase of its own shares.

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

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

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

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

Enforceability of contract to acquire shares.

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

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

Re-issue of shares acquired.

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

Acquisition of shares of holding company.

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

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

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

## PART VIII—DEBENTURES

### Creation of debentures and debenture stock

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

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

### Types of debentures

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

Perpetual debentures.

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

Convertible debentures.

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

Secured and unsecured debentures.

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

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

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

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

Redeemable debentures

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Meetings of  
debenture  
holders.

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

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

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

### Fixed and floating charges

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

Meaning of  
“floating” and  
“fixed”  
charges.

- (a) the security becomes enforceable and the holder thereof, pursuant to a power in that behalf in the debenture or the deed securing the debenture appoints a receiver or manager or enters into possession of the 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.

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

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

Priority of fixed over floating charge.

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

Powers of court to appoint receiver or manager.

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

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

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

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

Advertisement of appointment of receiver and manager.

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

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

Preferential payment to debenture holders in certain cases.

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

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

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

### Debenture trust deeds

Execution of  
debenture  
trust deed.

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

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

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

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

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

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

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

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

(5) Debentures further belong to different classes—

- (a) if they do not rank equally for payment when any security invested in the debenture by holders under any trust deed is realised; or
- (b) when the company is wound up, or in circumstances where the security may be realised, pursuant to paragraph (d) of subsection (4) the subject matter of such security or the proceeds thereof, or any assets available to satisfy the debentures, is or are not to be applied in satisfying the debentures strictly in proportion to the amount of principal, premiums and arrears of interest to which the holders are respectively entitled.

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

- (a) is entitled to participate in any money payable by the company under the deed; or
- (b) is entitled to the benefit of any mortgage, charge or security created by the deed, whether alone or together with other persons.

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



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

Contents of  
debenture  
trust deed.

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

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

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

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

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

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

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

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

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

Contents of debentures covered by trust deed.

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

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

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

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

Trustees for debenture holders.

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

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

(4) Notwithstanding anything contained in the debentures or trust deed, the court may, on the application of any debenture holder or of the Commission remove any trustee and appoint another in his place if satisfied that such trustee has interests which conflict or may conflict with those of the debenture holders or that for any reason it is undesirable that such trustee should continue to act; but that where the application is made by a debenture holder, the court if it thinks fit, may order the applicant to give security for the payment of the costs of the trustee and may direct that the application shall be heard in chambers.

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

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

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

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

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

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

Rights of  
debenture  
holders.

(2) A debenture holder may sue—

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

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

Liability of trustees for debenture holders.

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

(2) Subsection (1) shall not invalidate—

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

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

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

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

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

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

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

Restrictions on transferability of debentures.

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

any debenture, notice of the restriction shall be endorsed on the face of the debenture or debenture stock certificate and in the absence of such endorsement, the restriction shall be ineffective as regards any transferee for value, whether or not he has notice of the restriction.

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

Company to keep copies of instruments creating charges.

**163.** Every company shall cause a copy of every instrument creating any charge requiring registration under this Part to be kept at the registered office of the company; but, in the case of a series of uniform debentures, a copy of one debenture of the series shall be sufficient.

Company's register of charges.

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

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

Inspection of register and copies of instruments.

**165.** (1) The copies of instruments creating any charge requiring registration with the Commission under this Part and the register of charges kept in pursuance of section 164, shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than 2 hours each day shall be allowed for inspection) to inspection by any creditor or member of the company without fee and the register of charges shall also be open to inspection by any other person on payment of such fee as the Commission may prescribe for each inspection.

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

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

(2) The register shall contain the following information:—

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

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

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

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

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

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

(4) If inspection is refused, or a copy is refused or not forwarded, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding Le3,000,000 and in case of a continuing default, to a further fine of Le500,000. for each day during which the default continues.

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

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

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

Entry in register of transferees.

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

Notice of refusal to register.

(2) If any default is made in complying with subsection (1) the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding Le3,000,000.

#### Registration of charges with Commission

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

Registration of charges created by companies.

(2) This section applies to the following charges:—

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

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

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

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

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

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

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

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

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

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

- (c) a general description of the property charged, and
- (d) the names of the trustees, if any, for the debenture holders, together with the deed containing the charge or copy thereof verified in the prescribed manner, or, if there is no such deed, one of the debentures of the series;

and where more than one issue is made of debentures in the series, there shall be sent to the Commission for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

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

(10) In this Part, "charge" includes mortgage.

Register of particulars of charges.

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

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

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

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

**172.** (1) It shall be the duty of a company to send to the Commission for registration, the particulars of every charge created by the company and of the issues of debentures of a series requiring registration under section 170, but registration of such charge may be effected on the application of any person interested therein.

Duty of company to register charges.



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

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

Duty of company acquiring property to register subsisting charge.

**173.** (1) Where a company acquires any property which is subject to a charge of any kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered, to the Commission for registration in the manner required by this Act within 90 days after the date on which the acquisition is completed; but, if the property is situated and the charge was created outside Sierra Leone, 90 days after the date on which the copy of the instrument could in due course of post, and if despatched with due diligence, have been received in Sierra Leone shall be substituted for 90 days after the completion of the acquisition, as the time within which the particulars and the copy of the instrument are to be delivered to the Commission.

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

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

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

(3) In the event of default in complying with subsection (2), the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine of Le500,000 for each day during which the default continues.

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

**175.** Where a charge, particulars of which require registration under section 170, is expressed to secure all sums due or to become due or some other uncertain or fluctuating amount the particulars required under paragraph (a) of subsection (8) of section 170 state the maximum sum deemed to be secured by such charge (being the maximum sum covered by the stamp duty paid on it) and such charge shall be void, so far as any security on the company's property is thereby conferred, in respect of any excess over the stated maximum; but if— Charges to secure fluctuating amounts.

- (a) additional stamp duty is subsequently paid on such charge; and
- (b) at any time thereafter prior to the commencement of the winding up of the company, amended particulars of the charge stating the increased maximum sum deemed to be secured thereby (together with the original instrument by which the charge was created or evidenced) are delivered to the Commission for registration,

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

Endorsement  
of regist-  
ration.

**176.** (1) The company shall cause a copy of every certificate of registration given under section 171 to be endorsed on every debenture or certificate of debenture stock which is issued by the company and the payment of which is secured by the charge so registered.

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

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

**177.** If the Commission is satisfied with respect to any registered charge that—

Entries of  
satisfaction  
of charges.

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

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

**178.** The court may, on being satisfied that the omission—

Rectification  
of register.

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

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

Inspection of register and copies of instruments.

**179.** (1) The copies of instruments creating any charge requiring registration with the Commission and the register of charges kept in pursuance of section 171 shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than 2 hours in each day shall be allowed for inspection) to inspection by any creditor or member of the company without fee, and the register of charges shall also be open to inspection by any other person on payment of such fee, not exceeding Le5,000 for each inspection, as the company may determine.

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

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

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

Realisation of debenture holder's security.

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

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

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

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

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

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

Remedies available to debenture holders.

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

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

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

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

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

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

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

(5) The remedies given by this section shall be in addition to, and not in substitution for, any other powers and remedies conferred on the trustee of the debenture trust deed or on the debenture holders by the debentures or debenture trust deed, and any power or remedy which is expressed in any instrument to be exercisable if the debenture holders become entitled to realise their security is exercisable on the occurrence of any of the events specified in subsection (1) of section 180, or in the case of a general charge in subsections (1) and (2) of section 180 but a manager of the business or of any of the assets of a company may not be appointed for the benefit of debenture holders unless a receiver has also been appointed and has not ceased to act.

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

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

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

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

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

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

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

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

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

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

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

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

## PARTIX—MEETINGS AND PROCEEDINGS

**Statutory meetings**

Statutory meetings.

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

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

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

- (a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;
- (b) the total amount of cash received by the company in respect of all the shares allotted, distinguished;
- (c) the names, addresses and descriptions of the directors, auditors, managers, if any, and secretary of the company;
- (d) the particulars of any pre-incorporation contracts together with the particulars of any modification or proposed modification of the contracts;

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

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

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

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

be certified as correct by the auditors of the company.

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

(7) The directors shall cause a list showing the names, descriptions and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the

commencement of the meeting and to remain open and accessible to any member of the company during the continuance of the statutory meeting.

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

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

(10) The statutory meeting may adjourn from time to time and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequent to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

Non-compliance and penalty.

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

(2) If default is made in holding a statutory meeting within the time stipulated in section 183, the Commission may, on the application of any member of the company call or direct the calling of a statutory meeting and give ancillary or consequential directions as it thinks expedient.

### General meetings

Annual general meeting.

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

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

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

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

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

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

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

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

(6) Where a company resolves that a meeting shall be treated as its annual general meeting, a copy of the resolution shall within 7 days after the passing of the resolution be filed with the Commission.

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

Business transacted at annual general meetings.

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

### Extra-ordinary general meetings

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

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

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

(4) If the directors do not, within 21 days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists, or any one or more of them representing more than one-half of the total voting rights of all of them, may themselves convene a meeting; but any meeting so convened shall not be held after the expiration of 3 months from that date.

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



(6) Any reasonable expenses incurred by the requisitionist or requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

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

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

Place of meetings.

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

#### Notice of meetings

Length of notice for calling meetings.

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

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

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

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

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

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

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

Contents of notice.

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

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

(4) An error or omission in a notice with respect to the place, date, time or general nature of the business of a meeting shall not invalidate the meeting, unless the officer of the company responsible for the error or omission acted in bad faith or failed to exercise due care and diligence; but in the case of accidental error or omission, the officer responsible shall effect the necessary correction either before or during the meeting.

Persons entitled to notice.

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

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

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

Service of notice.

**192.** (1) A notice required to be given under subsection (1) of section 189 shall be given either personally, by post or by electronic means to the registered address either in Sierra Leone or elsewhere, of the person entitled to receive the notice.

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

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

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

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

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

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

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

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

Court to order meetings.

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

- (a) of its own motion, or
- (b) on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting,

order a meeting of the company or board, as the case may be, to be called, held and conducted in such manner as the court thinks fit, and where such order is made may give such ancillary or consequential directions as it thinks expedient; and these may include a direction that one member of the company present in person or by proxy be deemed to constitute a meeting, either of its own motion or otherwise.

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

Right to attend general meetings.

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

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

- (ii) any member who is a holder of preference shares only shall not be entitled to attend if his right to do so is validly suspended under this Act;
- (iii) nothing in this Part shall be deemed to preclude other persons from attending any general meeting with the permission of the chairman.

**197.** (1) Any member of a company entitled to attend and vote <sup>Proxies.</sup> at a meeting of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of him, and the proxy shall also have the same right as a member to speak at the meeting.

(2) Unless the articles otherwise provide, subsection (1) shall not apply in the case of a company not having a share capital.

(3) In every notice calling a meeting of a company having a share capital, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy, or where that is allowed, two or more proxies, to attend and vote instead of him, and that a proxy need not be a member; and if default is made in complying with this subsection in respect of any meeting, every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding Le3,000,000.

(4) Any provision contained in a company's articles shall be void in so far as it would have the effect of requiring the instrument appointing a proxy or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy, to be received by the company or any other person more than 48 hours before a meeting or adjourned meeting in order that the appointment may be effective at the meeting.

(5) If for the purpose of the meeting of the company invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to some only of the members entitled to be sent notice of the meeting and to vote by proxy at the meeting every officer of the company who knowingly and willfully authorises or permits their issue shall be guilty of an offence and be liable to a fine not exceeding Le5,000,000.

(6) An officer shall not be liable under subsection (5) by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy or of a list of persons willing to act as proxy if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

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

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

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

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

instrument proposed to vote, or in the case of a poll not less than 24 hours before the time appointed for the taking of the poll; and in default, the instrument of proxy shall be treated as not valid.

(10) This section shall apply to meetings of any class of members of a company as it applies to general meetings of the company.

**198.** (1) A corporation, whether a company within the meaning of this Act or not may—

- Corporation  
representa-  
tion at  
meetings of  
companies.
- (a) if it is a member of another corporation being a company within the meaning of this Act, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company;
  - (b) if it is a creditor (including a holder of debentures) of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the creditors of the company held in pursuance of this Act or of any regulations made under it or in pursuance of any provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorised under subsection (1) shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual shareholder, creditor or holder of debentures, of that company.

## Quorum.

199. (1) Unless otherwise provided in the articles, no business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business and at the time of any voting.

(2) Unless otherwise provided in the articles, the quorum for the meeting of a company shall be one-third of the total number of members of the company or 25 members (whichever is less) present in person or by proxy, but where the number of members is not a multiple of three, then the number nearest to one-third, and where the number of members is 6 or less, the quorum shall be two members.

(3) This section does not apply to one-man companies.

(4) For the purpose of determining a quorum, all members or their proxies shall be counted.

(5) If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members shall be dissolved; in any other case it shall be adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall form a quorum.

## Resolutions.

200. (1) A resolution shall be an ordinary resolution when it has been passed by a simple majority of votes cast by such members of the company as, being entitled to do so, vote in person or by proxy at a general meeting.

(2) A resolution shall be a special resolution when it has been passed by not less than two-thirds of the votes cast by such members of the company as, being entitled to do so, vote in person or by proxy at a general meeting of which 21 days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given; and, if it is so agreed by a majority in number of the

members having the right to attend and vote at any such meeting, being a majority together holding not less than 95 percent in nominal value of the shares giving that right or, in the case of a company not having a share capital, together representing not less than 95 per cent of the total voting rights at that meeting of all the members, a resolution may be proposed and passed as a special resolution at a meeting of which less than 21 days' notice has been given.

201. (1) All resolutions shall be passed at general meetings and shall not be effective unless so passed; but in the case of a private company a written resolution signed by all the members entitled to attend and vote shall be as valid and effective as if passed in a general meeting. Written resolutions.

(2) A written resolution shall be deemed to have been passed on the date on which it was signed by the last member to sign, and where the resolution states a date as the date of signature by any member, such statement shall be *prima facie* evidence that it was signed by that member on that date.

202. (1) Subject to this section, it shall be the duty of a company, on the requisition in writing of such number of members as is specified in this section and (unless the company otherwise resolves) at the expense of the company to— Circulation of members' resolutions.

(a) give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution submitted by a member which may properly be moved and is intended to be moved at that meeting;

(b) circulate to members entitled to have notice of any general meeting sent to them, any statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or the business to be

dealt with at that meeting, and where the statement has more than 1,000 words, to circulate a summary of it.

(2) The number of members necessary for a requisition under subsection (1) shall be—

- (a) any one or more members representing not less than one twentieth of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or
- (b) not less than one hundred members holding shares in the company on which there has been paid up an average sum, per member, of not less than Le20,000.

(3) Notice of the resolution shall be given, and the statement shall be circulated, to members of the company entitled to have notice of the meeting sent to them by serving a copy of the resolution or statement on each member in any manner permitted for service of notice of the meeting: and notice of the resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving notice of meetings of the company; and the copy shall be served, or notice of the effect of the resolution shall be given, as the case may be, in the same manner and so far as practicable, at the same time as notice of the meeting and where it is not practicable for it to be served or given at that time, it shall be served or given as soon as practicable after that.

(4) A company shall not be bound under this section to give notice of any resolution or to circulate any statement unless—

(a) a copy of the requisition signed by the requisitionists (or two or more copies which between them contain the signatures of all the requisitionists) is deposited at the registered office of the company—

- (i) in the case of a requisition requiring notice of a resolution, not less than 6 weeks before the meeting;
- (ii) in the case of any other requisition, not less than one week before the meeting; and

(b) there is deposited or tendered with the requisition, a sum reasonably sufficient to meet the company's expenses in giving effect to it and if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date 6 weeks or less after the copy has been deposited, the copy though not deposited within the time required by this subsection, shall be deemed to have been properly deposited for the purposes thereof.

(5) The company shall also not be bound under this section to circulate any statement if, on the application either of the company or of any other person who claims to be aggrieved, the court if satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter may order the company's costs on an application under this section to be paid in whole or in part by the requisitionist, notwithstanding that the requisitionist is not party to the application.

(6) Notwithstanding anything in the company's articles, the business which may be dealt with at an annual general meeting shall include any resolution of which notice is given in accordance

with this section and for the purposes of this subsection, notice shall be deemed to have been so given, notwithstanding the accidental omission, in giving it to one or more members.

(7) In the event of any default in complying with the provisions of this section, every officer of the company who is in default shall be guilty of an offence and be liable to a fine not exceeding Le3,000,000

Resolutions  
requiring  
special notice.

**203.** (1) Where by any provision in this Act, special notice is required of a resolution, a resolution shall not be effective unless notice of the intention to move it has been given to the company not less than 28 days before the meeting at which it is to be moved, and the company shall give its members notice of any such resolution at the same time and the same manner as it gives notice of the meeting or, if that is not practicable, shall give the notice either by advertisement in a local newspaper or in another note allowed by the articles, not less than 21 days before the meeting.

(2) If after the notice of the intention to move such a resolution has been given to the company, a meeting is called for a date not later than 28 days or less after the notice has been given, the notice though not given within the time required by this section shall be deemed to have been properly given.

Registration  
and copies of  
certain  
resolutions.

**204.** (1) Subject to paragraph (b) of subsection (10) of section 42 a printed copy of every resolution or agreement to which this section applies shall, within 15 days after the passing or making of the resolution or agreement as the case may be, be forwarded to the Commission.

(2) Where pursuant to sections 40 to 42 a company by special resolution alters a provision of its memorandum and the Commission is satisfied that the alteration is not in compliance with the applicable provisions of those sections, it may refuse to file a copy of the resolution in its records, and shall notify the company accordingly; and any person aggrieved by the refusal may appeal to the court within 21 days from the receipt of the notification.

(3) A copy of every resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.

(4) This section applies to—

- (a) special resolutions;
- (b) resolutions which have been agreed to by all the members of the company, but which, if not so agreed, would not have been effective for their purpose unless as the case may be, they had been passed as a special resolution; or
- (c) resolutions or agreements which have been agreed to by all the members of any class of shareholders but which, if not so agreed to, would not have been effective for their purpose, unless they have been passed by some particular majority or otherwise in some particular manner, and all resolutions and agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members; and
- (d) a resolution requiring the company to be wound up voluntarily, passed under paragraph (a) of subsection (1) of section 402.

(5) If a company fails to comply with subsection (3) the company and every officer of the company who is in default shall be guilty of an offence and be liable to a fine not exceeding Le3,000,000.

(6) For the purposes of subsections (4) and (5), a liquidator of the company shall be deemed to be an officer of the company.

Effect of resolutions passed at adjourned meetings.

**205.** (1) Where a resolution is passed at an adjourned meeting of—

- (a) a company;
- (b) the holders of any class of shares in a company; or
- (c) the directors of a company,

the resolution shall for all purposes be treated as having been passed on the day on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

(2) Where a resolution is passed on a poll, it shall for all purposes be deemed to have been passed on the day on which the result of the poll is declared, and not on any earlier day.

#### Miscellaneous matters relating to meetings and proceedings

**206.** (1) Every company shall cause—

- (a) minutes of all proceedings of general meetings;
- (b) all proceedings at meetings of its directors; and
- (c) where there are managers, all proceedings at meetings of its managers,

to be entered in books kept for that purpose.

(2) Any minutes if purporting to be signed by the chairman of the meeting at which the proceedings were held, or by the chairman of the next succeeding meeting, shall be *prima facie* evidence of the proceedings.

Minutes of proceedings and effect.

(3) Where minutes have been made, in accordance with the provisions of this section of the proceedings at any general meeting of the company or meeting of directors or managers, then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings had at the meeting to have been duly had, and all appointments of directors, managers or liquidators shall be deemed to be valid.

(4) If a company fails to comply with the provisions of subsection (1), the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding Le3,000,000.

**207.** (1) The books containing the minutes of proceedings of any general meeting of a company held on or after the commencement of this Act, shall be kept at the registered office of the company, and shall, during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, but so that not less than 6 hours in each day be allowed for inspection) be open to inspection by members without charge. Inspection of minute books and copies.

(2) Any member shall be entitled to be furnished within 14 days after receipt of his request in that behalf to the company, with a copy of such minutes certified by the Secretary at a charge not exceeding Le5,000 for every hundred words.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper time, the company and every officer of the company who is in default shall be guilty of an offence and be liable in respect of each offence to a fine not exceeding Le10,000,000.

(4) In the case of such refusal or default, the court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings, or direct that the copies required shall be sent to the persons requiring them.

**208.** This Part shall apply to any class of meetings except where expressly excluded by this Act. Class of meetings.



## PART X—DIRECTORS AND SECRETARIES OF COMPANY

**Directors**

Meaning of “directors”.

**209.** (1) There shall be a rebuttable presumption in favour of any person dealing with the company that all persons who are described by the company as directors, whether as executive or otherwise, have been duly appointed.

(2) Any person not being a duly appointed director of a company—

- (a) who holds himself out or knowingly allows himself to be held out as a director of that company; or
- (b) on whose directions or instructions the duly appointed directors are accustomed to act, shall be subject to the same duties and liabilities as if he were a duly appointed director of the company.

(3) Nothing in subsection (3) shall derogate from the duties and liabilities of the duly appointed directors, including the duty not to act on the directions or instructions of any other person.

(4) If any person, not being a duly appointed director of a company holds himself out, or knowingly allows himself to be held out as a director of the company or if the company holds out such person or knowingly allows the person to hold himself out as a director of the company, the person or the company, as the case may be, shall be guilty of an offence and be liable to a fine not exceeding Le8,000,000.

Shadow directors.

**210.** Without prejudice to sections 211 and 215 “shadow director” shall include any person on whose instructions and directions the directors are accustomed to act.

**Appointment of directors**

**211.** (1) Every company registered after the commencement of this Act shall have at least two directors. Number of directors.

(2) Any company whose number of directors falls below two shall, within one month of its so falling appoint new directors and shall not carry on business after the expiration of 3 months, unless new directors are appointed.

(3) A director of a company who knows that a company carried on business for more than 30 days after the number of directors had fallen below two shall be liable for all liabilities and debts incurred by the company during that period when the company so carried on business.

(4) A director shall, immediately after being appointed as such indicate in writing that he has accepted the appointment.

**212.** (1) The members at the annual general meeting shall have power to re-elect or not to re-elect existing directors and to appoint new ones. Subsequent appointment of directors.

(2) In the event of all the directors and the only surviving shareholder dying, any of the personal representatives shall be entitled to apply to the court for an order to convene a meeting of all the personal representatives of the shareholders entitled to attend and vote at a general meeting to appoint new directors to manage the company, and if they fail to convene a meeting, the creditors, if any, to do so.

(3) This section shall not apply to one-man companies.

**213.** (1) The board of directors shall have power to appoint new directors to fill any casual vacancy arising out of the death, resignation, retirement or removal of any director but the persons so appointed shall retire at the same time as the directors in whose place they were appointed. Casual vacancy.

(2) Where a casual vacancy is filled by the directors, the person so appointed may be approved by the company at the next general meeting and if not so approved, he shall forthwith cease to be a director.

(3) The directors may, at any time appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

Liability of a person where not duly appointed.

**214.** Where a person not duly appointed as a director acts as such on behalf of the company, his act shall not bind the company and he shall be personally liable for such action; but where it is the company which holds him out as director, the company shall be bound by his acts.

(2) The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

(3) Nothing in subsection (2) shall be deemed to give validity to acts done by a director after the appointment of the director has been shown to be invalid.

Share qualification of directors.

**215.** (1) The shareholding qualification for directors may be fixed by the articles of association or by the company in general meeting and unless and until so fixed no shareholding qualification shall be required.

(2) It shall be the duty of every director who is by the articles of the company required to hold a specified share qualification, and who is not already so qualified, to obtain his qualification within 2 months after his appointment or such shorter time as may be fixed by the articles.

(3) The office of director of a company shall be vacated if the director does not, within 2 months from the date of his appointment, obtain his qualification or after the expiration of the period, he ceases at any time to hold his shareholding qualification.

(4) A person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his shareholding qualification.

(5) For the purpose of any provision in the articles requiring a director to hold a specified share qualification, the bearer of a share warrant shall not be deemed to be the holder of the shares specified in the warrant.

**216.** (1) Any person who is appointed or to his knowledge is proposed to be appointed director of a public company and who is 70 or more years old shall disclose this fact in writing to the members at the general meeting. Duty of directors to disclose age to company.

(2) Any person who fails to disclose his age as required under this section or makes a false disclosure in relation to his age shall be guilty of offence and be liable on conviction to a fine not exceeding Le5,000,000.

**217.** If any person, being an undischarged bankrupt acts as director or directly or indirectly takes part in or is concerned in the management of any company, he shall be guilty of an offence and be liable to a fine not exceeding Le5,000,000., or to imprisonment for a term not exceeding 6 months, or to both the fine and imprisonment. Insolvent persons acting as directors

**218.** (1) Where—

- (a) a person is convicted by a court of any offence in connection with the promotion, formation or management of a company or an offence involving fraud or dishonesty; or
- (b) in the course of winding up a company it appears that a person-
  - (i) has committed any offence referred to under paragraph (a); or

Restraint of fraudulent persons.

- (ii) has otherwise been found guilty, while an officer of the company, of any fraud in relation to the company or of any breach of his duty to the company,

the court shall make an order that that person shall not be a director of or in any way, whether directly or indirectly, be concerned or take part in the management of a company for a specified period not exceeding 10 years.

(2) A person intending to apply for the making of an order under this section, shall give not less than 10 days notice of his intention to the person against whom the order is sought; and on the hearing of the application, the last mentioned person may appear and himself give evidence or call witnesses.

(3) An application for the making of an order by the court having jurisdiction to wind up a company may be made by the official receiver, or by the liquidator of the company or by any person who is or has been a member or creditor of the company; and on the hearing of any application for an order by the official receiver or the liquidator, or of any application for leave under this section by a person against whom an order has been made on the application of the official receiver or liquidator, the official receiver or liquidator shall appear and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.

(4) An order may be made by virtue of sub paragraph (ii) of paragraph (b) of subsection (1), notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made; and for the purposes of that paragraph "officer" includes any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

(5) If any person acts in contravention of an order made under this section, he shall be guilty of an offence and in respect of each offence, be liable to a fine not exceeding Le5,000,000 or to imprisonment for a term not exceeding 6 months, or to both the fine and imprisonment.

**219.** The following persons shall be disqualified from being directors:—

- (a) a person under the age of 18 years;
- (b) a lunatic or person of unsound mind;
- (c) a person who is an undischarged bankrupt; and
- (d) a person convicted, whether in Sierra Leone or elsewhere, of any offence involving fraud or dishonesty or any offence in connection with the promotion, formation or management of a company.

Disqualification for directorship.

**220.** (1) Unless the articles otherwise provide, at the first annual general meeting of the company, all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being, or if their number is not three or a multiple of three, then the number nearest one-third shall retire from office. Rotation of directors.

(2) A retiring director shall be eligible for re-election.

(3) The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

(4) The company at the meeting at which a director retires in the manner mentioned in subsections (1) and (2) may fill the vacated office by electing a person to that office and failing which the retiring director shall, if offering himself for re-election, be deemed to have been re-elected, unless at such meeting it is expressly resolved not to fill such vacated office or unless a resolution for the re-election of such director shall have been put to the meeting and lost.

(5) The annual general meeting shall have power to increase or reduce the number of directors generally and may determine in what rotation the directors shall retire but such direction shall not invalidate any prior act of the directors so removed.

Mode of voting on appointment of directors.

**221.** (1) At a general meeting of a company other than a private company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be made, unless a resolution that it shall be so made has first been passed unanimously by the meeting.

(2) A resolution passed in contravention of this section shall be void, whether or not it was objected to at the time:

Provided that-

- (a) this subsection shall not be taken as excluding the operation of section 220; and
- (b) where a resolution so moved is passed, no provision for automatic re-appointment of retiring directors in default of another appointment shall apply.

(3) For the purposes of this section, a motion for approving a person's appointment or for nominating a person for appointment shall be treated as a motion for his appointment.

(4) Nothing in this section shall apply to a resolution altering the company's articles.

Removal of directors.

**222.** (1) Unless the articles of association otherwise provide a company may, by ordinary resolution remove any director before the expiration of his period of office and may, by ordinary resolution appoint another person in his place but the director to be removed shall have a right to make representations to the meeting at which the ordinary resolution is passed.

(2) The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected as a director.

(3) Nothing in this section shall be taken as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as a director or of any appointment terminating with that as director, or as derogating from any power to remove a director which may exist apart from this section.

### Remuneration and other payments

**223.** (1) Subject to this section, the fees and other remuneration payable to the directors in whatsoever capacity, shall be determined from time to time by ordinary resolution of the company and not by any provision in the articles or in any agreement, which provision shall be null and void. Remuneration of directors.

(2) The fees payable to the directors as such shall be determined from time to time by ordinary resolution of the company and not in any other way; but where the articles of an existing company contain any provision fixing the fees payable to the directors, such provision shall continue in operation and have effect until the date of the first annual general meeting of the company held next after the commencement of this Act.

(3) Unless otherwise resolved, the fees payable to directors shall be deemed to accrue from day-to-day and the directors shall also be entitled to be paid all travelling and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meeting of the company or otherwise in connection with the business of the company.

**224.** A managing director shall receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way, and partly in another), as may be determined by the board of directors. Remuneration of managing directors.

Prohibition of loans to directors in certain circumstances.

**225.** (1) It shall not be lawful for a company to make a loan to any person who is its director or a director of its holding company, or to enter into any guarantee or provide any security in connection with a loan made to such a person by any other person.

(2) Nothing in this section shall apply-

- (a) subject to subsection (3), to anything done to provide such person as mentioned in this subsection with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company; or
- (b) in the case of a company whose ordinary business includes the lending of money or the giving of guarantee in connection with loans made by other persons, to anything done by the company in the ordinary course of that business.

(3) Paragraph (a) of subsection (2) does not authorise the making of any loan, or the entering into any guarantee, or the provision of any security except-

- (a) with the prior approval of the company given at a general meeting at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed;
- (b) on condition that, if the approval of the company is not given as in subsection (1) at or before the next following annual general meeting, the loan shall be repaid or the liability under the guarantee or security shall

be discharged, as the case may be, within 6 months from the conclusion of that meeting.

(4) Where the approval of the company is not given as required by the condition referred to in paragraph (a) of subsection (3), the directors authorising the making of the loan, or the entering into the guarantee, or the provision of the security, shall be jointly and severally liable to indemnify the company against any loss arising from it.

**226.** It shall not be lawful for a company to make to any director or former director of the company or any associated company any payment by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, unless particulars with respect to the proposed payment and the amount have been disclosed to members of the company and the proposal is approved by the company by ordinary resolution.

Payment by company for loss of office etc. to be approved.

**227.** (1) If in connection with the transfer of the whole or any part of the undertaking or property of a company, it is proposed to make any payment to a director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, the payment shall be unlawful unless particulars with respect to the proposal and the amount, have been disclosed to members of the company and the proposal is approved by the company.

Payment to director for loss of office etc. or transfer of property illegal.

(2) Where a payment declared by this section to be illegal is made to a director of a company, the amount received shall be deemed to have been received by him in trust for the company.

**228.** (1) Where, in connection with the transfer to any persons of all or any of the shares in a company, being a transfer resulting from -

- (a) an offer made to the general body of shareholders;
- (b) an offer made by or on behalf of some other

Directors to disclose payment for loss of office, in certain cases.

body corporate with a view to the company becoming its subsidiary or a subsidiary of its holding company;

- (c) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise or control the exercise of not less than one third of the voting power at any general meeting of the company; or
- (d) any other offer which is conditional on acceptance to a given extent, payment is to be made to a director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office,

it shall be the duty of that director to do all things reasonably necessary to ensure that particulars with respect to the proposed payment and the amount, are included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(2) If—

- (a) any director referred to in subsection (1) fails to do all things reasonably necessary as mentioned in this section; or
- (b) any person who has been properly required by such director to include the particulars in or send them with such notice fails to do so,

he shall be guilty of an offence and be liable to a fine not exceeding Le5,000,000.

(3) If—

- (a) the requirements of subsection (1) are not complied with in relation to such payments as are mentioned in it; or

- (b) the making of the proposed payment is not, before the transfer of any shares in pursuance of the offer, approved at a meeting summoned by the holders of the shares to which the offer relates of the same class as any of the shares at a meeting summoned for that purpose,

any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any person who has sold his shares as a result of the offer made, and the expenses incurred by him in distributing that sum among those persons shall be borne by him and not retained out of that sum.

(4) If, in connection with any transfer—

- (a) the price to be paid to a director of the company whose office is to be abolished or who is to retire from office, for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the same shares; or
- (b) any valuable consideration is given to the director,

the excess or the money value of the consideration, as the case may be, shall for the purposes of this section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

(5) Nothing in this section shall prejudice the operation of any rule of law requiring disclosure to be made with respect to any payments made under this section or with respect to any other like payments made, or to be made, to the directors of a company.

**229.** (1) For the purposes of sections 227 and 228 the expression “payment” includes any benefit or advantage whether in cash or in kind.

Provisions supplemental to sections 227 and 228.

(2) Sections 227 and 228 shall not render unlawful or apply to the payment of damages awarded or approved by any competent court for breach of any valid service agreement or the *bona fide* payment of any pension or superannuation benefit in respect of past services in accordance with a valid service agreement.

#### Powers and duties of directors

Limitations  
on the powers  
of directors.

**230.** (1) Notwithstanding any other provision of this Act or any provision in the company's articles, the directors of a company having a share capital shall not, without the approval of a special resolution of the company—

- (a) sell, lease or otherwise dispose of the whole, or substantially the whole, of the undertaking or of the assets of the company;
- (b) issue any new or unissued shares, other than treasury shares, in the company unless the shares shall first have been offered on the same terms and conditions to all the existing shareholders or to all the holders of the shares of the class or classes being issued in proportion as nearly as maybe to their existing holdings;
- (c) make voluntary contributions to any charitable or other funds, other than pension funds for the benefit of employees of the company or any associated company, of any amounts the aggregate of which will, in any financial year of the company, exceed Le10,000,000 or 2 per cent of the income surplus of the company at the end of the preceding financial year, whichever is the greater; but—

- (i) no resolution of the company shall be effective as approving of such transaction as is referred to in paragraph (a) unless it authorises in terms the specific transaction proposed by the directors;
- (ii) no resolution of the company shall be effective as approving of such a transaction referred to in paragraph (a) if passed more than one year before the issue of the shares unless such issue is in accordance with a scheme for the time being in force relating to the issue of shares to or for the benefit of persons *bona fide* in the employment of the company or any of its associated companies.

(2) Paragraph (b) of subsection (1) shall not apply to private companies.

(3) Notwithstanding any other provision of this Act or in the company's articles or in any resolution of the company in general meeting, no new or unissued shares or treasury shares shall be issued to any director or past director of the company or of any associated company or to his nominee or to any body corporate controlled by him unless the shares shall first have been offered on the same terms and conditions to all the existing shareholders or to all the holders of the shares of the class or classes being issued in proportion to their existing holdings or, in the case of a public company, to members of the public.

(4) For the purposes of subsection (3), a body corporate shall be deemed to be controlled by a director if the body corporate or its directors are accustomed to act in accordance with the directions

or instructions of such director or his nominee or if at a general meeting of the body corporate such director or his nominee is entitled to exercise or control the exercise of one-third or more of the voting power.

- (5) Nothing in this section shall prohibit-
- (a) the issue of any shares under a *bona fide* underwriting agreement; or
  - (b) the issue to a director at a fair price payable in cash of such shares, if any, as under the articles of the company, he is required to hold by way of share qualification.

(6) Unless the company's articles otherwise provide, the directors of a company having a share capital shall not, without the approval of a special resolution of the company, exercise the company's power to borrow money or to charge any of its assets where the moneys to be borrowed or secured, together with the amount remaining undischarged of moneys already borrowed or secured, apart from temporary loans obtained from the company's bankers in the ordinary course of business, will exceed the share capital for the time being of the company.

(7) No person dealing with the company in good faith or registering any disposition of, or title to, property shall be concerned to see whether the conditions have been fulfilled and the provisions of Part IV shall apply to any transactions of the type referred to in sections 52 to 54 notwithstanding that such conditions have not been fulfilled.

(8) In this section "treasury shares" are shares which on redemption, purchase, acquisition or forfeiture are available for re-issue by the company, unless the company by alteration of its memorandum and articles cancels or re-issues such shares.

**231.** (1) A director of a company stands in a fiduciary relationship towards the company and shall observe the utmost good faith towards the company in any transaction with it or on its behalf. Duties of directors.

(2) A director shall act at all times in what he believes to be the best interests of the company as a whole so as to preserve its assets, further its business, and promote the purposes for which it was formed.

(3) In considering whether a particular transaction or course of action is in the best interests of the company as a whole a director may have regard to the interests of the employees, as well as the members, of the company, and, when appointed by, or as representative of, a special class of members, employees, or creditors may give special, but not exclusive, consideration to the interests of that class.

(4) No provision, whether contained in the articles of a company, or in any contract, or in any resolution of a company shall relieve any director from the duty to act in accordance with this section or relieve him from any liability incurred as a result of any breach thereof.

(5) A director shall exercise his powers for the purpose for which they are specified and shall not do so for a collateral purpose; and the power, if exercised for the right purposes does not constitute a breach of duty, if it incidentally affects a member adversely.

(6) Any duty imposed on a director under this section shall be enforceable against the director by the company.

**232.** (1) Every director of a company shall exercise the powers and discharge the duties of his office honestly, in good faith and in the best interests of the company, and shall exercise that degree of care, diligence and skill which a reasonably prudent director would exercise in comparable circumstances. Duty of care and skill.

(2) Failure to take reasonable care in accordance with this Act shall ground an action for negligence and breach of duty.



(3) Each director shall be individually responsible for the actions of the board in which he participated, and his absence from the board's deliberations, unless justified, shall not relieve a director of such responsibility.

(4) The same standard of care in relation to the director's duties to the company shall be required for both executive and non-executive directors; but additional liability and benefit may arise under the master and servant law in the case of an executive director if there is an express or implied contract to that effect.

Directors as trustees and agents of company.

**233.** (1) Directors are trustees of the company's moneys, properties and powers and as such shall-

- (a) account for all the moneys over which they exercise control;
- (b) refund any moneys improperly paid away;
- (c) exercise their powers honestly in the interest of the company and all the shareholders, and not in their own or sectional interests.

(2) A director may, when acting within his authority and the powers of the company be regarded as an agent of the company under this Act.

Exercise of directors' power.

**234.** Directors shall not, without the approval of a special resolution of the company, exceed the powers conferred upon them by this Act and the company's articles or exercise such powers for a purpose different from that for which such powers were conferred notwithstanding that they may believe such exercise to be in the best interest of the company.

Conflict of duty and interest.

**235.** (1) Notwithstanding any provision in the company's articles, a director shall not, without the consent of the company place himself in a position in which his duty to the company conflicts or may conflict with his personal interests or his duties to other persons, and in particular, without such consent a director shall not-

- (a) use for his own advantage any money or property of the company or any confidential information or special knowledge obtained by him in his capacity as director;
- (b) be interested directly or indirectly, otherwise than merely as a shareholder or debenture holder in a public company, in any business which competes with that of the company;
- (c) be personally interested, directly or indirectly, in any contract or other transaction entered into by the company except as provided for by this Act.

(2) A director shall not, in the course of the management of the company or in the utilisation of the company's property, make any secret profit or gain or other unauthorised benefits.

(3) A director shall be accountable to the company for any secret profit or any other unauthorised benefits derived by him contrary to subsection (2).

(4) The inability or unwillingness of the company to perform any functions or duties under its articles and memorandum shall not constitute a defence to any breach of duty of a director under this Act.

(5) The duty not to use confidential information shall not cease where a director or an officer has resigned from the company, and he shall still be accountable and can be restrained by an injunction from misusing the information received by virtue of his previous position.

Consent of companies.

**236.** (1) For the purposes of section 235, the company shall not be deemed to have consented unless after full disclosure of extent of any interest of the directors, the transaction concerned shall have been specifically authorised by the company either by a resolution which shall have been supported by all the members of the company entitled to attend and vote at a general meeting or by a special resolution at a general meeting at which neither the director concerned nor the holders of any shares in which he is beneficially interested, either directly or indirectly, shall have voted as members on such resolution.

(2) Consent in accordance with subsection (1) shall be given before the occurrence of the transaction to which it relates; and a resolution of the company ratifying a transaction or series of related transactions which has already taken place shall not be effective for the purposes of subsection (1) unless it was passed not later than 15 months after the date when the transaction or first of such transactions took place.

Duties of directors in connection with sales.

**237.** (1) If a director of a company, having acquired as a director any special information which may substantially affect the value of the shares or debentures of the company or any associated company, buys or sells such shares without disclosing such information to the seller or or purchaser thereof, the purchase or sale shall be voidable at the option of the seller or purchaser within 12 months after the agreement to sell or buy.

(2) For the purposes of this section, any shares or debentures bought or sold shall be deemed to have been bought or sold by a director if his interest in the shares is such as to require recording in relation to him in the register to be maintained under this Act, unless it is proved that the sale or purchase was not made by him or on his instruction or advice or on the instructions or advice of any other person to whom he had imparted any special information affecting the value of the shares or debentures obtained by him in his capacity as director

(3) This section shall not prejudice the right of the company to proceed against any director for breach of section 235.

**238.** (1) Unless otherwise provided in the company's articles, a director, notwithstanding section 235, shall be entitled to enter into a contract with the company and, subject to compliance with section 231 and subsections (2) to (7), such contract or any other contract by the company in which any director is in any way interested shall not be liable to be avoided nor shall any director be liable to account for any profit made thereby by reason of such director holding that office or of the fiduciary relationship thereby established.

Contracts in which directors are interested.

(2) Every director who is in any way, whether directly or indirectly, materially interested in any contract or proposed contract entered into or to be entered into by or on behalf of the company shall declare the nature and extent of his interest at a meeting of the directors of the company.

(3) In the case of a proposed contract the "declaration" required by this section to be made by a director shall be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration or, if the director was not at the date of that meeting interested in the proposed contract, at the next meeting after he became so interested; and in a case where the director becomes interested in a contract after it is made the declaration shall be made at the first meeting of the directors held after the director becomes so interested.

(4) For the purposes of this section, a general notice in writing given to the directors of the company by a director to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm, shall be deemed to be a sufficient declaration of interest in relation to any contract or proposed contract so made or to be made—

- (a) if there is stated in the notice the nature and extent of the interest of the director in such company or firm;

- (b) if at the time the question of confirming or entering into the contract is first taken into consideration the extent of his interest in such company or firm is not greater than is stated in the notice;
- (c) no general notice shall be of any effect unless it is given at a meeting of the directors or the director giving the notice takes all reasonable steps to ensure that it is brought up and read at the next meeting of directors after it is given;
- (d) such general notice shall not be effective for more than twelve months but may from time to time be renewed.

(5) A director of the company shall not enter into any contract on its behalf in which he or, to his knowledge, any director of the company or any associated company is in any way materially interested, whether directly or indirectly, until a resolution has been passed by the directors approving it.

(6) In the case of any proposed contract in which the officer is himself interested he shall, prior to the passing of the approving resolution, declare the nature and extent of his interest in the contract at a meeting of directors or by written notice given to the director or such other director.

(7) A director shall not vote in respect of any contract or arrangement in which he is materially interested and if he does so his vote shall not be counted, nor shall he be counted in the quorum required for that business; but neither of these prohibitions shall apply to—

- (a) any arrangement for giving any director any security and indemnity in respect of money lent by him to or obligations undertaken by him for the benefit of the company;

- (b) any arrangement for the giving by the company of any security to a third party in respect of a debt or obligation of the company for which the director himself has assumed responsibility in whole or in part under a guarantee or indemnity or by the deposit of a security; or
- (c) any contract by a director to subscribe for or underwrite shares or debentures of the company.

(8) A copy of every declaration made and notice given in pursuance of this section shall, within three days after the making or giving, be entered in a book kept for this purpose.

(9) The book shall be open for inspection without charge by any director, secretary, auditor or member of the company at the registered office of the company and shall be produced at every general meeting of the company and at any meeting of the directors if any director so requests in sufficient time to enable the book to be available at the meeting.

(10) Any director or officer who fails to comply with any of the provisions of this section shall be guilty of an offence and be liable to a fine not exceeding Le5,000,000

(11) If a company fails to comply with subsections (8) and (9), the company and every officer of the company who is in default shall be guilty of an offence and be liable to a fine not exceeding Le3,000,000 and if any inspection or production required is refused, the court may by order compel an immediate inspection or production.

(12) For the purposes of this section, an interest merely as holder of debentures, or of not more than 2 per cent of the shares or any class of shares, of a public company shall not be deemed to be a material interest.

Directors acting professionally.

**239.** Unless otherwise provided in the company's articles, any director may, notwithstanding section 235, act by himself or his firm in a professional capacity for the company except as auditor and he or his firm shall be entitled to proper remuneration for professional services as if he were not a director.

Civil liabilities for breach of duty.

**240.** If a director commits any breach of his duties under sections 233, 234 and 235—

- (a) the director and any other person who knowingly participated in the breach shall be liable to compensate the company for any loss it suffers as a result of the breach;
- (b) the director shall account to the company for any profit made by him as a result of the breach; and
- (c) any contract or other transaction entered into between the director and the company in breach of the duties may be rescinded by the company.

Legal liabilities for breach of duty.

**241.** (1) Proceedings to enforce the liabilities referred to in section 246 to restrain a threatened breach of any duty under sections 234 and 235 or to recover from any director of the company property of the company may be instituted by the company or any member of the company.

(2) Proceedings may be instituted by the company on the authority of the board of directors or of any receiver and manager or liquidator of the company, or of an ordinary resolution of the company which shall either have been agreed to by all the members of the company entitled to attend and vote at a general meeting or have been passed at a general meeting.

(3) After an investigation of the affairs of the company, proceedings may also be instituted in the name of the company by the Commission.

(4) Where proceedings are instituted by a member he shall sue in a representative capacity on behalf of himself and all other members, except any members that are defendants to the action, and shall join the company as a defendant.

(5) The court, on the application of any defendant, may stay proceedings by such member if satisfied that, in all the circumstances, including his participation in the transaction complained of and the circumstances in which he became a member, it is inequitable that he should be allowed to have the conduct of the action and may, if it thinks fit order such member to give security for payment of the costs of the defendants and may direct that the action or any part of it shall be heard in chambers.

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

(7) In any proceedings under this section, the court shall have power when justice so requires, to order that any moneys found to be payable by any defendant shall be restored, in whole or in part, to members or former members of the company instead of to the company itself; and in that event the court may order that the necessary enquiries shall be made to ascertain the identity of the members and former members concerned and may give such consequential directions as may be necessary or expedient.

(8) No proceedings under this section shall be dismissed, settled or compromised without the approval of the court after notice of the proposed dismissal, settlement or compromise has been given to all members of the company and to the Commission in such manner as the court directs.

(9) Within the time prescribed by such notice any member of the company and the Commission may appear and call the attention of the court to any matters which seem relevant and may give evidence and call witnesses.

(10) If the court does not approve the dismissal or compromise, it may give the conduct of the action to any member willing to continue it, or to the Commission in the name of the company, making such consequential orders regarding the parties to the action or otherwise as may be necessary or expedient.

#### Miscellaneous matters relating to directors

Multiple directors.

**242.** The fact that a person holds more than one directorship shall not derogate from his fiduciary duties to each company, including the duty not to use property, opportunity or information obtained in the course of the management of one company for the benefit of the other company or to his or other person's advantage.

Directors with unlimited liability in respect of limited company

**243.** (1) In a limited company, the liability of the directors or managers or of the managing director, may, if so provided by the memorandum be unlimited.

(2) In a limited company in which the liability of a director or manager is unlimited, the directors and any managers of the company and the member who proposes a person for election or appointment to the office of director or manager, shall add to the proposal a statement that the liability of the person holding that office shall be unlimited, and before the person accepts the office or acts therein, notice in writing that his liability shall be unlimited shall be given to him by the following or one of the following persons, namely, the promoters, directors, managers and the secretary of the company.

(3) If any director, manager or promoter defaults in adding such a statement, or if any promoter, director, manager or secretary fails to give such notice, he shall be guilty of an offence and be liable to a fine not exceeding Le.3,000,000 and shall also be liable for any damage which the person so elected or appointed may sustain from the default.

Special resolution of limited company making liability of directors unlimited.

**244.** (1) A limited company, if so authorised by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors, managers, or of any managing director.

(2) Upon the passing of the special resolution, and notwithstanding the terms of any contract between a director and the company, the director may resign his office as director and in the event that a director resigns, he shall not be affected by the passing of the special resolution.

(3) The passing of the special resolution and any consequent resignation of a director shall not prejudice any existing rights which the director may otherwise have for breach of any contract of service with the company

**245.** (1) Subject to this section, the directors of a company shall, on demand made to them in writing by members of the company entitled to not less than one-fourth of the aggregate number of votes, furnish to all the members of the company within one month of receipt of the demand, a statement certified as correct or with such qualifications as may be necessary by the auditors of the company, showing for each of the last three years in respect of which the accounts of the company have been made up, the aggregate amount received in that year as remuneration or other emoluments by directors of the company, whether as directors or otherwise, in respect of the management of the company.

Statement on remuneration of directors to be furnished to shareholders.

(2) There shall, in respect of any director of the company who is-

(a) a director of a subsidiary company of the company referred to in subsection (1); or

(b) by virtue of the nomination, whether direct or indirect, of the company a director of any other company,

be included in the said aggregate amount any remuneration or other emoluments received by him whether as a director of or otherwise in relation to the management of the other company.

(3) A demand for a statement under subsection (1) shall be of no effect if the company, within one month after the date on which the demand is made resolves that the statement is not to be furnished.

(4) Pursuant to subsection (1), it shall be sufficient to state the total aggregate of all moneys paid to or other emoluments received by all the directors in each year without specifying the amount received by any individual.

(5) Any director who fails to comply with subsection (1) shall be guilty of an offence and be liable to a fine not exceeding Le5,000,000.

(6) In this section “emoluments” includes fees, percentages and other payments made or consideration given, directly or indirectly, to a director as such, and the money value of any allowances or perquisites belonging to his office.

Provision as to liability of officers and auditors.

**246.** Subject to this section, any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any director, manager or officer of the company, or any person (whether an officer of the company or not) employed by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he maybe guilty in relation to the company shall be void; and—

- (a) in relation to a provision which is in force on the commencement of this Act, this section shall have effect only on the expiration of a period of 6 months from that date;
- (b) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while such provision was in force; and
- (c) notwithstanding anything in this section, a company may, in pursuance of such provision, indemnify such director, manager, officer or auditor against any liability incurred

by him in defending any proceedings, whether civil or criminal, in which judgement is given in his favour or in which he is acquitted or in connection with any application under section 515 in which relief is granted to him by the court.

**247.** (1) Every company shall keep at its registered office, a Register of directors and secretaries.

(2) The register shall contain the following particulars with respect to each director:—

- (a) his present forename and surname;
- (b) any former forename and surname;
- (c) his usual residential address;
- (d) his nationality;
- (e) his business or occupation, if any;
- (f) particulars of any other directorships held by him; and
- (g) the date of his birth.

(3) The register shall contain the following particulars with respect to the secretary:—

- (a) in the case of an individual—
  - (i) his present forename and surname;
  - (ii) any former forenames and surnames; and

(iii) his usual residential address; and

(b) in the case of a corporation its registered name and registered or head office.

(4) The company shall, within the periods respectively mentioned in subsection (5), send to the Commission a return containing the particulars specified in the register and notification of any change among its directors or in its secretary or in any of the particulars contained in the register, specifying the date of the change.

(5) The periods referred to in subsection (4) shall be the period within which—

(a) a return is to be sent which shall be a period of 14 days from the date of incorporation of the company; and

(b) the notification of a change is to be sent 14 days from the happening thereof;

but in the case of a return containing particulars with respect to any person who is the company's secretary at the commencement of this Act, the period shall be 14 days from the commencement of this Act.

(6) The register to be kept under this section shall, during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that no less than two hours in each day be allowed for inspection) be open to inspection by any member of the company without charge and by another person on payment of such sum as the company may determine, for each inspection.

(7) If any inspection required under this section is refused, or if default is made in complying with subsections (1), (2), and (4), the company and every officer of the company who is default shall be guilty of an offence and be liable to a fine not exceeding Le3,000,000

(9) In case of any refusal or default, the court may by order compel an inspection of the register or that the copies required be sent as provided in this section.

(10) For the purpose of this section—

(a) a person in accordance with whose directions or instruction the directors of a company are accustomed to act shall be deemed to be a director and officer of the company; and

(b) references to a former forename or surname in the case of a married woman shall not include the name or surname by which she was known previous to the marriage.

**248.** (1) Every company shall keep a register showing as respects each director of the company (not being its holding company) the number, description and amount of any shares in or debentures of the company or any other body corporate, being the company's subsidiary or holding company, or a subsidiary of the company's holding company, which are held by or in trust for him or of which he has any right to become the holder (whether on payment or not); but the register need not include shares in any body corporate which is the wholly-owned subsidiary of another body corporate, and for this purpose, a body corporate shall be deemed to be the wholly-owned subsidiary of another if it has no member but that other and that other's wholly-owned subsidiaries and its or their nominees.

Register of directors' holdings.

(2) Where any shares or debentures fall to be or cease to be recorded in the register in relation to any director by reason of a transaction entered into after the commencement of this Act, and while he is a director, the register shall also show the date of, and price or other consideration for transaction that where there is an interval between the agreement for such transaction and the completion thereof, the date shown shall be that of the agreement.

(3) The nature and extent of a director's interest or right in or over any shares or debentures recorded in relation to him in the register shall, if he so requires, be indicated in the register.

(4) The company shall not by virtue of anything done for the purposes, be affected with notice of, or put upon inquiry as to the rights of any person in relation to any shares or debentures.

(5) The register shall, subject to the provisions, be kept at the company's registered or head office and shall be open to inspection during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) as follows:—

- (a) during the period beginning 14 days before the date of the company's annual general meeting and ending 3 days after the date of its conclusion, it shall be open to the inspection of any member or holder of debentures of the company; and
- (b) during that or any other period, it shall be open to the inspection of any person acting on behalf of the Commission.

(6) In computing the 14 days and the 3 days mentioned in subsection (5) any day which is a Saturday or Sunday or a public holiday shall be disregarded.

(7) Without prejudice to the rights conferred by subsection (5), the Commission may at anytime, request for the production to it of a copy of the register, or any part thereof.

(8) The register shall also be produced at the commencement of the company's annual general meeting and remain open and accessible during the continuance of the meeting to any person attending the meeting.

(9) If default is made in complying with subsection (1) or (2), or if any inspection required under this section is refused, or any copy required under it is not sent within a reasonable time, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding Le3,000,000, and if default is made in complying with subsection (8), the company and every officer of the company who is in default shall be liable to a fine not exceeding Le3,000,000.

(10) If any inspection required under this section is refused, the court may, by order, compel an immediate inspection of the register.

(11) For the purposes of this section—

- (a) any person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be deemed to be a director of the company; and
- (b) a director of a company shall be deemed to hold or to have an interest or right in or over, any share or debenture if a permanent representative of the body corporate other than the company holds them or has that interest or right in or over them, and either—
  - (i) that permanent representative is accustomed to act in accordance with the directions or instructions; or
  - (ii) he is entitled to exercise or control of one third or more of the voting power at any general meeting of that body corporate

### Secretaries

**249.** (1) Every company shall have a secretary.

Secretaries.



(2) Anything required or authorised to be done by or to the secretary may, if the office is vacant or there is for any other reason no secretary, be done by or to any assistant or deputy secretary; or, if there is no assistant or deputy secretary capable of acting, by or to any officer of the company authorised generally or specially in that behalf by the directors.

(3) If any company carries on business for more than 6 months without a secretary the company and every officer of the company who is in default shall be liable to a fine of Le500,000 for each day that the company continues to carry on business without a secretary after the expiration of the period.

Avoidance of acts done by person as director and secretary.

**250.** A provision requiring or authorising a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of the secretary.

Qualification of secretary.

**251.** (1) It shall be the duty of directors of a company to take all reasonable steps to ensure that the secretary of the company is a person who appears to them to have the requisite knowledge and experience to discharge the functions of a secretary of a company, and in the case of a public company, he shall be—

- (a) a member of the Institute of Chartered Secretaries and Administrators;
- (b) a legal practitioner within the meaning of the Legal Practitioners Act, 2000;
- (c) a member of the Institute of Chartered Accountants of Sierra Leone or such other bodies of accountants as are established from time to time by an enactment; or

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(d) a body corporate or firm consisting of members any one of whom is qualified under paragraphs (a), (b) or (c).

(2) In the case of paragraph (d) of subsection(1), the body corporate or firm shall designate a person or persons to carry out the duties of secretary and such person or persons shall be qualified under paragraphs (a) (b) or (c).

**252.** (1) Unless otherwise provided in the articles a secretary shall be appointed by the directors and, subject to the provisions of this section, may be summarily dismissed by them.

Appointment and summary dismissal of secretary.

(2) Where it is intended to summarily dismiss the secretary of a public company, the board of directors shall give him notice—

- (a) stating that it is intended to dismiss him;
- (b) setting out the grounds on which it is intended to summarily dismiss him; and
- (c) giving him a period not less than 7 working days within which to make his defence.

**253.** A secretary shall not owe fiduciary duties to the company, but where he is acting as its agent he shall owe fiduciary duties to it, and as such shall be liable to the company where he makes secret profits or derives other unauthorised benefits or lets his duties conflict with his personal interests, or uses confidential information he obtains from the company for his own benefit.

Fiduciary interests of secretary.

**254.** (1) The duties of a secretary shall include the following:—

Duties of secretary.

- (a) attending the meeting of the company, the board of directors and its committees, rendering all necessary secretarial services in respect of the meeting and advising on compliance by the meeting with the applicable rules and regulations;

- (b) maintaining the registers and other records required to be maintained by the company under this Act;
- (c) rendering proper returns and giving notification to the Commission as required under this Act; and
- (d) carrying out such administrative and other secretarial duties as directed by the board of directors, or the company.

(2) The secretary shall not, without the authority of the board of directors, exercise any powers vested in the board of directors.

#### PART XI—PROTECTION OF MINORITY AGAINST ILLEGAL AND OPPRESSIVE CONDUCT

##### Action by or against company

Only company may sue for wrong or ratify irregular conduct.

**255.** Subject to this Act, where any irregularity has been committed in the course of a company's affairs or any wrong has been done to the company only the company can sue to remedy that wrong and only the company can ratify the irregular conduct.

Injunction or declaration in the event of illegal or irregular activity.

**256.** (1) Without prejudice to the rights of members, the court may on the application of any member, by injunction or declaration, restrain the company from the following:—

- (a) entering into any transaction which is illegal or *ultra-vires*;
- (b) purporting to do by ordinary resolution any act which by its memorandum or articles require to be done by special resolution;
- (c) any act affecting the applicant's individual rights as a member;

- (d) committing fraud on either the company or the minority shareholders where the directors fail to take appropriate action to redress the wrong done;
- (e) where a meeting of the company cannot be called in time to be of practical use redressing a wrong done to the company or to minority shareholders;
- (f) where the directors are likely to derive a profit or benefit or have profited or benefited from their negligence or breach of duty but—
  - (i) nothing in this section shall derogate from the protection afforded by any provision of this Act to any person dealing with the company;
  - (ii) in relation to acts beyond the capacity or power of the company, the company shall be liable for such acts in accordance with this Act;
  - (iii) the right afforded to a member to apply to the court under this section shall be without prejudice to any right he may have to institute proceedings against any director of the company under this section.

(2) In any proceedings by a member under this section, the Court may, if it thinks fit, order that the member give security for the costs of the company and may direct that the application shall be heard in chambers.

(3) Where any member institutes an action under this section, the court may award costs to him personally whether or not his action succeeds.

Definition of members.

**257.** For purposes of section 256 “member” includes—

- (a) the personal representative of a deceased member; and
- (b) any person to whom shares have been transferred or transmitted by operation of law.

Commencing derivative action.

**258.** (1) Subject to subsection (2), an applicant may apply to the court for leave to bring an action in the name or on behalf of a company, or to intervene in an action to which the company is a party for the purpose of prosecuting, defending or discontinuing the action on behalf of the company.

(2) No action may be brought and no intervention may be made under subsection (1), unless the court is satisfied that—

- (a) the wrongdoers are the directors who are in control, and will not take necessary action;
- (b) the applicant has given reasonable notice to the directors of the company of his intention to apply to the court under subsection (1) if the directors of the company do not with due diligence bring, prosecute, defend or discontinue the action;
- (c) the applicant is acting in good faith; and
- (d) it appears to be in the best interest of the company that the action be brought, prosecuted, defended or discontinued.

Powers of court.

**259.** (1) In connection with an action brought or intervened under section 258, the court may at any time make such order or orders, as it thinks fit.

(2) Without prejudice to the generality of subsection (1), the court may make one or more of the following orders, that is an order—

- (a) authorising the applicant or any other person to control the conduct of the action;
- (b) giving directions for the conduct of the action;
- (c) directing that any amount adjudged payable by a defendant in the action shall be paid, in whole or in part, directly to former and present security holders of the company instead of to the company;
- (d) requiring the company to pay reasonable legal fees incurred by the applicant in connection with the proceedings.

**260.** An application made or an action brought or intervened in under section 258 shall not be stayed or dismissed by reason only that it is shown that an alleged breach of a duty owed to the company has been or may be approved by the shareholders of such company, but evidence of approval by the shareholders may be taken into account by the court in making an order under section 259.

Evidence of share-holders' approval not conclusive

**261.** An application made or an action brought or intervened in under section 258 shall not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the court given upon such terms as the court thinks fit; and if the court determines that the rights of any applicant may be substantially affected by such stay, discontinuance, settlement or dismissal, the court may order any party to the application or action to give notice to the applicant.

Court's approval to discontinue.

**262.** An applicant shall not be required to give security for costs in any application made or action brought or intervened in under section 258.

No security for costs.

**263.** In an application made or action brought or intervened in under section 258, the court may at any time order the company to pay to the applicant ‘interim costs before the final disposition of the application or action.

Interim costs.

Definition of applicant.

**264.** In sections 258 and 259 “applicant” means–

- (a) a registered holder or a beneficial owner and a former registered holder or beneficial owner, of a security of a company;
- (b) a director or an officer or a former director or officer of a company;
- (c) the Commission; or
- (d) any other person who, in the discretion of the court, is a proper person to make an application under section 258.

**Relief on the grounds of unfairly prejudicial and oppressive conduct**

Application

**265.** (1) An application to the court by petition for an order under section 263 in relation to a company may be made by a member of the company, the Commission or any other person approved by the court.

(2) In this section and section 266 “member” includes–

- (a) the personal representative of a deceased member; and
- (b) any person to whom shares have been transferred or transmitted by operation of law.

Grounds of application.

**266.** (1) An application for relief on the ground that the affairs of a company are being conducted in an illegal or oppressive manner may be made to the court by petition.

(2) An application to the court by petition for an order under this section in relation to a company may be made–

- (a) by a member of the company who alleges–

- (i) that the affairs of the company are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members, or in a manner that is in disregard of the interests of a member or the members as a whole;
- (ii) that an act or omission or proposed act or omission, by or on behalf of the company or a resolution or a proposed resolution of a class of members, was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members or was or would be in a manner which is in disregard of the interests of a member or the members as a whole; or

(b) by the Commission in a case where it appears to it in the exercise of its powers under this Act or any other enactment that–

- (i) the affairs of the company are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against a member or members or in a manner which is in disregard of the public interest; or
- (ii) any actual or proposed act or omission of the company (including an act or omission on its behalf) which was or would be oppressive, or unfairly prejudicial to, or unfairly discriminatory against a member or members in a manner which is in disregard of the public interests.

Powers of court to grant relief.

**267.** (1) If the court is satisfied that a petition under sections 265 and 266 is well founded, it may make such order or orders as it thinks fit for giving relief in respect of the matter complained of.

(2) Without prejudice to the generality of subsection (1), the court may make one or more of the following orders that is, an order:—

- (a) for regulating the conduct of the affairs of the company in future;
- (b) for the purchase of the shares of any member by other members of the company;
- (c) for the purchase of the shares of any member by the company and for the reduction accordingly of the company's capital;
- (d) directing the company to institute, prosecute, defend or discontinue specific proceedings, or authorising a member or members of the company to institute, prosecute, defend or discontinue specific proceedings in the name or on behalf of the company;
- (e) varying or setting aside a transaction or contract to which the company is a party and compensating the company or any other party to the transaction or contract;
- (f) directing an investigation to be made by the Commission;
- (g) appointing a receiver or a receiver and manager of the property of the company;
- (h) restraining a person from engaging in a specific conduct or from doing a specific act or thing;

(i) requiring a person to do a specific act or thing.

(3) Where an order under this section makes any alteration or addition to the memorandum or articles of a company, then, notwithstanding anything in any other provision of this Act but subject to the provisions of the order, the company shall not have power, without the leave of the court, to make any further alteration or addition to the memorandum and articles inconsistent with the provisions of the order but, subject to this subsection, the alteration or addition shall have effect as if it had been duly made by a resolution of the company.

(4) On any application under this section by a member of a company or the Commission, the court may if it thinks fit, order the applicant to give security for the costs of the company and may, direct that the application be heard in chambers.

#### **Investigation of companies and their affairs**

**268.** (1) The court may appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as shall be directed—

Investigation of affairs of company by inspectors.

- (a) in the case of a company having a share capital on the application of members holding not less than one quarter of the shares issued;
- (b) in the case of a company not having a share capital, on the application of not less than one-quarter of the persons on the company's register of members; and
- (c) in any other case, on the application of the company.

(2) The court may make such an appointment if it appears to it that there are circumstances suggesting that—

- (a) the company's affairs are being or have been conducted with intent to defraud its creditors or the creditors of any other person, or in a manner which is unfairly prejudicial to some part of its members;
- (b) any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial, or that the company was formed for any fraudulent or unlawful purpose;
- (c) persons concerned with the company's formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members;
- (d) the company's members have not been given all the information with respect to its affairs which they might reasonably expect; or
- (e) there are any other reasons for appointing the inspectors than in paragraphs (a), (b), (c), and (d).

Inspector's powers during investigation.

**269.** (1) Where an inspector appointed under section 268 to investigate the affairs of a company thinks it necessary, for the purposes of his investigation to also investigate the affairs of another body corporate which is or at any relevant time has been the company's subsidiary or holding company or a subsidiary of its holding company or a holding company of its subsidiary, he shall report on the affairs of the other body corporate so far as he thinks that the results of his investigation of its affairs are relevant to the investigation of the affairs of the company first mentioned.

(2) An inspector appointed under section 268 may at any time in the course of his investigation, without the necessity of making an interim report, inform the court and the Commission of matters coming to his knowledge as a result of the investigation tending to show that an offence has been committed.

**270.** (1) When an inspector is appointed under section 268, it shall be the duty of all officers and agents of the company, and of all officers and agents of any other body corporate whose affairs are being investigated under section 268—

Production of documents and evidence to inspectors.

- (a) to produce to the inspector all books and documents of or relating to the company or, as the case may be, the other body corporate which are in their custody or power;
- (b) to attend before the inspector when required to do so; and
- (c) otherwise to give the inspector all assistance in connection with the investigation which he is reasonably able to give.

(2) If the inspector considers that a person other than an officer or agent of the company or other body corporate is or may be in possession of information concerning its affairs, he may require that person to produce to him any books or documents in his custody or power relating to the company or other body corporate, and to attend before him otherwise to give him all assistance in connection with the investigation which he is reasonably able to give; and it is that person's duty to comply with the requirement.

(3) An inspector may examine on oath the officers and agents of the company or other body corporate, and such person as is mentioned in subsection (2) in relation to the affairs of the company or other body, and administer an oath accordingly.

(4) In this section, a reference to officers or to agents includes past, as well as present, officers or agents and “agents” in relation to a company or other body corporate, includes its bankers and persons employed by it as auditors, whether these persons are or are not officers of the company or other body corporate.

(5) An answer given by a person to a question put to him in the exercise of powers conferred by this section (whether it has effect in relation to an investigation under section 268 as applied by any other section in this Act) may be used in evidence against him.

(6) If any officer or agent of a company or body corporate—

- (a) refuses to produce to the inspectors any book or document which it is his duty to produce; or
- (b) refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company or body corporate,

the inspectors may certify the refusal under his hand to the court and it may then enquire into the case; and after hearing any witnesses who may be produced against or on behalf of the alleged offender or hearing any statement which may be offered in defence, the court may punish the offender in the same manner as if he had been guilty of contempt of the court

Powers of inspector to call for directors' bank accounts.

**271.** (1) If an inspector has reasonable grounds for believing that a director, or past director or other officer of the company or other body corporate whose affairs he is investigating maintains or has maintained a bank account of any description (whether alone or jointly with another person and whether in Sierra Leone or elsewhere), into or out of which there has been paid—

- (a) the emoluments or part of the emoluments of his office as such director particulars of which have not been disclosed in the financial statements of the company or other body corporate for any financial year, contrary to this Act (in relation to particulars in accounts of directors);
- (b) any money which has resulted from or been used in the financing of an undisclosed transaction, arrangement or agreement; or
- (c) any money which has been in any way connected with an act or omission or series of acts or omissions which on the part of that director constituted misconduct (whether fraudulent or not) towards the company or body corporate or its members,

the inspector may require the director to produce to him all documents in the director's possession, or under his control, relating to that bank account.

**272.** (1) On the conclusion of the investigation, the inspectors shall submit their report to the court. Inspectors' report.

(2) A copy of the report referred to in subsection (1) shall be forwarded by the court to the Commission and the registered office of the company, and a further copy shall at the request of the applicants for the investigation, be delivered to them.

(3) In any case, the court may, if it thinks fit—

- (a) furnish a copy of the report on request and on payment of the prescribed fee to—
  - (i) any member of the company or other body corporate which is the subject of the report;

- (ii) any person whose conduct is referred to in the report;
- (iii) the auditors of that company or body corporate; or
- (iv) any other person whose financial interests appear to the court to be affected by the matters dealt with in the report, whether as creditors of the company or body corporate, or otherwise; and

(b) cause such report to be printed and published.

Power to bring civil proceedings.

**273.** (1) If, from any report made under section 272, it appears to the Commission, that any civil proceedings ought in the public interest to be brought by the company or the applicant, the Commission may itself bring such proceedings in the name of the company or the applicant .

(2) The Commission shall indemnify the company or applicant against any costs or expenses incurred by it or him in or in connection with proceedings brought under this section; and any cost or expenses so incurred shall be, if not otherwise recoverable defrayed out of the Consolidated Fund.

Criminal proceedings on report by inspector.

**274.** (1) If, from any report made under section 272, it appears to the court, the company, a member of the company or the applicant that any person has been guilty of any offence in relation to the company for which he is liable the court, company, member or applicant shall refer the matter to the Attorney General.

(2) If, where any matter is referred to the Attorney General under this section he considers that—

- (a) the case is one in which a prosecution ought to be instituted and;

- (b) it is desirable in the public interest that the prosecution should be conducted by him,

he shall institute proceedings accordingly, and it shall be the duty of all officers and agents of the company, past and present (other than the defendant in the proceedings), to give to him all assistance in connection with the prosecution which they are reasonably able to give.

(3) The expenses of and incidental to an investigation under section 268 shall be defrayed as follows:—

- (a) where as a result of the investigation a prosecution is instituted by the Attorney-General, the expenses shall be defrayed by the Accountant General;

- (b) in any other case the expenses shall be defrayed by the company unless the court directs that they shall either be paid by the applicants or in part by the company and in part by the applicants.

**275.** A copy of the report of any inspector appointed under this Part, authenticated by the seal of the company or body corporate whose affairs they have investigated, shall be admissible in any legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in the report.

Inspector's report to be used as evidence in legal proceedings.

**276.** (1) Where it appears to the Commission, that there is good reason to do so, it may appoint one or more competent inspectors to investigate and report on the membership of any company and otherwise with respect to the company for the purpose of determining the true persons who are or have been financially interested in the success or failure of the company or able to control or materially to influence the policy of the company.

Appointment, etc. of inspectors to investigate ownership of company.



(2) The appointment of an inspector under this section may define the scope of his investigation, with regard to the matter or the period to which it is to extend or otherwise and in particular may limit his investigation to matters connected with particular shares or debentures.

(3) Where an application for an investigation under this section with respect to particular shares or debentures of a company is made to the Commission by members of the company and the number of applicants or the amount of the shares held by them is not less than that required for an application for the appointment of an inspector under paragraphs (a) and (b) of subsection (1) of section 268—

- (a) the Commission shall appoint an inspector to conduct the investigation unless it is satisfied that the application is vexatious; and
- (b) the inspector's appointment shall not exclude from the scope of his investigation any matter which the application seeks to include except in so far as the Commission is satisfied that it is reasonable for the matter to be investigated.

(4) Subject to the terms of an inspector's appointment, his powers shall extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of his investigation.

Provisions applicable to investigations.

**277.** (1) For the purposes of any investigation under section 276, sections 268 to 272 shall apply with the necessary modifications to references to the affairs of the company or to those of any body corporate, and—

- (a) the sections shall apply in relation to all persons—

(i) who are or have been, or whom the inspector has reasonable cause to believe to be or have been, financially interested in the success or failure or the apparent success or failure of the company or other body corporate whose membership is investigated with that of the company; or

(ii) who are able to control or materially to influence the policy thereof, including persons concerned only on behalf of others, as they apply in relation to officers and agents of the company or of the other body corporate, as the case may be; and

- (b) the Commission shall not be bound to furnish the company or any other person with a copy of any report by an inspector appointed under this section or with a complete copy of it if it is of the opinion that there is good reason for not divulging the contents of the report or of part of it, but shall keep a copy of the report, or, as the case may be, the parts of any report, as regards which it is not of that opinion.

(2) The expenses of any investigation under section 276 shall be defrayed out of the funds of the Commission .

**278.** (1) Where it appears to the Commission, that there is good reason to investigate the ownership of any shares in or debentures of a company and that it is necessary to appoint an inspector for the purpose, the Commission may require any person who it has reasonable cause to believe—

Power to require information as to persons interested in shares, etc.

- (a) to be or to have been interested in those shares or debentures; or

- (b) to act or to have acted in relation to those shares or debentures as a legal practitioner or an agent of some one interested in the shares or debentures, to give to the Commission any information which the person has or might reasonably be expected to obtain as to the present and past interest in those shares or debentures and the names and addresses of the persons interested, and of any persons who act or have acted on their behalf in relation to the shares or debentures.

(2) For the purposes of this section, a person shall be deemed to have an interest in a share or debenture if—

- (a) he has any right to acquire or dispose of the shares or debentures or any interest in them or to vote in respect of them;
- (b) if his consent is necessary for the exercise of any of the rights of other persons interested in the shares or debentures;
- (c) if other persons interested in the shares or debentures can be required or are accustomed to exercise their rights in accordance with his instructions.

(3) Any person who—

- (a) fails to give any information required of him under this section;
- (b) in giving such information makes any statement which he knows to be false in a material particular; or
- (c) recklessly makes any statement which is false in a material particular,

shall be guilty of an offence and be liable to a fine not exceeding Le3,000,000 or to imprisonment for a term not exceeding 6 months or to both the fine and imprisonment.

**279.** (1) Where in connection with an investigation under section 276 or 277 it appears to the Commission that there is difficulty in finding out the facts about any share (whether issued or to be issued), and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned or any of them to assist the investigation as required by this Act, the Commission may in writing direct that the shares shall, until further notice be subject to the restrictions imposed by this section.

Powers to impose restrictions on shares, etc.

(2) So long as any shares are directed to be subject to the restrictions imposed by this section—

- (a) any transfer of those shares, or in case of unissued shares any transfer of the right to be issued therewith and any issued, shall be void;
- (b) no voting rights shall be exercisable in respect of those shares;
- (c) no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder of those shares;
- (d) except in a liquidation, no payment shall be made of any sums due from the company on those shares, whether in respect of capital or otherwise.

(3) Where the Commission directs shares to be subject to restrictions under this section, or refuses to direct that shares shall cease to be subject to restrictions, any person aggrieved thereby may appeal to the court, and the court may, if it sees fit, direct that the shares shall cease to be subject to the restrictions.

(4) Any direction or order of the court that shares shall cease to be subject to restrictions under this section, expressed to be made with a view to permitting a transfer of those shares may continue the restrictions mentioned in paragraphs (c) and (d) of subsection (2), either in whole or in part, so far as they relate to any right acquired or offer made before the transfer.

(5) Any person who—

- (a) exercises or purports to exercise any right to dispose of any shares which, to his knowledge, are for the time being subject to restrictions under this section;
- (b) votes in respect of any shares, whether as holder or proxy, or appoints a proxy to vote in respect of such shares;
- (c) being the holder of such shares, fails to notify that they are subject to the restrictions,

shall be guilty of an offence and be liable to a fine not exceeding Le8,000,000 or to imprisonment for a term not exceeding 6 months, or to both the fine and imprisonment.

(6) Where shares in any company are issued in contravention of the restrictions, the company and every officer of the company who is in default shall be guilty of an offence and be liable to a fine not exceeding Le5,000,000

(7) This section shall apply in relation to debentures as it applies in relation to shares.

Savings for legal practitioners and bankers.

**280.** Nothing in this Part shall require disclosure to the courts or the Commission or to an inspector appointed by it by—

- (a) a legal practitioner of any privileged communication made to him in that capacity, except as regards the name and address of his client; or

- (b) a company's bankers as such, of any information as to the affairs of any of their customers other than the company.

## PART XII—FINANCIAL STATEMENTS AND AUDIT

### Accounting Records

**281.** (1) Every company shall cause accounting records to be kept in accordance with this section. Companies to keep accounting records.

(2) The accounting records shall be sufficient to show and explain the transactions of the company and shall be such as to—

- (a) disclose with reasonable accuracy, at any time, the financial position of the company; and
- (b) enable the directors to ensure that any financial statements prepared under this Part comply with the requirements of this Act as to the form and content of the company's financial statements.

(3) The accounting records shall, in particular, contain—

- (a) entries from day to day of all sums of money received and expended by the company, and the matters in respect of which the receipt and expenditure take place; and
- (b) a record of the assets and liabilities of the company;

(4) If the business of the company involves dealing in goods, the accounting records shall contain—

- (a) statements of stocks held by the company at the end of each financial year of the company;

- (b) all statements of stocks from which such statement of stock as is mentioned in paragraph (a) of this subsection has been or is to be prepared; and
- (c) except in the case of goods sold by way of ordinary retail trade, statements of all goods sold and purchased, showing the goods and the buyers and sellers in sufficient detail to enable all these to be identified.

Place and duration of records.

**282.** (1) The accounting records of a company shall be kept at its registered office or such other place in Sierra Leone as the directors think fit, and shall at all times be open to inspection by the officers of the company.

(2) Subject to any direction with respect to the disposal of records given under this Act accounting records which a company is required by section 281 to be kept shall be preserved by it for a period of 6 years from the date on which they were made.

Penalties for non-compliance with sections 299 and 300.

**283.** (1) If a company fails to comply with any provision of section 299 or 300, every officer of the company who is in default shall be guilty of an offence unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on, the default was excusable.

(2) An officer of a company shall be guilty of an offence if he fails to take all reasonable steps for securing compliance by the company with section 300 or has intentionally caused any default by the company under it.

(3) A person guilty of an offence under this section, shall be liable to a fine not exceeding Le5,000,000.

### Company's accounting reference periods and financial year

**284.** (1) A company's accounting reference period shall be determined according to its accounting reference date.

Accounting reference period and date.

(2) A company may give notice in the prescribed form to the Commission specifying a date in the calendar year as being the date on which in each successive calendar year an accounting reference period of the company is to be treated as coming to an end; and the date specified in the notice is then the company's accounting reference date.

(3) No notice shall have effect unless it is given before the end of 6 months beginning with the date of the commencement of business by a company and, failing such notice, the company's accounting reference date shall be 31st March.

(4) A company's first accounting reference period is such period ending with its accounting reference date which begins on the date of its incorporation and is a period of more than 6 months and not more than 18 months; and each successive period of 12 months beginning after the end of the first accounting reference period and ending with the accounting reference date is also an accounting reference period of the company.

(5) This section is subject to section 285, under which in certain circumstances a company may alter its accounting reference date and accounting reference periods.

**285.** (1) At any time during a period which is an accounting reference of a company by virtue of section 284, the company may give notice in the prescribed form to the Commission specifying a date in the calendar year (the new accounting reference date) on which that accounting reference period (the current accounting reference period) and each subsequent accounting reference period of the company is to be treated as coming to an end or (as the case may require) as having come to an end.

Alteration of accounting reference period.

(2) At any time after the end of a period which was an accounting reference period of a company by virtue of section 284 the company may give notice in the prescribed form to the Commission specifying a date in the calendar year (“the new accounting reference date”) on which that accounting reference period (“the previous accounting reference period”) and each subsequent accounting reference period of the company is to be treated as coming or (as the case may require) as having come to an end.

(3) A notice under subsection (2) shall have no effect—

- (a) unless the company is a subsidiary or holding company of another company and the new accounting reference date coincides with the accounting reference date of that other company; and
- (b) if the period allowed for laying and delivering accounts in relation to the previous accounting reference period has already expired at the time when the notice is given.

(4) A notice under this section shall state whether the current or previous accounting reference period of the company—

- (a) is to be treated as shortened, so as to come to an end or (as the case may require) be treated as having come to an end on the new accounting reference date on the first occasion on which that date falls or fell after the beginning of that accounting reference period; or
- (b) is to be treated as extended, so as to come to an end or (as the case may require) be treated as having come to an end on the new accounting reference date on the second occasion on which that date falls or fell after the beginning of that accounting reference period.

(5) A notice which states that the current or previous accounting reference period is to be extended shall have no effect if the current or previous accounting reference period, as extended in accordance with the notice, would exceed 18 months.

(6) Subject to any direction given by the Commission under subsection (7), a notice which states that the current or previous accounting reference period is to be extended shall have no effect unless—

- (a) no earlier accounting reference period of the company has been extended by virtue of a previous notice given by the company under this section;
- (b) the notice is given not less than 5 years after the date on which any earlier accounting reference period of the company which was so extended came to an end; or
- (c) the company is a subsidiary or holding company of another company and the new accounting reference date coincides with the accounting reference date of that other company.

(7) The Commission may, if it thinks fit, direct that subsection (6) shall not apply to a notice already given by a company under this section or (as the case may be) in relation to a notice which may be so given.

**286.** (1) Where a company has given notice under section 284 and that notice has not been superseded by a subsequent notice by the company, the new date specified in the notice is the company’s accounting reference date, in substitution for that which, by virtue of section 285, was its accounting reference date at the time when the notice was given.

Consequence of giving notice under section 284.

(2) Where by virtue of such a notice one date is substituted for another as the accounting reference date of a company—

- (a) the current or previous accounting reference period, shortened or extended (as the case may be) in accordance with the notice; and
- (b) each successive period of 12 months beginning after the end of that accounting reference period (as so shortened or extended) and ending with the new accounting reference date, or (as the case may require)

shall be treated as having been an accounting reference period of the company, instead of any period which would be an accounting reference period of the company if the notice had not been given.

(3) Section 285 and this section shall not affect any accounting reference period of the company which—

- (a) in the case of a notice under subsection (1) of section 285 is earlier than the current accounting reference period; or
- (b) in the case of a notice under subsection (2) of section 285, is earlier than the previous accounting reference period.

Inspection of accounts and books by non-directors.

**287.** (1) Subject to subsection (2), the directors shall from time to time determine whether and to what extent, at what time and places and under what conditions and regulations the accounts and books of the company or any of them shall be open for the inspection of members who are not directors.

(2) No member who is not a director shall have any right to inspect any account or book or document of the company unless that right is conferred by this Act or authorised by the directors or the company at general meeting.

**288.** (1) The directors of every company shall in respect of each financial year of the company, prepare financial statements for the year which shall comply with International Financial Reporting Standards. Directors' duty to prepare annual accounts.

(2) Subject to subsection (3), the financial statements required under subsection (1) shall include—

- (a) statement of the accounting policies;
- (b) the balance sheet as at the last day of the financial year;
- (c) an income statement or, in the case of a company not trading for profit, an income and expenditure account for the year;
- (d) notes on the accounts;
- (e) the auditor's report;
- (f) the director's report;
- (g) cash flow statements;
- (h) a five-year financial summary for publicly traded companies; and
- (i) in the case of a holding company, the group financial statements.

(3) The financial statements of a private company need not include the matters stated in paragraphs (a), (g), (h) and (i) of subsection (2).

(4) The directors shall at their first meeting after the incorporation of the company, determine to what date in each year financial statements shall be made up, and they shall give notice of the date to the Commission within 14 days of the determination.

(5) In the case of a holding company, the directors shall ensure that, except where in their opinion there are good reasons against it, the financial year of each of its subsidiaries shall coincide with the year of the company.

**Form and content of company, individual and group financial statements**

Form and content of company financial statements.

**289.** (1) The financial statements of a company prepared under section 288, shall comply with the requirements of the Third Schedule (so far as applicable) with respect to their form and content, and with the International Financial Reporting Standards adopted from time to time by the Institute of Chartered Accountants of Sierra Leone after due consultation with such accounting bodies as they may think fit for these purposes provided that such accounting standards do not conflict with of this Act or that Schedule.

(2) The balance sheet shall give a fair representation of the state of affairs of the company as at the end of the year; and the profit and loss account shall give a true and fair view of the profit or loss of the company for the year.

(3) The cash flow statements shall provide information on the generation and utilisation of funds by the company during the year.

(4) The five-year financial summary shall provide a report for a comparison over a period of five years or more of vital financial information.

(5) Subsection (2) overrides—

- (a) the requirements of the Second Schedule; and
- (b) all other requirements of this Act as to the matters to be included in the accounts of a company or in notes to those accounts;

and accordingly subsections (6) and (9) shall have effect.

(6) If the balance sheet or profit and loss account drawn up in accordance with those requirements would not provide sufficient information to comply with subsection (2), any necessary additional information shall be provided in that balance sheet or profit and loss account, or in a note to the accounts.

(7) If, owing to special circumstances in the case of any company compliance with such requirement in relation to the balance sheet or profit and loss account would prevent compliance with subsection (2), any necessary additional information shall be provided in that balance sheet or profit and loss account, or in a note to the accounts.

(8) If the directors depart from such requirement, particulars of the departure, the reasons for it and its effect shall be given in a note to the accounts.

(9) Subsections (1) to (8) shall not apply to group accounts prepared under section 290 and subsections (1) and (2) shall not apply to a company's income statement (or require the notes otherwise required in relation to that account) if—

- (a) the company has subsidiaries; and
- (b) the income statement framed as a consolidated account dealing with all or any of the subsidiaries of the company as well as the company—

- (i) complies with the requirements of this Act relating to consolidated profit and loss accounts; and
- (ii) shows how much of the consolidated profit and loss account for the year is dealt with in the individual financial statements of the company.

(10) If group financial statements are prepared and advantage is taken of subsection (6), that fact shall be disclosed in a note to the group financial statements.

Group financial statements of holding company.

**290.** (1) If at the end of a financial year a company has subsidiaries, the directors shall, as well as preparing individual accounts for that year, also prepare group financial statements being accounts or statements, which deal with the state of affairs and profit or loss of the company and the subsidiaries.

(2) Subsection (1) shall not apply if the company is a wholly owned subsidiary of another body corporate incorporated in Sierra Leone.

(3) A group financial statement may not deal with a subsidiary, if the directors of the company are of the opinion that-

- (a) it is impracticable, or would be of no real value to the members, in view of the insignificant amounts involved;
- (b) it would involve expense or delay out of proportion to its value to members of the company;
- (c) the result would be misleading, or harmful to the business of the company or any of its subsidiaries; or

- (d) the business of the holding company and that of the subsidiary are so different that they cannot reasonably be treated as a single undertaking.

(4) The group financial statements of a company shall consist of a consolidation of-

- (a) the balance sheet dealing with the state of affairs of the company and all the subsidiaries of the company; and
- (b) the profit and loss account of the company and its subsidiaries.

(5) If the directors are of the opinion that it is better for the purpose of presenting the same or equivalent information about the state of affairs and profit or loss of the company and its subsidiaries, and that to so present it that it may be readily appreciated by the members of the company, the group financial statements may be prepared in a form not consistent with subsection (1) and in particular the group financial statement may consist of-

- (a) more than one set of consolidated financial statements dealing respectively with the company and one group of subsidiaries and with other groups of subsidiaries;
- (b) separate financial statements dealing with each of the subsidiaries; or
- (c) statements expanding the information about the subsidiaries in individual balance sheet and profit and loss account of the holding company.



Form and content of group financial statements.

**291.** (1) The group financial statements of a holding company shall comply with the requirements of the Third Schedule, so far as applicable to group financial statements in the form in which those accounts are prepared with respect to the form and content of those statements and any additional information to be provided by way of notes to those accounts.

(2) Group financial statements together with any notes on them shall give a true and fair view of the state of affairs and profit or loss of the company and the subsidiaries dealt with by those statements as a whole.

(3) Subsection (2) shall override—

- (a) the requirements of the Third Schedule; and
- (b) all other requirements of this Act as to the matters to be included in group financial statements or in notes to those statements and accordingly subsections (4) and (5) shall have effect.

(4) If, group financial statements are not in accordance with the requirements of this Act by not providing sufficient information in compliance with subsection (2), any necessary additional information shall be provided in, or in a note to, the group financial statements.

(5) If, owing to special circumstances in the case of any company compliance with such requirements in relation to its group financial statements would prevent the statements from complying with subsection (2) (even if additional information were provided in accordance with subsection (4) the directors may depart from that requirement in preparing the group financial statements.

**292.** (1) The additional matters contained in the Third Schedule shall be disclosed in the company's financial statements for the year; and in that Schedule where a thing is required to be stated or shown or information is required to be given, it shall be construed to mean that the thing shall be stated or shown, or the information is to be given in a note to those statements.

Additional disclosure required in notes to financial statements.

(2) In the Third Schedule—

- (a) Parts I and II deal respectively with the disclosure of particulars of the subsidiaries of the company and its shareholders;
- (b) Part III deals with the disclosure of financial information relating to subsidiaries;
- (c) Part IV requires a subsidiary company to disclose its ultimate holding company;
- (d) Part V deals with the emoluments of directors, including emoluments waived, pensions of directors and compensation for loss of office to directors and past directors; and
- (e) Part VI deals with disclosure of the number of the employees of the company who are remunerated at higher rates.

(3) Whenever it is stated in the Third Schedule that this subsection shall apply to certain particulars or information, the particulars or information shall be annexed to the annual return first made by the company after copies of its financial statements have been laid before its shareholders in a general meeting; and if a company fails to satisfy an obligation thus imposed, the company and every officer who is in default shall be guilty of an offence and shall be liable to a fine not exceeding Le5,000,000 and for continued contravention, to a daily default fine of Le500,000.

(4) It shall be the duty of any director of a company to give notice to the company of such matters relating to himself as may be necessary for the purposes of Part V of the Third Schedule and this applies to persons who are or have at any time in the preceding 3 years been officers as it applies to directors.

(5) A person who defaults in complying with subsection (4) shall be guilty of an offence and be liable to a fine of Le.3,000,000 for each day during which the default continues.

### Director's report

Director's report.

**293.** (1) The directors of every company, shall prepare in respect of each financial year a report—

- (a) containing a representation of the effects of transactions, other events and conditions, in accordance with the definitions and recognition criteria for assets and liabilities, income and expenses set out in the International Accounting Standards Board's Framework for the Preparation and Presentation of Financial Statements;
- (b) stating the amount (if any) which they recommend should be paid as dividend and any further appropriation of profits.

(2) The report shall state the names of the persons who, at any time during the financial year, were directors of the company, and the principal activities of the company and its subsidiaries in the course of the year and any significant change in those activities in the year.

(3) The report shall also state the matters, and give the particulars required by Part I of the Fourth Schedule to this Act.

(4) Part II of the Fourth Schedule shall apply as regards the matters to be stated in the report of the directors in the circumstances specified in it.

(5) Part III of the Fourth Schedule shall apply as regards the matters to be stated in the directors' report relative to the employment, training and advancement of disabled persons, the health, safety and welfare at work of the employees of the company and the involvement of employees in the affairs, policy and performance of the company.

(6) In respect of any failure to comply with the requirements of this Act as to the matters to be stated, and the particulars to be given, in the directors' report, every person who was a director of the company immediately before the end of the period prescribed for laying and delivering financial statements shall be guilty of an offence and be liable on conviction to a term of imprisonment not exceeding 6 months or to a fine not exceeding Le.5,000,000

(8) In proceedings for an offence under subsection (6), it shall be a defence for the person to prove that he took all reasonable steps for securing compliance with the requirements in question.

**294.** (1) A company's balance sheet and every copy of it which is laid before the company in general meeting or delivered to the Commission shall be signed on behalf of the board by two of the directors of the company.

Signing of balance sheet and documents to be annexed to it.

(2) If a copy of the balance sheet—

- (a) is laid before the company or delivered to the Commission without being signed as required by this section; or
- (b) not being a copy so laid or delivered, is issued, circulated or published in a case where the balance sheet has not been signed as so required or where (the balance sheet having been so signed) the copy does not include a copy of the signatures or signature as the case may be,

the company and every officer of it who is in default shall be guilty of an offence and be liable to a fine not exceeding Le3,000,000.

(3) A company's profit and loss account and so far as not incorporated in its individual balance sheet or profit and loss account, any group accounts of a holding company, shall be annexed to the balance sheet, and the auditors' report and the directors' report shall also be attached to the balance sheet.

(4) The balance sheet and the profit and loss account annexed to it shall be approved by the board of directors and signed on their behalf by two directors authorised to do so.

Persons entitled to receive financial statements as of right.

**295.** (1) In the case of every company, a copy of the company's financial statements for the year shall, not less than 21 days before the date of the meeting at which they are to be laid in accordance with section 296 shall be sent to each of the following persons:—

- (a) every member of the company (whether or not entitled to receive notice of general meetings;
- (b) every holder of the company's debentures, (whether or not so entitled); and
- (c) all persons other than members and debenture holders, being persons so entitled.

(2) In the case of a company not having a share capital, subsection (1) shall not require a copy of the financial statements to be sent to a member of the company who is not entitled to receive notices of general meetings of the company, or to a holder of the company's debenture who is not so entitled.

(3) Subsection (1) shall not require copies of the financial statements to be sent to—

- (a) a member of the company or a debenture holder, being in either case a person who is not entitled to receive notices of general meetings, and of whose address the company is unaware;
- (b) more than one of the joint holders of any shares or debentures none of whom are entitled to receive such notices; or
- (c) those who are not so entitled in the case of joint holders of shares or debentures some of whom are not entitled to receive such notices.

(4) If copies of the financial statements are sent less than 21 days before the date of the meeting, it shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by all the members entitled to attend and vote at the meeting.

(5) If default is made in complying with subsection (1), the company and every officer of it who is in default shall be guilty of an offence and be liable to a fine not exceeding Le3,000,000.00.

**296.** (1) In respect of each year, the directors shall at a date not later than 18 months after incorporation of the company and subsequently once at least in every year, lay before the company in general meeting, copies of the financial statements of the company made up to a date not exceeding nine months previous to the date of the meeting.

Directors' duty to lay and deliver financial statements.

(2) The auditors' report shall be read before the company in general meeting, and be open to the inspection of any member of the company.

(3) In respect of each year, the directors shall deliver with the annual return to the Commission a copy of the balance sheet, the profit and loss account and the notes on the statements which were laid before the general meeting as required by this section.

(4) In the case of an unlimited company, the directors shall not be required by subsection (3), to deliver a copy of the accounts if—

- (a) at no time during the accounting reference period has the company been, to its knowledge, the subsidiary of a company that was then limited and at no such time, to its knowledge have there been held or been exercisable, by or on behalf of two or more companies that were then limited, shares or powers which, if they had been held or been exercisable by one of them, would have made the company its subsidiary; and
- (b) at no such time has the company been the holding company of a company which was then limited.

(5) References in this section to a company that was limited at a particular time are to a body corporate (under whatever law incorporated) the liability of whose members was at that time limited.

Penalty for non-compliance with section 296.

**297.** (1) If in a year any of the requirements of subsection (1) or (3) of section 296 is not complied with by any company every person who immediately before the end of that period was a director of the company shall, in respect of each of those subsections which is not so complied with, be guilty of an offence and be liable to a daily default fine of Le500,000 in the case of a small company, a company limited by guarantee or an unlimited company, and Le600,000 in the case of any other company.

(2) If a person is charged with an offence in respect of any of the requirements of subsection (1) or (3) of section 296, it shall be a defence for him to prove that he took all reasonable steps for ensuring that those requirements were complied with before the end of the period allowed for laying and delivering accounts.

(3) In proceedings under this section with respect to a requirement to lay a copy of a document before a company in general meeting, or to deliver a copy of a document to the Commission, it shall not be a defence to prove that the document in question was not in fact prepared as required by this Part .

**298.** (1) If—

- (a) in respect of a year, any of the requirements of subsection (1) or (3) of section 296 has not been complied with by a company before the end of the period allowed for laying and delivering financial statements; and
- (b) the directors of the company fail to make good the default within 14 days after the service of a notice on them requiring compliance,

Default order in case of non-compliance.

the court may, on application by any member or creditor of the company or by the Commission make an order directing the directors (or any of them) to make good the default within such time as may be specified in the order.

(2) The court's order may provide that all costs of and incidental to the application shall be borne by the directors.

(3) Nothing in this section shall affect the provisions of section 295.

**299.** (1) If any financial statements of a company (other than its group financial statement) of which a copy is laid before the shareholders in general meeting or delivered to the Commission do not comply with the requirement of this Act as to the matters to be included in, or in a note to, those financial statements, every person who at the time when the copy is so laid or delivered is a director of the company shall be guilty of an offence and in respect of each offence, be liable to a fine not exceeding Le5,000,000

Penalty for laying or delivering defective financial statements.

(2) If any group financial statements of which a copy is laid before a company in a general meeting or delivered to the Commission do not comply with section 296 or 297 and with the other requirements of this Act as to the matters to be included in or in a note to those financial statements, every person who at the time when the copy was so laid or delivered was a director of the company shall be guilty of an offence and be liable to a fine not exceeding Le5,000,000.

(3) In proceedings against a person for an offence under this section, it shall be a defence for him to prove that he took all reasonable steps for ensuring compliance with the requirements in question.

Share holder's right to obtain copies of financial statements.

**300.** (1) Any member of a company, whether or not he is entitled to have sent to him copies of the company's financial statements, and any holder of the company's debentures (whether or not so entitled) shall be entitled to be furnished (on demand and without charge) with a copy of the company's last financial statements.

(2) If, when a person makes a demand for a document which he is entitled by this section to be furnished with, default is made in complying with the demand within 7 days after its making, the company and every officer of it who is in default shall be guilty of an offence and be liable to a daily default fine of Le500,000, unless it is proved that the person has already made a demand for, and been furnished with, a copy of the document

#### Modified financial statements

Entitlement to deliver financial statements in modified form.

**301.** (1) In certain cases a company's directors may, in accordance with Part I of the Fifth Schedule deliver modified financial statements in respect of a year as a small company.

(2) For the purposes of sections 303 and 304 and the Fifth Schedule "deliver" means deliver to the Commission.

Definition of small company.

**302.** (1) In this Part and in Part XIII, a company qualifies as a small company in a year if for that year the following conditions are satisfied:—

- (a) it is a private company having a share capital;
- (b) the amount of its turnover for that year is not more than such amount as may be fixed by the Commission;
- (c) the value of its net assets is not more than such amount as may be fixed by the Commission;
- (d) none of its members is a non-citizen of Sierra Leone;
- (e) non of its members is a Government or public corporation or agency or its nominee; and
- (f) the directors between them hold not less than 51 percent of its equity share capital.

(2) In applying subsection (1) to a period which is a company's year but not in fact a year, the maximum figure for turnover in paragraph (b) of that subsection shall be proportionately adjusted.

**303.** (1) The directors of a company may, (subject to section 322 where the company has subsidiaries) deliver individual financial statements modified as for a small company in the cases specified in subsections (2) and (3);

and Part I of the Fifth Schedule shall apply with respect to the delivery of financial statements so modified.

(2) In respect of the company's first year, the directors may deliver financial statements modified as for a small company, if in that year it qualifies as a small company.

(3) The directors may in respect of a company's year subsequent to the first—

- (a) deliver financial statements modified as for a small company if the company qualifies as small and it also so qualified in the preceding year;
- (b) deliver financial statements modified as for a small company (although not qualifying in that year as small), if in the preceding year it so qualified and the directors were entitled to deliver financial statements so modified in respect of that year;
- (c) deliver financial statements modified as for a small company if, in that year the company qualifies as small and the directors were entitled under paragraph (b) of this subsection to deliver financial statements so modified for the preceding year (although the company did not in that year qualify as small).

Modified financial statement of holding company.

**304.** (1) This section shall apply to a holding company where in respect of a year section 294 requires the preparation of group financial statements for the company and its subsidiaries.

(2) The directors of the holding company may not, under section 303 deliver financial statements modified as for a small company, unless the group (that is to say, the holding company and its subsidiaries together) is in that year a small group and the group is small if it would so qualify as a small company.

(3) The figures to be taken into account in determining whether the group is small shall be the group account figures, that is—

- (a) where the group financial statements are prepared as consolidated financial statements the figures for turnover and balance sheet total; and

- (b) where the group financial statements are not prepared as consolidated financial statements, the corresponding figures given in the group financial statements, with such adjustment as would have been made if the statements had been prepared in consolidated form;

aggregated in either case with the relevant figures for the subsidiaries (if any) omitted from the group accounts (excepting those for any subsidiary omitted under paragraph (a) of subsection (3) of section 290 on the grounds of impracticability).

(4) In the case of each subsidiary omitted from the group financial statements, the relevant figures as regards turnover, and balance sheet total shall be those which are included in the financial statements of that subsidiary prepared in respect of its relevant year (with such adjustment as would have been made if those figures had been included in group financial statements prepared in consolidated form).

(5) For the purposes of subsection (4), the relevant year of the subsidiary shall be—

- (a) if its year ends with that of the holding company to which the group financial statements relate, that year ;and
- (b) if not, the subsidiary's year ending last before the end of the year of the holding company.

(6) If the directors are entitled to deliver modified financial statements they may also deliver modified group financial statements and such group financial statements—

- (a) if consolidated, may be in accordance with Part II of the Fifth Schedule (while otherwise comprising or corresponding with group financial statements prepared under this Act; and

- (b) if not consolidated, may be such as (together with any notes) give the same or equivalent information as required by paragraph (a),

and Part III of the Fifth Schedule shall apply to modified group financial statements whether consolidated or not.

#### Publication of financial statements

Publication by company of full individual or group financial statements.

**305.** (1) This section shall apply to the publication by a company of full individual or group financial statements, that is to say, the statements required by section 296 to be laid before the company in general meeting and delivered to the Commission including the director's report, unless dispensed with or under Part III of the Fifth Schedule, but does not apply to interim financial statements.

(2) If a company publishes individual financial statements (modified or otherwise) for a year, it shall publish with them the relevant auditor's report.

(3) If a company required by section 290 to prepare group financial statements for a year, publishes individual financial statements for that year, it shall also publish with them its group financial statements (which may be modified financial statements but only if the individual financial statements are modified).

(4) If a company publishes group financial statements (modified or not) otherwise than together with its individual financial statements, it shall publish with them the relevant auditors' report.

(5) References in this section to the relevant auditors' report are to the auditors' report under section 310, or, in the case of modified financial statements (individual or group), the auditors' special report under paragraph 12 of Part III of the Fifth Schedule.

(6) A company which contravenes any provision of this section and any officer of it who is in default shall be guilty of an offence and be liable to a daily default fine of Le500,000.

**306.** (1) This section shall apply to the publication by a company of abridged financial statements, that is to say, any balance sheet or profit and loss account relating to a year of the company or purporting to deal with such year, otherwise than as part of the full financial statements (individual or group) to which section 305 applies.

Publication of abridged financial statements.

(2) The reference in subsection (1) to a balance sheet or profit and loss account, in relation to financial statements published by a holding company, includes an account in any form purporting to be a balance sheet or profit and loss account for the group consisting of the holding company and its subsidiaries.

(3) If the company publishes abridged financial statements, it shall publish with those statements, a statement indicating—

- (a) that the statements are not full financial statements;
- (b) whether full individual or full group financial statements, according as the abridged statements deal solely with the company's own affairs or with the affairs of the company and any subsidiaries have been delivered to the Commission or, in the case of an unlimited company exempted under subsection (4) of section 296 from the requirement to deliver financial statements, that the company is so exempted;
- (c) whether the company's auditors have made a report under section 310 on the company's financial statements for any year with which the abridged financial statements purport to deal; and
- (d) whether any report so made was unqualified (meaning that it was a report, without

qualification, to the effect that in the opinion of the person making it, the company's financial statements had been properly prepared).

(4) Where a company publishes abridged financial statements, it shall not publish with those statements the report of the auditors as is mentioned in paragraph (c) of subsection (3).

(5) A company which contravenes any provision of this section and any officer of it who is in default, shall be guilty of an offence and be liable to a daily default fine of Le.500,000

#### Audit

Power of Minister to alter accounting requirements.

**307.** The Minister may, after consultation with the Institute of Chartered Accountants of Sierra Leone, by regulations—

- (a) add to the classes of documents—
  - (i) to be comprised in a company's account for a financial year to be laid before the company in general meeting as required by section 296, or
  - (ii) to be delivered to the Commission under that section,

and make provision as to the matters to be included in any document to be added to either class;

- (b) modify the requirements of this Act as to the matters to be stated in a document of such class;
- (c) reduce the classes of documents to be delivered to the Commission under section 296.

**308.** (1) Every company shall, at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting. Appointment and remuneration of auditors.

(2) If an appointment of auditors is not made at the annual general meeting the court may, on the application of any member of the company, appoint an auditor of the company for the current year.

(3) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a member to the company not less than 14 days before the annual general meeting.

(4) The company shall send a copy of the notice to the retiring auditor, and shall give notice to the members either by advertisement or in any other mode allowed by the articles, not less than 7 days before the annual general meeting.

(5) If, after notice of the intention to nominate an auditor had been so given, an annual general meeting is called for a date 14 days or less after the notice has been given, the notice, though not given within the time required by subsection(4), shall be deemed to have been properly given for the purposes thereof; and the notice to be sent or given within the time required by subsection (4) shall be sent or given at the same time as the notice of the annual general meeting.

(6) Subject to this section, the first auditors of a company may be appointed by the directors at any time before the first annual general meeting, and the auditors so appointed shall hold office until that annual general meeting.

**309.** (1) A person shall not be qualified for appointment as auditor of a company for the purposes of this Act, unless he is qualified to practice as an accountant under the Institute of Chartered Accountant Act, 1988 but in the case of a public company, the auditor shall be a chartered accountant. Qualification of auditors  
Act No. 5 of 1988.



(2) None of the following persons shall be qualified for appointment as auditor of a company:—

- (a) a director or other officer or servant of the company;
- (b) a person who is a partner of or in the employment of an officer or servant of the company;
- (c) a person or firm who or which offers to the company professional advice in a consultancy capacity in respect of secretarial or financial management;
- (d) a body corporate or firm which is closely connected or has control of another body corporate or firm which provides or has provided consulting services to the company intended to be audited;
- (e) an accountant who is disqualified from practising his profession by a competent body.

(3) A person shall also not qualify for appointment as an auditor of a company if he is, under subsection (5), disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company.

(4) Notwithstanding subsections (1), (2) and (3), a firm is qualified for appointment as auditor of a company if, but only if, all the partners are qualified for appointment as auditors.

(5) No person shall act as auditor of a company at a time when he knows that he is disqualified for appointment to that office and if an auditor of a company to his knowledge becomes so

disqualified during his term of office, he shall vacate his office and give notice in writing to the company that he has vacated it by reason of that disqualification.

(6) A person who acts as auditor in contravention of subsection (5), or fails without reasonable excuse to give notice of vacating his office as required by that subsection, shall be guilty of an offence and be liable to a fine not exceeding Le.3,000,000 and, for continued contravention, to a daily default fine of Le.500,000.

**310.** (1) The auditors of a company shall make a report to the members on the accounts examined by them and on every balance sheet and profit and loss account, and on all group financial statements copies of which are to be laid before the company in a general meeting during the auditors' tenure of office. Auditors' report.

(2) In addition to the report made under subsection (1) the auditor shall, in the case of a public company also make a report to an audit committee which shall be established by the public company.

(3) The audit committee referred to in subsection (2) shall consist of an equal number of directors and representatives of the shareholders of the company (subject to a maximum number of six members) and shall examine the auditors' report and make recommendations thereon to the annual general meeting as it may think fit; but a member of the audit committee shall not be entitled to remuneration and shall be subject to re-election annually.

(4) Any member may nominate a shareholder as a member of the audit committee by giving notice in writing of the nomination to the secretary of the company at least 21 days before the annual general meeting.

(5) Subject to such other additional functions and powers that the company's articles of association may stipulate, the objectives and functions of the audit committee shall be to—

- (a) ascertain whether the accounting and reporting policies of the company are in accordance with legal requirements and agreed ethical practices;
- (b) review the scope and planning of audit requirements;
- (c) review the findings on management matters in conjunction with the auditor and departmental responses on the findings;
- (d) keep under review the effectiveness of the company's system of accounting and internal control;
- (e) make recommendations to the board of directors in regard to the appointment, removal and remuneration of the auditors of the company; and
- (f) authorise the internal auditor to carry out investigations into any activities of the company which may be of interest or concern to the committee.

Auditors' duties and powers.

**311.** (1) It shall be the duty of the company's auditors, in preparing their report, to carry out such investigations as may enable them to form an opinion as to the following matters:—

- (a) whether proper accounting records have been kept by the company and proper returns adequate for their audit have been received from branches not visited by them; and
- (b) whether the company's balance sheet and (if not consolidated) its profit and loss account are in agreement with the accounting records and returns.

(2) If the auditors are of the opinion that proper accounting records have not been received from branches not visited by them, or if the balance sheet and (if not consolidated ) the profit and loss account are not in agreement with the accounting records and returns, the auditors shall state that fact in their report.

(3) Every auditor of a company shall have a right of access at all times to the company's books, accounts and vouchers, and be entitled to require from the company's office such information and explanations as he thinks necessary for the performance of the auditor's duties.

(4) If the requirements of Part IV of the Third Schedule are not complied with in the accounts, it shall be the auditors' duty to include in their report, so far as they are reasonably able to do so, a statement giving the required particulars.

(5) It shall be the auditors' duty to consider whether the information given in the director's report for the year for which the accounts are prepared is consistent with those accounts; and if they are of opinion that it is not, they shall state that fact in their report.

**312.** (1) A company may, at a general meeting of which notice has been served on the auditor by ordinary resolution remove an auditor before the expiration of his term of office, notwithstanding anything in any agreement between the company and the auditor. Removal of auditors.

(2) Where a resolution removing an auditor is passed at a general meeting of a company, the company shall, within 14 days give notice in writing of the fact to the Commission and if a company fails to give the notice required by this subsection the company and every officer who is in default shall be guilty of an offence and be liable to a daily default fine of Le500,000.

(3) Nothing in this section shall be taken as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as auditor or of any appointment terminating with that as auditor.

Auditors' right to attend company's meetings.

**313.** (1) A company's auditors shall be entitled to attend any general meeting of the company and to receive all notices of and other communications relating to any general meeting which a member of the company is entitled to receive and to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.

(2) An auditor of a company who has been removed shall be entitled to attend—

- (a) the general meeting at which his term of office would otherwise have expired; and
- (b) any general meeting at which it is proposed to fill the vacancy caused by his removal,

and to receive all notices of, and other communications relating to, such meeting which any member of the company is entitled to receive, and to be heard at any such meeting which he attends on any part of the business of the meeting which concerns him as former auditor of the company.

Resignation of auditors.

**314.** (1) An auditor of a company may resign his office by depositing a notice in writing to that effect at the company's registered office; and the notice shall operate to bring his term of office to an end on the date on which the notice is served, or on such later date as may be specified in the notice.

(2) An auditor's notice of resignation shall not be effective unless it contains either—

- (a) a statement to the effect that there are no circumstances connected with his resignation which he considers should be brought to the notice of the members or creditors of the company; or
- (b) a statement of such circumstances as are mentioned in paragraph (a)

(3) Where a notice under this section is served at a company's registered office, the company shall, within 14 days send a copy of the notice—

- (a) to the Commission; and
- (b) if the notice contains a statement under paragraph (b) of subsection (2), to every person who under section 295 is entitled to be sent copies of the financial statements.

(4) The company or any person claiming to be aggrieved may, within 14 days of the receipt by the company of a notice containing a statement under paragraph (b) of subsection (2), apply to the court for an order under subsection (5).

(5) If, on such an application the court is satisfied that the auditor is using the notice to secure needless publicity for a defamatory matter, it may, by order, direct that copies of the notice need not be sent out; and the court may further order the company's costs on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(6) The company shall, within 14 days of the court's decision, send to the persons mentioned in subsection (3)—

- (a) if the court makes an order under subsection (5), a statement setting out the effect of the order;
- (b) if not, a copy of the notice containing the statement under paragraph (b) of subsection (2).

(7) If default is made in complying with the provisions of subsection (3) or (6), the company and every officer of it who is in default shall be guilty of an offence and be liable to a daily default fine of Le.500,000

**315.** (1) A company's auditor shall in the performance of his duties, exercise all such care, diligence and skill as is reasonably necessary in each particular circumstance.

Liability of auditors for negligence.

(2) Where a company suffers loss or damage as a result of the failure of its auditor to discharge the duty imposed on him by subsection (1), the auditor shall be liable for negligence and the directors may institute an action for negligence against him.

(3) If the directors fail to institute an action against the auditor under subsection (2), any member may do so under section 258 after the expiration of 30 days notice to the company of his intention to institute such action.

(4) Where the company suffers loss as a result of fraud by an auditor, the auditor commits an offence and shall be liable on conviction to a fine not exceeding Le8,000,000

False statements to auditors.

**316.** (1) An officer of a company is guilty of an offence if he knowingly or recklessly makes to a company's auditors a statement (whether written or oral) which—

- (a) conveys or purports to convey any information or explanation which the auditors require, or are entitled to require, as auditors of the company; and
- (b) is misleading, false, or deceptive in a material particular.

(2) A person guilty of an offence under this section shall be liable to a term of imprisonment not exceeding one year or to a fine not exceeding Le5,000,000 or both the fine and imprisonment.

#### PART XIII—ANNUAL RETURNS

Annual returns of companies having share capital.

**317.** (1) Subject to this section, every company having a share capital other than a small company shall at least once in every year, make a return containing the following information:—

- (a) the names, addresses and occupations of all past and present members and the number of shares held by them and the shares transferred since the last return;
- (b) the address of the registered office, and if the register of members is kept elsewhere than at the registered office of the company, the address of the place where it is kept;
- (c) a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash specifying the following particulars:—

- (i) the amount of share capital and the number of shares into which it is divided;
- (ii) the number of shares taken from the incorporation of the company up to the date of the return;
- (iii) the amount called up on each share and the total amount of calls received and unpaid;
- (iv) the total amount of moneys, if any, paid by way of commission in respect of any shares or debentures;
- (v) particulars of any discount allowed on the issue of any shares issued at a discount or so much of the discount as has not been written off at the date on which the return is made;
- (vi) the amount of shares forfeited;
- (vii) the amount of shares for which share warrants are outstanding at the date of the return and of the share warrants issued and surrendered respectively since the date of the last return and the number of shares comprised in each warrant;
- (viii) particulars of directors; and
- (ix) the amount of indebtedness in respect of all mortgages and charges which are required to be registered under this Act.

(2) The return shall be in the form set out in the Sixth Schedule.

(3) In the case of a company still keeping a branch register, the particulars of the entry in that register shall, so far as they relate to matters which are required to be stated in the return, be included in the return made next after copies of those entries are received at the registered office of the company.

Annual returns of company not having share capital.

**318.** (1) Every company not having a share capital shall, at least once in every year, make a return stating—

- (a) the address of the registered office; and
- (b) the particulars of directors.

(2) There shall be annexed to the return a statement containing particulars of the amount of indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Commission under this Act.

Annual returns of small companies.

**319.** (1) Every small company shall, at least once every year make a return stating—

- (a) the name and address of the registered office of the company;
- (b) if the register of members is, under this Act kept elsewhere than at the registered office of the company, the address of the place where it is kept;
- (c) if any register of debenture holders of the company or part of such register is, under this Act kept elsewhere than at the registered office of the company, the address of the place where it is kept;
- (d) the share capital of the company;
- (e) the issued capital;
- (f) particulars of the total amount of indebtedness of the company in respect of all

mortgages and charges which are required to be registered with the Commission under this Act;

(g) particulars of the directors and secretary.

(2) The return shall be in the form set out in the Seventh Schedule.

**320.** (1) Every annual return made under this Part shall—

- (a) be contained in a separate part of the register; and
- (b) be completed within 28 days after the first or only general meeting in the year, and the company shall forward to the Commission a copy signed by a director or secretary of the company.

General provisions on annual returns.

(2) Section 73 shall apply with such modifications as may be necessary to the inspection of the annual returns.

(3) Except where the company is a private company, the annual returns shall include—

- (a) a copy certified by a director or secretary to be a balance sheet audited by the company's auditors, including every document required by law to be annexed to it; and
- (b) a copy of the report of the auditors on the balance sheet and if such balance sheet is in a language other than English, there shall also be annexed to it a translation in the English language, certified in the prescribed manner to be a correct translation.

(4) If the last balance sheet did not comply with the requirements of the law as in force at the date of the audit with respect

to the form of balance sheets there shall be made such additions to and corrections in the copy as would have been required to be made in the balance sheet in order to make it comply with the requirements, and the fact that the copy has been so amended shall be stated in the copy.

(5) If a company fails to comply with this section or either section 318 or 319 the company and every officer of the company who is in default shall be liable to a daily default fine of Le500,000.

(6) For the purposes of this Part, the expressions “officer” and “director”, shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

Certificates to be sent by private companies with annual returns.

**321.** A private company shall send with the annual returns required under section 318 a certificate signed by a director or secretary of the company that the company has not, since the last return or in the case of a first return, since the date of the incorporation of the company, issued, any invitation to the public to subscribe for any shares or debentures of the company; and where the annual return discloses the fact that the number of members of the company exceeds 50 also a certificate so signed that the excess consist wholly of persons who, under this Act, are not to be included in reckoning the number of 50.

#### PART XIV –DIVIDENDS AND PROFITS

Declaration of dividend and payment of interim dividend.

**322.** (1) A company may, in general meeting, declare dividends in respect of any year or other period only on the recommendation of the directors.

(2) The company may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

(3) The general meeting shall have power to decrease the amount of dividend recommended by the directors, but shall have no power to increase the recommended amount.

(4) Where the recommendation of the directors of a company with respect to the declaration of a dividend is varied in accordance with subsection (3) by the company in general meeting,

a statement to that effect shall be included in the relevant annual returns.

(5) Subject to this Act, dividends shall be payable to the shareholders only out of the distributable profits of the company.

(6) Subject to the rights of persons entitled to shares with special rights to dividends, all dividends shall be declared and paid according to the amounts paid on the shares; but where nothing is paid up on any of the shares in the company, dividends may be declared and paid according to the amounts of the shares.

(7) No amount paid on a share in advance of calls shall, while carrying interest, be treated as paid on the share.

**323.** Subject to the company being able to pay its debts as they fall due, the company may pay dividends out of the following profits:— Distributable profits.

- (a) profits arising from the use of the company’s property although it is a wasting asset;
- (b) revenue reserves;
- (c) realised profit on a fixed asset sold, but where more than one asset is sold, the net realised profit on the assets sold.

**324.** A company shall not declare or pay dividend if there are reasonable grounds for believing that the company is or would be, after the payment, unable to pay its liabilities as they become due. Restriction on declaration and payment of dividends.

**325.** (1) Where dividends are returned to the company unclaimed, the company shall send a list of the names of the persons entitled with the notice of the next annual general meeting to the members. Unclaimed dividends.

(2) After the expiration of 3 months of the notice mentioned in subsection (1), the company may invest the unclaimed dividend for its own benefit in an investment outside the company and no interest shall accrue on the dividends against the company.

(3) Where dividends have been sent to members and there is an omission to send to some other members due to the fault of the company, the dividends shall earn interest at the current bank rate from three months after the date on which they ought to have been posted.

(4) For the purpose of liability, the date of posting the dividend warrant shall be deemed to be the date of payment and proof of whether it has been sent is a question of fact.

Reserves and capitalization

**326.** (1) The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at their discretion, be applicable for any purpose to which the profits of the company may be properly applied, and pending such application may, also at their discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit; and the directors may also without placing them to reserve, carry forward any profits which they may think prudent not to distribute.

(2) The company in general meeting may upon the recommendation of the directors, resolve that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the company's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution.

(3) Such sum may be set free for distribution among the members who would have been entitled to dividends in the same proportions on condition that the dividends be not paid in cash but be applied either in or towards paying up any amounts for the time being unpaid on any shares held by such members respectively or paying up in full unissued shares or debentures of the company to be allotted and distributed to creditors as fully paid up.

(4) The company may decide by a resolution what part is to be distributed in cash or in shares and the directors shall give effect to such resolution.

(5) Share premium account and a capital redemption reserve fund may, for the purposes of this subsection, only be applied in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares.

(6) Where a resolution under subsections (2) and (4) is passed, the directors shall make all appropriations and applications of the undivided profits resolved to be capitalised thereby, and all allotments and issues of fully-paid up shares or debentures, if any, and generally do all acts and things required to give effect to it.

(7) The directors shall have power to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think fit in the case of shares or debentures becoming distributable in fractions.

(8) Any person may be authorised by the directors to enter on behalf of all the members entitled under this section into an agreement with the company-

- (a) to provide for the allotment to each of the members respectively, credited as fully paid up, of any further shares or debentures to which they may be entitled upon such capitalisation; or
- (b) for the payment up by the company on their behalf, of the amounts or any part of the amounts remaining unpaid on their existing shares; and any agreement made under such authority shall be effective and binding on all the members.

**327.** If under his contract of service, an employee is entitled to a share in the profits of the company as an incentive, he shall be entitled to share in the profits of the company whether or not dividends have been declared.

Employees' shares and profit sharing.

**328.** Dividends shall be specialty debts due to, and recoverable by shareholders within 12 years, and actionable only when declared.

Right of share holders to sue for dividends.

Liability  
for paying  
dividend out  
of capital,

**329.** (1) All directors who knowingly pay, or are party to the payment of dividend out of capital or otherwise in contravention of this Part shall be personally liable jointly and severally to refund to the company any amount so paid.

(2) The directors shall have the right to recover the dividend from shareholders who receive it with knowledge that the company had no power to pay it.

#### PART XV—RECEIVERS AND MANAGERS

##### Appointment of receivers and managers

Disqualification  
for appoint-  
ment as  
receiver  
or manager.

**330.** (1) The following persons shall not be appointed or act as receivers or managers of any property or undertaking of any company:-

- (a) any person who is under the age of 18 years;
- (b) any person found by a court to be of unsound mind;
- (c) a body corporate;
- (d) an undischarged bankrupt, unless he shall have been given leave to act as a receiver or manager of the property or undertaking of the company by the court by which he was adjudged bankrupt;
- (e) a director or auditor of the company;
- (f) any person convicted of any offence involving fraud, corruption or moral turpitude and who is disqualified as a result of a conviction for any offence in connection with the promotion or formation of a company.

(2) Any appointment made in contravention of subsection (1) shall be void and if any of the persons named in paragraphs (c), (d), (e) and (f) of that subsection acts as a receiver or

manager, he shall be guilty of offence and be liable to a fine not exceeding Le.5,000,000 in the case of a body corporate or, in the case of an individual to imprisonment for a term not exceeding 6 months or to a fine not exceeding Le.3,000,000.

(3) Where any of the persons mentioned in subsection (1) is, at the commencement of this Act acting as a receiver or manager he may be removed by the court on an application by a person interested.

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

Official  
receiver  
for debenture  
holders and  
others.

**332.** (1) Notwithstanding any other provision of this Act the court may, on the application of a person interested, appoint a receiver or a receiver and manager of the property or undertaking of a company if-

Appointment  
of receivers  
and managers  
by court.

- (a) the principal money borrowed by the company or the interest is in arrears; or
- (b) the security or property of the company is in jeopardy.

(2) A receiver or manager of any property or undertaking of a company appointed by the court shall be deemed to be an officer of the court and not of the company and shall act in accordance with the directions and instructions of the court.

**333.** (1) A receiver or manager of any property or undertaking of a company appointed out of court under a power contained in any instrument shall, subject to section 337, be deemed to be an agent of the person or persons on whose behalf he is appointed and, if appointed manager of the whole or any part of the undertaking of a company he shall be deemed to stand in a fiduciary relationship to the company and observe the utmost good faith towards it in any transaction with it or on its behalf.

Receivers and  
managers  
appointed out  
of court.



(2) A manager referred to in subsection (1), shall—

- (a) act at all times in what he believes to be the best interests of the company as a whole so as to preserve its assets, further its business, and promote the purposes for which it was formed, and in such manner as a faithful, diligent, careful and ordinarily skilful manager would act in the circumstance;
- (b) in considering whether a particular transaction or course of action is in the best interest of the company as a whole, may have regard to the interests of the employees, as well as the members of the company, and when appointed by, or as a representative of, a special class of members or creditors may give special, but not exclusive, consideration to their interest.

(3) Nothing in the articles of a company, in any contract, or in any resolution of a company shall relieve any manager from the duty to act in accordance with subsection (2) or relieve him from any liability incurred as a result of any breach of such duty.

Receiver or manager appointed out of court to apply to court for directions.

**334.** A receiver or manager of the property of a company appointed in accordance with subsection (1) of section 332, may apply to the court for direction in relation to any particular matter arising in connection with the performance of his functions, and on such application, the court may give such directions or make such order declaring the rights of persons before the court or otherwise, as it thinks just.

Registration of appointment order etc.

**335.** (1) If any person obtains an order for the appointment of a receiver or manager of the property of a company or appoints a receiver under any powers contained in any instrument, he shall, within 7 days from the date of the order or appointment, give notice of the fact to the Commission indicating the terms of the appointment

and remuneration and the Commission shall, on payment of such fee as it may prescribe, enter the fact in the register of charges.

(2) Every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or manager or liquidator of a company, being a document on or in which the company's name appears, shall contain a statement that a receiver or manager has been appointed.

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

**336.** (1) A person appointed a receiver of any property of a company shall, subject to the rights of prior incumbancers, take possession of and protect the property, receive the rents and profits and discharge all out-goings in respect thereof and realise the security for the benefit of those on whose behalf he is appointed, but unless appointed manager he shall not have power to carry on any business or undertaking.

Duties, powers, etc, of receivers and managers.

(2) A person appointed manager of the whole or any part of the undertaking of a company shall manage it with a view to the beneficial realisation of the security of those on whose behalf he is appointed.

(3) As from the date of appointment of a receiver or manager, the powers of the directors or liquidators in a members' voluntary winding up to deal with the property or undertaking over which he is appointed shall cease unless and until the receiver or manager is discharged.

(4) If, on the appointment of a receiver or manager, the company is being wound up under the provision relating to creditor's voluntary winding up, or the property concerned is in the hands of some other officer of the court, the liquidator or officer shall not be bound to relinquish control of such property to the receiver or manager except under the order of the court.

Liabilities of receivers managers on contracts.

**337.** (1) A receiver or manager of any property or undertaking of a company shall be personally liable on any contract entered into by him except in so far as the contract otherwise expressly provides.

(2) As regards contracts entered into by a receiver or manager in the proper performance of his functions, such receiver or manager shall, subject to the rights of any prior incumbrancers, be entitled to an indemnity in respect of liability thereon out of the property over which he has been appointed to act as receiver or manager.

(3) A receiver or manager appointed out of court under a power contained in any instrument shall also be entitled, as regards contracts entered into by him with the express or implied authority of those appointing him, to an indemnity in respect of liability thereon from those appointing him to the extent to which he is unable to recover in accordance with subsection (2).

#### Procedure after appointment

Notice of appointment.

**338.** (1) Where a receiver or manager of the whole or substantially the whole of the property of a company (hereafter in this section and in section 337, referred to as “the receiver”) has been appointed on behalf of the holders of any debentures of the company secured by a floating charge, then subject to the provisions of this section and of section 340—

- (a) the receiver shall forthwith send notice to the company of his appointment and the terms; and
- (b) there shall, within 14 days after receipt of the notice or such longer period as may be allowed by the court or by the receiver, be made out and submitted to the receiver in accordance with section 340, a statement in the prescribed form as to the affairs of the company; and

(c) the receiver shall, within 2 months after receipt of the statement send—

- (i) to the Commission or to the court a copy of the statement and of any comments he sees fit to make thereon and in the case of the Commission also a summary of the statement and of his comments if any on it;
- (ii) to the company a copy of such comments or if he does not see fit to make any comment, a notice to that effect; and
- (iii) to any trustees for the debenture holder on whose behalf he has been appointed and, so far as he is aware of their addresses, to all such debenture holders a copy of the summary.

(2) The receiver shall, within 2 months, or such longer period as the court may allow after the expiration of the period of 12 months from the date of his appointment and of every subsequent period of 12 months, and within 2 months or such longer period as the court may allow after he ceases to act as receiver or manager of the property of the debenture holder of the company, send to—

- (a) the Commission,
- (b) any trustees for the debenture holders of the company on whose behalf he was appointed;
- (c) the company; and
- (d) so far as he is aware of their addresses to all such debenture holders,

an abstract in the prescribed form showing his receipts and payments during that period of 12 months, or, where he ceases to act as a receiver during the period from the end of the period to which the last preceding abstract relate up to the date of his so ceasing, and the

aggregate amounts of his receipts and of his payments during all preceding periods since his appointment.

(3) Where the receiver is appointed under the powers contained in any instrument, this section shall have effect-

- (a) with the omission of the references to the court in subsection (1); and
- (b) with the substitution for the references to the court in subsection (2) of references to the Commission; and in any other case references to the court shall be taken as referring to the court by which the receiver was appointed .

(4) Subsection (1) shall not apply in relation to the appointment of a receiver or manager to act with an existing receiver or manager or in place of a receiver or manager dying or ceasing to act, but that where subsection (1) applies to a receiver or manager who dies or ceases to act before it has been fully complied with, the references in paragraphs (b) and (c) of that subsection to the receiver shall, subject to subsection (5), include references to his successors and to any continuing receiver or manager.

(5) Nothing in subsection (4) shall be taken as limiting the meaning of the expression “the receiver” where used in, or in relation to, subsection (2).

(6) This section and section 340, where the company is being wound up, shall apply notwithstanding that the receiver or manager and the liquidator are the same person.

(7) Nothing in subsection (2) shall prejudice the duty of the receiver to render proper accounts of his receipts and payments to the person to whom, and at the time at which he may be required to do so apart from that subsection.

(8) If the receiver defaults in complying with the requirements of this section, he shall be guilty of an offence and be liable to a fine of Le.500,000 for each day during which the default continues.

**339.** (1) The statements as to the affairs of a company required by section 338, to be submitted to the receiver (or his successor) shall show as at the date of the receiver’s appointment, the particulars of the company’s assets, debts and liabilities, the names, residences and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be prescribed.

Special provisions as to statement submitted to receiver.

(2) The statement shall be submitted by, and be verified by affidavit of one or more of the persons who are at the date of the receiver’s appointment, the directors and by the person who is at that date the secretary of the company, or by such of the persons in this subsection mentioned as the receiver (or his successors), subject to the direction of the court, may require to submit and verify the statement, that is to say, persons-

- (a) who are or have been officers of the company;
- (b) who have taken part in the formation of the company at any time within one year before the date of the receiver’s appointment;
- (c) who are in the employment of the company, or have been in the employment of the company within the year, and are in the opinion of the receiver capable of giving the information required;
- (d) who are or have been within the year officers of or in the employment of a company which is, or within the year was, an officer of the company to which the statement relates.

(3) Any person making the statement and affidavit shall be allowed, and shall be paid by the receiver (or his successor) out of his receipts, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the receiver (or his successor) may consider reasonable, subject to an appeal to the court.

(4) Where the receiver is appointed under the powers contained in any instrument, this section shall have effect with the substitution for references to the court of references to the Commission and references to an affidavit, of references to a statutory declaration; and in any other case references to the court shall be taken as referring to the court by which the receiver was appointed.

(5) If any person without reasonable excuse defaults in complying with the requirements of this section, he shall be guilty of an offence and be liable to a fine of Le.500,000 for each day during which the default continues.

(6) Reference in this section to the receiver's successor shall include a continuing receiver or manager.

#### Accounts by receivers or managers

Delivery to Commission of accounts of receivers and managers.

**340.** (1) Except where subsection (2) of section 339 applies, every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument shall, within one month or such longer periods as the Commission may allow, after the expiration of the period of 6 months from the date of his appointment, and of every subsequent period of 6 months, and within one month after he ceases to act as receiver or manager, deliver to the Commission for registration an abstract in the prescribed form showing his receipts and his payments during that period of 6 months, or where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract relate up to the date of his ceasing, and the aggregate amount of his receipts and of his payments during all preceding periods since his appointment

(2) Every receiver or manager who defaults in complying with this section shall be guilty of an offence and be liable to a fine of Le.500,000 for each day during which the default continues.

#### Duty as to returns

Enforcement of duty of receivers, managers to make returns, etc.

**341.** (1) If any receiver or manager of the property of a company having—

(a) defaulted in filing, delivering or making any returns, account or other document, or in giving any notice, which a receiver or manager is by law required to file, delivers, makes, gives

or fails to make good the default within 14 days after the service on him of a notice requiring him to do so; or

- (b) been appointed under the powers contained in any instrument has, after being required at any time by the liquidator of the company to do so fails to render proper accounts of his receipts and payment and to vouch them and to pay over to the liquidator the amount properly payable to him,

the Court may, on an application made for the purpose, make an order directing the receiver or manager, as the case may be, to make good the default within such time as may be specified in the order,

(2) In the case of any default as is mentioned in paragraph (a) of subsection (1), an application for the purposes of this section may be made by any member or by the Commission, and in the case of such default as is mentioned in paragraph (b) of that subsection, the application shall be made by the liquidator, and in either case the order may provide that all costs shall be borne by the receiver or manager, as the case may be.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on receivers in respect of such default as is mentioned in subsection (1).

#### Construction of references

**342.** Unless the context otherwise requires, any reference in this Act—

Construction of references to receivers and managers.

- (a) to a receiver or manager of the property of a company, or to a receiver thereof, includes a reference to a receiver or manager or as the case may be to a receiver of part only of that property and to a receiver only of the income arising from that property or from part thereof; and

- (b) to the appointment of a receiver or manager under the powers contained in any instrument includes reference to an appointment made under powers which, by virtue of any enactment, are implied in and have effect as contained in the instrument.

#### PART XVI – WINDING UP

##### Modes of winding up

Modes of winding up.

- 343.** (1) The winding up of a company may be either—
- (a) by the court;
  - (b) voluntary; or
  - (c) subject to the supervision of the court.

(2) This Act with respect to winding up applies, unless the contrary appears, to the winding up of a company in any of those modes.

##### Liability of members

Liability as contributories of present and past members.

**344.** (1) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to subsection (2) and the following qualifications:—

- (a) a past member shall not be liable to contribute;
  - (i) if he has ceased to be a member for one year or upwards before the commencement of the winding up;
  - (ii) in respect of any debt or liability of the company contracted after he ceased to be a member;

- (iii) 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 Act;

- (b) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;

- (c) in the case of a company limited by guarantee, no contribution shall, subject to subsection (3), be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;

- (d) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;

- (e) a sum due to any member of a company, in his capacity as a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company; but such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) In the winding up of a limited company, any director or manager, whether past or present, whose liability is, under this Act, unlimited, shall, in addition to his liability (if any) to contribute as an

ordinary member, be liable to make a further contribution as if he were, at the commencement of the winding up a member of an unlimited company; but—

- (a) a past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up;
- (b) a past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;
- (c) subject to the articles of the company, a director or manager shall not be liable to make such further contribution in order to satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding up.

(3) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

Definition of contributory.

**345.** “Contributory” means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

Nature of liability of contributory.

**346.** The liability of a contributory shall create a debt of the nature of a specialty accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

**347.** (1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives shall be liable in due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

Contributories in case of death of member.

(2) If the personal representatives default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory, and for compelling payment from the estate of the money due.

(3) Where the personal representatives are placed on the list of contributories, the heirs or assigns need not be added; but they may be added as and when the court thinks fit.

**348.** If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories—

Contributories in case of bankruptcy of member.

- (a) his trustee in bankruptcy shall represent him for all the purposes of the winding up, and shall be a contributory accordingly;
- (b) his trustee may be called on to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and
- (c) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

#### Winding-up by court-jurisdiction

**349.** The High Court shall have jurisdiction to wind up any company incorporated or registered in Sierra Leone.

Jurisdiction to wind up companies incorporated in Sierra Leone.

**Cases in which company may be wound up by court**

Circumstances in which company may be wound up by court.

**350.** A company may be wound up by the court if-

- (a) the company has by special resolution resolved that the company be wound up by the court;
- (b) default is made in delivering the statutory report to the Commission or in holding the statutory meeting;
- (c) the company does not commence its business for a whole year;
- (d) subject to section 67, the membership of the company falls below the requirements in section 15;
- (e) the company is unable to pay its debts;
- (f) the court is of the opinion that it is just and equitable that the company should be wound up.

Definition of inability to pay debts.

**351.** A company shall be deemed to be unable to pay its debts—

- (a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding Le2,000,000 then due, has served on the company, by leaving it at the registered office of the company, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor;
- (b) if, in Sierra Leone, execution or other process issued on a decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

- (c) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

**352.** (1) An application to the court for the winding up of a company shall be by petition, presented subject to the provisions of this section, either by the company or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately; but—

Provision as to applications for winding up.

- (a) a contributory shall not be entitled to present a winding up petition unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least 6 months during the 18 months before the commencement of the winding up or have devolved on him through the death of a former holder;
- (b) a winding-up petition shall not, if the ground of the petition is default in delivering the statutory report to the Commission or in holding the statutory meeting, be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held; and
- (c) the court shall not give a hearing to a winding-up petition presented by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and until a *prima facie* case for winding up has been established to the satisfaction of the court.

(2) Where a company is being wound up voluntarily or subject to supervision, a winding-up petition may be presented by the official receiver attached to the court as well as by any other person authorised in that behalf under the other provisions of this section, but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

Power of court on hearing petition.

**353.** (1) On hearing a winding-up petition, the court may dismiss it or adjourn the hearing conditionally or unconditionally, or make any interim order or any other order that it may think fit; but the court shall not refuse to make a winding-up order on the grounds only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where the petition is presented on the ground of default in delivering the statutory report to the Commission or in holding the statutory meeting, the court may-

- (a) instead of making a winding-up order, direct that the statutory report shall be delivered or that a meeting shall be held; and
- (b) order the costs to be paid by any persons who, in the opinion of the court, are responsible for the default.

(3) If the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the court, if it is of the opinion -

- (a) that the petitioners are entitled to relief either by winding up the company or by some other means; and
- (b) that in the absence of any other remedy it would be just and equitable that the company should be wound up,

shall make a winding-up order, but this does not apply if the court is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

**354.** The court may, at any time after the presentation of the petition for winding up a company under this Act and before making an order for winding up the company, upon the application of the company or any creditor or contributory restrain further proceedings in any suit or proceedings against the company upon such terms as the court thinks fit.

Power to stay or restrain proceedings against company.

**355.** In a winding up by the court, any disposition of the property of the company, including things-in-action, and any transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

Avoidance of disposition of property, etc. after commencement of winding up.

**356.** When any company is being wound up by the court, any attachment, distress, or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void.

Avoidance of attachment, etc

### Commencement of winding up

**357.** (1) Where before the presentation of a petition for the winding up of a company by the court a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the court, on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

Commencement of winding up by the court.

(2) In any other case, the winding-up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

**358.** On the making of a winding-up order, a copy of the order shall be forwarded by the company to the Commission who shall make a minute therefore in its books relating to the company.

Copy of order to be forwarded to Commission.



Actions to be stayed on winding-up order.

**359.** When a winding-up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court may impose.

Effect of winding-up order.

**360.** An order for winding-up a company shall operate in favour of all creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

#### Official receiver in winding up

Official receiver to be appointed by the Commission.

**361.** For the purposes of this Act so far as it relates to the winding-up of companies by the court the term “official receiver” means the official receiver appointed for the purpose by the Commission .

Statement of company's affairs to official receiver.

**362.** (1) Where the court has made a winding-up order or appointed a provisional liquidator, there shall, unless the court thinks fit to order otherwise and so orders, be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts and liabilities, the names, residence and occupation of its creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be prescribed or as the official receiver may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the secretary or other senior officer of the company or by such of the persons (hereafter in this subsection referred to as the official receiver), who, subject to the direction of the court, the court may require to submit and verify the statement, that is to say, persons-

- (a) who are or have been directors or officers of the company;
- (b) who have taken part in the formation of the company at any time within one year before the relevant date;

(c) who are in the employment of the company, or have been in the employment of the company within the year, and are in the opinion of the official receiver capable of giving the information required;

(d) who are or have been within the year officers of or in the employment of a company, which is, or within the year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within fourteen days from the relevant date, or within such extended time as the official receiver or the court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official receiver or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the court.

(5) If any person, without reasonable excuse, defaults in complying with the requirements of this section, he shall be guilty of an offence and be liable to a fine of Le.500,000 for each day during which the default continues.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract from it.

(7) Any person untruthfully stating himself to be a creditor or contributory shall be guilty of an offence and be liable on conviction to a fine not exceeding Le5,000,000.

(8) In this section the expression “the relevant date” means in a case where a provisional liquidator is appointed, the date of his appointment, and, in a case where no appointment is made, the date of the winding up order.

Report by  
official  
receiver.

**363.** (1) In a case where a winding up order is made, the official receiver shall, as soon as practicable after receipt of the statement to be submitted under section 362 or, in a case where the court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the court-

- (a) as to the amount of capital issued, subscribed and paid up, and the estimated amount of assets and liabilities;
- (b) if the company has failed, as to the causes of the failure; and
- (c) whether in his opinion further enquiry is desirable as to any matter relating to the promotion, formation or failure of the company, or the conduct of the business thereof.

(2) The official receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since its formation, and any other matters which in his opinion it is desirable to bring to the notice of the court.

(3) If the official receiver states in such further report that in his opinion a fraud has been committed, the court shall have the further powers provided in sections 393 and 394.

### Liquidators

Power of  
court to  
appoint  
liquidators.

**364.** For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators.

**365.** (1) Subject to this section, the court may appoint a liquidator provisionally at any time after the presentation of a winding up petition and before the making of a winding up order, and either the Commission or any other fit person may be appointed.

Appointment  
and powers of  
provisional  
liquidators.

(2) Where a liquidator is provisionally appointed by the court, the court may limit and restrict his powers by the order appointing him.

**366.** The following provisions with respect to liquidators shall have effect on a winding-up order being made:-

Appointment,  
style, etc. of  
liquidators.

- (a) the official receiver shall, by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such;
- (b) the official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the court for appointing a liquidator in the place of the official receiver;
- (c) the court may make any appointment and order required to give effect to the determination, and, if there is a difference between the determination of the meetings of the creditors and contributories in respect of the matter, the court shall decide the difference and make such order thereon as the court may think fit;
- (d) in a case where a liquidator is not appointed by the court, the official receiver shall be the liquidator of the company;
- (e) the court may determine whether any and what security is to be given by a liquidator on his appointment;
- (f) the official receiver shall by virtue of his office be the liquidator during any vacancy;
- (g) a liquidator shall be described, where a person other than the official receiver is liquidator,

by the style of “the liquidator”, and, where the official receiver is liquidator, by the style of “the official receiver and liquidator”, of the particular company in respect of which he is appointed, and not by his individual name.

Provisions where person other than official receiver is appointed liquidator.

**367.** Where in the winding up of a company by the court a person other than the official receiver is appointed liquidator, that person—

- (a) shall not be capable of acting as liquidator until he has notified his appointment to the Commission or the court and given security in the prescribed manner to the satisfaction of the Commission;
- (b) shall give the official receiver such information and access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Act.

General provisions as to liquidators.

**368.** (1) A liquidator appointed by the court may resign or, on cause shown, be removed by the court.

(2) Where a person other than the official receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the court may direct and, if more of such persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the court directs.

(3) A vacancy in the office of a liquidator appointed by the court shall be filled by the court.

(4) If more than one liquidator is appointed by the court, the court shall declare whether any act required or authorised by this Act to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(5) The acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

(6) Nothing in subsection (5) shall be deemed to give validity to acts done by a liquidator or provisional liquidator after his appointment has been shown to be invalid.

**369.** Where a winding-up order has been made or where a provisional liquidator has been appointed, the liquidator or provisional liquidator, as the case may be, shall take into his custody or control all the property and things-in-action to which the company is or appears to be entitled.

Custody of company's property.

**370.** (1) Where a company is being wound up by the court, the court may, on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator in his official name, and thereupon the property to which the order relates shall then vest accordingly.

Vesting of property of company in liquidators.

(2) The liquidator may, after giving such indemnity, if any, as the court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which is necessary to bring or defend for the purpose of effectively winding up the company and recovering its property.

**371.** (1) The liquidator in a winding up by the court shall have power with the sanction either of the court or of the committee of inspection to—

Powers of liquidators.

- (a) bring or defend any action or other legal proceeding in the name and on behalf of the company;
- (b) carry on the business of the company, so far as may be necessary for the beneficial winding up;
- (c) appoint a legal practitioner to assist him in the performance of his duties but where the liquidator is a legal practitioner, he shall not appoint his partner;

- (d) pay any class of creditors in full;
  - (e) make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;
  - (f) compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and contributory, or alleged contributory, or other debtor or person apprehending liability to the company.
- (2) The liquidator shall have power to—
- (a) sell the real and personal property and things-in-action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell them in parcels;
  - (b) do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the company's seal;
  - (c) prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory, for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt, and rateably with the other separate creditors;

- (d) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;
  - (e) raise on the security of the assets of the company any money required;
  - (f) take out in his official name letters of administration in respect of the estate of any deceased contributory, and to do in his official name any other act necessary for obtaining a payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself; but nothing in this paragraph shall be deemed to affect the rights, duties and privileges of the Administrator and Registrar-General;
  - (g) appoint an agent to do any business which the liquidator is unable to do himself;
  - (h) do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.
- (3) The exercise by the liquidator in a winding up by the court of powers conferred by this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.
- (4) The court may order that the liquidator may, where there is no committee of inspection exercise any of the powers specified in paragraph (a) or (b) of subsection (1) without the sanction or intervention of the court.

Companies  
Liquidation  
Account.

**372.** (1) An account, called the Companies Liquidation Account, shall be kept by the Commission at the Bank of Sierra Leone and all moneys received by the Commission in respect of proceedings in connection with the winding up of companies shall be paid into that account.

(2) All payments out of moneys standing to the credit of the Commission in the Companies Liquidation Account shall be made by the Registrar in the prescribed manner.

Exercise and  
control of  
liquidator's  
powers.

**373.** (1) Subject to this Act, the liquidator of a company which is being wound up by the court shall, in the administration of the assets of the company and in their distribution among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection.

(2) Directions given by the creditors or contributories at any general meeting shall, in case of conflict be deemed to override any directions given by the committee of inspection.

(3) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories, as the case may be.

(4) The liquidator may apply to the court in the manner prescribed, for directions in relation to any particular matter arising under the winding up.

(5) Subject to this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(6) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court; and the court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just.

**374.** Every liquidator of a company which is being wound up by the court shall keep, in the manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed; and any creditor or contributory may, subject to the control of the court, personally or by his agent inspect such books.

Books to be  
kept by  
liquidator.

**375.** (1) Every liquidator of a company which is being wound up by the court shall, in such manner and at such times as the Commission directs, pay the money received by him into the Companies Liquidation Account and the Commission shall furnish him with a certificate of receipt of the money so paid.

Payments by  
liquidators  
into Com-  
panies Liquid-  
ation  
Account.

(2) If the committee of inspection satisfies the official receiver that, for the purpose of carrying on the business of the company, obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any bank, the official receiver shall, on the application of the committee of inspection, authorise the liquidator to make his payments into and out of such bank as the committee may select, and then those payments shall be made in the prescribed manner.

(3) If the liquidator at any time retains for more than 10 days a sum exceeding Le.1,000,000 or such other amounts as the official receiver in any particular case authorises him to retain, then, unless he explains the retention to the satisfaction of the official receiver he shall pay interest on the amount so retained in excess, at the rate of twenty percent per annum and the liquidator shall-

- (a) be liable to a disallowance of all or such part of his remuneration as the official receiver may think just;
- (b) be removed from his office by the official receiver; and
- (c) be liable to pay any expenses occasioned by reason of his default.

(4) A liquidator of a company which is being wound up by the court shall not pay any sums received by him as liquidator into his private banking account.

Audit of liquidator's accounts.

**376.** (1) Every liquidator of a company which is being wound up by the court shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the Commission an account of his receipts and payments as liquidator.

(2) The account which shall be in the prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration.

(3) The Commission shall cause the account to be audited and for the purpose of the audit the liquidator shall furnish the official receiver with such vouchers and information as the Commission may require.

(4) The Commission may, at any time require the production of and inspect any books or accounts kept by the liquidator.

(5) When the account has been audited, one copy shall be filed and kept by the Commission and the other copy shall be delivered to the court for filing; and each copy shall be open to the inspection of any creditor or any person interested.

(6) The Commission shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and contributory.

Control over liquidators.

**377.** (1) The Commission shall take cognisance of the conduct of liquidators of companies which are being wound up by the court, and if—

- (a) a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by this Act, rules or otherwise with respect to the performance of his duties; or
- (b) any complaint is made to the Commission by any creditor or contributory in regard thereto,

the Commission shall enquire into the matter, and take such action on it as he may think expedient.

(2) The Commission may, at any time require any liquidator of a company which is being wound up by the court to answer any inquiry in relation to any winding up in which he is engaged, and may, if he thinks fit, apply to the court to examine him or any other person on oath concerning the winding up.

(3) The Commission may also direct a local investigation to be made of the books and vouchers of the liquidator.

**378.** (1) When the liquidator of a company which is being wound up by the court has—

Release of liquidators.

- (a) realised all the property of the company, or so much of it as can, in his opinion, be realised without needlessly protracting the liquidation;
- (b) distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves;
- (c) made a final return, if any, to the contributories; or
- (d) resigned, or has been removed from his office,

the court shall, on his application, cause a report on his accounts to be prepared; and, on his complying with all the requirements the court shall take into consideration the report and any objection which may be urged by any creditor or contributory or person interested against the release of the liquidator, and either grant or withhold the release accordingly.

(2) Where the release of a liquidator is withheld, the court may, on the application of any creditor or contributory or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(3) An order of a court releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or

otherwise in relation to his conduct as liquidator, but such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

#### Committees of inspection

Meetings to consider appointment of committee of inspection.

**379.** (1) When a winding up order has been made by the court, it shall be the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not—

- (a) an application shall be made to the court for appointing a liquidator in place of the official receiver; or
- (b) an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator, and who are to be members of the committee if appointed.

(2) The court may make any appointment and order required to give effect to the determination; and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of those matters the court shall decide the difference and make such order as the court may think fit.

Constitution and proceedings of committee of inspection.

**380.** (1) A committee of inspection appointed pursuant to this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of disagreement may be determined by the court.

(2) The committee shall meet at such times as they may from time to time appoint and, failing such appointment, at least once a month; and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) The committee may act by a majority of its members present at a meeting, but shall not act unless a majority of the committee are present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors or of contributories, if he represents contributories of which seven days' notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the committee, the liquidator shall summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy; and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.

(8) Notwithstanding subsection (7), if the liquidator, having regard to the position in the winding up is of the opinion that it is unnecessary for the vacancy to be filled, he may apply to the court and the court may make an order that the vacancy be not filled or be not filled except in circumstances specified by the order.

(9) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

(10) If there is no committee of inspection, any act or thing or any direction or permission, authorised or required by this Act to be done or given by the committee may be done or given by the Commission on the application of the liquidator.

#### General powers of court in case of winding up by court

**381.** (1) The court may at any time after an order for winding up, on the application either of the liquidator, or the official receiver or any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

Power to stay winding up.

(2) On any application under this section the court may, before making an order, require the official receiver to furnish to the court a report with respect to any facts or matters which are in his opinion relevant to the application.

(3) A copy of every order under this section shall be forwarded by the company or otherwise as may be prescribed, to the Commission, which shall enter it in its records relating to the company.

Settlement of lists of contributories and application of assets.

**382.** (1) As soon as may be after making a winding-up order, the court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required by this Act, and shall cause the assets of the company to be collected, and applied in the discharge of its liabilities.

(2) Where it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.

(3) In settling the list of contributories, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

Delivery of property to liquidators.

**383.** The court may, at any time after making a winding up order, require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer forthwith, or within such time as the court directs, to the liquidator any money, property or books and papers in his hands to which the company is *prima facie* entitled.

Payments of debts due by contributories to company and extent to which set off allowed.

**384.** (1) The court may, at any time after making a winding up order, require any contributory for the time being on the list of contributories to pay, in the manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) The court may, in making an order—

- (a) in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and
- (b) in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the same allowance.

(3) In the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

**385.** (1) The court may, at any time after making a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for the payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any call so made.

Power of court to make calls.

(2) In making a call, the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

**386.** (1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount into the Companies Liquidation Account to the account of the liquidator instead of to the liquidator, and the order may be enforced in the same manner as if it had directed payment to the liquidator.

Payment into Companies liquidation Account of moneys due to companies.



(2) All moneys and securities paid or delivered into the Companies Liquidation Account in the event of a winding up by the court shall be subject in all respects to the orders of the court.

Order on contributory to be conclusive evidence.

**387.** (1) An order made by the court on a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings whatsoever.

Appointment of special manager.

**388.** (1) Where in proceedings the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court for an order to that effect.

(2) The court may, on the application, appoint a special manager of the company's estate or business to act during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.

(3) The special manager shall give such security and account in such manner as the court shall direct.

(4) The special manager shall receive such remuneration as may be fixed by the court.

Power to exclude creditors not proving in time.

**389.** The court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved.

Adjustment of rights of contributories.

**390.** The court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled to it.

**391.** (1) The court may, at any time after making a winding up order, make such order for inspection of the books and papers of the company by creditors and contributories as the court thinks just, and any books and papers in the possession of the company may be inspected by the creditors or contributories accordingly, but not further or otherwise.

Inspection of books by creditors and contributories.

(2) Nothing in this section shall be taken to exclude or restrict any statutory rights of a government department or person acting under the authority of a government department

**392.** The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding up in such order of priority as the court thinks just.

Costs of winding up to be paid out of assets.

**393.** (1) The court may, at any time after the appointment of a provisional liquidator or the making of a winding up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court thinks capable of giving information, concerning the promotion, formation, trade, dealings, affairs or property of the company.

Summoning of persons suspected of having property of company.

(2) The court may examine the officer or other person on oath concerning those matters, either orally or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The court may require the officer or other person to produce any books and papers in his custody or power relating to the company, but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being given a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful impediment (made known to the court at the time of its sitting, and allowed by it), the court may cause him to be apprehended and brought before it for examination,

Attendance of directors of company at meetings of creditors, etc.

**394.** In the winding up by the court of a company the court may require the attendance of any director or other officer of the company at any meeting of creditors or of contributories or of a committee of inspection, for the purpose of giving information as to the trade, dealings, affairs or property of the company.

Public examination of promoters, directors, etc.

**395.** (1) Where an order has been made for winding up a company by the court and the official receiver has made a further report under this Act stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the court may, after consideration of the report, direct that that person, director or other officer shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director or officer of it.

(2) The official receiver shall take part in the examination, and may for that purpose, if specifically authorised by the court in that behalf, employ a legal practitioner.

(3) The liquidator, where the official receiver is not the liquidator, and any creditor or contributory, may also take part in the examination either personally or by his counsel.

(4) The court may put such questions to the person examined as the court thinks fit.

(5) The person examined shall be examined on oath, and shall answer all questions the court may put or allow to be put to him.

(6) A person ordered to be examined under this section shall at his own cost before his examination, be furnished with a copy of the official receiver's report, and may at his own cost employ a legal practitioner who shall be at liberty to put to him such questions as the court may think just for the purpose of enabling him to explain or qualify any answers given by him.

(7) If a person applies to the court to be exculpated from any charges made or suggested against him, it shall be the duty of the official receiver to appear on the hearing of the application and call the attention of the court to any matters which appear to the official receiver to be relevant; and if the court, after hearing any evidence given or witnesses called by the official receiver, grants the application, the court may allow the applicant such costs as in its discretion it thinks fit.

(8) Notes of the person's public 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 him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(9) The court may, if it thinks fit, adjourn the examination from time to time.

(10) An examination under this section may, if the court so directs and subject to general rules, be held before any magistrate and the powers of the court under this section as to the conduct of the examination may be exercised by the person before the examination is held.

**396.** (1) Where an order has been made for winding up a company by the court, and the official receiver has made a further report under this Act stating that, in his opinion, a fraud has been committed by a person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the court may, on the application of the official receiver, order that that person, director or officer shall not, without the leave of the court, be a director of or in any way, whether directly or indirectly, be concerned in or take part in the management of a company for such period, not exceeding 5 years, from the date of the report as may be specified in the order.

Power to restrain fraudulent persons from managing companies.

(2) The official receiver shall, where he intends to make an application under subsection (1), give not less than 10 days' notice of his intention to the person charged with fraud, and on the hearing of the application that person may appear and himself give evidence or call witnesses.

- (3) It shall be the duty of the official receiver to-
- (a) appear on the hearing of an application by him of an order under this section and on an application for leave under this section; and
  - (b) call the attention of the court to any matters which appear to him to be relevant,

and on such application the official receiver may himself give evidence or call witnesses.

(4) If any person acts in contravention of an order made under this section he shall be guilty of an offence and shall, in respect of each offence, be liable on conviction to a fine not exceeding Le5,000,000 or to a term of imprisonment not exceeding 2 years or to both the fine and imprisonment.

(5) This section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made.

Power to arrest absconding contributory.

**397.** The court may, at any time either before or after making a winding up order, on proof of probable cause for believing that a contributory is about to leave Sierra Leone, or otherwise to abscond, or to remove or conceal any of his property for the purpose of evading payment of calls, or of avoiding examination respecting the affairs of the company, cause the contributory to be arrested, and his books and papers and movable personal property to be seized, and safely kept until such time as the court may order.

Powers of court cumulative.

**398.** Any powers conferred by this Act on the court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of the contributory or debtor, for the recovery of any call or other sums.

Dissolution of company.

**399.** (1) When the affairs of a company have been completely wound up, the court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) The order shall, within 14 days from the date of its making, be reported by the liquidator to the Commission which shall make in its books a minute of the dissolution of the company.

(3) If the liquidator defaults in complying with the requirements of this section, he shall be guilty of an offence and be liable to a fine of Le500,000 for each day during which he is in default.

### Enforcement of and appeal from orders

**400.** All orders made by the court under this Part may be enforced in the same manner in which orders of such court made in any suit pending before it is carried out. Enforcement of orders

**401.** Appeals from any order or decision made or given in the matter of winding up of a company by the court may be made in the same manner and subject to the same conditions as appeals from any order or decision of the court in cases within its ordinary jurisdiction. Appeals from orders

### Voluntary winding-up

- 402.** (1) A company may be wound up voluntarily-
- (a) when the period, if any, fixed for the duration of the company by the articles expires, or the event, if any, occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound-up voluntarily; Circumstances in which company may be wound up voluntarily.
  - (b) if the company resolves by special resolution that the company be wound up voluntarily;
  - (c) if the company resolves by special resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

(2) In this Part the expression “a resolution for voluntary winding up” means a resolution passed under any of the provisions of subsection (1).

Notices of resolutions to wind up voluntarily.

**403.** (1) When a company has passed a resolution for voluntary winding-up, it shall, within 14 days after the passing of the resolution, give notice of the resolution, by advertisement in the Gazette and also in a local newspaper, if any, circulating in the district where the registered office of the company is situated.

(2) If default is made in complying with subsection (1), the company and every officer of the company who is in default shall be liable to a default fine, and for the purposes of this subsection the liquidator of the company shall be deemed to be an officer of the company.

Commencement of voluntary winding up.

**404.** A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up.

#### Consequences of voluntary winding up

Effect of voluntary winding-up on business and status of company.

**405.** In a case of a voluntary winding up, the company shall, from the commencement of the winding-up, cease to carry on its business, except so far as may be required for the beneficial winding-up; but the corporate status and powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

Avoidance of transfers, etc., after commencement of voluntary winding up.

**406.** Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding up, shall be void.

#### Declaration of solvency

Statutory declaration of solvency.

**407.** (1) Where it is proposed to wind up a company voluntarily, the directors may (or in the case of a company having more than two directors, the majority of them) at a directors' meeting make a statutory declaration to the effect that they have made a full inquiry into the company's affairs and that they have formed the opinion that the company will be able to pay its debts in full within

such period, not exceeding 12 months from the commencement of the winding up, as may be specified in the declaration.

(2) A declaration by the directors has no effect for the purposes of this Act unless—

- (a) it is made within the 5 weeks immediately preceding the date of the passing of the resolution for winding up, or on that date but before the passing of the resolution;
- (b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration; and
- (c) it is delivered to the Commission before the expiration of 15 days immediately following the date on which the resolution for the winding up is passed or such further date as may be determined by the Commission.

(3) A director making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the specified period shall be guilty of an offence and be liable to a fine not exceeding Le.5,000,000 or to a term of imprisonment not exceeding 6 months or to both the fine and imprisonment.

(4) If the company is wound up in pursuance of a resolution passed within 5 weeks after the making of the declaration and its debts are not paid or provided for in full within the period specified, it shall be presumed (unless the contrary is shown) that the director did not have reasonable grounds for his opinion.

**408.** A winding-up in the case where a director's statutory declaration under section 407 has been made is a “members' voluntary winding up”; and a winding up in the case of which such a declaration has not been made is a “creditors' voluntary winding up”.

Distinction between “members” and “creditors” voluntary winding-up.

**Provisions applicable to a members' voluntary winding up**

Provisions applicable to members' winding-up.

**409.** Sections 410 to 416 shall only apply in relation to a members' voluntary winding-up.

Powers of company to appoint and fix remuneration of liquidators.

**410.** (1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

(2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance of such powers.

Power to fill vacancies in office of liquidator.

**411.** (1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For the purpose of filling a vacancy, a general meeting may be convened by any contributory or, if there were more liquidators than one by the continuing liquidators.

(3) The meeting shall be held in the manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

Power of liquidator to accept shares as consideration for sale of company's property.

**412.** (1) The following applies where a company is proposed to be, or is being, wound up voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company ("the transferee company"), whether or not this latter is a company within the meaning of this Act.

(2) The liquidator of the company to be, or being, wound up ("the transferor company") may, with the sanction of a special resolution of that company, conferring either a general authority on himself or an authority in respect of any particular arrangement, receive, in compensation or part compensation for the transfer or sale of shares, policies or other like interests in the transferee company for distribution among the members of the transferor company.

(3) Without prejudice to subsection (2) the liquidator may, with the sanction of a special resolution, enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests (or in addition), participate in the profits of, or receive any other benefit from, the transferee company.

(4) A sale or arrangement in pursuance of this section is binding on members of the transferor company.

(5) If a member of the transferor company who did not vote in favour of the special resolution expresses his dissent from it in writing addressed to the liquidator, and left at the company's registered office within 7 days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in the manner provided by any enactment regulating arbitration.

(6) If the liquidator elects to purchase the member's interest, the purchase money shall be paid before the company is dissolved and be raised by the liquidator in such manner as may be determined by special resolution.

(7) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding-up or for appointing liquidators; but, if an order is made within a year for winding up the company by or subject to the supervision of the court the special resolution shall not be valid unless sanctioned by the court.

**413.** (1) If the liquidator is at any time of the opinion that the company will not be able to pay its debts in full within the period stated in the directors' declaration under section 407, he shall forthwith summon a meeting of the creditors and shall lay before the meeting a statement of the company's assets and liabilities.

Creditors' meeting in case of insolvency.

(2) If the liquidator fails to comply with subsection (1) he shall be guilty of an offence and be liable to a fine not exceeding Le5,000,000

Final meeting and dissolution of companies.

**414.** (1) As soon as the company's affairs are fully wound up the liquidator shall make up an account of the winding-up, showing how it has been conducted and the company's property has been disposed of, and shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the accounts before the meeting and giving an explanation of it.

(2) The meeting shall be called by advertisement in the Gazette and in a newspaper, specifying its time, place and object and published at least one month before the meeting.

(3) Within one week after the meeting, the liquidator shall send to the Commission a copy of the account, and shall make a return to it of the holding of the meeting and of its date; and if the copy is not sent or the return is not made in accordance with this subsection the liquidator is liable to a default fine.

(4) If a quorum is not present at the meeting, the liquidator shall, in lieu of the return referred to in subsection (3), make a return that the meeting was duly summoned and that no quorum was present; and upon such a return being made, the provisions of subsection (3) as to the making of the return are deemed complied with.

(5) The Commission, on receiving the account and either of these returns shall forthwith register them, and on the expiration of 3 months from the registration of the return the company is deemed to be dissolved; but the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(6) It is the duty of the person on whose application an order of the court, under this section is made within 7 days after the making of the order to deliver to the Commission an office copy of the order for registration; and if that person fails to do so he is liable to a default fine.

(7) If the liquidator fails to call a general meeting of the company as required by subsection (1), he is liable to a default fine.

**415.** (1) Where section 413 has effect, section 422 applies to the winding up to the exclusion of section 414 as if the winding up were a creditors' winding up and not a members' voluntary winding up.

Alternative provision as to company meeting in case of insolvency.

(2) The liquidator is not required to summon a meeting of creditors under section 422 at the end of the first year from the commencement of the winding up, unless the meeting held under section 414 is held more than 3 months before the end of that year.

**416.** (1) The liquidator in a members' voluntary winding-up shall keep proper records and books of account with respect to his acts and dealings and of the conduct of the winding up and of all receipts and payments by him and so long as he carries on the business of the company, he shall keep a distinct account of the trading.

Books and accounts during members' voluntary winding up.

(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 3 months of the end of the year or such longer period as the Commission may allow; and
- (b) lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year and of the trading during such time as the business of the company has been carried on, and within 28 days thereafter shall send a copy of the accounts to the Commission for registration.

(3) So soon as the affairs of the company are fully wound up, the liquidator shall prepare and send to every member of the company final accounts of the winding up showing—

- (a) how the winding up has been conducted;
- (b) the result of the trading during such time as the business of the company has been carried on; and
- (c) how the property of the company has been disposed of, and shall then convene a general meeting of the company for the purpose of laying before it the accounts and of giving an explanation of the accounts.

(4) Within 28 days after the meeting referred to in subsection (3), the liquidator shall send to the Commission for registration copies of the accounts laid before the meeting and a statement of the holding of the meeting and of its date.

(5) If a quorum was not present at the meeting the liquidator, in lieu of the statement made under subsection (4), shall send a statement that the meeting was duly convened and that no quorum was present at the meeting.

(6) The records, books and accounts referred to in this section shall be in such form if any, as the Commission may prescribe and shall give a true and fair view of the matters therein recorded and of the administration of the company's affairs and of the winding up.

(7) The accounts referred to in subsections (2) and (3) shall be audited by the auditor of the company prior to being laid before the company in general meeting in accordance with subsections (2) and (3) 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 all 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 the accounts are in

accordance with the books and records and give all the information required by this Act in the manner required and give a true and fair view of the matters stated in the accounts.

- (8) The audit and auditors' report shall not be required if-
  - (i) the liquidator, or one of the liquidators if more than one, is duly qualified under this Act for appointment as auditor of a public company; and
  - (ii) on or after his appointment as liquidator, the company resolved by special resolution that the amounts shall not be audited in accordance with this subsection.

(9) A meeting required to be convened under this section shall be convened and held, so far as may be, in accordance with this Act and the regulations of the 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 5 years from the dissolution of the company but thereafter may destroy the books and papers unless the Commission otherwise directs, in which event he shall not destroy the books and papers until the Commission consents in writing.

(11) If a liquidator fails to comply with any of the provisions of this section, he shall be guilty of an offence and be liable to a fine not exceeding Le.500,000 for each default.

#### **Provisions applicable to creditors' voluntary winding up**

**417.** (1) The company shall give at least 7 days' notice of the company meeting at which the resolution for voluntary winding up is to be proposed. Meeting of creditors.

(2) Subsection (1) applies notwithstanding any power of the members, or of any particular majority of the members, to exclude or waive any other requirement of this Act or the company's articles with respect to the period of notice to be given of any company meeting.

- (3) The company shall, in addition—
- (a) cause a meeting of its creditors to be summoned for the day, or the day next following the day, on which the company meeting is to be held;
  - (b) cause notice of the creditors' meeting to be advertised once in the *Gazette* and once at least in two local newspapers circulating in the locality in which the company's registered office or its principal place of business is situated.
- (4) The directors of the company shall—
- (a) cause a full statement of the position of the company's affairs, together with a list of its creditors and the estimated amount of their claims, to be laid before the creditors' meeting; and
  - (b) appoint one of their number to preside at the meeting; and it shall be the duty of the director so appointed to attend the meeting and preside at it.

(5) If the company meeting at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the creditors' meeting held under subsection (2) shall have effect as if it had been passed immediately after the passing of the resolution for voluntary winding up.

- (6) If default is made—
- (a) by the company in complying with subsections (1) and (3);
  - (b) by the directors in complying with subsection (4);

- (c) by any director in complying with subsection (5),

the company, the directors or the director (as the case may be) is or are liable to a fine not exceeding Le.5,000,000; and in the case of default by the company, every officer of the company who is in default is also so liable to the same penalty.

(7) Failure to give notice of the company meeting as required by subsection (1) does not affect the validity of any resolution passed or other thing done at that meeting which would be valid apart from that subsection.

**418.** (1) The creditors and the company at their respective meetings may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if—

- (a) the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator;
- (b) no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator.

(2) Where different persons are nominated, any director, member or creditor of the company may, within 7 days after the date on which the nomination was made by the creditors, apply to the court for an order directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors.

**419.** (1) The creditors, at the meeting to be held in pursuance of section 417 or at any subsequent meeting, may, if they think fit, appoint a committee of inspection consisting of not more than 5 persons; and if the committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number.



(2) A committee of inspection shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of differences, may be determined by the court .

(3) The creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not be members of the committee of inspection and, if creditors so resolve, the persons mentioned in the resolution shall not, unless the court under this provision, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(4) Proceedings of a committee of inspection shall be conducted in the prescribed manner.

Fixing of liquidators' remuneration and cesser of directors' powers.

**420.** (1) The committee of inspection, or if there is no committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

(2) On the appointment of the committee of inspection, or if there is no committee, the creditors, may, sanction the continuance of such powers.

Power to fill vacancy in office of liquidator.

**421.** If a vacancy occurs by death, resignation or otherwise, in the office of a liquidator, appointed by the company, the company in general meeting may, subject to any arrangement with the creditors fill the vacancy.

Liquidator to call meetings of company and others at the end of each year.

**422.** (1) If the winding up continues for more than one year, the liquidator shall summon a general meeting of the company and a meeting of creditors—

- (a) at the end of the first year from the commencement of the winding up, and of each succeeding year; or
- (b) at the first convenient date within 3 months from the end of the year or such longer period as the Commission may allow, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If a liquidator fails to comply with subsection (1) he shall be guilty of an offence and be liable to a fine not exceeding Le5,000,000

#### Provisions applicable to voluntary winding up

**423.** Subject to this Act as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu*, and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

Distribution of property of company.

**424.** (1) The liquidator may—

- (a) in the case of a members' voluntary winding up, with the sanction of a special resolution of the company, and
- (b) in the case of a creditors' voluntary winding up, with the sanction of the court or the committee of inspection (or, if there is no such committee, a meeting of the creditors),

Powers and duties of liquidator in voluntary winding up

exercise any of the powers given by paragraphs (d), (e), and (f) of subsection (1) of section 371 to a liquidator in a winding up by the court.

(2) The liquidator may, without sanction, exercise any of the other powers given by this Act to the liquidator in a winding up by the court.

(3) The liquidator may—

- (a) exercise the court's power of settling a list of contributories and the list shall be *prima facie* evidence of the liability of the persons named in it to be contributories;
- (b) exercise the court's power of making calls;
- (c) summon general meetings of the company for the purpose of obtaining its sanction by special resolution or for any other purpose he may think fit.

(4) The liquidator shall pay the company's debts and adjust the rights of the contributories among themselves.

(5) When several liquidators are appointed, any power given by this Act may be exercised by any one or more of them as may be determined at the time of their appointment or, in default of such determination, by any number not less than two.

Appointment and removal of liquidator in voluntary winding up.

**425.** (1) If from any cause whatever there is no liquidator acting, the court may appoint a liquidator.

(2) The court may, on cause shown, remove a liquidator and appoint another liquidator.

Notice by liquidator of his appointment.

**426.** (1) The liquidator shall, within 21 days after his appointment, deliver to the Commission for registration a notice of his appointment in a form prescribed by the Commission.

(2) If the liquidator fails to comply with subsection (1) he shall be guilty of an offence and be liable to a fine of Le.500,000 for each day that the default continues.

Arrangement when binding on creditors.

**427.** (1) Any arrangement entered into between a company about to be, or is in the course of being wound up and its creditors shall, subject to the right of appeal under this section, be binding-

(a) on the company if sanctioned by an extraordinary resolution, and

(b) on the creditors if acceded to by three-fourths in number and value of the creditors.

(2) Any creditor or contributory may, within 3 weeks from the completion of the arrangement, appeal to the court against it and the court may, as it thinks just, amend, vary or confirm the arrangement.

Power to apply to court to have questions determined or powers exercised.

**428.** (1) The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls, or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.

(2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

(3) A copy of an order made by virtue of this section staying the proceedings in the winding up shall be forwarded by the company or otherwise as may be prescribed, to the Commission, which shall enter it in its records relating to the company.

**429.** All costs, charges, and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

Cost of voluntary winding up.

**430.** The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the court; but in the case of an application by a contributory, the court must be satisfied that the rights of the contributories will not be prejudiced by a voluntary winding up.

Saving of rights of creditors and contributories.

### Winding up subject to supervision of court

**431.** When a company has passed a resolution for voluntary winding up, the court may make an order that the voluntary winding up shall continue but subject to the supervision of the court, and with such liberty for creditors, contributories or others to apply to the court, and generally on such terms and conditions, as the court thinks just.

Power to order winding up subject to supervision.

**432.** A petition for the continuance of a voluntary winding up subject to the supervision of the court shall, for the purpose of giving jurisdiction to the court be deemed to be a petition for winding up by the court.

Effect of petition for winding up subject to supervision.

**433.** A winding up subject to the supervision of the court shall, for the purposes of sections 355 and 356, be deemed to be a winding up by the court.

Application of sections 355 and 356 to winding-up subject to supervision of court.

Appointment and removal of liquidators.

**434.** (1) Where an order is made for a winding up subject to supervision, the court may, by that or any subsequent order appoint any additional liquidator.

(2) A liquidator so appointed shall have the same powers, is subject to the same obligations, and in all respects stands in the same position as if he had been duly appointed in accordance with this Act in respect of the appointment of liquidators in a voluntary winding up.

Effect supervision order.

**435.** (1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the court, exercise all his powers, without the court's sanction or intervention, in the same manner as if the company were being wound up altogether voluntarily.

(2) The powers specified in paragraphs (d), (e) and (f) of subsection (1) of section 371 shall not be exercised by the liquidator except with the sanction or intervention, in the same manner as if the company were being wound up altogether voluntarily.

(3) A winding up subject to the supervision of the court is not a winding up by the court for the purposes of the Eighth Schedule but, subject to this Act an order for a winding up subject to supervision is deemed to be for all purposes an order for winding up by the court.

(4) Where the order for winding up subject to supervision was made in relation to a creditors' voluntary winding up in which a committee of inspection had been appointed, the order is deemed an order for winding up by the court for the purposes of section 398, except in so far as the operation of those provisions is excluded in a voluntary winding up by general rules.

(5) In this section "relevant date" means such date as may be fixed by the Minister by statutory instrument.

### Provisions applicable to every mode of winding-up, proof and ranking of claims

**436.** (1) In every winding-up (subject, in the case of insolvent companies, to the application in accordance with this Act of the law of bankruptcy) all debts payable on a contingency and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, are admissible to proof against the company.

Debts of all descriptions may be proved.

(2) A just estimate is to be made (so far as possible) of the value of such debts or claims as may be subject to any contingency or sounding only in damages, or for some other reason do not bear a certain value.

**437.** In the winding-up of an insolvent company incorporated in Sierra Leone the same rules shall apply and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy in Sierra Leone with respect to the estates of persons adjudged bankrupt; and all persons who in such case would be entitled to prove and receive dividends out of the assets of the company may come in under the winding-up and make such claims against the company as they respectively are entitled to by virtue of this section.

Application of bankruptcy rules in certain cases.

**438.** (1) In a winding up there shall be paid in priority to all other debts—

Preferential payments.

(a) all taxes and rates whether payable to the Government or to a local council, due from the company at the relevant date and having become due and payable within 12 months next before that date;

(b) deductions under the National Social Security and Insurance Trust Act, 2001;

Act No. 4 of 2001.

(c) all wages or salaries of—

- (i) any clerk or servant whether or not earned in part by way of commission; and
- (ii) any workman or labourer in respect of services rendered to the company during a period of 12 months next before the relevant date;

but where any labourer has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part as the court may decide to be due under the contract, proportionate to the time of service up to the relevant date;

- (e) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company or unless the company has at the commencement of the winding up under such a contract with insurers as is mentioned in section 28 of the Workmen's Compensation Act, rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the Workmen's compensation Act accrued before the relevant date.

Cap 219 (2) Where any compensation under the Workmen's Compensation Act is a weekly payment, the amount due in respect thereof shall, for the purposes of paragraph (c) of subsection (1) be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under that Act.

(3) Where any payment on account of wages or salary has been made to any clerk, servant, workman or labourer in the employment of a company out of money advanced by some person for that purpose, that person shall, in a winding up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which that clerk, servant,

workman or labourer would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(4) The debts referred to in subsection (1) shall—

- (a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and
- (b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(5) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the debts referred to in subsection (1) shall be discharged forthwith so far as the assets are sufficient to meet them.

(6) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding-up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale, and in respect of any money paid under the charge, the landlord or other person shall have the same rights or priority as the person to whom the payment is made.

(7) In this section the expression “the relevant date” means—

- (a) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding-up order; and

- (b) in any other case, the date of the commencement of the winding-up.

#### Effect of winding-up on antecedent and other transactions

Fraudulent preference.

**439.** (1) Any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property which would, if made or done by or against an individual, be deemed in his bankruptcy a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be voidable.

(2) For the purposes of this section, the presentation of a petition for winding up in the case of a winding up by or subject to the supervision of the court and a resolution for winding up, shall be deemed to correspond with the act of bankruptcy in the case of an individual.

(3) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

Liabilities and rights of persons fraudulently preferred.

**440.** (1) Where anything made or done after the commencement of this Act is void under section 439 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt—

- (a) the person preferred shall, without prejudice to any liabilities or rights apart from this section, be subject to the same liabilities and have the same rights, as if he had undertaken to be personally liable as surety for the debt to the extent of the charge on the property or the value of his interest, whichever is the less; and
- (b) the value of that person's interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all incumbrances other than those to which the charge for the company's debt was the subject.

(2) Where, for the purposes of this section an application is made to the court in respect of any payment on the grounds that the payment was fraudulent preference of a surety or guarantor, the court may—

- (a) determine any questions in respect of the payment arising between the person to whom the payment is made and the surety or guarantor; and
- (b) grant relief in respect thereof notwithstanding that it is not necessary to do so for the purposes of the winding up, and may for that purpose give leave to bring in the surety or guarantor as a third party as in the case of an action for the recovery of the sum paid.

(3) Subsection (2) shall apply with the necessary modifications to a transaction other than payment of money as it applies to payment of money.

**441.** (1) A liquidator who wishes to have transactions under section 444 or any other voidable transaction under sections 446 and 447 set aside shall—

Procedure for setting aside voidable transactions and charges.

- (a) file in the court a notice to that effect specifying the transaction or charge to be set aside and, in the case of a transaction, the property or value which the liquidator wishes to recover and also the effect of subsections (2), (3) and (4); and
- (b) serve a copy of the notice on the other party to the transaction or the grantee of the charge and on every other person from whom the liquidator wishes to recover.

(2) A person—

- (a) who would be affected by the setting aside of the transaction or charge specified in the notice; and

- (b) who considers that the transaction or charge should not be set aside,

may apply to the court for an order that the transaction or charge not be set aside.

(3) Unless a person on whom the notice was served has applied to the court under subsection (2), the transaction or charge shall be set aside one month after the date of service of the notice.

(4) If one or more persons have applied to the court under subsection (2) the transaction or charges shall be set aside on the day on which the last application is finally determined unless the court orders otherwise.

Orders upon setting aside transaction or charges.

**442.** If a transaction or charge is set aside, the court may make one or more of the following orders:—

- (a) an order requiring a person to pay to the liquidator in respect of benefits received by that person as a result of the transaction or charge such sums as fairly represent those benefits;
- (b) an order requiring property transferred as part of the transaction to be restored to the company;
- (c) an order requiring property to be vested in the company if it represents in a person's hands the application of either proceeds of sale of property or of money so transferred;
- (d) an order releasing in whole or in part a charge given by the company;
- (e) an order requiring security to be given for the discharge of an order made under this section;
- (f) an order specifying the extent to which a person affected by the setting aside of a transaction or by an order made under this section is entitled to claim as a creditor in the liquidation.

**443.** (1) The setting aside of a transaction or an order made under section 442 does not affect the title or interest of a person in property which that person has acquired—

Additional provisions relating to setting aside transactions and charges.

- (a) from a person other than the company;
- (b) for valuable consideration; and
- (c) without knowledge of the circumstances under which the property was acquired from the company.

(2) The setting aside of a charge or an order made under section 442 does not affect the title or interest of a person in property which that person has acquired—

- (a) as the result of the exercise of a power of sale by the grantee of the charge;
- (b) for valuable consideration; and
- (c) without knowledge of the circumstances relating to the giving of the charge.

(3) Recovery by the liquidator of property or its equivalent value whether under this Act or under any other enactment may be denied wholly or in part if—

- (a) the person from whom recovery is sought received the property in good faith and has altered his position in the reasonably held belief that the transfer to that person was validly made and would not be set aside; and
- (b) in the opinion of the court it is inequitable to order recovery or recovery in full.

**444.** (1) Where—

Transactions at undervalue.

- (a) a transaction was entered into by a company within the specified period referred to in subsection (3);

- (b) the value of the consideration or benefit received by the company was less than the value of the consideration provided by the company or the company received no consideration or benefit; and
- (c) when the transaction was entered into the company-
  - (i) was unable to pay its due debts;
  - (ii) was engaged or about to engage in business for which its financial resources were unreasonably small; or
  - (iii) incurred an obligation knowing that the company would not be able to perform the obligation when required to do so;
- (d) when the transaction was entered into the other party to the transaction knew or ought to have known of the matter referred to in subparagraph (i), (ii) or (iii) as the case may be of paragraph (c),

the liquidator may recover from any other party to the transaction any amount by which the value of the consideration or benefit provided by the company exceeded the value of the consideration or benefit received by the company.

(2) Where—

- (a) a transaction was entered into by a company within the specified period;
- (b) the value of the consideration or benefit received by the company was less than the value of the consideration provided by the company or the company received no consideration or benefit;
- (c) the company became unable to pay its due debts as a result of the transaction; and

- (d) when the transaction was entered into the other party to the transaction knew or ought to have known that the company would become unable to pay its due debts as a result of the transaction,

the liquidator may recover from any other party to the transaction any amount by which the value of the consideration or benefit provided by the company exceeded the value of the consideration or benefit received by the company.

(3) For the purposes of this section—

- (a) “transaction” includes the giving of a guarantee by a company;
- (b) “specified period” means-
  - (i) the period of a year before the commencement of the winding up; and
  - (ii) in the case of a company that was put into winding up by the court, the period of a year before the making of the application to the court together with the period commencing on the date of the making of that application and ending on the date on which the order of the court was made.

**445.** (1) Where within the specified period referred to in subsection (4) a company has acquired a business or property from the services of—

- (a) a person who was at the time of the acquisition a director of the company or a nominee or relative of or a trustee for a relative of a director of the company;
- (b) a person or a relative of a person who at the time of the acquisition had control of the company;

Inadequate or excessive consideration for directors and certain other persons.

- (c) another company that was at the time of the acquisition controlled by a director of the company or a nominee or relative of or a trustee for a relative of a director of the company;
- (d) another company that was at the time of the acquisition a related company,

the liquidator may recover from the person relative company or related company as the case may be any amount by which the value of the consideration given for the acquisition of the business, property or services exceeded the value of the business, property or services at the time of the acquisition.

(2) Where within the specified period referred to in subsection (4) a company has disposed of a business or property or provided services or issued shares to—

- (a) a person who was at the time of the disposition or issue a director of the company or a nominee or relative of or a trustee for a relative of a director of the company;
- (b) a person or a relative of a person who at the time of the disposition, provision or issue had control of the company;
- (c) another company that was at the time of the disposition, provision or issue controlled by a director of the company or a nominee or relative of or a trustee for a relative of a director of the company; or
- (d) another company that at the time of the disposition, provision or issue was a related company, the liquidator may recover from the person, relative company or related company as the case may be, any amount by which the value of the business, property or services

or the value of the shares at the time of the disposition, provision or issue exceeded the value of any consideration received by the company.

(3) For the purposes of this section, the value of a business or property includes the value of any goodwill attaching to the business or property.

(4) For the purposes of subsections (1 and (2), “specified period” means—

- (a) the period of 3 years before the commencement of the winding up; and
- (b) in the case of a company that was put into winding up by the court the period of three years before the making of the application to the court together with the period commencing on the date of the making of the application and ending on the date on which the order of the court was made.

**446.** (1) Subject to subsection (2), if a company that is in liquidation is unable to meet all its debts, the court, on the application of the liquidator may order that a security or charge or part of it created by the company over any of its properties or undertaking in favour of—

Court to set aside certain securities and charges.

- (a) a person who was, at the time the security or charge was created a director of the company or a nominee or relative of or a trustee for a relative of a director of the company;
- (b) a person or a relative of a person who at the time when the security or charge was created had control of the company;
- (c) another company that was when the security or charge was created controlled by a director of the company or a nominee or relative of or a trustee for a relative of a director of the company ;



- (d) another company that at the time when the security or charge was created was a related company,

shall so far as any security on the property or undertaking is conferred be set aside as against the liquidator of the company if the court considers that having regard to the circumstances in which the security or charge was created the conduct of the person relative company or related company as the case may be in relation to the affairs of the company and any other relevant circumstances it is just and equitable to make the order.

(2) Subsection (1) does not apply to a security or charge that has been transferred by the person in whose favour it was originally created and has been purchased by another person (whether or not from the first mentioned person) if—

- (a) at the time of the purchase, the purchaser was not a person specified in any of paragraphs (a) to (d) of that subsection; and
- (b) the purchase was made in good faith and for valuable consideration.

(3) The court may make such other orders as it thinks proper for the purpose of giving effect to an order under this section.

Pooling of assets of related companies.

**447.** (1) On the application of the liquidator, a creditor or shareholder, the court, if satisfied that it is just and equitable to do so, may order that—

- (a) a company that is, or has been, related to the company in liquidation shall pay to the liquidator the whole or part of any or all of the claims made in the liquidation;
- (b) where two or more related companies are in liquidation, the liquidations in respect of each company must proceed together as if they were one company to the extent that the court so orders and subject to such terms and conditions as the court may impose.

(2) The court may make such other order or give such directions to facilitate giving effect to an order under subsection (1) as it thinks fit.

**448.** (1) In deciding whether it is just and equitable to make an order under paragraph (a) of subsection (1) of section 447, the court shall have regard to the following matters:—

Guidelines for orders.

- (a) the extent to which the related company took part in the management of the company in liquidation;
- (b) the conduct of the related company towards the creditors of the company in liquidation;
- (c) the extent to which the circumstances that gave rise to the liquidation of the company are attributable to the actions of the related company;
- (d) the extent to which the businesses of the companies have been combined;
- (e) such other matters as the court thinks fit.

(3) The fact that creditors of a company in liquidation relied on the fact that another company is, or was, related to it is not a ground for making an order under section 447.

**449.** (1) The Commission shall establish a fund to be called the Assetless Companies Fund, in this section called 'the Fund'.

Assetless Companies Fund.

(2) The Commission may invest money forming part of the Fund in such manner as it thinks fit.

(3) The Fund shall consist of—

- (a) all contributions paid under subsection (5);
- (b) all interest received from the investment of money forming part of the Fund; and
- (c) any other money lawfully paid into the Fund.

- (4) There shall be paid out of the Fund—
- (a) the expenses of maintaining and administering the Fund; and
  - (b) the amounts advanced from the Fund under subsection (6).

(5) A company that lodges an annual return shall pay to the Commission, at the time of lodging the return, such fee by way of contribution to the Fund as may be prescribed

(6) Where a company in liquidation does not have unencumbered assets immediately available to the liquidator of a value greater than Le10,000,000 or other prescribed amount (an “assetless company”), the Commission may make one or more advances from the Fund under this section, if it is satisfied that it would be in the interests of the company’s creditors or shareholders, or both, for the liquidator to—

- (a) make inquiries concerning the business, property, affairs or entitlements of the company; or
- (b) bring, continue or defend proceedings relating to the business, property or affairs of the company,

for the purpose of recovering, retaining or realising the company’s assets.

(7) Advances from the Fund under this section shall be of such amount as the Commission determines, having regard to the proposals of the liquidator for the conduct of the proceedings or the inquiry, and may be made in relation to any one or more stages of the proceedings or the inquiry, and on such terms and conditions as the Commission thinks fit.

(8) Advances from the Fund may include an amount to meet any costs awarded against the liquidator.

(9) Where an advance has been authorised by the Commission under subsection (6), the Commission has, in the liquidation of the company concerned, a claim to be repaid the amount of that advance.

(10) The Commission’s claim under subsection (9) shall be treated as an expense properly incurred by the liquidator under this Act.

**450.** (1) Where a company is being wound up, a floating charge on the undertaking or property of the company created within 6 months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequent to the creation of, and in consideration for, the charge, together with interest on that amount.

Effect of floating charge.

(2) Interest under subsection (1) shall be at prevailing bank rate.

**451.** (1) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable or not readily saleable or by reason of its binding the possession to the performance of any onerous act, or to the payment of any sum of money, the liquidator may, with the leave of the court and subject to this section, by writing signed by him, at any time within 12 months after the commencement of the winding up or such extended period as may be allowed by the court, disclaim the property.

Disclaimer of onerous property.

(2) Where such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power under this section of disclaiming the property may be exercised at any time within 12 months after he has become aware of it or such extended period as may be allowed by the court.

(3) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose

of releasing the company and the property of the company from liability, affect the rights or liabilities of the other person.

(4) The court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the court thinks just.

(5) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of 28 days after the receipt of the application or such further period as may be allowed by the court, given notice to the applicant that he intends to apply to the court for leave to disclaim.

(6) In the case of a contract, if the liquidator, after the application, does not, within the period or further period disclaim the contract, the company shall be deemed to have adopted it.

(7) The court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the court thinks just; and any damages payable under the order to the person may be proved by him as a debt in the winding up.

(8) The court may, on the application by a person who either claims any interest in any disclaimed property or is under a liability and on hearing such persons as it thinks fit, make an order for the vesting of the property in or to whom it may seem just that the property should be delivered by way of compensation for such liability, or a trustee for him, and on such terms as the court thinks just.

(9) On a vesting order being made, the property comprised in it shall vest accordingly in the person named in that behalf without any conveyance or assignment for the purpose.

(10) Where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee by demise, including a chargee by way of legal mortgage, except upon the terms of making that person—

- (a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or
- (b) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date, and in either event if the case so requires, the liabilities and obligations shall be as if the lease had comprised only the property comprised in the vesting order.

(11) If there is no person claiming under the company who is willing to accept an order upon such terms, the court shall have power to vest the property and interest in the property in any person liable either personally or in a representative capacity either alone or jointly with the company to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created in the lease by the company.

(12) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding-up.

**452.** (1) Where a creditor has issued execution against the goods or lands of a company or has attached any debt due to it, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the company unless he has completed the execution or attachment before the commencement of the winding up; but—

Restriction of rights of creditor in company being wound up.

- (a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding-up is to be proposed, the date on which the creditor had the notice shall for the purposes of subsection (1) be substituted for the date of the commencement of the winding up; and
  - (b) a person who purchases in good faith under a sale by the sheriff of any goods of a company on which execution has been levied shall in all cases acquire a good title to them against the liquidator.
- (2) For the purposes of this section—
- (a) an execution against goods shall be taken to be completed by seizure and sale;
  - (b) an attachment of a debt shall be deemed to be completed by receipt of the debt; and
  - (c) execution against land shall be deemed to be completed by seizure and , in the case of an equitable interest, by the appointment of a receiver.

(3) In this section the expression “goods” includes all chattels personal, and the expression “sheriff” includes any officer charged with the execution of a writ or other process.

Duties of sheriff as to goods taken in execution.

**453.** (1) Where any goods of a company are taken in execution, and, before the sale or completion of the execution by the receipt or recovery of the full amount of the levy, the Sheriff is notified in writing that a provisional liquidator has been appointed or that a winding-up order has been made or that a resolution for voluntary winding-up has been passed, the Sheriff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator; but the costs of the execution shall be a first charge on the goods, or money so delivered and the liquidator may sell the goods, or sufficient part of them, for the purpose of satisfying that charge.

(2) Where under an execution in respect of a judgement for a sum exceeding Le3,000,000 the goods of a company are sold or money is paid in order to avoid the sale, the Sheriff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for 14 days.

(3) If within the time notice is served on the Sheriff of a petition for the winding-up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company and an order is made or a resolution is passed, as the case may be, for the winding up of the company, the Sheriff shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.

(4) The rights conferred by this section on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit.

(5) In this section the expression “goods” includes all chattels personal, and the expression “Sheriff” includes any officer charged with execution of a writ or other process.

#### Offences antecedent to or in course of winding up.

**454.** (1) If any person, being a past or present director, manager or other officer of a company which at the time of the commission of the alleged offence is being wound up, whether by or under the supervision of the court or voluntarily, or is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up—

Offences by officers of companies in liquidation.

- (a) does not to the best of his knowledge and belief fully and truly disclose to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company;

- (b) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up;
- (c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up;
- (d) within 12 months before the commencement of the winding up or at any time after that conceals any part of the property of the company to the value of Le8,000,000 or more or conceals any debt due to or from the company;
- (e) within 12 months before the commencement of the winding up or at any time after that fraudulently removes any part of the property of the company ;
- (f) makes any material omission in any statement relating to the affairs of the company;
- (g) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the liquidator;
- (h) after the commencement of the winding-up prevents the production of any book or paper affecting or relating to the property or affairs of the company;
- (i) within 12 months before the commencement of the winding-up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction,

- mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company;
- (j) within 12 months before the commencement of the winding up or at any time after that makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company;
- (k) within 12 months before the commencement of the winding up or at any time after that fraudulently parts with, alters, or makes any omission in, is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company;
- (l) after commencement of the winding up or at any meeting of the creditors of the company within 12 months next before the commencement of the winding up attempts to account for any part of the property of the company by fictitious losses or expenses;
- (m) has within 12 months before the commencement of the winding up or at any time after that by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for ;
- (n) within 12 months before the commencement of the winding-up or at any time after that, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for;

- (o) within 12 months before the commencement of the winding-up or at any time after that pawns, pledges, or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging, or disposal is in the ordinary way of the business of the company, or
- (p) by any false representation or other fraud obtains the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up,

shall be guilty of an offence, and in the case of the offences in paragraphs (m), (n) and (o) be liable to imprisonment for a term not exceeding three years, and in the case of any other offence shall be liable to imprisonment for a term not exceeding 2 years.

- (2) It shall be a valid defence—
  - (a) to a charge under paragraphs (a), (b), (c), (d), (f), (n) and (o) of subsection (1), if the accused person proves that he had no intent to defraud; and
  - (b) to a charge under paragraphs (h), (i) and (j) of subsection (1) if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(3) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under paragraph (o) of subsection (1), any person who takes in pawn, or pledge or otherwise receives the property knowing it to be pawned, pledged, or disposed of in such circumstances shall be guilty of an offence, and shall be liable to be punished in the same way as if he had received the property knowing it to have been obtained in circumstances amounting to a misdemeanour.

(4) For the purposes of this section, the expression “director” shall include any person in accordance with whose directions or instructions the directors of a company are accustomed to act and “past director” means a person who was a director 12 months before the commencement of the winding up.

**455.** Any director, manager or other officer, or contributory of any company being wound up who- Penalty for falsification of books.

- (a) destroys, mutilates, alters or falsifies any books, papers or securities: or
- (b) makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the company with intent to defraud or deceive any person, shall be guilty of an offence and be liable to a term of imprisonment not exceeding 2 years.

**456.** (1) Where a company is ordered to be wound up by a court or passes a resolution for voluntary winding up, a person is deemed to have committed an offence if he, being a director, manager or other officer of the company with intent to defraud- Fraud by officers of companies which have gone into liquidation.

- (a) creditors of the company, has made or causes to be made any gift or transfer of or charge on or has caused or connived at the levying of any execution;
- (b) conceals or removes any part of the company’s property since or within 2 months before the date of any unsatisfied judgement or order for the payment of money obtained against the company; or
- (c) has by false pretences or by means of any other fraud induced any person to give credit to the company.

(2) Any person convicted under subsection (1) shall be liable to a term of imprisonment not exceeding 2 years.

Liability where proper accounts not kept.

**457.** (1) If, where a company is being wound up it is shown that proper books of account were not kept by the company throughout the period of 2 years preceding the commencement of the winding-up, every director, or manager or other officer of the company who was knowingly a party to or connived at the default of the company, unless he shows that he acted honestly or that in the circumstances in which the business of the company was carried on the default was excusable, shall be guilty of an offence and be liable to a term of imprisonment not exceeding 2 years.

(2) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any company-

- (a) if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid; and,
- (b) where the trade or business has involved dealings in goods, statements of the annual stock-takings and, except in the case of goods sold by way of ordinary retail trade, of goods sold and purchased, showing the goods and buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

Responsibility of directors for fraudulent trading.

**458.** (1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company for any fraudulent purpose, the court, on the application of the official receiver, or the liquidator or any creditor or contributory of the company, may, if it thinks proper, declare that any of the directors, whether past or present, of the company who were knowingly parties to the carrying on of the business in the manner mentioned in this subsection shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court may direct.

(2) On the hearing of the application, the official receiver or the liquidator, as the case may be, may himself give evidence or call witnesses.

(3) Where the court makes such a declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may-

- (a) provide for making the liability of such a director under the declaration, a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any company or person on his behalf, or any person claiming as assignee from or through the director, company or person; and
- (b) from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection.

(4) For the purposes of subsection (3), the expression "assignee" includes-

- (a) any person to whom or in whose favour, by the directions of the director, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created; but
- (b) does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(5) Where any business of a company is carried on with intent to defraud or for such purpose as is mentioned in subsection (1), every director of the company who was knowingly a party to the carrying on of the business in the manner mentioned shall be guilty of an offence and be liable on conviction to a term of imprisonment not exceeding one year.

- (6) The court may—
- (a) in the case of any person in respect of whom a declaration has been made under subsection (1) or who has been convicted of an offence under subsection (5), 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 in or take part in the management of a company for such period, not exceeding 5 years, from the date of the declaration or of the conviction, as the case may be; and
  - (b) if any person acts in contravention of an order made under this subsection he shall, in respect of each offence, be liable on conviction to a fine not exceeding Le5,000,000 or to a term of imprisonment not exceeding 2 years, or to both the fine and imprisonment.
- (7) In subsection (6) the expression “the court”—
- (a) in relation to the making of an order, means the court by which the declaration was made or the court before which the person was convicted as the case may be; or
  - (b) in relation to the granting of leave means any court having jurisdiction to wind up the company.
- (8) For the purposes of this section, the expression “director” shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

**459.** (1) If in the course of winding-up a company it appears that any person who has taken part in the formation or promotion of the company or any past or present director, manager or liquidator or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the official receiver, or of the liquidator, or of any creditor or contributory, examine the conduct of the promoter, director, manager, liquidator or officer, and compel him to—

Power of court to assess damages against delinquent directors.

- (a) repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just; or
- (b) contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the court thinks just.

(2) This section shall have effect notwithstanding that the offence is one for which the offender may be criminally liable.

(3) Where in the case of a winding-up an order for payment of money is made under this section, the order shall be deemed to be a final judgment against the person against whom the order is made.

**460.** (1) If it appears to the court in the course of a winding up by, or subject to the supervision of, the court that any past or present director, manager or other officer, or any member of the company has committed an offence in relation to the company for which he is criminally liable, the court may, either on the application of the person interested in the winding up or of its own motion, direct the liquidator either himself to prosecute the offender or to refer the matter to the Attorney-General.

Prosecution of delinquent officers and members of company.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager or other officer, or any member, of the company has committed any offence in relation to the company for which he is criminally liable he shall—



- (a) forthwith report the matter to the Attorney-General; and
- (b) furnish to the Attorney-General such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as he may require.

(3) Where any report is made under subsection (2) to the Attorney-General he may, if he thinks fit, apply to the court for an order conferring on him or any person designated by him for the purpose with respect to the company concerned, all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the court.

(4) If, on any report to the Attorney-General under subsection (2) it appears to him that the case is not one in which proceedings ought to be taken by him, he shall inform the liquidator accordingly, and then, subject to the approval of the court, the liquidator may himself take proceedings against the offender.

(5) If it appears to the court in the course of a voluntary winding up that any past or present director, manager or other officer, or any member, of the company has committed an offence, and that no report with respect to the matter has been made by the liquidator to the Attorney-General under subsection (2) the court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report; and on a report being made this section shall have effect as though the report had been made in pursuance of subsection (2).

(6) If, where any matter is reported or referred to the Attorney-General, he considers—

- (a) that the case is one in which a prosecution ought to be instituted; and
- (b) that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him,

he shall institute proceedings accordingly, and it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which he is reasonably able to give.

(7) For the purposes of subsection (6), the expression “agent” in relation to a company shall include any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(8) If any person fails or neglects to give assistance in the manner required by subsection (7)—

- (a) the court may, on the application of the Attorney-General, direct that person to comply with the requirements of that subsection; and
- (b) where an application is made with respect to a liquidator the court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him to do so, direct that the costs of the application shall be borne by the liquidator personally.

(9) The Minister may direct that the whole or any part of any costs and expenses properly incurred by the liquidator in proceedings duly brought by him under this section shall be defrayed out of the Consolidated Fund.

(10) Subject to any direction under subsection (9) and to mortgages or charges on the assets of the company and any debts to which priority is given by section 154 all costs and expenses shall be payable out of those assets in priority to all other liabilities payable.

(11) In this section, “Attorney-General” means Attorney-General and Minister of Justice.

### Supplementary provisions as to winding up

Disqualifications for appointment as liquidator.

**461.** (1) The following persons shall not be competent to be appointed or to act as liquidator of a company, whether in a winding up by, or under the supervision of the court, or in a voluntary winding up:—

- (a) a person below the age of 18 years;
- (b) any person found by the court to be of unsound mind;
- (c) a body corporate;
- (d) an undischarged bankrupt;
- (e) an officer or contributory of the company under liquidation;
- (f) any person convicted of any offence involving fraud, dishonesty, official corruption or moral turpitude and in respect of whom there is a subsisting order under section 218.

(2) An appointment made in contravention of subsection (1) shall be void and if any of the persons named in paragraphs (c), (d), (e), and (f) of that subsection acts as a liquidator of the company he shall be guilty of an offence and be liable to a fine not exceeding Le5,000,000 .in the case of a body corporate or, in the case of an individual, to imprisonment for a term not exceeding 6 months or to a fine not exceeding Le5,000,000 or to both the imprisonment and fine.

Corrupt inducement affecting appointment as liquidator.

**462.** Any person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator, shall be guilty of an offence and be liable to imprisonment for a term not exceeding one year.

**463.** (1) If a liquidator defaults in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, and fails to make good the default within 14 days after the service on him of a notice requiring him to do so, the court may, on the application made to the court by any contributory or creditor of the company or by the Commission, make an order directing the liquidator to make good the default within such time as is specified in the order.

Enforcement of duty of liquidator to make returns, etc.

(2) Any order under this section may provide that the costs of any expenses incidental to the application shall be borne by the liquidator and nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a liquidator in respect of the default.

**464.** (1) Where a company is being wound up, whether by or under the supervision of the court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

Notification that company is in liquidation.

(2) If default is made in complying with this section, the company and every director, manager, secretary or other officer of the company, and every liquidator of the company and every receiver or manager, who knowingly and wilfully authorises or permits the default commits an offence and is liable on conviction to a fine not exceeding Le3,000,000 or to a term of imprisonment not exceeding one year or to both the fine and imprisonment.

**465.** (1) In the case of a winding up by the court, or of a creditors' voluntary winding up of a company—

Exemption of certain documents from stamp duty on winding up of companies.

- (a) every assurance relating solely to freehold or leasehold property, or to any mortgage, charge or other encumbrance on, or any estate, right or interest in, any real or personal property, which forms part of the assets of the company and which, after the execution of the assurance, either at law or in equity, is or remains part of the assets of the company; and

- (b) every power of attorney, proxy paper, writ, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of any company which is being so wound up, or to any proceeding under such a winding up,

Cap 274. shall be exempt from duties chargeable under the Stamp Duty Act.

(2) In this section the expression “assurance” includes deed, transfer, assignment and surrender.

Books of company to be evidence.

**466.** Where a company is being wound up, and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows:—

- (a) in the case of a winding up by, or subject to the supervision of, the court in such way as the court directs;
- (b) in the case of a members’ voluntary winding up, in such way as the company by special resolution directs; and
- (c) in the case of a creditors’ voluntary winding up, in such way as the committee of inspection or, if there is no committee, as the creditors of the company, may direct.

(2) After 5 years from the dissolution of the company no responsibility shall rest on the company, the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested in it.

(3) The Minister may, by statutory instrument, make rules to prevent, for any period not exceeding five years from the dissolution of the company, the destruction of the books and papers of a company which has been wound up, and for enabling any creditor or contributory of the company to appeal to the court from any direction which may be given in the matter.

**467.** (1) If, where a company is being wound up the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding-up is concluded, send to the Commission a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

Information as to pending liquidations.

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy of it or extract from it.

(3) If a liquidator fails to comply with this section, he shall be guilty of an offence and be liable to a fine of Le500,000 for each day during which the default continues, and any person untruthfully stating himself to be a creditor or contributory shall be guilty of an offence and be liable to a fine not exceeding Le5,000,000.

**468.** (1) If, where a company is being wound up, it appears either from any statement sent to the Commission under section 467, or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for 6 months after the date of their receipt, the liquidator shall forthwith pay the money into the Companies Liquidation Account, and shall be entitled to the prescribed certificate of receipt for the money so paid; and that certificate shall be an effectual discharge to him.

Unclaimed assets to be paid into Companies Liquidation Account.

(2) For the purpose of ascertaining and getting in any money payable to the Commission in pursuance of this section, the same powers may be exercised, and by the same authority, as are exercisable under any enactment regarding bankruptcies for the purpose of ascertaining and getting in the sums, funds and dividends referred to in this section.

(3) Any person claiming to be entitled to any money paid to the Commission in pursuance of this section may apply to the Commission for payment, and the Commission may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due.

(4) Any person dissatisfied with the decision of the Commission in respect of any claim made in pursuance of this section may appeal to the court.

Resolutions passed at adjourned meetings of creditors and contributories

**469.** Where after the commencement of this Act a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

#### Supplementary powers of court

Meetings to ascertain wishes of creditors or contributories.

**470.** (1) The court may—

- (a) as to all matters relating to the winding up of a company, have regard to the wish of the creditors or contributories of the company, as proved to it by any sufficient evidence; and
- (b) if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the court directs, and may appoint a person to act as chairman of such meeting and to report the result to the court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the articles.

Affidavits, etc., in Sierra Leone and elsewhere.

**471.** (1) An affidavit required to be sworn under or for the purposes of this Part may be sworn in Sierra Leone or elsewhere in accordance with the Statutory Declarations Act, 1835 or under any enactment providing for the making of an affidavit.

(2) All courts, judges, justices, commissioners and persons acting judicially in Sierra Leone shall take judicial notice of the seal or stamp or signature, as the case may be, of such court,

judge, person, consul or vice-consul attached, appended or subscribed to such an affidavit, or to any other document to be used for the purposes of this Part.

**472.** In all proceedings under this Part, all courts, judges and persons acting judicially, and all officers, judicial or ministerial, of any court or employed in enforcing the process of the court, shall take judicial notice of the signature of any officer of the court and also of the official seal or stamp of the court appended to or impressed on any document made, issued or signed under this Part, or on any official copy of such a document.

Judicial notice of signature of officers.

#### Provisions as to dissolutions

**473.** (1) Where a company has been dissolved, the court may, at any time within 2 years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void.

Power of court to declare dissolution of company void.

(2) Thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(3) It shall be the duty of the person on whose application the order was made, within 7 days after the making of the order, or such further time as the court may allow, to deliver to the Commission for registration an office copy of the order and if that person fails to do so he shall be guilty an offence and be liable to a fine of Le500,000 for each day during which the default continues.

**474.** (1) If the Commission has reasonable cause to believe that a company is not carrying on business or is not in operation, it may send to the company by post a letter enquiring whether the company is carrying on business or is in operation.

Commission to strike defunct company off register.

(2) If the Commission does not, within one month of sending the letter receive any answer to the letter, it shall, within 14 days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer

thereto has been received, and that if an answer is not received to the second letter within one month from the date of sending the letter a notice will be published in the Gazette and in a local newspaper with a view to striking the name of the company off the register.

(3) If the Commission either receives an answer to the effect that the company is not carrying on business or is not in operation, or does not within one month after sending the second letter receive any answer, it may publish in the Gazette and in a local newspaper, and send to the company by post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned in the letter will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in a case where a company is being wound up, the Commission has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months, it shall publish in the Gazette and in a local newspaper and send to the company or the liquidator, if any, a notice as is provided in subsection (3).

(5) At the expiration of the time mentioned in the notice, the Commission may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice of it in the Gazette and in a local newspaper, and on the publication in the Gazette of this notice the company shall be dissolved:

Provided that—

- (a) the liability, if any, of every director, manager officer, and member of the company shall continue and may be enforced as if the company had not been dissolved; and
- (b) nothing in this subsection shall affect the power of the court to wind up a company the name of which has been struck off the register.

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the court on an application made by the company or member or creditor

before the expiration of 20 years from the publication in the Gazette and in the local newspaper may, if satisfied that the company was at the time of the striking off carrying on business or in operation or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register.

(7) On a certified copy of the order being delivered to the Commission for registration, the company shall be deemed to have continued in existence as if its name had not been struck off.

(8) The court may, by order give such directions and make such provisions as it thinks just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(9) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business; and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director or officer of the company.

(10) If there is no director or officer of the company whose name and address are known to the Commission, the notice may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

**475.** Where a company is dissolved, all property and rights whatsoever vested in or held in trust for the company immediately before its dissolution (including leasehold property but not including property held by the company in trust for any other person) shall, subject and without prejudice to any order which may at any time be made by the court under sections 473 and 474, be deemed to be *bona vacantia*. Property of dissolved company to be *bona vacantia*

#### Returns by officers of court

**476.** The officers of the court acting in the winding up of companies shall make to the Commission such returns of the business of their respective courts and offices, at such times, and in such manner and form as may be prescribed, and from those returns the Commission shall cause books to be prepared which shall be opened for public information and searches. Returns by officers in winding up.

### Accounts to be prepared annually

Annual accounts of company winding up and disposal.

**477.** The Commission and every officer by whom fees are taken under this Act in relation to the winding up of companies shall make returns and give information to the Auditor-General in such form as he may require; and the accounts of the Commission relating to the winding up of companies shall be audited as soon as may be after the end of each year by the Auditor-General or an auditor appointed by him.

### PART XVII—ARRANGEMENTS AND COMPROMISES

Power to compromise with creditors and members.

**478.** (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them or between the company and its members or any class of them the court may—

- (a) on the application in a summary way of the company or of any creditor or member of the company;  
or
- (b) in the case of a company being wound up, of the liquidator,

order a meeting of the creditors or class of creditors or of the members of the company or class of members as the case may be, to be summoned in such manner as the court may direct.

(2) If three-fourths of the creditors in value or class of creditors or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement, shall, if sanctioned by the court be binding on—

- (a) all the creditors or class of creditors;
- (b) the members or class of members;
- (c) the company or in the case of a company being wound up, on the liquidator and contributories of the company.

(3) An order made under subsection (2) shall have no effect until a certified copy of the order has been delivered to the Commission for registration.

(4) A copy of every order shall be annexed to every copy of the memorandum of the company issued after the order has been made, or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

(5) If a company defaults in complying with subsection (4) the company and every officer of the company who is in default shall be guilty of an offence and be liable to a fine not exceeding Le500,000 for each day in which the default continues.

(6) In this section the expression—

- (a) “company” means any company liable to be wound up under this Act; and
- (b) “arrangement” includes a reorganisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods.

**479.** (1) Where a meeting of creditors or class of creditors or of members or any class of members are summoned every notice summoning the meeting sent to a creditor or member shall be accompanied with—

Information on compromise to be circulated.

- (a) a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors of the company, whether as directors or members or creditors of the company or otherwise; and
- (b) the effect of the compromise or arrangement on those interests, in so far as it is different from the effect on similar interests of other persons.

(2) In every notice summoning the meeting which is given by advertisement there shall be included such a statement as is mentioned in subsection (1) or a notification of the place at which, and the manner in which, creditors or members entitled to attend the meeting may obtain copies of the statement.

(3) Where the compromise or arrangement affects the rights of debenture holders of the company, the statement shall give the same explanation in respect of the trustees of any deed for securing the issue of the debentures as it is required to give in respect of the directors of the company.

(4) Where a notice given by advertisement includes a notification that copies of a statement explaining the effect of the compromise or arrangement can be obtained by creditors or members entitled to attend the meeting, every creditor or member shall, on making the application in the manner indicated by the notice, be furnished by the company free of charge with a copy of the statement.

(5) If a company defaults in complying with any requirement of this section, the company and every officer of the company shall be guilty of an offence and be liable on conviction to a fine not exceeding Le3,000,000.

(6) For the purposes of subsection (5), a liquidator of the company and a trustee of a deed for securing the issue of debentures of the company shall be deemed to be officers of the company.

(7) No person shall be liable under subsection (5) if he shows that the default was due to the refusal of another person, being a director or trustee for debenture holders, to supply the necessary particulars of his interest.

(8) It is the duty of any director of the company and of any trustee for its debenture holders to give notice to the company of such matters relating to himself as may be necessary for the purposes of this section, and any person who defaults in complying with this subsection shall be guilty of an offence and be liable on conviction to a fine not exceeding Le3,000,000

**480.** (1) Where an application is made to the court under section 478 for the sanctioning of a compromise or arrangement proposed between a company and such persons as are mentioned in that section, and it is shown to the court that—

Provisions for facilitating reconstruction and amalgamation of companies.

- (a) the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies; and
- (b) that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as “a transferor company”) is to be transferred to another company (in this section referred to as “the transferee company”), the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters:—
  - (i) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;
  - (ii) the allotting or appropriation by the transferee company of any shares, debentures, policies or other similar interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;
  - (iii) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
  - (iv) the dissolution, without winding up, of any transferor company;

- (v) the provision to be made for any persons, who within such time and in such manner as the court directs dissent from the compromise or arrangement;
- (vi) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities then—

- (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 the liabilities of,

the transferee company, and in the case of any property, if the order so directs, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause a certified copy thereof to be delivered to the Commission for registration within 7 days after the making of the order; and if default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a fine of Le500,000 for each day that the default continues.

(4) In this section the expression “property” includes property rights and powers of every description, and the expression “liabilities” includes duties.

Power to acquire shares of dissenting minority.

**481.** (1) This section applies where a scheme or contract involving the transfer of shares or any class of shares in a transferor company to the transferee company has, within 4 months after the making of the offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary.

(2) In the circumstances referred to in subsection (1), the transferee company may, at any time within 2 months after the expiration of the 4 months referred to in subsection (1), give notice to any dissenting shareholder that it desires to acquire his shares.

(3) The expression “dissenting shareholder” includes a shareholder who has not assented to the scheme or contract, and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

(4) If the notice referred to in subsection (2) is given, the transferee company is then, (unless on an application made by the dissenting shareholder within one month from the date on which the notice was given, the court thinks fit to order otherwise), entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company.

(5) But where shares in the transferor company of the same class or classes as the shares whose transfer is involved are already held (at the date of the offer) by, or by a nominee for, the transferee company or its subsidiary to a value greater than one-tenth of the aggregate of their value and that of the shares (other than those already so held) whose transfer is involved, subsections (2) and (4) do not apply unless—

- (a) the transferee company offers the same terms to all holders of the shares (other than those already so held) whose transfer is involved or, where those shares include shares of different classes, of each class of them; and
- (b) the holders who approve the scheme or contract, besides holding not less than nine-tenths in value of the shares (other than those so held) whose transfer is involved, are not less than three-fourths in number of the holders of those shares.



Dissentient's  
right to  
compel  
acquisition  
of his shares.

**482.** (1) This section applies where, in pursuance of such a scheme or contract as is referred to in section 481, shares in a company are transferred to another company or its nominee, and those shares (together with any other shares in the first-mentioned company held by, or by a nominee for, the transferee company or its subsidiary at the date of the transfer) comprise or include nine-tenths in value of the shares in the first mentioned company or of any class of those shares.

(2) The transferee company shall, within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement), give notice of that fact in the prescribed manner to the holders of the remaining shares or of the remaining shares of that class (as the case may be) who have not assented to the scheme or contract.

(3) Such a holder may, within 3 months from the giving of that notice to him, himself give notice (in the prescribed form) requiring the transferee company to acquire the shares in question.

(4) If a shareholder gives notice under subsection (3) with respect to any shares, the transferee company is then entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to it, or on such other terms as may be agreed or as the court on the application of either the transferee company or the shareholder thinks fit to order.

Provisions  
supplementing  
section  
481.

**483.** (1) Where notice has been given by the transferee company under subsection (2) of section 481 and the court has not, on an application made by the dissenting shareholder, ordered the contrary, subsections (2), (3) and (4) shall apply.

(2) The transferee company shall, on expiration of one month from the date on which the notice has been given (or, if an application to the court by the dissenting shareholder 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 shareholder by any person appointed by the transferee company and on its own behalf by the transferee company.

(3) An instrument of transfer is not required for any share for which a share warrant is for the time being outstanding.

(4) The transferee company shall also pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of subsection (4) of section 481 that company is entitled to acquire; and the transferor company shall thereupon register the transferee company as the holder of those shares.

(5) Any sums received by the transferor company under this section shall be paid into a separate bank account, and such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which those sums, or that other consideration, were respectively received.

PART XVIII—COMPANIES INCORPORATED OUTSIDE  
SIERRA LEONE AND CARRYING ON BUSINESS WITHIN  
SIERRA LEONE

**484.** This Part shall apply to—

- (a) all companies incorporated outside Sierra Leone which, after the commencement of this Act, establish a place of business within Sierra Leone; and,
- (b) all companies incorporated outside Sierra Leone which have, before the commencement of this Act, established a place of business within Sierra Leone and continue to have an established place of business within Sierra Leone after the commencement.

Companies  
to which  
this Part  
applies.

**485.** Every company incorporated outside Sierra Leone which, at the commencement of this Act, has a place of business in Sierra Leone and every company which, after the commencement of this Act, establishes a place of business within Sierra Leone shall within 3 months from the commencement of this Act or within one month from the establishment of the place of business, deliver to the Commission for registration—

- (a) a certified copy of the charter, statutes or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English language, a certified translation thereof;

Documents,  
etc., to be  
delivered to  
Commission  
by companies  
carrying on  
business in  
Sierra Leone.

- (b) the full address of the registered or principal office of the company and their principal place of business in Sierra Leone;
- (c) the present name and any former forename or surname, address and occupation of the person authorised to manage the company in Sierra Leone;
- (d) a list of the directors of the company, containing such particulars with respect to the directors as are by this Act required to be contained with respect to directors in the register of the directors of a company;
- (e) the names and addresses of one or more persons resident in Sierra Leone authorised to accept on behalf of the company service of process and any notices required to be served on the company; and
- (f) the certificate of incorporation or similar document and a statutory declaration by a director stating that the company exists in the country of incorporation,

and in the event of any alteration being made in the instrument or in the address or in the directors or managers or in the names or addresses of such persons, the company shall, within 3 months of the alteration deliver to the Commission a notice of the alteration.

Balance sheet of company carrying on business in Sierra Leone.

**486.** (1) Every company to which this Part applies shall in every calendar year make out a balance sheet in respect of its business activities in Sierra Leone in the form, and containing the particulars and including the documents, as under this Act it would if it had been a company within the meaning of this Act, have been required to make out and lay before the company in general meeting, and deliver a copy of that balance sheet to the Commission for registration.

(2) If the balance sheet is not written in the English language, there shall be annexed to it a certified translation thereof.

**487.** Every company to which this Part applies shall—

- (a) in every prospectus inviting subscriptions for its shares or debentures in Sierra Leone state the country in which the company is incorporated;
- (b) conspicuously exhibit on every place where it carries on business in Sierra Leone the name of the company and the country in which the company is incorporated;
- (c) cause the name of the company and of the country in which the company is incorporated to be stated in legible characters in all bill-heads and letter papers, and in all notices, advertisements and other official publications of the company; and
- (d) if the liability of the members of the company is limited, cause notice of that fact to be stated in legible characters in every prospectus and in all bill-heads, letter papers, notices, advertisements and other official publications of the company in Sierra Leone and to be affixed on every place where it carries on its business.

Obligation to state name of company, etc.

**488.** Any process or notice required to be served on a company to which this Part applies shall be sufficiently served if addressed to any person whose name has been delivered to the Commission under this Part and left at or sent by post to the address which has been so delivered; and—

Service on company to which this Part applies.

- (a) where the company defaults in delivering to the Commission the name and address of a person resident in Sierra Leone who is authorised to accept on behalf of the company service of process or notices; or
- (b) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the company, or for any reason cannot be served,

a document may be served on the company by leaving it at or sending it by post to the principal place of business established by the company in Sierra Leone.

Commission to be notified when company ceases to have place of business in Sierra Leone.

**489.** If any company to which this Part applies ceases to have a place of business in Sierra Leone it shall forthwith give notice of the fact to the Commission, and as from the date on which notice is so given the obligation of the company to deliver any document to the Commission shall cease.

Notification of winding up of company incorporated outside Sierra Leone.

**490.** (1) Where, in the case of a company incorporated outside Sierra Leone—

- (a) a winding up order is made by a court of the country in which the company is incorporated;
- (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 managers and agents of the company shall, within 28 days thereafter cause notice to be given to the Commission who shall register and cause the particulars contained in the register to be published in the *Gazette*.

(2) Where such events have occurred as are referred to in paragraph (a) or (b) of subsection (1) the local managers of the company shall, on every invoice, order or business letter issued in Sierra Leone by or on behalf of the company, being a document on or in which the company's name appears, cause a statement to appear in legible letters to the effect that the company is being wound up in the country where it is incorporated.

(3) If any person carries on in Sierra Leone 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 he shall be guilty of an offence and be liable to a fine not exceeding Le500,000 for each day during which he continues to do so.

**491.** (1) If a company incorporated outside Sierra Leone ceases to have an established place of business in Sierra Leone it shall, within 28 days after so ceasing, give notice thereof to the Commission in duplicate and the Commission shall register the notice and cause a copy of it to be published in the *Gazette*.

Cessation of business of company incorporated outside Sierra Leone.

(2) The Commission shall then strike the name of the company off the register.

(3) After notice has been given to the Commission in accordance with subsection (1) and so long as the company has no established place of business in Sierra Leone then except as provided in subsection (6), no person shall be under any obligation to deliver any document relating to that company to the Commission pursuant to this Act.

(4) Where the Commission has reasonable cause to believe that a company incorporated outside Sierra Leone has ceased to have a place of business in Sierra Leone, it may send by registered post to the registered local manager and agent and, if more than one, to all such persons, a letter enquiring whether the company is maintaining an established place of business in Sierra Leone.

(5) If the Commission receives an answer to the effect that the company has ceased to have an established place of business in Sierra Leone or does not, within three months, receive any reply, it may strike the name of the company off the register.

(6) At any time within 6 years after the date on which the company was struck off the register under subsections (1),(2), (4) and (5) , all persons shall continue to have a right to inspect the documents relating to that company; and during those 6 years, the company shall, notwithstanding subsection (3) continue to give notice of any alteration in the names of the company's agents.

Penalties.

**492.** (1) Unless otherwise provided in this Act, if any company to which this Part applies fails to comply with any of the provisions of this Part the company, and every officer or agent of the company shall be guilty of an offence and be liable to a fine not exceeding Le.5,000,000 or, in the case of a continuing offence Le.500,000.for each day during which the default continues.

(2) If a company defaults in delivering to the Commission any document required under section 485 to be delivered for registration, its rights under or arising out of any contract made in Sierra Leone during the time of the default continues shall not be enforceable by action or other legal proceedings.

(3) The company may apply to the court for relief against the disability imposed by subsection (2) and the court may on being satisfied that it is just and equitable to grant relief, grant such relief either generally or as respects any particular contract and on such conditions as it may impose.

(4) Nothing in this section shall prejudice the rights of any other parties against the company in respect of that contract.

(5) If an action or proceeding is commenced by any other party against that party in respect of the contract nothing shall preclude the company from enforcing in that action or proceeding by way of counterclaim, set off or otherwise, such rights as it may have against that party in respect of the contract.

Interpretation.

**493.** For the purposes of this Part the expression-

- (a) "certified" means certified in the prescribed manner to be a true copy or a correct translation;
- (b) "director" in relation to a company includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;
- (c) "prospectus" has the same meaning as when used in relation to a company incorporated under this Act;
- (d) "place of business" means a branch, management, shares, transfer or registration office, factory, mine or 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 company or maintains a stock of merchandise belonging to that company from which he regularly fills orders on its behalf but-
  - (i) a company shall not be deemed to have a place of business in Sierra Leone merely because it carries on business dealings in Sierra Leone through a *bona fide* broker or general commission agent acting in his business as such; or
  - (ii) the fact that a company has a subsidiary which is registered, resident or carrying on business in Sierra Leone whether through a place of business or otherwise shall not itself constitute the place of business of that subsidiary.

## PART XIX—DEALINGS IN COMPANIES' SECURITIES

Regulations.

**494.** (1) The Commission may make regulations for the purpose of giving effect to the provisions of this Part and may, in particular, make regulations—

- (a) prescribing the forms for returns and other information required under this Part;
- (b) requiring returns to be made, within a specified time, if any, by any company or enterprise to which this Part applies;
- (c) prescribing the procedure and criteria for approval of mergers, acquisitions, take-overs, amalgamations and business combinations under this Act;
- (d) prescribing any fees payable under this Part;
- (e) prescribing the formula for the calculation of the price at which securities may be bought or sold; or
- (f) prescribing the information to be contained in any prospectus or trust deed filed under this Part.

(2) Any regulations made pursuant to subsection (1) may, where appropriate prescribe penalties not exceeding a fine of Le500,000 for each day during which a default continues, or imprisonment for a term not exceeding 6 months or both the fine and imprisonment for any contravention of any of the regulations.

(3) This section shall not apply to any company whose shares are listed on the stock exchange under any enactment regulating securities.

**Invitations to the public**

**495.** (1) It shall not be lawful for any person to make any invitation to the public— Control of public invitations.

- (a) to acquire or dispose of any securities of a company;
- (b) to deposit money with any company for a fixed period or payable at call, whether bearing interest,

unless the company concerned is a public company and the provisions of sections 495 to 508 are duly complied with or the company is licensed under the Banking Act, 2000 to carry on banking business. Act No. 10 of 2000.

(2) Nothing in this subsection shall render unlawful the sale of any shares by or under the supervision of the court.

(3) If any invitation to the public is made in breach of subsection (1), all persons making the invitation and every officer who is in default or any body corporate making the invitation shall be guilty of an offence and be liable on conviction in the case of a body corporate to a fine not exceeding Le8,000,000 and in any other case to a fine not exceeding Le5,000,000 or to a term of imprisonment not exceeding 2 years or to both the fine and imprisonment.

(4) If, as a result of any invitation to the public in breach of subsection (1), any person acquires or disposes of any securities or deposits money with any company, he shall be entitled to rescind such transactions and either in addition to or instead of rescinding, to recover compensation for any loss sustained by him from any person who is liable whether convicted or not in respect of the breach.

(5) Where, in accordance with subsection (3), any person claims to rescind any transaction, he must do so with reasonable promptitude and shall not be entitled to rescind any transaction with the company from it unless he takes steps to rescind before the commencement of the winding-up of the company; but the fact that it is too late to rescind shall not prejudice his right to recover compensation from any person other than the company.

Meaning of  
“invitation to  
the public” .

**496.** (1) For the purposes of this Act, an invitation shall be deemed to be made to the public, if an offer or invitation to make an offer is-

- (a) published, advertised or disseminated by newspaper, broadcasting, cinematograph, or any other means whatsoever;
- (b) made to or circulated among any persons whether selected as members or as 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 any one or more persons to acquire any securities dealt in upon any stock exchange or in respect of which the invitation states that application has been or shall be made for permission to deal in those securities upon any stock exchange; but:-
  - (i) nothing in this section shall be taken as requiring any invitation to be treated as made to the public if it can properly be regarded in all the circumstances as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving that offer or invitation or otherwise as being a domestic concern of the persons making and receiving it;
  - (ii) an invitation made by or on behalf of a private company exclusively to its existing shareholders (not being greater in number than 50 and its existing employees) shall not be deemed to be an invitation to the public unless the invitation is of the type referred to in this paragraph.

(2) For the purposes of subsection (1), the issue of any form of application for securities or of any form to be completed on the deposit of money with a company shall be deemed to be an invitation to acquire those shares or to deposit money.

**497.** (1) Where a company allots or agrees to allot securities to any person with a view to their being offered for sale to the public, any document by which the offer for sale is made shall be deemed to be a prospectus.

Document offering for sale deemed to be prospectus.

(2) For the purposes of this section, an allotment of, or an agreement to allot, securities shall, unless the contrary is proved, be deemed to have been made with a view to the securities being offered for sale to the public if it is shown that-

- (a) an offer of the securities for sale to the public was made within 6 months after the allotment or agreement to allot; or
- (b) at the date when the offer was made the whole consideration to be received by the company in respect of the securities had not been so received.

#### Forms of prospectus

**498.** (1) It shall not be lawful to issue any form of application for securities in a public company unless the form is issued with a prospectus which complies with the requirements of section 497; but this section shall not apply if it is shown that the form of application was issued either-

Form of application for shares to be issued with prospectus.

- (a) in connection with a *bona fide* invitation to a person to enter an underwriting agreement with respect to the shares; or
- (b) in relation to shares which were not offered to the public.

(2) If any person contravenes any provision of this section, he shall be guilty of an offence and be liable to a fine not exceeding Le5,000,000

Effective date of prospectus. **499.** A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

Form and contents of prospectus.

- 500.** (1) Every prospectus shall—
- (a) be in the form prescribed by the Commission;
  - (b) be signed by every director or person named in the prospectus as a proposed director of the issuer, or by his agent authorised in writing;
  - (c) state that a copy has been registered with the Commission and also state immediately after that statement that the Commission assumes no responsibility as to its contents;
  - (d) state the matters specified in the Ninth Schedule.
  - (e) in the case of an offer of units under a unit trust scheme include a copy of the scheme's particulars;
  - (f) where the person making a report required to be included in any prospectus has made in it, or has without giving a reason, indicated in it, any adjustment to the report or endorsed on it or attached thereto a statement by that person setting out the adjustment;
  - (g) contain a statement that no securities shall be allotted on the basis of the prospectus later than its date of issue;
  - (h) where it contains a statement made or purporting to have been made by an expert or contains what purports to be a copy of or extract from a report, memorandum or valuation of an expert, state the date on which the statement, report, memorandum or valuation was made and whether or not it

was prepared by the expert for incorporation in the prospectus and contain a copy of that person's consent which shall have previously been lodged with the Commission;

- (i) not contain the name of any person as a debenture holder's representative or trustee or as an auditor or a banker or a legal practitioner or share broker of the company or proposed company or for or in relation to the issue or proposed issue of securities, unless that person has consented in writing before the issue of the prospectus to act in that capacity in relation to the prospectus and a copy of the consent has been lodged with the Commission;
- (j) subject to subsection (2), where the prospectus offers shares in or debentures or other securities of a foreign corporation incorporated or to be incorporated, contain particulars with respect to-
  - (i) the instrument constituting the corporation;
  - (ii) the enactment or provisions having the force of an enactment by or under which the incorporation of the corporation was effected or is to be effected;
  - (iii) an address in Sierra Leone where the instrument, enactment or provisions or certified copies may be inspected;
  - (iv) the date on which and the place where the company was or is to be incorporated; and
  - (v) whether the corporation has established a place of business in Sierra Leone and, if so the address of its principal office in Sierra Leone.

(2) Sub-paragraphs (iii) to (iv) of paragraph (j) of subsection (1) shall not apply in the case of a prospectus issued more than 2 years after the day on which the corporation was entitled to commence business.

(3) A document referred to in subsection (1) shall, in addition state—

- (a) the net amount of the consideration received or to be received by the company in respect of shares or debentures to which the offer relates; and
- (b) the place and time at which a copy of the contract under which the shares or debentures have been or are to be allotted may be inspected.

(4) Where an offer to which subsection (1) of section 497 relates is made, it shall be sufficient if the document referred to in that section is signed on behalf of the issuer by 2 directors or 2 members of the board of management or their authorised agent, in writing.

(5) If after delivery of the prospectus approved by the Commission for registration but prior to registration the expert referred to in paragraph (h) of subsection (1) has withdrawn his consent, the person who has submitted the prospectus to the Commission for approval shall immediately notify the Commission.

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

(7) Where a prospectus does not comply with the requirements of this Act or any regulations made under it, no director or other person shall incur any liability in respect of the failure to comply if he proves that he had no knowledge of the matter and that he exercised due diligence to ensure that the failure to comply did not occur.

**501.** Section 498 shall not apply to the issue—

Application of provisions relating to prospectus in certain cases.

- (a) to existing members of a company of a prospectus or form of application relating to shares in the company, whether or not an applicant for shares has the right to renounce in favour of other persons; and
- (b) of a prospectus or form of application relating to securities which are or are to be in all respect uniform with securities previously issued and for the time being dealt in or quoted on a recognised stock exchange; but, subject as specified in paragraphs (a) and (b), section 498, shall apply to a prospectus or a form of application issued on or with reference to the formation of a company, or at any time thereafter.

**502.** (1) Subject to this section, a person shall not issue, circulate, publish, disseminate or distribute any notice, circular or advertisement that—

Prohibition of issue, etc, of certain notices, circulars and advertisements.

- (a) offers for subscription or purchase, securities in a company, or invites subscription for, or purchase of any such securities; or circulars and
- (b) calls attention to—
  - (i) an offer, or intended offer, for subscription or purchase of securities in a company;
  - (ii) an invitation, or intended invitation, to subscribe for or purchase such securities; or
  - (iii) a prospectus.

(2) This section shall not apply to—

- (a) a notice or circular that relates to an offer or invitation not made or issued to the public;



- (b) a registered prospectus;
- (c) a notice, circular or advertisement that calls attention to a registered prospectus, which states that allotments of, or contracts with respect to, the shares referred to in the prospectus which will be made only on the basis of one of the forms of application referred to in, and attached to a copy of the prospectus and that contains no other information or matter other than some or all of the following information, namely:-
  - (i) the number and description of the securities in the company to which the prospectus relates;
  - (ii) the name of that company, the date of its incorporation and the number of the company's issued securities; and where the issue price of any securities is to be paid by instalments, the amounts paid and unpaid on those issued securities;
  - (iii) the general nature of its main business, or the proposed main business, of the company;
  - (iv) the names, addresses and occupation of the directors or proposed directors;
  - (v) the names and addresses of the brokers or underwriters (if any) to the issue;
  - (vi) the name of the stock exchange (if any) of which the brokers or underwriters to the issue are members;
  - (vii) particulars of the time and place at which copies of the registered prospectus and form of application for the shares to which it relates may be obtained; or

- (d) to a notice or circular that-
  - (i) accompanies a notice or circular referred to in paragraph (b) or (c) or would but for the inclusion in it of a statement referred to in sub-paragraph (iii) or (iv), be a notice or circular so referred to;
  - (ii) is issued or circulated by a person whose ordinary business includes advising clients in connection with their investments and is issued or circulated only to clients so advised in the course of that business;
  - (iii) contains a statement that the investment to which it or the accompanying document relates is recommended by that person; and
  - (iv) where the person is an underwriter or sub-underwriter of an issue of shares to which the notice or circular or accompanying document relates, contains a statement that the person making the recommendation is interested in the success of the issue as an underwriter or sub-underwriter, as the case may be.

(3) This section shall apply to notices, circulars and advertisements published or disseminated by newspaper, radio or television broadcasting, cinematograph, electronic mail or any other means.

(4) Any person who contravenes this section and any person who knowingly authorises or permits an act that constitutes a contravention of this section shall be guilty of an offence and be liable to a fine not exceeding Le5,000,000 or to a term of imprisonment not exceeding 6 months.

(5) Where a notice, circular or advertisement relating to a company is issued, circulated, published, disseminated or distributed in contravention of this section by or with the authority or permission of an officer of the company, the company shall be guilty of an offence.

Expert's statements in prospectus.

**503.** (1) A prospectus inviting persons to subscribe for securities in a company and including a statement purporting to be made by an expert shall not be issued unless-

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

(2) If any prospectus is issued in contravention of this section the company and every person who is knowingly a party to its issue shall be guilty of an offence and be liable to a fine not exceeding Le5,000,000.

(3) In this section "expert" includes every engineer, legal practitioner, accountant and any other person whose profession gives authority to a statement made by him.

Prospectus on invitation to the public to acquire or dispose of securities.

**504.** (1) Notwithstanding the provisions of section 495, it shall be lawful to make an invitation to the public to acquire or dispose of any securities of a public company, if-

- (a) within 6 months prior to the making of the invitation there has been delivered to the Commission and registered by it in accordance with this Act a prospectus relating to such securities complying in all respects with the relevant provisions of section 497.
- (b) except as provided in subsection (2), every person to whom the invitation is made is supplied with a true copy of such prospectus;

(c) every copy of the prospectus states on its face that it has been, at the time when the invitation is first made, registered by the Commission and the date of registration.

(2) Paragraph (b) of subsection (1) shall not apply to an invitation made under or through a member or to an invitation made by or through an approved stock exchange to a client of that member or to an invitation made by or through a licensed dealer.

**505.** A company limited by shares shall not, before the statutory meeting vary the terms of a contract referred to in the prospectus, or statement in lieu of prospectus, except subject to the approval of the statutory meeting.

Contract in prospectus, etc., not to be varied without leave.

**506.** (1) The Commission shall not register a prospectus unless-

Registration of prospectus.

- (a) the prospectus has been approved by it;
- (b) the prospectus complies with the requirements of this Act and any regulations made under it;
- (c) there is also filed with the Commission a copy of-
  - (i) every consent required by subsection (1) of section 503 to the issue of the prospectus;
  - (ii) every material contract referred to in the prospectus or, in the case of a contract not reduced into writing, a declaration giving full particulars of the contract;
- (d) where a prospectus relates to securities dealt in on an approved stock exchange or states that the application has been or will be made to an approved stock exchange for permission to deal in the securities to which

it relates, the prospectus shall be accompanied by a certificate from the approved stock exchange that the prospectus has been scrutinised by the stock exchange, and that the exchange's requirements relating to its contents have been satisfied.

(2) Every issuer of securities shall—

- (a) cause a copy of every document referred to in paragraph (c) of subsection (1) to be deposited, not later than 3 days after the prospectus is registered, at its registered office (where it is required to have one) or at its principal place of business; and
- (b) keep every copy, for a period of at least 6 months after the registration of the prospectus, for the inspection by investors, members and creditors.

(3) The Commission shall keep and maintain a register of prospectuses on which all prospectuses registered under this section shall be entered.

(4) The Commission shall forthwith upon registering a prospectus of a company send a copy of the prospectus to the Securities and Exchange Commission or equivalent body.

(5) Where the Commission has refused to register a prospectus, the person who has delivered a prospectus for registration may apply to the court which, after hearing the applicant, the Commission and such evidence as they may call, may either order the Commission to register the prospectus or may dismiss the application and prohibit any person before the court from publishing the prospectus before it has been amended to the satisfaction of the Commission.

Material  
change.

**507.** (1) Where, after the Commission has given approval of the prospectus, but before registration or after such registration any material change occurs in the business of the issuer, or in any other

manner which would have the effect of rendering the prospectus or any statement required to be contained in the prospectus or any other matter concerning the issue to the public generally, untrue, incomplete, misleading or non-compliant with any applicable law, the issuer shall promptly inform the Commission of the likely occurrence or occurrence of such change and the Commission shall give such directions as it thinks appropriate in the circumstances including the revocation of the approval so granted.

(2) Where in the circumstances set out in subsection (1) or in any other circumstances where the Commission considers that the prospectus, whether before or after registration and before the closing of the offer period, contains any untrue, incomplete or misleading statement or does not comply with the law or any listing rules applicable to the issuer, the Commission may require the prospectus to be amended or completed or may require that a fresh document be submitted in its place.

**508.** (1) Subject to this section, every person who—

- (a) is a director at the time of the issue of a prospectus;
- (b) authorises or causes himself to be named and is named in a prospectus as a director or as having agreed to become a director either immediately or after an interval of time;
- (c) is a promoter; or
- (d) authorises or causes the issue of a prospectus, shall be liable to pay compensation to any person who subscribes for or purchases securities on the faith of a prospectus for any loss or damage sustained by reason of—
  - (i) an untrue statement in the prospectus; or
  - (ii) the wilful non-disclosure in the prospectus of any matter of which he had knowledge and which he knew to be material.

Civil liability  
for misstate-  
ment in  
prospectus.

(2) No person shall be liable under paragraph (d) of subsection (1) as a person authorising or causing the issue of a prospectus by reason only that—

- (a) in a case where the consent of an expert is required to the issue of a prospectus, he has given that consent, except in respect of an untrue statement in the prospectus purporting to be made by him as an expert; or
- (b) his name is included in a prospectus as a trustee for debenture holders, trustee, auditor, banker, legal practitioner or share-broker or as a person performing some other professional or advisory function only.

(3) Subject to subsection (4), no person shall be liable under subsection (1) if he proves that—

- (a) having consented to become a director, he withdrew his consent before the issue of the prospectus, and it was issued without his authority or consent;
- (b) the prospectus was issued without his knowledge or consent and he gave reasonable notice to the public of the fact as soon as possible after he became aware of its issue;
- (c) after the issue of the prospectus and before any allotment or sale under it he withdrew his consent and gave reasonable notice to the public of the withdrawal as soon as possible after he became aware of any untrue statement in the prospectus.
- (d) in relation to an untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment or sale of the securities believe, that the statement was true;

- (e) in relation to an untrue statement not purporting to be a statement made by an expert or to be based on a statement made by an expert contained in what purports to be a copy of or extract from a report, memorandum or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report, memorandum or valuation, and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it and that that person had given the consent required by subsection (1) of section 503 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for lodging, or to that person's knowledge, before any allotment or sale under the prospectus; and
- (f) in relation to a statement purporting to be a statement made by a public officer contained in what purports to be a copy of or extract from a public document, it was a correct and fair representation of the statement or copy of or extract from the document.

(4) Subsection (3) shall not apply in the case of a person who is liable under paragraph (d) of subsection (1), by reason of his having given a consent required of him by section 503, in respect of an untrue statement purporting to have been made by him as an expert.

(5) A person who apart from this subsection would be liable under paragraph (d) of subsection (1) by reason of his having given a consent required of him by section 503, in respect of an untrue statement purporting to be made by him as an expert shall not be liable if he proves that—

- (a) having given his consent under section 503 to the issue of the prospectus, he withdrew it in writing before a copy of the prospectus was registered by the Commission;
  - (b) after a copy of the prospectus was registered by the Commission and before any allotment or sale of securities, he withdraws his consent and gives reasonable notice to the public of the withdrawal as soon as possible after he became aware of the untrue statement; or
  - (c) he was competent to make the statement and had reasonable ground to believe and did up to the time of the allotment or sale of shares or debentures believe that the statement was true.
- (6) Where—
- (a) a prospectus contains the name of a person as a director, or as having agreed to become a director, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to its issue; or
  - (b) the consent of a person is required under section 501 to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus,

every director of the company other than a director without whose knowledge or consent the prospectus was issued, and every other person who authorised or caused its issue shall be liable to indemnify the person so named or whose consent was so required against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion in it of a statement purporting to be made by him as an expert, or in defending himself against any action or legal proceeding brought against him in respect thereof.

**509.** (1) Where a prospectus contains a statement which is untrue, every person referred to in section 503 shall, subject to subsections (3) and (4), be guilty of an offence and shall be liable on conviction to a fine not exceeding Le 8,000,000 or to imprisonment for a term not exceeding 5 years, or to both the fine and imprisonment.

Offences in respect of untrue statements in prospectus.

(2) Where there is published with or as part of a prospectus a report of any expert or an extract from such report and such report or extract contains a statement which is untrue, the expert shall, provided he has given his consent to the inclusion of such statement in the prospectus in the form and context in which it appears, and subject to subsections (3) and (4), be guilty of an offence, and shall be liable to a fine not exceeding Le8,000,000 or to imprisonment for a term not exceeding 3 years or to both the fine and imprisonment.

(3) In any prosecution under this section, it shall be a defence if it is proved either that the untrue statement was immaterial or—

- (a) with respect to every untrue statement not purporting to be made by the Commission or an expert or of a public official document or statement, that the person charged had, after reasonable investigation, reasonable ground to believe and did up to the time of the allotment of the securities or acceptance of the officer (as the case may be) believe that the statement was true, and that there was no omission to state any material fact necessary to make the statement as set out not misleading; and
- (b) with respect to every untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that the person charged had reasonable ground to believe and did believe that the person making the report or valuation was competent to make it; and

- (c) with respect to every such 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, that it was a correct and fair representation of the statement or copy of or extract from the document.

Interpretation as to statement in prospectus.

**510.** For the purposes of this Part a statement—

- (a) included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and
- (b) shall be deemed to be included in a prospectus if it is contained in the prospectus or in any report or memorandum appearing on the face of it or by reference incorporated or issued with it.

#### PART XX—MISCELLANEOUS

Provision with respect to default fines and meaning of “officer in default” etc.

**511.** (1) Subject to this Act, where by any section it is provided that a company and every officer of the company who is in default shall be liable to a default fine, the company and every such officer shall, for each day during which he default, refusal or contravention continues, be liable to a fine not exceeding Le500,000.

(2) For the purposes of any section which provides that an officer of a company who is in default shall be liable to a fine or penalty, the expression “officer who is in default” means any director, manager, secretary or other officer of the company, who knowingly and wilfully authorises or permits the default, refusal or contravention mentioned in the section.

(3) Any person who is guilty of an offence for which no penalty is provided shall be liable to a fine not exceeding Le5,000,000.

Penalty for improper use of the word “limited”.

**512.** If any person or persons trade or carry on business under any name or title of which “Limited” or any contraction or imitation of that word, is the last word, that person or those persons, unless duly incorporated with limited liability shall be guilty of an offence and be liable to a fine not exceeding Le500,000 for each day on which that name or title has been used.

**513.** Where proceedings are instituted under this Act against any person by the Attorney-General nothing in this Act shall be taken to require any person who has acted as legal practitioner for the defendant to disclose any privileged communication made to him in that capacity. Saving for privileged communications.

#### Service of documents and legal proceedings

**514.** (1) A document may be served on a company by leaving it at or sending it by post to the registered office of the company in Sierra Leone. Service of documents.

(2) A document may be served on the Commission by leaving it at or sending it by post to the office of the Commission.

**515.** (1) If in any proceeding for negligence, default, breach of duty or breach of trust against a person to whom this section applies it appears to the court hearing the case that that person is or may be liable in respect of the negligence or default, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, the court may relieve him, either wholly or partly, from his liability on such terms as the court may think fit. Power of court to grant relief in certain cases.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief and the court on such application shall have the same power to relieve him under this section as it would have had if it had been a court before which proceedings against that person for negligence, default, or breach of duty or breach of trust had been brought.

(3) The persons to whom this section applies are the following:—

- (a) directors of a company;
- (b) managers of a company;
- (c) other officers of a company;
- (d) persons employed by a company as auditors, whether they are officers of the company or not.

Costs in action by certain limited companies.

**516.** Where a limited company is plaintiff in any action or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the default if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

Power to enforce orders.

**517.** Orders made by the court under this Act may be enforced in the same manner as orders made in an action pending before the court

False statements.

**518.** (1) Any person who, with respect to a document required by or for the purpose of this Act—

- (a) makes, or authorises the making of, a statement that is false or misleading in a material particular knowing it to be false or misleading;
- (b) omits, or authorises the omission from it, any matter knowing that the omission makes the document false or misleading in a material particular,

commits an offence, and is liable on conviction to a fine not exceeding Le8,000,000 or to a term of imprisonment not exceeding 3 years or to both the fine and imprisonment

(2) Every director or employee of a company who makes or furnishes, or authorises or permits the making or furnishing of a statement or report that relates to the affairs of the company and that is false or misleading in a material particular to—

- (a) a director, employee, auditor, shareholder, debenture holder, or trustee for debenture holders of the company;
- (b) a liquidator, or liquidation committees of property of the company;
- (c) if the company is a subsidiary, a director, employee, or auditor of its holding company; or

- (d) a stock exchange or an officer of a stock exchange,

knowing it to be false or misleading, commits an offence, and is liable on conviction to a fine not exceeding Le8,000,000 or to imprisonment for a term not exceeding 2 years or to both the fine and imprisonment.

(3) For the purposes of this section, a person who voted in favour of the making of a statement at a meeting is deemed to have authorised the making of the statement.

(4) If any person, on examination on oath authorised under this Act, or in any affidavit or deposition in or about any matter arising under this Act, wilfully gives false evidence he shall be guilty of perjury.

- 519.** Every director, employee, or shareholder of a company who—
- (a) fraudulently takes or applies property of the company for his own use or benefit or for a use or purpose other than the use or purpose of the company; or
  - (b) fraudulently conceals or destroys property of the company,

Every director, employee, etc. to be liable.

shall be guilty of an offence and is liable on conviction to a fine not exceeding Le8,000,000 or imprisonment for a term not exceeding 2 years or to both the fine and imprisonment.

**520.** (1) Every director, employee or shareholder of a company who, with intent to defraud or deceive a person—

Falsification of records.

- (a) destroys, parts with, mutilates, alters or falsifies, or is a party to the destruction, mutilation, alteration, or falsification of any register, accounting records, book, paper, or other document, belonging or relating to the company; or
- (b) makes or is party to the making of, false entry in any register, accounting records, book,

paper, or other document belonging or relating to the company, commits an offence, and is liable on conviction to a fine not exceeding Le 5,000,000 or imprisonment for a term not exceeding 2 years or to both the fine and imprisonment.

(2) Every person who, in relation to a mechanical, electronic, or other device used in connection with the keeping or preparation of any register, accounting records, index, book, paper, or other document for the purposes of a company or this Act-

- (a) records or stores in the device, or makes available to a person from the device, matter that he knows to be false or misleading in a material particular; or
- (b) with intent to falsify or render misleading such register, accounting records, index, book, paper or other document destroys, removes, or falsifies matter recorded or stored in the device, or fails or omits to record or store any matter in the device.

is guilty of an offence, and is liable on conviction to a fine not exceeding Le 8,000,000 or imprisonment for a term not exceeding 2 years or to both the fine and imprisonment.

Power to grant relief.

**521.** (1) Where in any proceedings before any court for negligence, default or breach of duty against a person to whom this section applies it appears to the court that the person is or may be liable in respect thereof, but that that person has acted honestly and reasonably and that, having regard to all circumstances of the case including those connected with the person's appointment, the person ought fairly to be excused for the negligence, default or breach, the court may relieve that person either wholly or partly from liability on such terms as the court thinks fit.

(2) Where a person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, or breach of duty that person may apply to the court for relief, and the court shall have the same

power to relieve the person under this section as it would have had if it has been a court before which proceedings against that person for negligence, default, or breach of duty had been brought.

(3) This section shall apply to-

- (a) a director or other officers;
- (b) a person employed by a company as auditor;
- (c) an expert;
- (d) a liquidator;
- (e) a trustee for debenture holders;
- (f) directors, managers, and other officers of a company incorporated outside Sierra Leone.

**522.** (1) No proceeding under this Act shall be invalidated by reason of any defect, irregularity or deficiency of notice unless the court is of the opinion that injustice has been or may be caused thereby which cannot be remedied by an order of the court. Irregularities in proceedings.

(2) The court may, if it thinks fit make an order declaring that the proceeding is valid notwithstanding the defect, irregularity or deficiency.

(3) Notwithstanding subsections (1) and (2) or any other provision of this Act, where an omission, defect, error or irregularity, including the absence of a quorum at any meeting of the company or of the directors, has occurred in the management or administration of a company whereby a provision of this Act has been contravened, or whereby there has been default of a procedural or technical kind in the observance of the articles of association or whereby any proceedings at or in connection with any meeting of the company or of the directors or any assembly purporting to be such a meeting have been rendered ineffective, including the failure to make or lodge with the Commission any declaration of solvency, the court-

- (a) may, either of its own motion or on the application of any interested person, make such order as it thinks fit to rectify or cause



- to be rectified or to nullify or modify or cause to be modified the consequences in law of any such omission, defect, error or irregularity, or to validate any act, matter or thing rendered or alleged to have been rendered invalid by or as a result of such omission, defect, error or irregularity;
- (b) shall before making such order satisfy itself that such order would not do injustice to the company or to any member or creditor;
- (c) may, where any such order is made, give such ancillary or consequential directions as it thinks fit;
- (d) may determine what notice or summons is to be given to other persons of the intention to make such application or of the intention to make such order, and whether and how it should be given or served and whether it should be advertised in any newspaper.

(4) The court may, whether a company is in the process of being wound up or not, on good cause shown, enlarge or abridge any time for doing any act or taking any proceeding allowed or limited by this Act or any regulation on such terms as the justice of the case may require and such enlargement may be ordered although the application is not made until after the time originally allowed or limited.

Arbitration.

**523.** (1) A company may, by writing under the hand of two directors agree to refer and may refer, to arbitration, in accordance with the general law relating to arbitration, any existing or future dispute between itself and any other company or person.

(2) Every company which is party to an arbitration may delegate to the arbitrator power to settle any term or to determine any matter capable of being lawfully settled or determined by the company itself or by its directors or other governing body.

Court may disqualify directors.

**524.** (1) Where—

- (a) a person has, while a director of a company—

- (i) persistently failed to comply with this Act;
- (ii) persistently failed to take all reasonable steps to obtain compliance with this Act by the company;
- (iii) been guilty of fraud in relation to the company or of a breach of duty to the company or a shareholder;
- (iv) acted in a reckless or incompetent manner in the performance of his duties as director;
- (b) a person who, while being a director of a company was wholly or substantially responsible for the company—
- (i) being wound up because of its inability to pay its debts as and when they become due;
- (ii) ceasing to carry on business because of its inability to pay its debts as and when they become due;
- (iii) entering into a scheme of compromise or arrangement with its creditors,

the court may, on application make an order that the person shall not, without the leave of the court, be a director or promoter of, or in any way, whether directly or indirectly, be concerned or take part in the management of a company for a period not exceeding 5 years as may be specified in the order.

(2) Where within the period of 7 years before the making of an application under this section a person is a director of two or more companies to which subparagraphs (i), (ii), (iii) of paragraph (b) of subsection (1) apply, the court may make an order that the person may not be a director or promoter of or in any way directly or indirectly be concerned in the management of a company for such period not exceeding 5 years as may be specified in the order unless that person satisfies the court—

- (a) that he was not wholly or substantially responsible for the insolvency of those companies; or
- (b) that it would not be just or equitable for the power to be exercised.

(3) A person intending to apply for an order under this section shall give not less than 10 days' notice of that intention to the person against whom the order is sought, and on the hearing of the application the last-mentioned person may appear and give evidence or call witnesses.

(4) An application for an order under this section may be made by the Commission, or by the liquidator of the company, or by a person who is, or has been, a shareholder or creditor of the company; and on the hearing of—

- (a) an application for an order under this section by the Commission or the liquidator; or
- (b) an application for leave under this section by a person against whom an order has been made on the application of the Commission or the liquidator,

the Commission or liquidator shall appear and call the attention of the court to any matters which seem to it or him to be relevant and may give evidence or call witnesses.

(5) An order may be made under this section even though the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made.

(6) The Registrar of the court shall, as soon as practicable after the making of an order under this section, give notice to the Commission that the order has been made and the Registrar shall publish in the *Gazette* and in two publications in a local newspaper the name of the person against whom the order is made.

(7) Every person who acts in contravention of an order under this section commits an offence and is liable to a fine not exceeding Le5,000,000 or to imprisonment for a term not exceeding one year or to both the fine and imprisonment.

**525.** (1) For the purpose of ascertaining whether a company or an officer is complying with this Act, the Commission may, on giving 72 hours' written notice to the company, call for the production of or inspect any book required to be kept by the company under this Act. Commission's power of inspection.

(2) No person shall obstruct or hinder the Commission or a person authorised by the Commission, while exercising a power conferred by subsection (1).

(3) Any person who contravenes subsection (2) commits an offence and is liable on conviction to a fine not exceeding Le5,000,000 or imprisonment for a term not exceeding one year or to both the fine and imprisonment.

**526.** (1) Any person who is aggrieved by an act or decision of the Commission under this Act may appeal to a court as of right within 21 days after the date of notification of the act or decision, or within such further time as the court may allow. Appeals from Commission's decisions.

(2) On hearing the appeal, the court may approve the Commission's act or decision or may give such directions or make such determination in the matter as it thinks fit.

**527.** (1) Where, under this Act it is provided that if proceedings are instituted by any person he shall sue in a representative capacity on behalf of himself and other members of a class the following provisions shall apply:- Representative actions.

- (a) the person may commence proceedings in such representative capacity without obtaining the consent and approval of any other member of the class represented and, subject to paragraph (b), the person shall have the sole conduct of the action and no other member of the class shall be deemed to be a party to the proceedings or in any way liable for the costs thereof;
- (b) any member of the class represented may at any time prior to 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 upon such terms regarding the conduct of the action and otherwise as it shall think fit; and if leave is granted the applicant shall become a party to the proceedings and liable accordingly to have an order for costs made against him;

- (c) any judgment given in the action shall bind and innure to the benefit of all members of the class represented, whether or not they have intervened in the proceedings in accordance with paragraph (b);
- (d) no proceedings shall be dismissed, settled or compromised without the leave of the Court which may, if it thinks fit, order that notice of the proposed dismissal, settlement or compromise shall be given to all members of the class represented and any other persons.

(2) Nothing in this section shall affect the validity of any agreement between the members of the class represented, relating to contribution towards the costs of the party or parties suing in a representative capacity.

Annual report  
by Com-  
mission.

**528.** The Commission shall cause a general annual report of matters within this Act to be prepared and laid before Parliament.

Proof of  
signature of  
Registrar.

**529.** (1) All documents purporting to be orders or certificates made or issued by the Commission for the purposes of this Act to be sealed with the seal of the Commission or to be signed by the Registrar or any person authorised in that behalf by the Commission shall be received in evidence and deemed to be such orders or certificates without further proof unless the contrary is shown.

(2) A certificate signed by the Registrar that any order made, certificate issued, or act done, is the order, certificate or act of the Commission shall be *prima facie* evidence of the fact so certified.

**530.** The Commission may, by statutory instrument, make Regulations. regulations generally for the purposes of this Act, and in particular for-

- (a) prescribing the forms and returns and other information required under this Act,
- (b) prescribing the procedure for obtaining any information required under this Act;
- (c) requiring returns to be made within the specified period by any company or enterprise to which this Act applies;
- (d) prescribing any fees payable under this Act.

#### PART XXI - REPEALS

**531.** (1) The Companies Act is hereby repealed.

Repeal and  
savings

(2) Notwithstanding the repeal, all companies incorporated or registered under the Companies Act, shall be deemed to be incorporated and registered under this Act and shall, within 6 months after the commencement of this Act apply to the Commission for a certificate of registration, which shall, without payment of any fee, give to the company a certificate in the manner provided under this Act.

Cap. 249.

(3) The name of any company which fails to apply for registration under subsection (2) within 6 months of the date of commencement of this Act will be struck off the register.

(4) Any act done, executed or issued under the repealed Act and in force or operative before the commencement of this Act shall, so far as it could have been done, executed or issued under this Act have effect as if done, executed or issued under this Act.

(5) Subject to this section, the memorandum of association and articles of association of a company incorporated or registered under the repealed Act and the provisions of Table A in the First Schedule of that Act, if adopted as all or part of the articles of that company shall have effect as if made or adopted under this Act.

(6) Where a company formed before the commencement of this Act has, pursuant to its memorandum or articles or a resolution of the general meeting authorised directors of the company to issue shares and some part of the shares remain unissued, the directors may issue the shares on the terms and conditions and up to the limit expressed in the memorandum, articles or resolution without requiring the authority of a further resolution of the general meeting.

(7) Any register, fund or account kept under the repealed Act shall be deemed to be part of a register, fund or account kept under the corresponding provision of this Act.

(8) The provision of this Act with respect to winding up shall not apply to any company of which the winding up has commenced before the commencement of this Act; and the company shall be wound up in such manner and with the same incidents as if this Act had not been passed, and for purposes of the repealed Act, the provisions of the repealed Act shall be deemed to remain in force.

## SCHEDULES

### FIRST SCHEDULE (Sections 24, 31)

#### TABLE A.

#### RULES FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES

##### PRELIMINARY

#### RULES FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES

#### *Shares.*

1. Subject to the provisions, if any, in that behalf of the memorandum of association and without prejudice to any special rights previously conferred on the holders of existing shares, any share may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, voting, return of share capital or otherwise, as the company may from time to time by special resolution determine: and any preference share may, with the sanction of a special resolution, be issued on the terms that it is, or at the option of the company is, liable to be redeemed.

2. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting of these rules relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

3. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the seal of the company specifying the share or shares held by him and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

4. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding Le10,000, and on such terms if any, as to evidence and indemnity, as the directors think fit.

5. No part of the funds of the company shall directly or indirectly be employed in the purchase of, or in loans upon the security of the company's shares, but nothing in this rule shall prohibit the provision of financial assistance by the company for the purchase of its own shares.

#### *Lien.*

6. The company shall have a lien on every share (not being a fully paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully paid shares) standing registered in the name of a single person for all moneys at present payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this rule. The company's lien if any, on a share shall extend to all dividends payable thereon.

7. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is readily payable, nor until the expiration of 14 days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is readily payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or bankruptcy.

8. For giving effect to such sale the directors may authorise a person to transfer the shares sold to the purchaser. The purchaser shall be registered as the holder of the shares comprised in such transfer and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

9. The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is readily payable and the residue shall (subject to a like lien for sums not readily payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale.

#### ***Calls on Shares***

10. The directors may, from time to time make calls upon the members in respect of any moneys unpaid on their shares provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call; and each member shall, subject to receiving at least fourteen days' notice specifying the time or times of payment, pay to the company at the time or times so specified the amount called on his shares.

11. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

12. 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 upon the sum at the rate of six per centum per annum from the day appointed for the payment to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

13. The provisions of these rules as to the liability of joint holders and as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if it had become payable by virtue of a call duly made and notified.

14. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

15. The directors may, if they think fit, receive from any member, willing to advance money, all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until they would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, 6 percent) as may be agreed upon between the member paying the sum in advance and the director.

#### **Transfer and transmission of shares.**

16. The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect of the transfer.

17. Shares shall be transferred in the following form, or in any usual or common form which the directors shall approve-

I, A. B., of.....in consideration of the sum of Le..... paid to me by C. D., of....., (here after called "the transferee") do hereby transfer to the said transferee the share (or shares) numbered.....in the undertaking called the.....Company Limited, to hold unto the transferee, his executors, administrators and assigns, subject to the conditions on which I hold the same: and I, the transferee, do hereby agree to take the share (or shares) subject to these conditions. As witness our hands the .....day of.....20...

#### **Witness to the signatures of, etc.**

18. The directors may decline to register any transfer of shares, not being fully paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless.

- (a) a fee not exceeding Le20,000 is paid to the company in respect thereof; and

- (b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer. If the directors refuse to register a transfer of any shares, they shall within 2 months after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.

19. The executors or administrators of a deceased sole holder of a share shall be the only persons recognized by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the legal personal representatives of the deceased survivor, shall be the only persons recognized by the company as having any title to the share.

#### Forfeiture of Shares

20. If a member fails to pay any call or instalment of a call on the day appointed for payment, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

21. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed, the share in respect of which the call was made will be liable to be forfeited.

22. If the requirements of such notice as are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made be forfeited by a resolution of the directors to that effect.

23. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition, the forfeiture may be cancelled on such terms as the directors think fit.

24. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding remain, liable to pay to the company all moneys which, at the date of the forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company receives payment in full of the nominal amount of the shares.

25. A statutory declaration in writing that the declarant is a director of the company and that a share in the company has been duly forfeited on a date stated in the declaration, shall be *prima facie* evidence of the facts stated in it as against all persons claiming to be entitled to the share.

26. The provisions of these rules as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if it had been payable by virtue of a call duly made and notified.

#### Conversion of shares into stock

27. The company may, by ordinary resolution convert any paid-up shares into stock, and reconvert any stock into paid-up shares of any denomination.

28. The holders of stock may transfer it or any part, in the same manner, and subject to the same rules, as and subject to which, the shares from which the stock arose might, previous to the conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

29. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

30. Such of the rules of the company as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder".

#### Alteration of capital

31. The company may, from time to time by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

32. Subject to any direction to the contrary that may be given by the company in general meeting, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general

meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time, within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of those shares in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

33. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture and otherwise as the shares in the original share capital.

34. The company may by ordinary resolution—

- (a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
- (b) sub-divide its existing shares, or any of them, into shares of smaller amount than is fixed by the memorandum of association subject nevertheless, to this Act;
- (c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

35. The company may, by special resolution, reduce its share capital and any capital redemption reserve fund in any manner and with, and subject to any incident authorized, and consent required, by law.

#### **General meetings**

36. A general meeting shall be held once in every calendar year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or in default, at such time in the third month following that in which the anniversary of the company's incorporation occurs and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the director.

37. The above-mentioned general meetings shall be called ordinary general meetings; all other general meetings shall be called extraordinary general meetings.

38. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default may be convened by members of the company holding, at the date of the deposit of the requisition, not less than one-tenth of the paid-up capital of the company. If at any time there are not within Sierra Leone sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meetings in the same manner as nearly as possible as that in which meetings may be convened by the directors.

#### **Notice of general meetings**

39. Subject to this Act relating to special resolution, seven days' notice at least ( exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given ) specifying the place, the day and the hour of meeting and, in case of special business, the general nature of that business shall be given in the manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the rules of the company, entitled to receive such notices from the company; but with the consent of all the members entitled to receive notice of some particular meeting may be convened by such shorter notice and in such manner as those members may think fit.

40. The accidental omission to give notice of a meeting to, or the nonreceipt of notice of a meeting by, any member shall not invalidate the proceedings at any meeting

#### **Proceedings at general meetings**

41. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, the consideration of the accounts, balance sheet and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation and fixing of the remuneration of the auditors.

42. If within half an hour from the time appointed for the meeting, a quorum of members is present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

43. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

44. If there is no such chairman, or if at any meeting he is not present within thirty minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose one of their number to be chairman.

45. The chairman may, with the consent of any meeting at which a quorum is present ( and shall if so directed by the meeting) , adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at a meeting from which the adjournment took place. When a meeting is adjournment for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of the business to be transacted at an adjourned meeting.

46. At any general meeting, a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is ( before or on the declaration of result of the show of hands ) demanded by at least three member present in person or by proxy entitled to vote or by one members or two member so present and entitled, if that member or those two members together hold not less than fifteen per cent of the paid-up capital of the company and , unless a poll is so demanded, a declaration by the chairman 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 of the proceedings of the company shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

47. If a poll is duly demanded, it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

48. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting, at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

49. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded, shall be entitled to a second or casting vote.

### Votes of members

50. On a show of hands, every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

51. 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 vote 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.

52. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hand or on a poll, by his committee or other legal guardian appointed by that court, and such committee or other legal guardian may, on a poll, vote by proxy.

53. No member shall be entitled to vote at any general meeting unless all calls or other sums payable by him in respect of shares in the company have been paid.

54. On a poll, votes may be given either personally or by proxy.

55. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under seal, or under the hand of an officer or attorney duly authorised. A proxy need not be a member of the company.

56. The instrument appointing a proxy and power of attorney or other authority, if any under which it is a signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than seventy –two hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, and in default, the instrument of proxy shall not be treated as valid.

57. An instrument appointing a proxy may be in the following form, or any other form which the directors shall approve.

.....Company, Limited.



“I,....., of ....., in the ....., being a member of the ..... Company. Limited, me and on my behalf at the (ordinary or extraordinary, as the case may be) general meeting of the company to be held on the .....day of .....20 ....., and at any adjourned thereof.”

Signed this..... day of .....20.....

58. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

#### **Corporations acting by representatives at meeting**

59. Any corporation which is a member of the company may by resolution of its directors or other governing body authorize such person as its thinks fit to act as its representative at any meeting of the company or of any class of members of the company, and the person so authorized shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

#### **Directors**

60. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

61. The qualification of a director shall be the holding of at least one share in the company.

#### **Powers and duties of Directors**

62. The business of the company shall be managed by the directors, who may pay all expenses incurred in setting up and registering the company, and may exercise all such powers of the company, as are not, by the Act, or by these articles, required to be exercised by the company in general meeting, subject, nevertheless, to any rule of these articles, to this Act, and to such rules, being not inconsistent with the rules or provisions, as may not be prescribed by the company in general meeting; but no rule made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that rule had not been made.

63. The directors may from time to time appoint one or more of their number to the office of managing director or manager for such term and at such remuneration (whether by way of salary, or commission, or participation in profits or partly in one way and partly in another) as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation or retirement of directors; but his appointment shall be subject to determination *ipso facto* if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office as managing director or manager be determined.

64. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

65. The directors shall cause minutes to be made in books provided for the purpose-

- (a) of all appointments of officers made by the directors;
- (b) of the names of the directors present at each meeting of the directors and of any committee of the directors;
- (c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors; and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

#### **The seal**

66. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of a director and the secretary or such other person as the directors may appoint for the purpose; and that director and the secretary or other person shall sign every instrument to which the seal of the company is so affixed in their presence.

#### **Disqualification of Directors**

67. The office of director shall be vacated, if the director-

- (i) ceases to be a director;
- (ii) without the consent of the company in general meeting holds any other office of profit under the company except that of managing director or manager;
- (iii) becomes bankrupt;
- (iv) becomes prohibited from being a director by reason of any order made under section 217;
- (v) is found a lunatic or becomes of unsound mind;
- (vi) resign his office by notice in writing to the company;
- (vii) is directly or indirectly interested in any contract with the company or participates in the profits of any contract with the company;
- (viii) is punished with; imprisonment for a term exceeding six months without the option of a fine.

Provided, however, that a director shall not vacate his office by reason of his being a member of any corporation which has entered into contracts with or done any work for the company if he shall have declared the nature of his interest in a manner required by section 237 but the Director shall not vote in respect of any such contract or work or any matter arising thereout, and if he does so vote his vote shall not be counted.

#### **Rotation of directors**

68. The directors to retire in every year shall be those who have been longest in office since their last election but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

69. A retiring director shall be eligible for re-election.

70. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto and in default the retiring director shall be deemed to have been re-elected unless at such meeting it is resolved not to fill up such vacated office.

71. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

72. Any casual vacancy occurring in the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

73. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

#### **Proceedings of directors**

74. The directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

75. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall, when the number of directors exceeds three be three, and when the number of directors does not exceed three, be two.

76. The continuing directors may act notwithstanding any vacancy in their body but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

77. The directors may elect the chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the meeting the directors present may choose one of their number to be chairman of the meeting.

78. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.

79. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

80. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

81. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of such director or person acting as director, or that they or any of them were disqualified, be as valid as if such person had been duly appointed and was qualified to be a director.

#### **Dividends and reserves**

82. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

83. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

84. No dividend shall be paid otherwise than out of profits.

85. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid up on any of the shares in the company, dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

86. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting

contingencies, or for equalizing dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the discretion, the directors either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

87. If several persons are registered as joint holders of any share, any one of them may give effectual receipts for any dividend or other moneys payable on or in respect of the share.

88. Any dividend may be paid by cheque or warrant sent through the post to the registered address of the member or person entitled to it or in the case of joint holders to any one of the joint holders at his registered address or to the person and the address as the member or person entitled or the joint holders as the case may be may direct. Every cheque or warrant shall be made payable to the order of the person to whom it is sent or to the order of the other person as the member or person entitled or the joint holders as the case may be may direct.

89. No dividend shall bear interest against the company.

90. The directors shall cause true accounts to be kept with respect to-

- (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
- (b) all sales and purchases of goods by the company; and
- (c) the assets and liabilities of the company.

91. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

92. The directors shall, from time to time in accordance with section 288 cause to be prepared and to be laid before the company in general meeting the financial statements of the company.

### Notices

93. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address within Sierra Leone) to the address, if any, within Sierra Leone supplied by him to the company for the giving of notices to him.

94. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

95. If a member has no registered address within Sierra Leone and has not supplied to the company an address within Sierra Leone for the giving of notices to him, a notice addressed to him inserted in the *Gazette* and advertised in a newspaper (if any) circulating in the neighbourhood of the registered office of the company shall be deemed to be duly given to him at noon on the day on which the later notice appears.

96. A notice may be given by the company 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.

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

98. Notice of every general meeting shall be given in some manner authorized by these rules to (a) every member except those members who (having no registered address within Sierra Leone) have not supplied to the company an address within Sierra Leone for the giving of notices to them, and (b) every person entitled to a share in consequence of the death or bankruptcy of a member, who, but for his death or bankruptcy, would be entitled to receive notice of the meeting. No other person shall be entitled to receive notices of general meetings.

### TABLE B

#### FORM OF MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES

1st. The name of the company is "The West Coast Steam Packet Company, Ltd.

2nd. The registered office of the company will be situate in Freetown.

3rd. The objects for which the company is established are, "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing of all such other things as are incidental or conducive to the attainment of the above object."

4th. The liability of the members is limited.

5th. The share capital of the company is Le1,000,000 divided into one thousand shares of Le1000 each.

We, the persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, addresses, and descriptions of subscribers.	Number of shares taken by each subscriber
“1. John Coker, of....., merchant .....	200
2. John Macauley, of..... “ .....	200
3. Thomas Williams, of..... “ .....	25
4. John Williams, of..... “ .....	30
5. Caleb Bright, of..... “ .....	15
6. Andrew Smart, of..... “ .....	5
7. Caesar During, of..... “ .....	10
Total shares taken	485

TABLE C

FORM OF MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND NOT HAVING A SHARE CAPITAL

*Memorandum of Association.*

- 1st. The name of the company is “The Kissy School Association, Limited.”
- 2nd. The registered office of the company will be situated in Kissy.
- 3rd. The objects for which the company is established are the carrying on a school for boys at Kissy and the doing of all such other things as are incidental or conducive to the attainment of the above object.
- 4th. The liability of the members is limited.

5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding Le1000,000.

We, the persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, addresses and descriptions of subscribers.

- |   |  |
|---|--|
| “1. John Coker, of....., Schoolmaster . |  |
| 2. John Macauley, of....., “            |  |
| 3. Thomas Wilkinson, of....., “         |  |
| 4. John Williams, of....., “            |  |
| 5. Caleb Bright, of....., “             |  |
| 6. Andrew Smart, of....., “             |  |
| 7. Caesar During, of....., “            |  |

Dated the.....day of.....20

Witness to the above signatures,

A. B.,  
Oxford Street, Freetown.

ARTICLES OF ASSOCIATION TO ACCOMPANY MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL

**Members**

1. The number of members with which the company proposes to be registered is five hundred, but the directors may from time to time register an increase of members.

2. The subscribers to the memorandum of association and such other persons as the directors shall admit to membership shall be members of the company.

#### **General meetings**

3. The first general meeting shall be held at such time, not being less than one month nor more than three months after the incorporation of the company, and at such place, as the directors may determine.

4. A general meeting shall be held once in every calendar year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting or, in default, at such time in the third month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

5. The general meetings shall be called ordinary general meetings; all other meetings shall be called extraordinary general meetings.

6. The directors may, whenever they think fit, convene extraordinary general meetings and extraordinary general meetings shall also be convened on such requisition or, in default, may be convened by such requisitionists, as provided by section 187. If at any time there are not within Sierra Leone sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

#### **Notice of general meetings**

7. Subject to the provisions of section 200 relating to special resolutions, 21 days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and, in case of special business, the general nature of that business shall be given in the manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the rules of the company, entitled to receive such notices from the company; but with the consent of all the members entitled to receive notice of some particular meeting, that meeting may be convened by such shorter notice and in such manner as those members may think fit.

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

#### **Proceedings at general meetings**

9. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance sheets and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

10. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to do business. Unless otherwise provided, three members personally present shall be a quorum.

11. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

12. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

13. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose one of their number to be chairman.

14. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Unless otherwise granted, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

15. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least two members present in person or by proxy entitled to vote and unless a poll is so demanded, a declaration by the chairman 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 of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

16. If a poll is duly demanded it shall be taken in such manner as the chairman directs and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

17. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting, at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

18. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

#### **Votes of members**

19. Every member shall have one vote.

20. A member of unsound mind, or in respect of whom an order has been made, by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, or other legal guardian appointed by that court, and such committee, or other legal guardian may, on a poll, vote by proxy.

21. No member shall be entitled to vote at any general meeting unless all moneys payable by him to the company have been paid.

22. On a poll votes may be given either personally or by proxy.

23. The instrument appointing a proxy shall be in writing under the hand of the appointor or his attorney duly authorized in writing or, if the appointor is a corporation, either under the seal, or under the hand of an officer or attorney so authorized. A proxy needs not to be a member of the Company.

24. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than 72 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

25. An instrument appointing a proxy may be in the following form, or any other form which the directors shall approve-

.....Company, Limited.

“I, ....., of..... in, ....., being a member of the .....Company Limited, hereby appoint.....of....., as my proxy to vote for me and on my behalf at the (ordinary or extraordinary, as the case may be) general meeting of the company to be held on the.....day of....., 20 ,and at any adjournment thereof.”

Signed this.....day of.....20.....

26. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

#### **Corporations acting by representatives at meetings**

27. Any corporation which is a member of the company may, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

#### **Directors**

28. The number of directors and the names of the first directors shall be determined in writing by a majority of the subscribers to the memorandum.

29. The remuneration of the directors shall from time to time be determined by the company in general meeting.

#### **Powers and duties of directors**

30. The business of the company shall be managed by the directors, who may pay all expenses incurred in setting up and registering the company, and may exercise all such powers of the company as are not, by this Act, or by these articles,

required to be exercised by the company in general meeting, subject nevertheless to any rule of these articles, to this Act, and to such rules, being not inconsistent with the rules or provisions, as may be prescribed by the company in general meeting; but no rule made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that rule had not been made.

31. The directors shall cause minutes to be made in books provided for the purpose—

- (a) of all appointments of officers made by the directors;
- (b) of the names of the directors present at each meeting of the directors and of any committee of the directors;
- (c) of all resolutions and proceedings at all meetings of the company, and of the directors and of committees of directors, and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

32. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of a director and of the secretary or such other person as the directors may appoint for the purpose; and that director and the secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

#### **Disqualifications of directors**

33. The office of director shall be vacated, if the director—

- (a) without the consent of the company in general meeting, holds any other office of profit under the company; or
- (b) becomes bankrupt; or
- (c) becomes prohibited from being a director by reason of any order made under section 218; or
- (d) is found a lunatic or becomes of unsound mind; or
- (e) resigns his office by notice in writing to the company; or
- (f) is directly or indirectly interested in any contract with the company and fails to declare the nature of his interest in a manner required by section 736; or

- (g) is punished with imprisonment for a term exceeding six months without the option of a fine.

A director shall not vote in respect of any contract in which he is interested or any matter arising out of any contract, and if he does so vote his vote shall not be counted.

#### **Rotation of directors**

34. At the first ordinary general meeting of the company the whole of the directors shall retire from office, and at the ordinary general meeting in every subsequent year one-third of the directors for the time being or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

35. The directors to retire in every year shall be those who have been longest in office since their last election but as between persons who became directors on the same day, those to retire shall (unless they otherwise agree among themselves) be determined by lot.

36. A retiring director shall be eligible for re-election.

37. The company at the general meeting at which a director retires in a manner secured in paragraph 35 may fill up the vacated office by electing a person to it and in default the retiring director shall be deemed to have been re-elected unless at such meeting it is resolved not to fill up the vacated office.

38. The company may, from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

39. Any casual vacancy occurring in the board of directors may be filled up by the directors but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

40. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.



41. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

#### Proceedings of directors

42. The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

43. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall, when the number of directors exceed three, be three and shall, when the number of directors does not exceed three, be two.

44. The continuing directors may act notwithstanding any vacancy in their body but, if and so long as their number is reduced below the number fixed by or pursuant to the rules of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number or of summoning a general meeting of the company, but for no other purpose.

45. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be chairman of the meeting.

46. The directors may delegate any of their powers to committees consisting of such members or members of their body as they think fit; any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

47. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairman of the meeting.

48. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

49. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of such directors or persons acting as directors, or that they or any of them were disqualified, be as valid as if such person had been duly appointed and was qualified to be a director.

50. The directors shall cause proper books of account to be kept with respect to all sums of money received and expended by the company and the assets and liabilities of the company.

51. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

52. The directors shall, from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

53. The directors shall, from time to time, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets and reports.

54. The profit and loss accounts shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expenses of the establishment, salaries and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting and, in cases where any item of expenditure which may, in fairness be distributed over several years has been incurred in any one year, the whole amount of the item shall be stated with the addition of the reasons why only a portion of the expenditure is charged against the income of the year.

55. A copy of every balance sheet (including every document required by law to be annexed to it) which is to be laid before the company in general meeting together with a copy of the auditor's report shall not, less than 7 days before the date of the meeting be sent to all persons entitled to receive notices of general meetings of the company.

#### Audit

56. Auditors shall be appointed and their duties regulated in accordance with sections 308 to 316.

#### Notices

57. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address within Sierra Leone) to the address, if any, within Sierra Leone supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

58. If a member has no registered address within Sierra Leone and has not supplied to the company an address within Sierra Leone for the giving of notices to him, a notice, addressed to him inserted in the *Gazette* and advertised in a newspaper (if any) circulating in the neighbourhood of the registered office of the company, shall be deemed to be duly given to him on the day on which the later notice appears.

59. Notice of every general meeting shall be given in some manner authorized by these rules to every member except those members who (having no registered address within Sierra Leone) have not supplied to the company an address within Sierra Leone for the giving of notices to them. No other persons shall be entitled to receive notices of general meetings.

#### *Names, Addresses and Description of Subscribers.*

- |      |                           |              |     |
|------|---------------------------|--------------|-----|
| “ 1. | John Coker, of.....       | Schoolmaster |     |
| 2.   | John Macauley, of.....    |              | “ “ |
| 3.   | Thomas Wilkinson, of..... |              | “   |
| 4.   | John Williams, of.....    |              | “   |
| 5.   | Caleb Bright, of.....     |              | “   |
| 6.   | Andrew Smart, of.....     |              | “   |
| 7.   | Caesar Daring, of.....    |              | “   |

Dated the.....day of.....20.....

B.,

Oxford Street, Freetown.

#### TABLE D

#### MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND HAVING A SHARE CAPITAL

#### Memorandum of Association.

- 1st. The name of the company is “The Kambia Hotel Company, Limited.”
- 2nd. The registered office of the company will be situated in Freetown.
- 3rd. The objects for which the company is established are “the facilitating of travelling in Sierra Leone, by providing hotels and conveyances by sea and by land for the accommodation of travelers, and the doing of all such other things as are incidental or conducive to the attainment of the above object.”
- 4th. The liability of the members is limited.
- 5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company, contracted before he ceases to be a member, and the costs, charges and expenses of winding-up the company and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding Le1,000,000.

6th . The share capital of the company shall consist of Le100,000,000, divided into five thousand shares of Le20,000 each.

We the ..... persons whose names and addresses are subscribed, are formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, addresses and descriptions of subscribers.	Number of shares taken by each subscriber.
“ 1. John Coker, of....., merchant.....	200
2. John Macauley, of....., “ .....	25
3. Thomas Wilkinson, of....., “ .....	30
4. John Williams, of....., “ .....	40
5. Celeb Bright, of....., “ .....	15
6. Andrew Smart, of....., “ .....	5
7. Caesar During, of....., “ .....	10
Total shares taken ....	<u>325.”</u>

Dated the.....day of.....20.....

Witness to the above signatures,

A. B.  
Oxford Street, Freetown.

ARTICLES OF ASSOCIATION TO ACCOMPANY THE MEMORANDUM OF ASSOCIATION OF AN UNLIMITED COMPANY HAVING A SHARE CAPITAL

1. The Articles of Table A, set out in the First Schedule, shall be the articles of association of the company and apply to the company.

Names, addresses and description of subscribers.

- “ 1. John Coker, of....., merchant.
- 2. John Macauley, of....., “

- 3. Thomas Wilkinson, of....., merchant.
- 4. John Williams, of....., “
- 5. Caleb Bright, of....., “
- 6. Andrew Smart, of....., “
- 7. Caesar During, of....., “

Dated the.....day of.....20.....

Witness to the above signatures,

A. B.  
Oxford Street, Freetown.

TABLE E

MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY HAVING A SHARE CAPITAL.

**Memorandum of Association**

1st . The name of the company is “The Patent Stereotype Company.”

2nd . The registered office of the company will be situated in Freetown.

3rd . The objects for which the company is established are “the working of a patent method of founding and casting stereotypes of plates of which method John Macauley, of Lumley, is the sole patentee and the doing of all such things as are incidental or conducive to the attainment of the above objects.”

We the persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, addresses and descriptions of subscribers.	Number of shares taken by each subscriber.
“ 1. John Coker, of....., merchant.....	3
2. John Macauley, of....., “ .....	2
3. Thomas Wilkinson, of..... “ .....	1
4. John Williams, of..... “ .....	2
5. Caleb Bright, of..... “ .....	2
6. Andrew Smart, of..... “ .....	1
7. Abel During of..... “ .....	1
Total shares taken .....	12.”

Dated the.....day of.....20.....

Witness to the above signatures,

A. B.,  
Oxford Street, Freetown.

ARTICLES OF ASSOCIATION TO ACCOMPANY THE PRECEDING  
MEMORANDUM OF ASSOCIATION.

1. The share capital of the company is Le10,000,000 divided into twenty shares of Le500,000 each

2. The company may by special resolution-

- (a) increase the share capital by such sum to be divided into shares of such amount as the resolution may determine;
- (b) consolidate its shares into shares of a larger amount than its existing shares;

- (c) sub-divide its shares into shares of smaller amount than its existing shares;
- (d) cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person;
- (e) reduce its share capital in any way.

3. The Articles of Table A set out this Schedule (other than Articles 27, 28, 29, 30, 34, and 35), shall be deemed to be incorporated with these articles and shall apply to the company.

Names, addresses and descriptions of subscribers.

- 1. John Coker, of....., merchant.
- 2. John Macauley, of....., “
- 3. Thomas Wilkinson, of....., “
- 4. John Williams, of....., “
- 5. Caleb Bright, of....., “
- 6. Andrew Smart, of....., “
- 7. Abel During, of....., “

Dated the.....day of.....20.....

Witness to the above signatures,

A. B.,  
Oxford Street, Freetown.

SECOND SCHEDULE

(Section 108)

FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE DELIVERED TO REGISTRAR BY A PRIVATE COMPANY ON BECOMING A PUBLIC COMPANY

Statement in lieu of prospectus delivered for registration by

(Insert the name of the company)

PURSUANT TO SECTION 108 OF THE COMPANIES ACT.

DELIVERED FOR REGISTRATION BY

The nominal share capital of the Company divided into ..... Le Shares of Le.....each

“ “ .....”  
“ “ .....”

Amount (if any) of above capital which consists of redeemable preference shares.

Shares of Le.....

The date on or before which these shares are, or are liable, to be redeemed.

Names, descriptions and addresses of directors or proposed directors.

Amount of shares issued ... .. Shares

Amount of commissions paid in connection therewith.

Amount of discount, if any, allowed on the issue of any shares, or so much thereof as has not been written off at the date of the statement.

Unless more than one year has elapsed since the

date on which the Company was entitled to commence business-

Amount of preliminary expenses Le.....  
Amount paid to any promoter ... .. Name of promoter.  
Amount Le.....

Consideration for the payment ... .. Consideration-

If the share capital of the Company is divided into different classes of shares, the right of voting at meetings of the Company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

Number and amount of shares and debentures issued within the 2 years preceding the date of this statement as fully or partly paid up otherwise than for cash or agreed to be so issued at the date of this statement. 1....shares of Le..... fully paid.  
2. ....shares upon which Le.....per share credited as paid.  
Consideration for the issue of those shares or debentures.3. ...Debenture Le.....  
4. Consideration-

Names and addresses of vendors of property (1) purchased or acquired by the Company within the 2 years preceding the date of this statement or (2) agreed or proposed to be purchased or acquired by the Company.

Amount (in cash, shares or debentures) paid or payable to each separate vendor.

Amount paid or payable in cash, shares or debentures for such property, specifying the amount paid or payable for goodwill. Total purchase price Le  
Cash ... .. Le.....  
Shares ... .. Le.....  
Debentures ... Le.....

Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of business or entered into more than 2 years before the delivery of this statement). Goodwill ..... Le.....

Time and place at which the contracts or copies thereof may be inspected.

Names and address of the auditors of the Company.

Full particulars of the nature and extent of the interest of every director in any property purchased or acquired by the Company within the two years preceding the date of this statement or proposed to be purchased or acquired by the Company or, where the interest of such a director consists in being a partner in a firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise, by any person either to induce him to become or to qualify him as, a director, or otherwise for services rendered or to be rendered to the Company by him or by the firm.

Rates of the dividends (if any) by the Company in respect of each class of shares in the Company in each of the three financial years immediately preceding the date of this statement or since the incorporation of the Company whichever period is the shorter.

Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of these years.

If any of the unissued shares or debentures are to be applied in the purchase of any business the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profit of the business in respect of each of the three financial years immediately preceding the date of this statement; but in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year the above requirement shall have effect as if references to 2 years or one year, as the case may be, were substituted for references to 3 years, and in such case the statement shall say how long the business to be acquired has been carried on.

Signatures of the persons above-named as directors or proposed directors (or of their agents authorized in writing).

Date.....20 .....

### THIRD SCHEDULE

#### Sections 289, 291, 292, 311

#### FORM AND CONTENT OF COMPANY'S FINANCIAL STATEMENTS

##### PART I

##### GENERAL INFORMATION TO BE DISCLOSED GENERAL RULES AND FORMATS

##### Section A

##### GENERAL INFORMATION TO BE DISCLOSED

1. All accounting information that will assist users to assess the financial liquidity, profitability and viability of a company should be disclosed and presented in a logical, clear and understandable manner in accordance with international standards and standards issued by the Institute of Chartered Accountants of Sierra Leone.

2. The financial statements of a company shall state-

- (a) the name of the company;
- (b) the period of time covered;
- (c) a brief description of its activities;
- (d) its legal form;
- (e) its relationship with its significant local and overseas suppliers (if any) including the immediate and ultimate parent, associated or affiliated company.

3. Financial statements shall include the following—

- (a) statement of accounting policies;
- (b) balance sheet;
- (c) income statement;
- (d) cash flow statement;
- (e) notes on the financial statements;
- (f) five-year financial summary for publicly-traded companies.

4. Financial implication of inter-company transfer and technical transfer and technical management agreements between the company and its significant local and overseas suppliers (if any) including its immediate and ultimate, associated affiliated company should be disclosed.

5. Financial statements should show corresponding figures for the preceding period.

#### SECTION B GENERAL RULES

6. (1) Subject to the following provisions of this Schedule—

- (a) every balance sheet of a company shall show the items listed in either of the balance sheet formats set out below in section C of this Part; and
- (b) every profit and loss account of a company shall show the items listed in any one of the profit and loss account formats so set out; in either case in the order and under the headings and sub-headings given in the format adopted.

(2) Sub-paragraph (1) is not to be read as requiring the heading or sub-heading for any items to be distinguished by any letter or number assigned to that item in the format adopted.

7. (1) Where in accordance with paragraph 1 a company's balance sheet or profit and loss account for any year has been prepared by reference to one of the formats set out in section C, the directors of the company shall adopt the same format in preparing the accounts for subsequent years of the company unless in their opinion there are special reasons for a change.

(2) Particulars of any change in the format adopted in preparing a company's balance sheet profit and loss account in accordance with paragraph 1 shall be disclosed, and the reasons for the change shall be explained in a note to the accounts in which the new format is first adopted.

8. (1) Any item required in accordance with paragraph 1 to be shown in a company's balance sheet or profit and loss account may be shown in greater detail than required by the format adopted.

(2) A company's balance sheet or income statement may include an item representing or covering the amount of any asset or liability, income or expenditure not otherwise covered by any of the items listed in the format adopted, but the following shall not be treated as assets in any, company's balance sheet—

- (a) preliminary expenses;
- (b) expenses or commission on any issue of shares or debentures.

(3) In preparing a company's balance sheet or profit and loss account the directors of the company shall adapt the arrangement and headings and sub-headings otherwise required by paragraph 1 in respect of the items to which an Arabic number is assigned in the format adopted, in any case where the special nature of the company's business requires such adaptation.

(4) Items to which Arabic numbers are assigned in any of the formats set out in section B may be combined in a company year if either—

- (a) their individual amounts are not material to assessing the state of affairs or profit or loss of the company for that year; or
- (b) the combination facilitates that assessment; but in a case within paragraph (a) the individual amounts of any items so combined shall be disclosed in a note to the accounts.

(5) Subject to paragraph 9 (3), a heading or sub-heading corresponding to an item listed in the format adopted in preparing a company's balance sheet or profit and loss account shall not be included if there is no amount to be shown for that item in respect of the year to which the balance sheet or profit and loss account relates.

(6) Every profit and loss account of a company shall show the amount of the company's profit or loss on ordinary activities before taxation.

(7) Every profit and loss account of a company shall show separately as additional items-

- (a) any amount set aside or proposed to be set aside to, or withdrawn or proposed to be withdrawn from, reserves; and
- (b) the aggregate amount of any dividend.

9. (1) In respect of every item shown in a company's balance sheet or profit and loss account the corresponding amount for the year immediately preceding that to which the balance sheet or profit and loss account relates shall also be shown.

(2) Where that corresponding amount is not comparable with the amount to be shown for the item in question in respect of the year to which the balance sheet or profit and loss account relates, the former amount shall be adjusted and particulars of the adjustment and the reasons for it shall be disclosed in a note to the accounts.

(3) Paragraph 8 (5) does not apply in any case where an amount can be shown for the item in question in respect of the year immediately preceding that to which the balance sheet or profit and loss account relates, and that amount shall be shown under the heading or sub-heading required by paragraph 1 for that item.

10. Amounts in respect of items representing assets or income may not be set off against amounts in respect of items representing liabilities or expenditure (as the case may be), or vice versa.

## SECTION C

### THE REQUIRED FORMATS FOR ACCOUNTS

#### *Preliminary*

11. Reference in this Part to the items listed in any of the formats set out below are to those items read together with any of the notes following the formats which apply to any of those items, and the requirement imposed by paragraph 1 to show the items, listed in any provision in those notes for alternative positions for any particular items.

12. A number in brackets following in any of the formats set out below is a reference to the note of that number in the notes following the formats.

13. In the notes following the formats-

- (a) the heading of each note gives the required heading or sub-heading for the item to which it applies and a reference to any letter and numbers assigned to that item in the formats set out below (taking a reference in the case of Format 2 of the balance sheet formats to the item listed under "assets" or under "liabilities" as the case may require); and
- (b) references to a numbered format are to the balance sheet format or as the case may require) to the profit and loss account format of that number set out below.

#### Balance Sheet Formats

##### FORMAT 1

- A. Called Up Shares Capital Not Paid (1)
- B. Fixed assets
  - 1. Land and buildings;
  - 2. Plant and machinery;
  - 3. Fixtures, fittings, tools and equipment;
  - 4. Construction-in-progress;
  - 5. Pre-payment for stocks in-transit.



- C. Long-term investments
1. Shares in group companies;
  2. Loans to group companies;
  3. Shares in related companies;
  4. Loans to related companies;
  5. Other investments other than loans;
  6. Other loans;
  7. Own shares (Treasury shares) (4)
  8. Bonds, debentures and Federal Government Development Stocks.
- D. Deferred charges
1. Development costs;
  2. Concessions, Patents, Licences, Franchises, Trade marks and similar rights and assets (2)
  3. Goodwill (3)
  4. Pre-payments for stocks in transit.
- E. Current Asset
- I. Stocks
1. Raw materials and consumables;
  2. Work-in-progress;
  3. Finished goods and goods awaiting sale;
  4. Pre-payments for stocks in transit.
- II. Debtors (5)
1. Trade debtors;
  2. Amount owed by group companies;
  3. Amount owed by related companies;
  4. Other debtors;
  5. Called up shares capital not paid (1)
  6. Pre-payments and accrued income.
- III. Short-term investment
1. Shares in group companies;
  2. Own shares (Treasury shares) (4);
  3. Other investments.
- IV. Cash at bank and in hand

- F. Prepayments and accrued income (6)
- G. Creditors; amounts falling due within one year.
1. Debenture loans (7);
  2. Bank loans and overdrafts;
  3. Payments received on account (8);
  4. Trade creditors;
  5. Bills of exchange payable;
  6. Amounts owed to group companies;
  7. Amounts owed to related companies;
  8. Other creditors including taxation (P.A.Y.E.) and National Provident Fund (social security) (9);
  9. Accruals and deferred income (10).
- H. Net current assets (liabilities) (11)
- I. Total assets less current liabilities.
- J. Creditors: amount falling due after more than one year.
1. Debenture loans (7);
  2. Bank loans and overdrafts;
  3. Payments received on account (8);
  4. Trade creditors;
  5. Bills of exchange payable;
  6. Amounts owed to group companies;
  7. Amount owed to related companies;
  8. Other creditors including taxation and social security (9);
  9. Accruals and deferred income (10).
- K. Provisions for liabilities and charges.
1. Pensions and similar obligations;
  2. Taxation, including deferred taxation;
  3. Other provisions.
- L. Accruals and deferred income (10)
- M. Capital and reserves.
1. Called up share capital (12);
  - II Share premium account;
  - III Revaluation reserves;
  - IV Other reserve.

1. Capital redemption reserve;
  2. Reserve for own shares;
  3. Reserves provided for by the articles of association;
  4. Other reserves.
- V Profit and loss transferred from Profit and Loss Account or Income Statement.

## Balance Sheet Formats

## FORMAT 2

## ASSETS

- A. Called up share capital not paid (1).
- B. Tangible assets.
1. Land and buildings;
  2. Plant and machinery;
  3. Fixtures, fittings, tools and equipment;
  4. Payments on account and assets in course of construction.
- C. Long-Term Investment
1. Share in group companies
  2. Loans to group companies
  3. Shares in related companies
  4. Loans to related companies
  5. Other investments other than loans
  6. Other loans
  7. Own shares (Treasury Shares) (4)
- D. Deferred Charges
1. Development costs
  2. Concessions, patents, licences, trade marks and similar rights and issues (2)
  3. Goodwill
  4. Payments on account
- E. Current Assets.
- I Stocks
1. Raw materials and consumables
  2. Work-in-progress
  3. Amounts owned by related companies
  4. Finished goods and goods awaiting sale
  5. Payments for stocks in transit

- II Debtors (5)
1. Trade debtors
  2. Amounts owed by group companies
  3. Amounts owed by related companies
  4. Other debtors
  5. Called up share capital not paid (1)
  6. Prepayments and accrued income (6)

## III Short-term Investments

1. Shares in group companies
  2. Own shares (Treasury Shares) (4)
  3. Other investments.
- IV. Cash at bank and in hand

## F. Prepayments and accrued income (6)

## CAPITAL AND LIABILITIES

- A. Capital and Reserves.
- I. Called up share capital (12)
- II Share premium account
- III Revaluation reserve
- IV. Other reserves.
1. Capital redemption reserves
  2. Reserve for own shares (12A)
  3. Reserves provided for by the articles of association
  4. Other reserves.
  - V. Profit and loss account (Retained Earnings) (12B)
- B. Current liabilities
1. Debenture loans (7)
  2. Trade creditors
  3. Bank loans and overdrafts
  4. Payments received in advance (8)
  5. Bills of exchange payable
- C. No-trade current liabilities.
1. Provision for pension and other similar obligations
  2. Provisions for taxation including deferred taxes, National Provident Fund (social security) (9)
  3. Other provisions
  4. Accruals and deferred income (10)
  5. Transactions between and within group:

- (a) Amount owed to group companies
- (b) Amount owed to related companies
- (c) Others.

Portions of long-term liabilities due in the current period

D. Long-term liabilities

- 1. Debenture Loans (portion not due next year).
- 2. Bonds (portions not due next year)
- 3. Other long-term debts (portion not due next year).

Notes on the balance sheet formats

(1) Called up share capital not paid (Formats 1 and 2, items A and E, 11.5) This item may be shown in either of the two positions given in Formats 1 and 2.

(2) Concessions, patents, licences, trade marks and similar rights and assets (Formats 1 and 2, item D2).

Amounts in respect of assets shall only be included in a company's balance sheet under this item if either-

- (a) the assets were acquired for valuable consideration and are not required to be shown under goodwill; or
- (b) the assets in question were created by the company itself.

(3) Goodwill – (Formats 1 and 2, items D. 3. – Amounts representing goodwill shall only be included to the extent that the goodwill was acquired for valuable consideration.

(4) Own shares – (Formats 1 and 2 items C 7 and E. III 2) – The nominal value of the shares held shall be shown separately.

(5) Debtors – (Formats 1 and 2, items E II 1 to 6) – The amount falling due after more than one year shall be shown separately for each item included under debtors.

(6) Prepayments and accrued income – (Formats 1 and 2, item E II 6 and F) – This item may be shown in either of the two positions given in Formats 1 and 2.

(7) Debenture loans (7) – Format 1, item G 1 and B 1 and Format 2, item C I) – The amount of any convertible loans shall be shown separately.

(8) Payments received on account:- (Format 1, items G 3 and 3 and Format 2, item C 3) – Payments received on account of orders shall be shown for each of these items in so far as they are not shown as deductions from stocks.

(9) Other creditors including taxation – (Format 1, items G 8 and 8 and Format 2 item C 2)- The amount for creditors in respect of taxation shall be shown separately from the amount for other creditors.

(10) Accruals and deferred income, - Format 1, items G9, 9 and L1 and Format 2, item C 4) – The two positions given for this item in Format 1 at E 9 and H 9 are an alternative to the position at J, but if the item is not shown in apposition corresponding to that at J it may be shown in either or both of the other two positions (as the case may require).

The two positions given for this item in Format 2 are alternatives

(11) Net current assets (liabilities).- (Format 1, item H) – In determining the amount to be shown for this item any amounts shown under prepayments and accrued income shall be taken into account wherever shown.

(12) Called up share capital.- (Format 1, item k 1 and Format 2, item A)- The amount of allotted share capital and the amount of called up share capital which has been paid up shall be shown separately.

(13) Creditors. – Amounts falling due within one year and after one year shall be shown separately for each of these items and their aggregate shall be shown separately for all of these items.

**Profit and loss account formats**

## FORMAT 1

(See note (17) below)

1. Turnover
2. Cost of sales (14)
3. Gross profit or loss
4. Distribution expenses (14)
5. Administrative expenses (14)
6. Other operating income (14)
7. Income from shares in group companies
8. Income from shares in related companies
9. Income from other fixed asset investments (15)
10. Other investment receivable and similar income (15)
11. Amounts written off investments
12. Accrued interest expense and similar charges
13. Tax on profit or loss on ordinary activities
14. Profit or loss on ordinary activities after taxation
15. Extraordinary income
16. Extraordinary charges
17. Extraordinary profit or loss
18. Tax on extraordinary profit or loss
19. Other taxes under the above items
20. Profit or loss for the financial year
21. Earnings per share
22. Dividend per share

## Profit and loss account formats

## FORMAT 2

1. Sales of Revenue
2. Change in stocks of finished goods and in work-in-progress
3. Own work capitalised
4. Other operating income

5. (a) Raw materials and consumables  
(b) Other external charges
6. Staff costs  
(a) Wages and salaries  
(b) Other pension costs
7. (a) Depreciation of fixed assets, depletion and amortisation of wasting and intangible assets  
(b) Exceptional amounts written off current assets.
8. Other operating charges
9. Income from shares group companies
10. Income from shares in related companies
11. Income from other fixed asset investments (15)
12. Other interest receivable and similar income (15)
13. Amounts written off investment
14. Interest payable and similar charges (16)
15. Tax on profit or loss on ordinary activities
16. Profit or loss on ordinary activities after taxation
17. Extraordinary income
18. Extraordinary charger
19. Extraordinary profit or loss
20. Tax on extraordinary profit or loss
21. Other taxes not shown under the above item
22. Profit or loss for the current year transferred to Retained Earnings or Reserve.

## Profit and loss account formats

FORMAT 3  
(See note (17))**A. Charges**

1. Cost of sales (14)
2. Distribution costs (14)
3. Administrative expenses (14)
4. Amounts written off investments
5. Interest payable and similar charges (16)
6. Tax on profit or loss on ordinary activities
7. Profit or loss on ordinary activities after taxation
8. Extraordinary charges

9. Tax on extraordinary profit or loss
10. Other taxes not shown under the above items
11. Profit or loss for the financial year.

**B. Income**

1. Turnover
2. Other operating income.
3. Own work capitalised
4. Other operating income
5. Income from shares in group companies
6. Income from shares in related companies
7. Income from other fixed asset investments (15)
8. Other interest receivable and similar income (15)
9. Profit or loss on ordinary activities after taxation
10. Extraordinary income
11. Profit or loss for the financial year.

**Notes on the profit and loss account format**

(14) Cost of sales; distribution costs: administrative expenses (Format 1 items 3, 4 and 5 and Format 3, items A 1,2, and 3, - These items shall be stated after taking into account any necessary provisions for depreciation or diminution in value of assets.

(15) Income from other fixed asset investments: other interest receivable and similar income, - (Format 1, items 9 and 10: Format 2, items 11 and 12: Format 3, items B 5 and 6: Format 4, item B 7 and 8.) – Income and interest derived from group companies shall be shown separately from income and interest derived from other sources.

(16) Interest payable and similar charges. – (Format 1, item 12: Format 2 item 14: Format 3, item A 5: Format 1, item A 7) – The amount payable to group companies shall, be shown separately.

(17) Formats 1 and 3. – The amount of any provisions for depreciation and diminution in value of tangible and intangible fixed assets falling to be shown under items 7 (a) and A.4 (a) respectively in Formats 2 and 4 shall be disclosed in a note to the accounts in any case where the profit and loss account is prepared by reference to Format 1 or Format 3.

## PART II

## ACCOUNTING PRINCIPLES AND RULES

## SECTION A

## ACCOUNTING PRINCIPLES

*Preliminary*

14. Subject to paragraph 15 the amounts to be included in respect of all items shown in a company's financial statements shall be determined in accordance with generally accepted accounting principles, and with the Accounting Standards laid down from time to time by the Association of Chartered Accountants of Sierra Leone.

*Departure from the accounting principles*

15. If it appears to the directors of a company that there are special reasons for departing from any of the principles stated above in preparing the company's financial statements in respect of any financial year they may do so, but particulars of the departure, the reasons for it and its effect shall be given in a note to the accounts.

## SECTION B

## HISTORICAL COST ACCOUNTING RULES

*Preliminary*

16. Subject to section C of this Part, the amounts to be included in respect of all items shown in a company's financial Statements shall be determined in accordance with the rules set out in paragraphs 17-28.

*Fixed assets*

17. Subject to any provision for depreciation or diminution made in accordance with paragraphs 18 or 19 the amount to be included in respect of any fixed asset shall be its purchase price or production cost.

18. In the case of any fixed asset which has a limited useful economic life, the amount of—

- (a) its purchase price or production cost; or
- (b) where it is estimated that such asset will have a residual value at the end of the period of its useful economic life, its purchase price or production cost less that estimated residual value; shall be reduced by provisions for depreciation calculated to write off that amount systematically over the period of the asset's useful economic life.

19. (1) Where a fixed asset investment of a description failing to be included under item B III of either of the balance sheet formats set out in Part I of this Schedule had diminished in value, provision for diminution in value may be made in respect of it and the amount to be included in respect of it may be reduced accordingly; and any such provisions which are not shown in the profit and loss account shall be disclosed (either separately or in aggregate) in a note to the accounts.

(2) Provisions for diminution in value shall be made in respect of any fixed asset which had diminished in value if the reduction in its value is expected to be permanent (whether its useful economic life is limited or not), and the amount to be included in respect of it shall be reduced accordingly; and such provisions which are not shown in the profit and loss account shall be disclosed (either separately or in aggregate) in a note to the accounts.

(3) Where the reasons for which any provision was made in accordance with sub-paragraph (1) or (2) have ceased to apply to any extent, that provision shall be written back to the extent that it is no longer necessary; and any amounts written back in accordance with this sub-paragraph which are not shown in the profit and loss account shall be disclosed (either separately or in aggregate) in a note to the accounts.

#### **Rules for determining particular fixed asset items**

20. (1) Notwithstanding that an item in respect of “development costs” is included under fixed assets” in the balance sheet formats set out in Part I of this Schedule, “an amount may only be included in a company’s balance sheet in respect of development costs in special circumstances.

(2) If any amount is included in a company’s balance sheet in respect of development costs the following information shall be given in a note to the accounts—

- (a) the period over which the amount of those costs originally capitalised is being or is to be written off; and
- (b) the reason for capitalising the development costs in question.

21. (1) The application of paragraphs 17 to 19 in relation to goodwill (in any case where goodwill is treated as an asset) is subject to the following provisions of this paragraph.

(2) The amount of the consideration for goodwill acquired by a company shall be reduced by provisions for amortisation calculated to write off that amount systematically over a period of 5 years or less as may be determined by the directors of the company.

(3) In any case where any goodwill acquired by a company is shown or included as an asset in the company’s balance sheet the period chosen for writing off the consideration for that goodwill and the reasons for choosing that period shall be disclosed in a note to the accounts.

#### **Current Assets**

22. Subject to paragraph 23, the amount to be included in respect of any current asset shall be its purchase price or production cost.

23. (1) If the net realisable value of any current asset is lower than its purchase price or production cost the amount to be included in respect of that asset shall be the net realisable value.

(2) Where the reason for which any provision for diminution in value was made in accordance with sub-paragraph (1) have ceased to apply to any extent, that provision shall be written back to the extent that it is no longer necessary.

#### **Miscellaneous and supplementary provision**

##### ***Excess of money owed over value received as an asset item***

24. (1) Where the amount repayable on any debt owed by a company is greater than the value of the consideration received in the transaction giving rise to the debt, the amount of the difference may be treated as an asset.

- (2) Where such amount is so treated—
- (a) it shall be completely written off before repayment of the debt; and
  - (b) and the current amount is not shown as a separate item in the company's balance sheet it must be disclosed in a note to the accounts.

***Assets included at a fixed amount***

25. (1) Subject to the following sub-paragraph assets which fail to be included—
- (a) amongst the fixed assets of a company under the item “raw material and consumables” ; may be included at a fixed quantity and value.
  - (b) their quantity, value and composition are not subject to material variation.

***Determination of purchase price or production cost***

26. (1) The purchase price of an asset shall be determined by adding to the actual price paid any expenses incidental to its acquisition.
- (2) The production cost of an asset shall be determined by adding to the purchase price of the raw materials and consumables used the amount of the costs incurred by the company which are directly attributable to the production of that asset.
- (3) In addition, there may be included in the production cost of an asset—
- (a) a reasonable proportion of the costs incurred by the company which are only indirectly attributable to the production of that asset, but only to the extent that they relate to the period of production; and
  - (b) interest on capital borrowed to finance the production of that asset, to the extent that it accrues in respect to of the period of production; but in a case within paragraph (a) the inclusion of the interest in determining the cost of that asset and the amount of the interest so included is disclosed in a note to the accounts.

- (4) In the case of current assets distribution costs may not be included in production costs.

27. (1) Subject to the qualification mentioned in sub-paragraph (5), the purchase price or production cost of—

- (a) any assets which fail to be included under any item shown in a company's balance sheet under the general item “stocks” and
- (b) any assets which are tangible assets (including investments);

may be determined by the application of any of the methods mentioned in sub-paragraph (2) of this paragraph in relation to any such assets of the same class.

(2) The method chosen must be one which appears to the directors to be appropriate in the circumstances of the company.

(3) These methods are—

- (a) the method known as “first in, first out” (FIFO);
- (b) the method known as “last in, first out” (LIFO)
- (c) a weighted average price; and
- (d) any other method similar to any of the methods mentioned above.

(3) Where in the case of any company-

- (a) the purchase price or production of assets failing to be included under any item shown in the company's balance sheet has been determined by the application of any method permitted by this paragraph; and
- (b) the amount shown in respect of that item differs materially from the relevant alternative amount given below in this paragraph;

the amount of that difference shall be disclosed in a note to the accounts.

(4) Subject to sub-paragraph (5) below for the purposes of sub-paragraph (3) (b) above, the relevant alternative amount, in relation to any item shown in a company's balance sheet, is the amount which would have been shown with respect to that item if assets of any class included under that item at an amount determined by any method permitted by this paragraph had instead been included at their replacement cost as at the balance sheet date.

(5) The relevant alternative amount may be determined by reference to the most recent actual purchase price production cost before the balance sheet date of assets of any class included under the item in question instead of by reference to their replacement cost as at that date, but only if the former appears to the directors of the company to constitute the more appropriate standard of comparison in the case of assets of that class.

(6) For the purposes of this paragraph, assets of any description shall be regarded as tangible if assets of that description are substantially indistinguishable one from another.

#### **Substitution of original stated amount where price or cost unknown**

28. Where there is not record of the purchase price or production cost of any assets of a company or of any price, expenses or costs relevant for determining its purchase price or production cost in accordance with paragraph 26, or such record cannot be obtained without unreasonable expense or delay, its purchase price or production cost shall be taken for the purposes of paragraph 17 to 23 to be the value record of its value made on or after its acquisition or production by the company.

### SECTION C ALTERNATIVE ACCOUNTING RULES

#### *Preliminary*

**29. (1) The rules set out in section B are referred to below in this Schedule as the historical cost accounting rules.**

(2) These rules, with the omission of paragraphs 16, 21 and 25 to 28, are referred to below in this Part as the depreciation rules and references below in this Schedule to the historical cost accounting rules do not include the depreciation rules as they apply by virtue of paragraph 32.

30. Subject to paragraphs 32 to 34 the amount to be included in respect of assets of any description mentioned in paragraph 26 may be determined on any basis so mentioned.

#### **Alternative accounting rules**

31. (1) Intangible fixed assets, other than goodwill, may be included at their current cost.

(2) Tangible fixed assets may be included at a market value determined as at the date of their last valuation or at their current cost.

(3) Investments of any description failing to be included under item 13 of either of the balance sheet formats set out in Part I of this Schedule may be included either-

(a) at a market value determined as at the date of their last valuation; or

(b) at a value determined on any basis which appears to the directors to be appropriate in the circumstances of the company,

but in the latter case particulars of the method of valuation adopted and of the reasons for adopting it shall be disclosed in a note to the accounts.

(4) Investments of any description failing to be included under item C III of either of the balance sheet formats set out in Part I of this Schedule may be included at their current cost.

(5) Stocks may be included at their current cost.

#### **Application of the depreciation rules**

32. (1) Where the value of any assets of a company is determined on any basis mentioned in paragraph 31, that value shall be, or (as the case may require) be the starting point for determining, the amount to be included in respect of that asset in the company's accounts, instead of its purchase price or production cost or any value previously so determined for that asset; and the depreciation rules shall apply accordingly in relation to such asset cost of reference to the value most recently determined for that asset on any basis mentioned in paragraph 31.



(2) The amount of any provision for depreciation required in the case of any fixed asset by paragraph 18 or 19 as it applies by virtue of sub-paragraph (1) is referred to as the historical cost amount.

(3) Where sub-paragraph (1) applies in the case of any fixed asset the amount of any provision for depreciation in respect of that asset-

- (a) included in any item shown in the profit and loss account in respect of amounts written off assets of the description in question; or
- (b) taken into account in stating any item so shown which is required by note (14) of the notes on the profit and loss account formats set out in Part I of this Schedule to be stated after taking into account any necessary provisions for depreciation or diminution in value of assets included under it,

may be the historical cost amount instead of the adjusted amount provided that the amount of any difference between the two is shown separately in the profit and loss account or in a note to the accounts.

***Additional information to be provided in case of departure from historical costs accounting rules***

33. (1) This paragraph applies where the amounts to be included in respect of assets covered by any items shown in a company's accounts have been determined on any basis mentioned in paragraph 31.

(2) The items affected and the basis of valuation adopted in determining the amounts of the assets in question in the case of such item shall be disclosed in a note to the accounts.

(3) In the case of each balance sheet item affected (except stocks) either-

- (a) the comparable amounts determined according to the historical cost accounting rules; or
- (b) the differences between those amounts and the corresponding amounts actually shown in the balance sheet in respect of that item;

shall be shown separately in the balance sheet or in a note to the accounts.

(4) In sub-paragraph (3) references in relation to any item to the comparable amounts determined are references to-

- (a) the aggregate amount which would be required to be shown in respect of that item if the amounts to be included in respect of all the assets covered by that item were determined according to the historical cost accounting rules; and
- (b) the aggregate amount of the cumulative provisions for depreciation or diminution in value which would be permitted or required in determining those amounts according to those rules.

***Revaluation reserve***

34. (1) With respect to any determination of the value of an asset of a company on any basis mentioned in paragraph 31, the amount of any profit or loss arising from that determination (after allowing, where appropriate, for any provisions for depreciation or diminution in value made otherwise than by reference to the value to be determined and any adjustments of provisions made in the light of that determination) shall be credited or (as the case may be) debited to a separate reserve ("the revaluation reserve").

(2) The amount of the revaluation reserve shall be shown in the company's balance sheet under a separate sub-heading in the position given for the item "revaluation reserve" in Format 1 or 2 of the balance sheet formats set out in Part 1 of this Schedule, but need not be shown under that name.

(3) The revaluation reserve shall be reduced to the extent that the amounts standing to the credit of the reserve are in the opinion of the directors of the company no longer necessary for the purpose of the accounting policies adopted by the company; but an amount may only be transferred from the reserve to the profit and loss account if either-

- (a) the amount in question was previously charged to that account; or
- (b) it represents realised profit.

(4) The treatment for taxation purposes of amounts credited or debited to the revaluation reserve shall be disclosed in a note to the accounts.

## PART III

## NOTES TO THE ACCOUNTS

*Preliminary*

35. Any information required in the case of any company by the following provisions of this Part of this Schedule shall, (if not given in the company's accounts) be given by way of a note to those accounts.

*Disclosure of accounting policies*

36. The accounting policies adopted by the company in determining the amounts to be included in respect of items shown in the balance sheet and in determining the profit or loss of the company shall be stated (including policies with respect to the depreciation and diminution in value of assets).

*Information supplementing the balance sheet*

37. Paragraphs 38 to 50 require information which either supplement the information given with respect to any particular items shown in the balance sheet or is otherwise relevant to assessing the company's state of affairs in the light of the information so given.

*Share capital and debentures*

38. (1) The following information shall be given with respect to the company's share capital—

- (a) the authorised share capital; and
- (b) where shares of more than one class have been allotted, the number and aggregate nominal value or shares of each class allotted.

(2) In the case of any part of the allotted share capital that consists of redeemable shares the following information shall be given—

- (a) the earliest and latest dates on which the company has power to redeem those shares;
- (b) whether those shares must be redeemed in any event or are liable to be redeemed at the option of the company or of the shareholder; and

- (c) whether any (and, if so, what) premium is payable on redemption.

39. If the company has allotted any shares during the financial year, the following information shall be given—

- (a) the reason for making the allotment;
- (b) the classes of shares allotted; and
- (c) the price to be paid for the shares allotted.

40. (1) If the company has issued any debentures during the financial year to which the accounts relate, the following information shall be given—

- (a) the reason for making the issue;
- (b) the classes of debentures issued; and
- (c) as respects each class of debentures, the amount issued and the consideration received by the company for the issue.

(2) Particulars of any redeemed debentures which the company has power to reissue shall also be given.

(3) Where any of the company's debentures are held by a nominee or trustee for the company, the nominal amount of the debentures and the amount at which they are stated in the accounting records kept by the company in accordance with this Act.

*Fixed assets*

41. (1) In respect of each item which is or would but for paragraph 8,(4) (b) shown under the general item "fixed assets" in the company's balance sheet the following information shall be given—

- (a) the appropriate amounts in respect of that item as at the date of the beginning of the financial year and as at the balance sheet date respectively;
- (b) the effect on any amount shown in the balance sheet in respect of that item of—
  - (i) any revision of the amount in respect of any assets included under that item made during that year on any basis mentioned in paragraph 31;
  - (ii) acquisitions of any assets during that year;
  - (iii) disposals of any assets during that year; and
  - (iv) any transfers of assets of the company to and from that item during that year.

(2) The reference in sub-paragraph (1) (a) to the appropriate amounts in respect of any item as at any date mentioned in that sub-paragraph is a reference to amounts representing the aggregate amounts determined, as at that date, in respect of assets falling to be included under that base on either of the following bases, that is—

- (a) on the basis of purchase price or production cost (determined in accordance with paragraphs 21 and 27); or
- (b) on any basis mentioned in paragraph 31, (leaving out of account in either case any provision for depreciation or diminution in value).

(3) In respect of each item within sub-paragraph (1)—

- (a) the cumulative amount of provisions for depreciation or diminution in value of assets included under that item as at each date mentioned in sub-paragraph (1) (a);
- (b) the amount of such provisions made in respect of the financial year;
- (c) the amount of any adjustment made in respect of such provisions during that year in consequence of the disposal of any assets; and

(d) the amount of any other adjustments made in respect of such provisions during that year;  
shall also be stated.

42. Where any fixed assets of the company other than listed investments are included under any item shown in the company's balance sheet at an amount determined on any basis mentioned in paragraph 31, the following information shall be given—

- (a) the years (so far as they are known to the directors) in which the assets were severally valued and the several values; and
- (b) in the case of assets that have been valued during the financial year, the name of the persons who valued them or particulars of their qualification for doing so and (whichever is stated) the bases of valuation used by them.

43. In relation to any amount which is or would but for paragraph 8 (4) (b), be shown in respect of the item "Land and buildings" in the company's balance sheet there shall be stated—

- (a) how much of the amount is ascribable to land held under statutory right of occupancy and how much to land held under a sublease; and
- (b) how much of the amount ascribable to land held under a sublease is ascribable to land held on long lease and how much to land held on short lease.

#### *Investments*

44. (1) In respect of the amount of each item which is or would for paragraph 8 (4) (b) be shown in the company's balance sheet under the general item 'investments' (whether as fixed assets or as current assets) there shall be stated—

- (a) how much of that amount is ascribable to listed investments; and
- (b) how much of any amount so ascribable is ascribable to investments as respects which there has been granted a listing on a recognised stock exchange and how much to other listed investments.

(2) Where the amount of any listed investments is stated for any item in accordance with sub-paragraph (1) (a), the following amounts shall also be stated—

- (a) the aggregate market value of those investments where it differs from the amount so stated; and
- (b) both the market value and the stock exchange value of any investments of which the former value is, for the purposes of the accounts, taken as being higher than the latter.

45. (1) Where any amount is transferred—

- (a) to or from any reserves; or
- (b) to any provisions for liabilities and charges; or
- (c) from any provisions for liabilities and charges otherwise than for the purpose for which the provision was established; and the reserves or provisions are or would but for paragraph 8 (4) (b) be shown as separate items in the company's balance sheet,

the information mentioned in sub-paragraph 2 shall be given in respect of the aggregate of reserves or provisions included in the same item.

(2) That information is—

- (a) the amount of reserves or provisions as at the date of the beginning of the year and as at the balance sheet date respectively;
- (b) any amount transferred to or from the reserves or provisions during that year; and
- (c) the source and application respectively of any amount so transferred.

(3) Particulars shall be given of each provision included in the item “other provisions” in the company's balance sheet in any case where the amount of that provision is material.

### *Provision for taxation*

46. The amount of any provisions for taxation other than deferred taxation shall be stated.

### *Details of indebtedness*

47. (1) In respect of each item shown under “creditors” in the company's balance sheet there shall be stated—

- (a) the aggregate amount of any debts included under that item which are payable or repayable otherwise than by instalments and fall due for payment or repayment after the end of the period of 5 years beginning with the day next following the end of the financial year; and
- (b) the aggregate amount of any debts so included which are payable or repayable by instalments and any of which fall due for payment after the end of that period;

and in the case of debts within paragraph (b) the aggregate amount of instalments falling due after the end of that period shall also be disclosed for each item.

(2) Subject to sub-paragraph (3), in relation to each debt falling to be taken into account under sub-paragraph (1), the terms of payments or repayment and the rate of any interest payable on debt shall be stated.

(3) If the number of debts is such that, in the opinion of the directors, compliance with sub-paragraph (2) would result in a statement of excessive length, it shall be sufficient to give a general indication of the terms of payment or repayment and the rates of any interest payable on the debts.

(4) In respect of each item shown under “creditors” in the company's balance sheet there shall be stated—

- (a) the aggregate amount of any debts included under that item in respect of which any security has been given by the company; and
- (b) an indication of the nature of the securities so given.

(5) References above in this paragraph to an item shown under “creditors” in the company’s balance sheet include references where amounts falling due to creditors within one year and after more than one year are distinguished in the balance sheet—

- (a) in a case within sub-paragraph (1), to an item shown under the latter of those categories; and
- (b) in a case within sub-paragraph (4), to an item shown under either of those categories;

and references to items shown under “creditors” include references to items which would but for paragraph 8 (4) (b) be shown under that heading.

48. If any fixed cumulative dividends on the company’s shares are in arrears, there shall be stated—

- (a) the amount of the arrears; and
- (b) the period for which the dividends or, if there is more than one class, each class of them are in arrear.

#### ***Guarantee and other financial commitments***

49. (1) Particulars shall be given of any charge on the assets of the company to secure the liabilities of any other person, including where practicable, the amount secured.

(2) The following information shall be given with respect to any other contingent liability not provided for—

- (a) the amount or estimated amount of that liability;
- (b) its legal nature; and
- (c) whether any valuable security has been provided by the company in connection with that liability and if so, what.

(3) There shall be stated, where practicable—

- (a) the aggregate amount or estimated amount of contracts for capital expenditure, so far as not provided for; and

- (b) the aggregate amount or estimated amount of capital expenditure authorised by the directors which has not been contracted for.

(4) Particulars shall be given of—

- (a) any pension commitments included under any provision shown in the company’s balance sheet; and
- (b) any such commitments for which no provision has been made;

and where any such commitment relates wholly or partly to pensions payable to past directors of the company separate particulars shall be given of that commitment so far as it relates to such pensions.

(5) Particulars shall also be given of any other financial commitments which—

- (a) have not been provided for; and
- (b) are relevant to assessing the company’s state of affairs.

(6) Commitments within any of the preceding sub-paragraphs undertaken on behalf of or for the benefit of —

- (a) any holding company or fellow subsidiary of the company; or
- (b) any subsidiary of the company;

shall be stated separately from the other commitments within that sub-paragraph and commitments within paragraph (a) shall be stated separately from those within paragraph (b).

#### ***Miscellaneous Matters***

50. (1) Particulars shall be given of any case where the purchase price or production cost of any asset is for the first time determined under paragraph 28.

(2) Where any outstanding loan made under the authority of section 134 (2) (b) or (c) of this Act (various cases of financial assistance by a company for purchase of its own shares) are included under any item shown in the company’s balance sheet, the aggregate amount of those loans shall be disclosed for each item in question.

(3) The aggregate amount which is recommended for distribution by way of dividend shall be stated.

#### PART IV

##### INFORMATION SUPPLEMENTING THE PROFIT AND LOSS ACCOUNT

51. Paragraphs 52 to 56 requires information which either supplements the information given with respect to any particular items shown in the profit and loss account or otherwise provides particulars of income or expenditure of the company or of circumstances affecting the items shown in the profit and loss account.

##### *Separate statement of certain items of income and expenditure*

52. (1) Subject to the following provisions of this paragraph, each of the amounts mentioned below shall be stated.

(2) The amount of the interest on or any similar charges in respect of-

- (a) bank loans and overdrafts, and loans made to the company (other than bank loans and overdrafts) which-
  - (i) are repayable otherwise than by instalments and fall due for repayment before the end of the period of five years beginning with the day next following the end of the financial year; or
  - (ii) are repayable by instalments the last of which falls due for payment before the end of that period; and
- (b) loans of any other kind made to the company.

This sub-paragraph shall not apply to interest or charges on loans to the company from group companies, but with that exception, it applies to interest for charges on all loans, whether made on the security of debentures or not.

- (c) the amounts respectively set aside for redemption of share capital and for redemption of loans.
- (d) the amount of income from listed investments.

(e) The amount of rents from land (after deduction of ground rents, rates and other outgoings).

This amount need only be stated if a substantial part of the company's revenue for the financial year consists of rents from land.

- (f) The amount charged to revenue in respect of sums payable in respect of the hire of plant and machinery.
- (g) The amount of the remuneration of the auditors (taking "remuneration", for the purposes of this sub-paragraph, as including any sums paid by the company in respect of the auditors' expenses).

##### *Particulars of Taxes*

53. (1) The basis on which the date of tax applicable to companies is computed shall be stated.

(2) Particulars shall be given of any special circumstances affecting liability in respect of taxation of profits, income or capital gains for the financial year or liability in respect of taxation of profits, income or capital gains for succeeding financial years.

(3) The following amount shall be stated-

- (a) the amount of the corporate tax;
- (b) if that amount would have been greater but for relief from double taxation, the amount which it would have been but for such relief;
- (c) the amount of the charge for income tax; and
- (d) the amount of the charge for taxation imposed on profits made outside Sierra Leone, income and (so far as charged to revenue) capital gains.

These amounts shall be stated separately in respect of the amount which is or would but for paragraph 8 (4) (b) be shown under the following items in the profit and loss account, that is "tax on profit or loss on ordinary activities" and "tax on extraordinary profit or loss".

**Particulars of turnover**

54. (1) If in the course of the financial year the company has carried on business of two or more lines that, in the opinion of the directors, differ substantially from each other, there shall be stated in respect of each line (describing it)–

- (a) the amount of the turnover attributable to that line; and
- (b) the amount of the profit or loss of the company before taxation which is in the opinion of the directors attributable to that line.

(2) If in the course of the financial year the company has supplied markets that, in the opinion of the directors, differ substantially from each other, the amount of the turnover attributable to each market shall also be stated.

(3) In this paragraph “market” means a market delimited by geographical bounds.

(4) In analysing for the purposes of this paragraph, the source, in terms of business or in terms of market, of turnover or, (as the case may be) of profit or loss, the directors of the company shall have regard to the manner in which the company’s activities are organised.

(5) For the purposes of this paragraph–

- (a) classes of business which, in the opinion of the directors, do not differ substantially from each other shall be treated as one class; and
- (b) markets which, in the opinion of the directors, do not differ substantially from each other shall be treated as one market: and any amounts properly attributable to one line of business or (as the case may be) to one market which are not material may be included in the amount stated in respect of another.

**Particulars of staff**

55. (1) The following information shall be given with respect to the employees of the company–

- (a) the average number of persons employed by the company in the financial year; and

- (b) the average number of persons so employed within each category of persons employed by the company.

(2) The average number required by sub-paragraph (1) (a) or (b) shall be determined by dividing the relevant annual number by the number of weeks in the financial year–

(3) The relevant annual number shall be determined by ascertaining for each week in the financial year–

- (a) for the purposes of sub-paragraph (1) (a), the number of persons employed under contracts of service by the company in that week (whether throughout the week or not);
- (b) for the purposes of sub-paragraph (1) (a), the number of persons in the category in question of person so employed;

and in either case, adding all the weekly numbers.

(4) In respect of all persons employed by the company during the financial year who are taken into account in determining the relevant annual number for the purposes of sub-paragraph (1) (a) there shall be stated the aggregate amounts respectively of–

- (a) wages and salaries paid or payable; and
- (b) other pension costs so incurred;

in so far as those amounts or any of them are stated in the profit and loss account.

(5) The categories of persons employed by the company by reference to which the number required to be disclosed by sub-paragraph (1) (b) is to be determined shall be such as the directors may select having regard to the manner in which the company’s activities are organised.

**Miscellaneous matters**

56. (1) Where any amount relating to any preceding year is included in any item in the profit and loss account, the effect shall be stated.

(2) Particulars shall be given of any extraordinary income or charges arising in the year.

(3) The effect shall be stated of any transactions that are exceptional by virtue of size or incidence though they fall within the ordinary activities of the company.

### *General*

57. (1) Where sums originally denominated in foreign currencies have been brought into account under any items shown in the balance sheet or profit and loss account, the basis on which those sums have been translated into Sierra Leonean currency shall be stated.

(2) In respect of every item stated in a note to the accounts the corresponding amount for the financial year immediately preceding that to which the accounts relate shall also be stated and where the corresponding amount is not comparable, it shall be adjusted and particulars of the adjustment and the reasons for it shall be given.

## **FOURTH SCHEDULE (Section 293)**

### **MATTERS TO BE DEALT WITH IN DIRECTORS' REPORT**

#### **PART 1**

#### **MATTERS OF A GENERAL NATURE**

##### *Asset Values*

1. (1) If significant changes in the fixed assets of the company or of any of its subsidiaries have occurred in the financial year, the report shall contain particulars of the changes.

(2) If, in the case of such of those assets that consist in interests in land, their market value (as at the end of the year) differs, substantially, from the amount at which they are included in the balance sheet, and the difference is, in the director's opinion, of such significance as to require that the attention of members of the company or of holders of its debentures should be drawn to it, the report shall indicate the difference with such degree of precision as is practicable.

### *Directors' interests*

2. (1) The report shall state the following with respect to each person who at the end of the year, was a director of the company—

- (a) whether or not, according to the register kept by the company for the purposes of ascertaining the interest of a director in the company, he was at the end of that year interested in shares in, or debentures of, the company or any other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company;
- (b) if he was so interested, the number and amount of shares in, and debentures of each body (specifying it) in which, according to that register, he was then interested.

### *Miscellaneous matters*

3. (1) Where any amount relating to any preceding year is included in an item in the profit and loss account, the effect shall be stated.

(2) Particulars shall be given of any extraordinary income or charges arising in the year.

(3) The effect of any transactions that are exceptional by virtue of size or incidence, though they fall within the ordinary activities of the company shall be stated.

### *General*

4. (1) Where sums originally denominated in foreign currencies have been brought into account under any items shown in the balance sheet or profit and loss account, the basis on which those sums have been translated into Leones shall be stated.

(2) Subject to sub-paragraph (3), every item stated in a note to the accounts the corresponding amount for the financial year immediately preceding that to which the accounts relate shall also be stated and where the corresponding amount is not comparable, it shall be adjusted and particulars of the adjustment and the reasons for it shall be given.



(3) Sub-paragraph (2) shall not apply in relation to any amount stated by virtue of section 311 as applying Part IV of the Third Schedule share capital of subsidiaries and other bodies corporate held by the company, etc.)–

- (i) whether or not (according to that register) he was, at the beginning of that year a director, when he became one), interested in shares in, or debentures of, the company or such body corporate; and
- (ii) if he was, the number and amount of shares in and debenture of, each body (specifying it) in which, according to that register, he was interested at the beginning of the year or as the case may be when he became a director.

(4) The particulars required by this paragraph may be given by way of notes to the company's accounts in respect of the year, instead of being stated in the director's report

#### *Charitable gifts*

5. (1) Money given for charitable purposes to a person who, when it was given, was ordinarily resident outside Sierra Leone is to be left out of account.

(2) "Charitable purposes" means purposes which are exclusively charitable,

#### *Miscellaneous*

6. The directors report shall contain–

- (a) particulars of any important events affecting the company or any of its subsidiaries which have occurred since the end of the year;
- (b) an indication of likely future developments in the business of the company and of its subsidiaries;
- (c) an indication of the activities (if any) of the company and its subsidiaries in the field of research and development;
- (d) names of distributors of the company's; products, and

- (e) particulars of donations and gifts made for any purpose.

#### PART II DISCLOSURE REQUIRED BY COMPANY ACQUIRING ITS OWN SHARES, ETC.

7. This Part shall apply where shares in a company–

- (a) are purchased by the company or are acquired by it by forfeiture or surrender in lieu of forfeiture;
- (b) are required by another person in circumstances where section 134 applies;
- (c) are made subject to a lien or other charges taken (whether expressly or otherwise) by the company and permitted under this Act.

8. The directors' report with respect to a year shall state–

- (a) the number and nominal value of the shares so purchased, the aggregate amount of the consideration paid by the company for such shares and the reasons for their purchase;
- (b) the number and nominal value of the shares so acquired by the company or acquired by another person in such circumstances and so charged respectively during the year;
- (c) the maximum number and nominal value of shares which, having been so acquired by the company or acquired by another person in such circumstances or so charged (whether or not during that year) are held at any time by the company or the other person during the year;
- (d) where the number and nominal value of the shares of any particular description are stated in pursuance of any of the preceding sub-paragraphs, the percentage of the called up shares which shares of that description represent;
- (e) where any of the shares have been so charged, the amount of the charge in each case;

## PART III

## EMPLOYMENT AND EMPLOYEES

*Employment of disabled persons*

9. The directors' report shall contain a statement showing how many disabled persons were employed during the year and describing the policy which the company has applied during the year—

- (a) for giving full and fair consideration to applications for employment by the company made by disabled persons, having regard to their particular aptitudes and abilities;
- (b) for continuing the employment of, and for arranging appropriate training for, employees of the company who have become disabled persons during the period when they were employed by the company; and
- (c) otherwise for the training, career development and promotion of disabled persons employed by the company.

*Health, safety and welfare at work of company's employees*

10. The directors' report shall contain a statement as to the arrangement in force in the year for securing the health, safety and welfare at work of employees of the company and its subsidiaries, and for protecting other persons against risks to health or safety arising out of or in connection with the activities at work of those employees.

*Employee involvement and training*

11. The directors' report shall contain a statement describing the action that has been taken during the year to introduce, maintain or develop arrangements aimed at—

- (i) providing employees systematically with information on matters of concern to them as employees;
- (ii) consulting employees or their representatives on a regular basis so that the views of employees can be taken into account in making decisions which are likely to affect their interests;

- (iii) encouraging the involvement of employees in the company's performance through an employees' share scheme or by some other means; and
- (iv) achieving a common awareness on the part of all employees of the financial and economic factors affecting the performance of the company.

12. The directors' report shall contain a statement showing the arrangements made or facilities provided by the company for the training of employees during the year.

FIFTH SCHEDULE (Sections 301, 303, 304 and 305)  
MODIFIED FINANCIAL STATEMENTS OF COMPANIES QUALIFYING AS  
SMALL COMPANIES

## PART 1

## MODIFIED INDIVIDUAL FINANCIAL STATEMENTS

*Introductory**Accounts modified as for a small company*

1. (1) In respect of the relevant financial year, there may be delivered a copy of a modified balance sheet, instead of the full balance sheet.

(2) The modified balance sheet shall be an abbreviated version of the full balance sheet, showing only those items to which a letter or number is assigned in the balance sheet format adopted under Part I of the Third Schedule but in other respects corresponding to the full balance sheet.

(3) The copy of the modified balance sheet shall be signed by two directors.

2. A copy of the profit and loss account need not be delivered nor a copy of the directors' report otherwise required by section 293.

3. If a modified balance sheet is delivered, there shall be disclosed in it (or in a note to the company's accounts delivered)—

- (a) the aggregate of the amounts required by note (5) of the notes on the balance sheet formats set out in Part I of the Third Schedule, to be shown separately for each item included under debtors (amounts falling due after one year); and
- (b) the aggregate of the amounts required by note 13 of those notes to be shown separately for each item included under creditors in format 2 (amounts falling due within one year or after more than one year).

4. The company's balance sheet shall contain a statement by the directors that-

- (a) they rely on sections 301 to 304 as entitling them to deliver modified accounts; and
- (b) they do so on the ground that the company is entitled to the benefit of those sections as a small company;

and the statement shall appear in the balance sheet immediately above the signatures of the directors.

5. (1) The accounts delivered shall be accompanied by a special report of the auditors stating that in their opinion-

- (a) the directors are entitled to deliver modified accounts, in respect of the financial year, as claimed in the directors statement, and
- (b) any accounts comprised in the documents delivered as modified accounts are properly prepared as such in accordance with this Schedule.

(2) A copy of the auditors' report under section 310 need not be delivered; but the full text of it shall be reproduced in the special report under this paragraph.

(3) If the directors propose to rely on section 310 to 304 as entitling them to deliver modified accounts, it shall be the auditors' duty to provide them with a report stating whether in their opinion the directors are so entitled, and whether the documents to be delivered as modified accounts are properly prepared in accordance with this Act.

6. Subject to this Part, where the directors rely on sections 299 to 302 in delivering any documents, and-

- (a) the company is entitled to the benefit of those sections on the ground claimed by the directors' in their statement; and
- (b) the accounts comprised in the documents are properly prepared in accordance with this Schedule,

then this Act shall have effect as if any document which by virtue of this Part is included in or omitted from the documents delivered as modified accounts were (or, as the case may be), were not required by this Act to be comprised in the company's accounts in respect of the year.

## PART II MODIFIED GROUP FINANCIAL STATEMENTS (IN CONSOLIDATED FORM) FOR SMALL COMPANIES

7. (1) In respect of the relevant year, there may be delivered a copy of a modified balance sheet instead of the full consolidated balance sheet.

(2) The modified balance sheet shall be an abbreviated version of the full consolidated balance sheet, showing only those items to which a letter or Roman numeral is assigned in the balance sheet format adopted under Part 1 of the Third Schedule, but in other respect corresponding to the full consolidated balance sheet.

8. The information required by the Third Schedule to be given in notes to group financial statements need not be given, with the exception of any information required by provisions of that Schedule listed in paragraph 3 of that Schedule.

9. There shall be disclosed in the modified balance sheet, or in a note to the group accounts delivered, aggregate amounts corresponding to those specified in paragraph 5.

PART III

MODIFIED GROUP ACCOUNTS CONSOLIDATED OR OTHERS

10. If modified group accounts are delivered, the following paragraphs apply.

11. The director's statement to be contained in the balance sheet include a statement that the documents delivered include modified group accounts, in reliance on section 301.

12. (1) The auditors' special report under paragraph 5 shall include a statement that in their opinion—

- (a) the directors are entitled to deliver modified group accounts, as claimed in their statement in the balance sheet, and
- (b) any accounts comprised in the documents delivered as modified group financial statements are properly prepared as such in accordance with this Schedule.

(2) A copy of the auditors' report need not be delivered; but the full text of it shall be reproduced in the special report under paragraph 5.

(3) If the directors propose to rely on section 301 as entitling them to deliver modified group financial statements, it is the auditor's duty to provide them with a report stating whether in their opinion the directors are so entitled, and whether the documents to be delivered as modified group financial statements are properly prepared in accordance with this Schedule.

13. Subject as above where the directors rely on section 301 in delivering any documents, and—

- (a) the company is entitled to the benefit of that section on the ground claimed by the directors in their statement in the balance sheet, and
- (b) the accounts comprised in the documents delivered as modified financial statements are properly prepared in accordance with this Schedule, then section 312 has effect as if any document which by virtue of this Schedule is

included in or omitted from the documents delivered as modified group financial statements were (or, as the case may be, were not) required by this Act to be comprised in the company's financial statements in respect of the year.

SIXTH SCHEDULE (Sections 317 and 319)  
ANNUAL RETURN OF COMPANY HAVING SHARE CAPITAL

ANNUAL RETURN OF .....Limited made up to the day of .....(being the fourteenth day after the date of the annual general meeting for the year 20.....)

1. Address  
(Address of the registered office of the company)
2. Situation of registers of members and debenture holders.
  - (a) (Address of place at which the register of members is kept, if other than the registered office of the company)
  - (b) (Address of any place in Sierra Leone other than the registered office of the company at which any register of holders of debentures of the company or such register or part of any register or part of such register is kept.
3. Summary of share capital and debentures.
  - (a) Nominal share capital  
Nominal share capital     ...             ... divided into:

(Insert number and class)	shares of	..	..	each
.. .. .	shares of	..	..	each
.. .. .	shares of	..	..	each
.. .. .	shares of	..	..	each

(b) Issued share capital and debentures

	Number	Class	Shares
Number of shares of each class taken up to the date of this return (which number must agree with the total shown in the list as held by members).	.. ..	..	shares
Number of shares of each Payment wholly in cash	.. ..	..	shares
Number of shares of each class issued as partly paid up for a consideration other than cash and extent to which each such share is so paid up.			shares issued as paid-up to the extent of Le per share.
Number of shares (if any) of each class issued at a discount.	.. ..	..	shares issued as paid-up to the extent of Le per share.
	.. ..	..	shares
	.. ..	..	shares
	.. ..	..	shares.
Amount of discount on the issued shares which has not been written off at the date of this return.	.. ..	Le.....	
	Number	Class	
Amount called Le.....per share up on number Le....per share on shares of Le.....share on each class of Le....per	.. ..	..	shares
	.. ..	..	shares
	.. ..	..	shares
	.. ..	..	shares
Total amount of calls received.			
Including payments on application and allotment And any sums received on shares forfeited.		Le.....	

	Number	Class	Shares
Total amount (if any) agreed to be considered as paid on the number of shares of each class issued as fully paid..	.. ..	..	shares
up for a consideration paid other than cash	.. ..	..	shares
Total amount (if any) agreed as considered paid on number of shares each class issued as fully paid up for a consideration paid other than cash	.. ..	..	shares
Total amount of calls unpaid	.. ..	..	shares
Total amount of the sums (if any) paid by way of commission in respect of any shares or debentures	.. ..	..	Le.....
Total amount of the sums (if any) Allowed by way of discount in respect of any debentures since the date of the last return.	... ..	..	Le.....
Total number of shares	... ..	..	shares
Each class forfeited	... ..	..	shares
			shares
			shares

4. *Particulars of indebtedness*

Total amount of indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Commission under this Act.

5. *List of past and present members*

List of persons holding shares or stocks in the company on the fourteenth day after the annual general meeting for 20.....and of persons who have held shares or stocks therein at any time since the date of the last return, or in the case of the first return, of the incorporation of the company.

			<b>Account of Shares</b>	<b>Remarks</b>
Folio in register containing	Name and addresses.	Number of shares held by existing members at date of return. *	Particulars of shares transferred since the date of the last return of the incorporation of the company of (a) persons who are still members and (b) persons who have ceased to be members. * Registration of transfer.	

The aggregate number of shares held by each member must be stated, and the aggregate must be added up so as to agree with the number of shares stated in the summary of share capital and debentures to have been taken up.

When the shares are of different classes these columns should be subdivided so that the number of each class held, or transferred may be shown separately. Where any share have been converted into stock the amount of stock held by each member must be shown.

The date of registration of each transfer should be given as well as the number of shares transferred on each date. The particulars should be placed together with that of the transferee, but the name of the transferee may be inserted in the “marks” column immediately opposite the particulars of each transfer.

- (i) If the return for either of the two immediately preceding years was given as at the date of that return the full particulars required as to past and present members and the shares and stock held and transferred by them, only such of the particulars need be given as related to persons ceasing to be or becoming members since the date of the last return and to shares transferred since that date or to changes as compared with the date in the amount of stock held by a member.

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- (ii) If the names in the list are not arranged in alphabetical order, an index sufficient to enable the name of any person to be readily found must be annexed.

**6. Particulars of directors and securities.**

Particulars of the persons who are directors of the company at the date of this return.

Name Present fore- name or names and surname	Any former forenames or names and surname.	Nationality	Usual residential address	Business, occupation and parti- culars of other direc- torships	Date of birth

Particulars of the person who is secretary of the company at the date of this return.

Name (In the case of an indivi- dual, present forename or names and surname, in the case of a corpora- tion, the corporate name).	Any former fore- names or surnames.	Usual residential address (In the case of a corpora- tion, the register or principal office).

Signed.....

Director:.....

Notes

“Director” includes any person who occupies the position of a director by whatsoever name called and any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

“Former forename” and “former surname” do not include in the case of a married woman the name or surname by which she was known previous to the marriage.

Where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated.

\*Delivered for filing by:.....

\*This should be printed at the bottom of the first page of the return.

SEVENTH SCHEDULE (Section 319)

ANNUAL RETURN FOR A SMALL COMPANY

PART 1

Content

1. The name and address of the registered office of the company.
2. If the register of members is, under this Act kept elsewhere than at the registered office of the company, the address of the place where it is kept.
3. If any register of holders of debentures of the company or such register or part of such register is, under this Act kept elsewhere than at the registered office of the company, the address of the place where it is kept.
4. The authorised share capital of the company.
5. The issued capital.
6. The total paid-up capital.
7. Particulars of the total amount of the indebtedness of the company in respect of the company in respect of all mortgages and charges which are required to be registered with the Commission under this Act.
8. Particulars of the directors and secretary.

PART II

Annual returns of.....Limited made up to the day of 20 (being the fourteenth day after the date of the annual general meeting for the year.....

.....

1. Name

.....

2. Address

(Address of the register office of the company).

.....

3. Situation of registered of members and debenture holders.

.....

(a) (Address of place at which the register of members is kept, if other than the registered office of the company)

(b) Address of any place in Sierra Leone other than the registered office of the company at which any register of holders of debentures of the company or any duplicate of such register or part of such register is kept.

4. *Particulars of indebtedness*

Particulars of the persons who are directors of the company at the date of this return.

Name Present for-name or names and surname	Any former forenames or names and surname.	Nationality	Usual residential address	Business, occupation and particulars of other directorships	Date of birth

Particulars of the person who is secretary of the company at the date of this return.

Name (In the case of an individual, present forename or names and surname, and in the case of a corporation, the corporate name).	Any former forenames or surnames.	Usual residential address (In the case of a corporation, the registered or principal office).

Signed.....

Director:.....

Notes

“Director” includes any person who occupies the position of a director by whatsoever name called and any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

“Former forename” and “former surname” do not include in the case of a married woman the name or surname by which she was known previous to the marriage.

The names of all bodies corporate of which the director is also a director should be given except those bodies corporate of which the company making the return is the wholly-owned subsidiary or bodies corporate which are the wholly-owned subsidiaries either of the company or of another company of which the company is a subsidiary of another if it has no members except that other and that other’s wholly-owned subsidiaries and its or their nominees. If the space provided in the form is insufficient, particulars of both directorship should be listed on a separate statement attached to the return.

Where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated.

\*Delivered for filing by:.....

\*This should be printed at the bottom of the first page of the return.

EIGHTH SCHEDULE-

(Section 435)

Section

Subject matter

- 362 Statement of company’s affairs to be submitted to official receiver.
- 365 Appointment and powers of provisional liquidators.
- 366 Appointment, style etc. of liquidators.
- 373 Exercise and control of liquidator’s powers.
- 374 Books to be kept by liquidator.
- 375 Payments by liquidators into Companies Liquidation Account.
- 376 Audit of liquidator’s accounts.
- 380 Constitution and proceedings of committee of inspection.

NINTH SCHEDULE

(Section 500)

PART 1– MATTERS REQUIRED TO BE STATED IN A PROSPECTUS

1. Except where the prospectus is published as a newspaper advertisement, the contents of the memorandum, with the names, descriptions and addresses of the signatories, and the number of shares subscribed for by them respectively.
2. The number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company.
3. The number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors.
4. The names, descriptions and addresses of the directors or proposed directors and of the managers or proposed managers (if any).
5. Where shares are offered to the public for subscription, particulars as to-



- (a) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters:-
- (i) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;
  - (ii) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company;
  - (iii) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters ;
  - (iv) working capital; and
- (b) the amounts to be provided in respect of the matters referred to in sub-paragraph (a) otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

6. The amount payable on application and allotment on each share and, in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the 2 preceding years, the amount actually allotted, and the amount, if any, paid on the shares so allotted.

7. The number and amount of shares and debentures which, within the 2 preceding years have been issued or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.

8. The names and addresses of the vendors of any property purchased or acquired by the company, or proposed to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares or debentures, to the vendor; and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor.

9. The amount if any, paid or payable as purchase money in cash, shares or debentures, for such property, specifying the amount, if any, payable for goodwill.

10. The amount, if any, paid within the 2 preceding years or payable as commission (but not including commission to sub-underwriters) for subscribing or agreeing to subscribe, or agreeing to procure subscriptions, for any shares in, or debentures of, the company, or the rate of such commission.

11. The amount or estimated amount of preliminary expenses.

12. The amount paid within the 2 preceding years or intended to be paid to any promoter, and the consideration for such payment.

13. The dates of and parties to every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than 2 years before the date of issue of the prospectus, and a reasonable time and place at which such material contract or a copy thereof may be inspected.

14. The names and addresses of the auditors, if any, of the company.

15. Full particulars of the nature and extent of the interest, if any, of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become or to qualify him as a director, or, otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.

16. If the prospectus invites the public to subscribe for shares in the company and the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

17. In the case of a company which has been carrying on business, or of a business which has been carried on, for less than 3 years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

#### PART II—REPORTS TO BE SET OUT IN PROSPECTUS

1. A report by the auditors of the company with respect to the profits of the company in respect of each of the three financial years immediately preceding the issue of the prospectus, and with respect to the rates of the dividends, if any, paid by the company in respect of each class of shares in the company in respect of each of the 3 years, giving particulars of each class of shares on which the dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those; years and, if no accounts have been made up in respect of any part of the period of 3 years ending on a date 3 months before the issue of the prospectus, containing a statement of that fact.

2. If the proceeds or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by accountants who shall be named in the prospectus upon the profits of the business in respect of each of the 3 financial years immediately preceding the issue of the prospectus.

#### PART III—PROVISIONS APPLYING TO PARTS I AND II

1. The provisions of this Schedule with respect to the memorandum and the qualification, remuneration and interest of directors, the names, descriptions and addresses of directors or proposed directors, and the amount or estimated amount of the preliminary expenses, shall not apply in the case of a prospectus issued more than 2 years after the date at which the company is entitled to commence business.

2. Every person shall, for the purposes of this Schedule be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase or for any option of purchase, of any property, to be acquired by the company in any case where—

- (a) the purchase money is not fully paid at the date of the issue of the prospectus;
- (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus;
- (c) the contract depends for its validity or fulfilment on the result of that issue.

3. Where any property to be acquired by the company is to be taken on lease, this Schedule shall have effect as if the expressions “ vendor ” included the lessor, “purchase money” included the consideration for the lease, and “sub-purchaser” included a sub-lessee.

4. For the purposes of item 8 of Part I, where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.

5. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than 3 years, the accounts of the company or business have only been made up in respect of 2 years or one year, Part II shall have effect as if references to 2 years or one year, as the case may be, were substituted for references to 3 years.

6. The expression “financial year” in Part II means the year in respect of which the accounts of the company or of the business, as the case may be, are made up, and where by reason of any alteration of the date on with the financial year of the company or business terminates the accounts of the company or business have been made up for a period greater or less than a year, that greater or less period shall for the purpose of that Part be deemed to be a financial year.

Passed in Parliament this *3rd* day of *June*, in the year of our Lord two thousand and nine.

VICTOR A. KAMARA,  
*Clerk of Parliament.*

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed Parliament and found by me to be a true and correct printed copy of the said Bill.

VICTOR A. KAMARA,  
*Clerk of Parliament.*