

Zambia

## Companies Act, 1994

### Chapter 388

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# Zambia

## Companies Act, 1994

### Chapter 388

Commenced on 1 February 1995 by [Companies \(Commencement\) Order, 1995](#)

*[This is the version of this document from 15 July 2011.]*

*[This legislation has been revised and consolidated by the Ministry of Legal Affairs of the Government of the Republic of Zambia. This version is up-to-date as at 31st December 1996. All subsequent amendments have been researched and applied by Laws.Africa for ZAMBIALII.]*

*[Amended by [Companies \(Amendment\) Act, 2000 \(Act 1 of 2000\)](#) on 1 February 2000]*

*[Amended by [Companies \(Amendment\) Act, 2010 \(Act 12 of 2010\)](#) on 16 April 2010]*

*[Amended by [Companies \(Amendment\) Act, 2011 \(Act 24 of 2011\)](#) on 15 July 2011]*

*[26 of 1994; 6 of 1995]*

**An Act to provide for the formation, management, administration and winding-up of companies; to provide for the registration of charges over the undertakings or properties of companies; to provide for the registration of foreign companies doing business in Zambia; and to provide for matters connected with or incidental to the foregoing.**

## Part I – Preliminary

### 1. Short title

This Act may be cited as the Companies Act.

### 2. Interpretation

In this Act, unless the context otherwise requires—

"**accounting records**" includes—

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry; and
- (b) such working papers and other documents as are necessary to explain the methods and calculations by which the accounts are made up;

"**accounts**" means profit and loss accounts and balance sheets together with any statements, reports and notes attached to or intended to be read with any of those profit and loss accounts or balance sheets, but, subject to section one hundred and seventy-four, does not include the auditors' reports or directors' reports;

"**alternate director**" means an alternate director of a company referred to in section two hundred and thirteen;

"**annual accounts**" means the annual accounts referred to in section one hundred and sixty-four;

"**annual general meeting**" means an annual general meeting of a company referred to in section one hundred and thirty-eight;

"**annual return**" means the return referred to in section one hundred and eighty-four, together with any document required by this Act to accompany the return;

"**articles**" means the articles of a company described in section seven;



**"auditors' report"** means the report of the auditors of a company referred to in section one hundred and seventy-three;

**"body corporate"** means a company or corporation incorporated under or by virtue of the laws of Zambia or of any other country, other than a corporation sole;

**"book"** includes accounts, deed, writing, register, document, accounting record, and any clear record of information, however compiled and whether recorded or stored in written or printed form or by electronic or photographic process or otherwise;

**"branch register"** means a branch register of a company established under section fifty-one;

**"capital redemption reserve"** means the reserve referred to in section sixty;

**"certificate of incorporation"** means a certificate of incorporation of a company issued by the Registrar under section ten, or a replacement of such a certificate issued under this Act;

**"certificate of share capital"** means a certificate of share capital of a company issued by the Registrar under section ten, or a replacement of such a certificate issued under this Act;

**"certified copy"** means a copy of a document of a company which has endorsed thereon or annexed thereto—

- (a) a certificate by a notary public; or
- (b) a declaration made and signed by an officer of the company or by some person interested therein otherwise than on behalf of the company;

to the effect that it is a true and complete copy of the original, together with, in the case of an original in a language other than English, an English translation similarly certified to the effect that it is an accurate translation of the original;

**"charge"** means a charge created in any way and includes—

- (a) mortgage;
- (b) an agreement to give or execute a charge or mortgage whether on demand or otherwise; and
- (c) until such time as the whole of the purchase price is paid, an agreement for sale and purchase of land under which the seller remains in occupation;

**"class meeting"** means a meeting of those members of a company who, under the articles, belong to a particular class;

**"committee of inspection"** means a committee of inspection appointed in the course of a winding-up under section two hundred and ninety-five or three hundred and fifteen;

**"company"** means—

- (a) a company incorporated under this Act; or
- (b) subject to section four and Division 14.3, an existing company;

**"company limited by guarantee"** means a company incorporated as such, being a company satisfying section nineteen;

**"company with share capital"** means a public company, a private company limited by shares or an unlimited company;

**"court"** means the High Court for Zambia;

**"creditors' voluntary winding-up of"** means a voluntary winding-up with respect to which no declaration of solvency was made in accordance with section three hundred and eight;

**"current liability"**, means a liability that would in the ordinary course of events be payable within twelve months after the end of the financial year to which the accounts or group accounts concerned relate;

**"debenture"** means a document issued by a body corporate that evidences or acknowledges a debt of the body corporate, whether or not it constitutes a charge on property of the body corporate, in respect of money that is or may be deposited with or lent to the body corporate, other than a document of the following kinds—

- (a) a document acknowledging a debt incurred by the body corporate in respect of money that is or may be deposited with or lent to the body corporate by a person—
  - (i) in the ordinary course of a business carried on by the person; and
  - (ii) in the ordinary course of such business of the body corporate as is not part of a business of borrowing money and providing finance;
- (b) a document issued by a bank in the ordinary course of its banking business that evidences or acknowledges indebtedness of the bank arising in the ordinary course of that business;
- (c) a cheque, order for the payment of money or bill of exchange;
- (d) a document of a kind prescribed, and in the circumstances prescribed in the regulations for the purposes of this paragraph;

and includes—

- (a) a unit of a debenture;
- (b) debenture stock; and
- (c) bonds and any other securities issued by a company, whether constituting a charge on the assets of the company or not;

**"debenture holder"** includes a debenture stockholder;

**"declaration of guarantee"** means a declaration of guarantee made under section nineteen;

**"declaration of solvency"** means a declaration made in accordance with section three hundred and eight;

**"default"** means, in reference to a person who is "in default," that the person wilfully authorised or permitted an act or omission that constitutes a contravention by a body corporate of the provision of this Act in which the expression appears;

**"designating number"** means the number assigned to a company or foreign company by the Registrar for the purposes of identification;

**"director"** means a person appointed as a director of a company under section two hundred and six; and  
**"the directors"** means the directors acting collectively as described in section two hundred and three;

**"director-report"** means the report by the directors of a company referred to in section one hundred and seventy-six;

**"document"** includes—

- (a) any paper or other material on which there is writing or printing or on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (b) a disc or tape or other article, or any material, from which sounds, images, writings or messages are capable of being reproduced with or without the aid of any other article or device;

and without limiting the generality of the foregoing, includes any summons, order and other legal process and any notice;

**"equity share"** means a share comprised in the equity share capital of a body corporate;

**"equity share capital"** means the issued share capital of a body corporate, excluding any part thereof which neither as respects dividends nor as respects capital carries any right to participate beyond a specified amount in a distribution;

**"executive director"** means a director to whom has been delegated any of the powers of the directors to direct and administer the business and affairs of the company;

**"executive officer"** means a person, by whatever name called and whether or not a director of a body corporate, who is concerned, or takes part, in the management of the body corporate;

**"existing company"** means a body corporate which immediately prior to the commencement of this Act was a company under the former Act;

**"expert"** includes an engineer, valuer, accountant, assayer, and any other person whose profession or calling gives authority to a statement by the person on the subject matter concerned;

**"extraordinary general meeting"** means a general meeting of a company that is not an annual general meeting;

**"extraordinary resolution"** means an extraordinary resolution for the purposes of section one hundred and fifty-six;

**"financial year"**

- (a) in relation to a company, means the financial year of the company under section forty-two;
- (b) in relation to a foreign company, means the financial year of the foreign company under section two hundred and forty-two; and
- (c) in relation to any other body corporate, means a period in relation to which the body corporate, in conformity with the law of the place of its incorporation, produces accounts;

**"former Act"** means the Companies Act repealed by section four hundred and two;

*[Cap. 686 of the 1971 Edition]*

**"former name"** does not include—

- (a) a name changed or disused before the person bearing the name attained the age of eighteen years;
- (b) a name changed or ceased to be used more than twenty years previously; or
- (c) the name by which a married woman was known prior to her marriage;

**"general meeting"** means an annual general meeting or an extraordinary general meeting;

**"general accounts"** means the accounts of a group of companies referred to in section one hundred and sixty-five;

**"group of companies"** means a company that is a holding company together with all its subsidiaries;

**"holding company"** means a body corporate that is a holding company under section forty-three;

**"invitation to the public"** means an invitation described in section one hundred and nineteen;

**"limited company"** means a company limited by shares or a company limited by guarantee;

**"liquidator"** includes a provisional liquidator;

**"managing director"** means the managing director of a company appointed under section two hundred and fourteen;

**"member"** means a member of a company under section forty-five;

**"members voluntary winding-up"** means a voluntary winding-up with respect to which a declaration of solvency was made in accordance with section three hundred and eight;

**"monetary unit"** means an amount of one thousand kwacha;

**"non-current liability"** means a liability that is not a current liability;

**"number"**, in relation to shares, includes an amount of stock;

**"officer"** includes—

- (a) a director, secretary or executive officer of a body corporate;
- (b) a local director of a foreign company;
- (c) a receiver of any part of the undertaking of a body corporate appointed under a power contained in any instrument; and
- (d) a liquidator of a body corporate appointed by the members in a voluntary winding-up;

but does not include—

- (i) a receiver of any part of the undertaking of a body corporate appointed by the court;
- (ii) a liquidator of a body corporate appointed by the court or by the creditors of the body corporate; or
- (iii) an auditor of a body corporate;

**"official receiver"** means—

- (a) an official receiver appointed under the Bankruptcy Act; or  
[Cap. 82]
- (b) an officer appointed for the purpose by the Minister, if no such official receiver is appointed;

**"ordinary resolution"** means an ordinary resolution for the purposes of section one hundred and fifty-six;

**"prescribed"** means prescribed in the regulations made under this Act;

**"private company"** means a private company limited by shares, a company limited by guarantee or an unlimited company;

**"private company limited by shares"** means a company incorporated as such, being a company satisfying section seventeen;

**"profit and loss account"** includes income and expenditure account, revenue account or any other account showing the results of the business of a company for a period;

**"public company"** means a company incorporated as such, being a company satisfying section fourteen;

**"receiver"** includes an official receiver and a receiver and manager; and any reference to a receiver of the property of a company includes a reference 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;

**"register of foreign companies"** means the register referred to in section two hundred and forty-four;

**"register of liquidators"** means the register of liquidators referred to in subsection (4) of section one hundred and thirty-two;

*[definition of "register of liquidators" inserted by section 2 of [Act 24 of 2011](#)]*

**"register of receivers"** means the register of receivers referred to in subsection (3) of section one hundred and eleven;

*[definition of "register of receivers" inserted by section 2 of [Act 24 of 2011](#)]*

**"registered accountant"** means a registered accountant for the purposes of the Accountants Act;

*[Cap. 390]*

**"registered member"** means a person registered as a member of a company under section forty-eight;

**"registered office"** means—

- (a) in relation to a company, the registered office of the company under section one hundred and ninety; and
- (b) in relation to a foreign company, the registered office of the company under section two hundred and forty-five;

**"registered records office"** means the registered records office of a company referred to in section one hundred and ninety-one;

**"Registrar"** means the person appointed as Registrar under section fourteen of the Patents and Companies Registration Agency Act, 2010.

*[Act No. 15 of 2010]*

*[definition of "Registrar" substituted by section 2 of Act 12 of 2010]*

**"related"** means related for the purposes of section forty-three;

**"resolution for reducing share capital"** means a resolution described in section seventy-six;

**"seal"** means the common seal of a company or other body corporate;

**"secretary"**—

- (a) in relation to a company, means a person appointed as the secretary pursuant to section two hundred and five;
- (b) in relation to a body corporate other than a company, means a person occupying the position of secretary, by whatever name called;

**"share"** includes stock;

**"shareholder"** includes a stockholder;

**"share premium account"** means the share premium account referred to in section sixty-one;

**"share warrant"** means a share warrant issued pursuant to section sixty-nine;

**"special resolution"** means a special resolution for the purposes of section one hundred and fifty-six;

**"Standard Articles"** means the Standard Articles in the First Schedule;

**"subsidiary"** means a body corporate that is a subsidiary of another body corporate for the purposes of section forty-three;

**"unlimited company"** means a company incorporated as such, being a company satisfying section twenty;

**"waiting period"** means the period of seven days after the first publication of a prospectus which has been registered, or such longer period after that date as may be stated in the prospectus as the period before the expiration of which applications, offers, or acceptances in response to the prospectus will not be accepted or treated as binding;

**"wholly owned subsidiary"** means a body corporate that is the wholly owned subsidiary of another body corporate for the purposes of section forty-three.

### 3. Effect of declaration in certified copy

A declaration made for the purposes of paragraph (b) of the definition of certified copy in section two shall be deemed to be a statutory declaration.

#### 4. Application of Act to existing companies

Subject to this Act, this Act applies to an existing company as if it had been duly incorporated under this Act as—

- (a) a public company, if it was a public company under the former Act;
- (b) a private company limited by shares, if it was a private company limited by shares under the former Act; or
- (c) a company limited by guarantee, if it was a private company limited by guarantee under the former Act.

#### 5. Prohibition of large partnerships

- (1) Subject to this section, an association or partnership that—
  - (a) consists of more than twenty persons; and
  - (b) is not a body corporate;shall not carry on any business for gain by the association or partnership or individual members of the association or partnership.
- (2) Subsection (1) shall not apply to a partnership—
  - (a) formed for the purpose of carrying on a prescribed profession or calling; and
  - (b) having not more than the number of partners prescribed for the purposes of that profession.
- (3) If an association or partnership contravenes this section, each member of the association or partnership shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

### Part II – Incorporation and modification of companies

#### 2.1 – Incorporation

#### 6. Application for incorporation

- (1) Subject to this Act, two or more persons associated for any purpose may incorporate a company by subscribing their names to an application for incorporation in the prescribed manner and form upon payment of the prescribed fee.
- (2) Subject to subsection (3), an individual shall not subscribe to an application for incorporation if the person—
  - (a) is under eighteen years of age;
  - (b) is an undischarged bankrupt under the laws of Zambia;
  - (c) subject to an order by the court, is an undischarged bankrupt under the laws of another country;
  - (d) is of unsound mind and has been declared to be so by the court or a court of competent jurisdiction of another country; or
  - (e) has, in the last five years prior to the application, been convicted of an offence involving fraud or dishonesty in Zambia or elsewhere.

- (3) The incorporation of a company shall not be invalid by reason only that an individual or individuals subscribed to the application for incorporation in contravention of subsection (2).

[section 6 substituted by section 3 of [Act 24 of 2011](#)]

## 7. The articles of a company

- (1) A company may have articles regulating the conduct of the company.
- (2) The articles may contain restrictions on the business that the company may carry on.
- (3) Where a provision in the articles is inconsistent with this Act or any other written law, the provision is invalid to the extent of the inconsistency.
- (4) The articles of a company may adopt the regulations of the Standard Articles, or any specified regulations thereof.
- (5) The articles of a public company or a private company limited by shares shall be deemed to have adopted the regulations of the Standard Articles except insofar as the articles exclude or modify those regulations.
- (6) The articles of a company shall be divided into paragraphs numbered consecutively.

## 8. Amendment of articles

- (1) Subject to this Act, and to its articles, a company may amend its articles if it passes a special resolution approving the amendment.
- (2) If a company passes a special resolution approving the amendment of its articles, it shall within twenty-one days after the date of the resolution lodge a copy of the resolution with the Registrar together with a copy of each paragraph of the articles affected by the amendment, in its amended form.
- (3) The articles have effect in their amended form on and from the day of their lodgment with the Registrar or such later date as may be specified in the resolution.
- (4) If a company fails to comply with subsection (2), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

## 9. Statutory declaration as to compliance with the Act

- (1) An application for incorporation shall be accompanied by a statutory declaration that the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, made by—
  - (a) a legal practitioner having a practising certificate who was engaged in the formation of the company; or
  - (b) a person named in the application as a first director or secretary of the company.
- (2) The Registrar may accept the declaration as *prima facie* evidence of compliance.

## 10. Certificates of incorporation and of share capital

- (1) Where an application for incorporation and the documents referred to in section six have been duly lodged, the Registrar shall, subject to this Act, issue a certificate in the prescribed form stating that the company is, on and from the date specified in the certificate, incorporated and that the company is the type of company specified in the application for incorporation.

- (2) If the company has share capital, the Registrar shall, at the same time, issue a certificate stating—
  - (a) the amount of share capital of the company; and
  - (b) the division of the share capital into shares of a fixed amount.
- (3) The Registrar shall keep a copy of each certificate issued under this section, and this Act shall apply to the copies as if they were documents lodged with the Registrar.

## 11. Incorporation of the company

On and from the date of incorporation specified in the certificate of incorporation, but subject to this Act, there shall be constituted an incorporated company by the name set out in the certificate.

## 12. Register of companies

- (1) The Registrar shall maintain a register of companies in which is entered, in respect of each company—
  - (a) a chronological record of the prescribed particulars, and of any other particulars which the Registrar thinks fit, in relation to the company; and
  - (b) a record of the documents lodged under this Act in respect of the company, other than documents whose only effect is to change particulars recorded under paragraph (a).

## 2.2 – Types of company

## 13. Types of company

A company incorporated under this Act shall be—

- (a) a public company; or
- (b) a private company being—
  - (i) a private company limited by shares;
  - (ii) a company limited by guarantee; or
  - (iii) an unlimited company

## 14. Public companies

- (1) A public company shall have share capital.
- (2) The articles of a public company shall state—
  - (a) the rights, privileges, restrictions and conditions attaching to each class of shares, if there are two or more classes; and
  - (b) the authority given to the directors to determine the number of shares in, the designation of, and the rights, privileges, restrictions and conditions attaching to each series in a class of shares, if the class of shares may be issued in series.
- (3) All shares shall rank equally apart from differences due to their being in different classes or series.
- (4) Where a public company is wound-up, a member shall be liable to contribute, in accordance with Part XIII, an amount not exceeding the amount, if any, unpaid on the shares held by him.



- (5) The articles of a public company shall not impose any restriction on the right to transfer any shares of the company other than—
- (a) a restriction on the right to transfer any shares on which there is unpaid liability; or
  - (b) a restriction on the right to transfer shares issued to directors or other officers or employees exercising any rights or options granted under section seventy-three, or issued in pursuance of any scheme adopted under that section; or
  - (c) a provision for the compulsory acquisition, or rights of first refusal, of shares referred to in paragraph (b), in favour of other members of the company or trustees appointed under any scheme adopted under section seventy-three.

**15. \*\*\***

*[section 15 repealed by section 3 of [Act 12 of 2010](#)]*

**16. Private companies**

- (1) Subject to this section, the articles of a private company shall limit the number of its members to a specified number, being a number not more than fifty.
- (2) The regulations may provide that the articles of an unlimited company may, subject to any specified conditions, limit the number of its members to a number larger than fifty.
- (3) The articles of a private company shall not impose any restriction on the transferability of shares after they have been issued unless all the shareholders have agreed in writing.
- (4) For the purposes of subsection (1)—
  - (a) joint holders of shares are counted as one person; and
  - (b) a member is not counted if he is in the employment of the company or of a related body corporate, or if he was a member while previously in the employment of the company or a related body corporate and has been a member continuously since that time.
- (5) If a private company—
  - (a) has more members than permitted by its articles; or
  - (b) invites the public to acquire shares or debentures in the company in contravention of section one hundred and twenty-two;

the Registrar may give notice to the company requiring the company to give reasons why the company should not be converted into a public company.

- (6) If, one month after the issue of the notice, the contravention concerned has not been rectified, the court may, on the application of the Registrar, if not satisfied that the contravention was inadvertent and not likely to be repeated, order—
  - (a) that the company shall be deemed to have made an application for conversion to a public company, or conversion to a private company followed by conversion to a public company, as appropriate, and to have passed any resolutions necessary for such an application or applications in the form specified in the order; and
  - (b) that the directors, or any of them, shall be liable for the costs of the application of the Registrar and the conversion of the company.

## 17. Private companies limited by shares

- (1) The articles of a private company limited by shares shall state—
  - (a) the rights, privileges, restrictions and conditions attaching to each class of shares, if there are two or more classes; and
  - (b) the authority given to the directors to determine the number of shares in, the designation of, and the rights, privileges, restrictions and conditions attaching to each series, if a class of shares may be issued in series.
- (2) All shares shall rank equally apart from differences due to their being in different classes or series.
- (3) Where a private company limited by shares is wound-up, a member shall be liable to contribute, in accordance with Part [XIII](#), an amount not exceeding the amount, if any, unpaid on the shares held by him.

## 18. \*\*\*

*[section 18 repealed by section 4 of [Act 12 of 2010](#)]*

## 19. Companies limited by guarantee

- (1) Each subscriber to an application for incorporation as a company limited by guarantee shall sign a declaration of guarantee specifying the amount that he undertakes to contribute to the assets of the company in the event of its being wound-up.
- (2) Each subscriber to the application for incorporation shall, on the incorporation of the company, be a member of the company.
- (3) Subject to any additional requirements imposed by the articles of the company—
  - (a) a person shall become a member of the company, on approval by a resolution of the company, by signing a declaration of guarantee and delivering it to the company; and
  - (b) a person shall cease to be a member on delivering to the company a signed notice in writing to that effect.
- (4) Within seven days after a person becomes a member or ceases to be a member of the company, the company shall lodge with the Registrar a notice in the prescribed form, together with, in the case of a person's becoming a member, the declaration of guarantee by the person.
- (5) The company shall not carry on business for the purpose of making profits for its members or for anyone concerned in its promotion or management.
- (6) Where a company limited by guarantee is wound-up, a member shall be liable to contribute, in accordance with Part [XIII](#), an amount not exceeding the amount specified in the declaration of guarantee made by him.
- (7) If the company carries on business for the purpose of making profits for its members or for anyone concerned in its promotion or management—
  - (a) those officers and members of the company who wilfully authorise or permit the business to be carried on for that purpose shall be jointly and severally liable for the payment and discharge of all debts and liabilities of the company incurred in carrying on the business so authorised or permitted; and
  - (b) each of the officers and members referred to in paragraph (a) shall be guilty of an offence, and shall be liable on conviction to a fine of not more than thirty monetary units for each day on which that business is carried on.

- (8) If the company fails to comply with subsection (4), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

## **20. Unlimited companies**

- (1) An unlimited company shall have share capital and its articles shall state—
- (a) the rights, privileges, restrictions and conditions attaching to each class of shares, if there are two or more classes; and
  - (b) the authority given to the directors to determine the number of shares in, the designation of, and the rights, privileges, restrictions and conditions attaching to each series, if a class of shares may be issued in series.
- (2) All shares shall rank equally apart from differences due to their being in different classes or series.
- (3) Where an unlimited company is wound-up, a member shall be liable to contribute, in accordance with Part XIII, without limitation of liability.

## **2.3 – General provisions**

### **21. Contractual effect of incorporation**

Subject to this Act, the incorporation of a company shall have the same effect as a contract under seal between the company and its members from time to time and between those members themselves, in which they agree to form a company whose business will be conducted in accordance with the application for incorporation, the certificate of share capital from time to time, the articles of the company from time to time, and this Act.

### **22. Capacity and powers of a company**

- (1) A company shall have, subject to this Act and to such limitations as are inherent in its corporate nature, the capacity, rights, powers and privileges of an individual.
- (2) A company shall have the capacity to carry on its business and exercise its powers in any jurisdiction outside Zambia to the extent that the laws of Zambia and of that jurisdiction permit.
- (3) A company shall not carry on any business or exercise any power that it is restricted by its articles from carrying on or exercising, nor exercise any of its powers in a manner contrary to its articles.

### **23. Validity of acts**

No act of a company, including any transfer of property to or by a company, shall be invalid by reason only that the act or transfer is contrary to its articles or this Act.

### **24. Notice not presumed**

No person dealing with a company shall be affected by, or presumed to have notice or knowledge of, the contents of a document concerning the company by reason only that the document has been lodged with the Registrar or is held by the company available for inspection.

### **25. No disclaimer allowed**

A company or a guarantor of an obligation of the company may not assert against a person dealing with the company or with any person who has acquired rights from the company that—

- (a) any of the articles of the company has not been complied with;

- (b) a shareholder agreement has not been complied with;
- (c) the persons named in the most recent annual return or notice under section two hundred and twenty-six are not the directors of the company;
- (d) the registered office of the company is not an office of the company;
- (e) a person held out by a company as a director, an officer or an agent of the company has no authority to exercise the powers and perform the duties that are customary in the business of the company or usual for such a director, officer or agent;
- (f) a document issued by any director, officer or agent of the company with actual or usual authority to issue the document is not valid or genuine; or
- (g) the financial assistance referred to in section eighty-three or the sale or disposal of property referred to in section two hundred and sixteen was not authorised; except where that person has, or ought to have had by virtue of his position with or relationship to the company, knowledge of the fact asserted.

## **26. Companies ceasing to have at least two members**

- (1) If at any time the number of members of a company is reduced below two and it carries on business for more than six months without at least two members, a member or director of the company who was aware that the business was being carried on with fewer than two members shall be severally liable for the payment of all the debts and liabilities of the company incurred after the end of that period of six months.
- (2) The court, in any proceeding against the member or director or on application being made to it by any person interested, may relieve the member or director either wholly or partly from liability under subsection (1) on such terms as it thinks fit, if it is satisfied that the member or director had made reasonable efforts to prevent the business from being continued, or that it is otherwise just and reasonable to do so.
- (3) The liability imposed under subsection (1) shall be in addition to any liability of the company.

## **27. No increase in a member's liability or contribution without consent**

A member of a company shall be bound by an alteration made in the articles on a date (in this section called the "alteration date") after the date on which he became a member only to the extent that the alteration does not require him—

- (a) to take or subscribe for more shares than the number held by him on the alteration date;
- (b) in any way to increase his liability as at the alteration date; or
- (c) to contribute to the share capital of the company or otherwise to pay money to it;

unless he agrees in writing, either before or after the alteration date, to be bound thereby.

## **28. Pre-incorporation contracts**

- (1) If a person purports to enter into a contract not evidenced in writing in the name of or on behalf of a company before it comes into existence, the person shall be bound by the contract and entitled to the benefits thereof.
- (2) If a person purports to enter into a contract evidenced in writing in the name of or on behalf of a company before it comes into existence, the person shall be bound by the contract (in this section called "the relevant contract") and entitled to the benefits thereof except as provided in this section.

- (3) The company may, not later than fifteen months after its incorporation, adopt the contract by an ordinary resolution, and upon the adoption, subject to subsection (4)—
  - (a) the company shall for all purposes be bound by the contract and entitled to the benefits thereof as if the company had been in existence at the date of the contract and had been a party thereto; and
  - (b) the person who purported to act in the name of or on behalf of the company shall cease to be bound by or entitled to the benefits of the contract.
- (4) Subject to subsection (5), whether or not the relevant contract is adopted by the company, the other party to the contract may apply to the court for an order fixing obligations under the contract as joint or joint and several, or apportioning liability between or among the company and the person who purported to act in the name of or on behalf of the company, and upon such application the court may make any order it thinks just and equitable.
- (5) Subsection (4) does not apply if the relevant contract expressly provides that the person who purported to act in the name of or on behalf of the company before it came into existence shall not in any event be bound by the contract nor entitled to the benefits thereof.

## **29. Copies of certificate of incorporation, certificate of share capital and articles to be given to members**

- (1) A company shall supply to any member on request copies of—
  - (a) the certificate of incorporation;
  - (b) the certificate of share capital, in the case of a company with share capital; and
  - (c) The articles of the company;within seven days after receiving payment of the sum of one monetary unit, or such lesser sum as may be prescribed by the company, for each set of copies.
- (2) A company limited by guarantee shall supply to any member on request a list of the members with the amounts guaranteed by each in the declaration of guarantee.
- (3) A copy of the articles supplied under subsection (1) shall have endorsed on it the registered address, the postal address and the address of the registered records office of the company.
- (4) If a company fails to comply with this section, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

## **2.4 – Conversion of a company from one type to another**

### **30. Conversion of a private company limited by shares to company limited by guarantee**

- (1) A private company limited by shares may be converted into a company limited by guarantee if—
  - (a) there is no unpaid liability on any of its shares;
  - (b) all its members agree in writing to such a conversion;
  - (c) a special resolution amending the articles to satisfy section nineteen is passed, if the articles do not satisfy that section; and
  - (d) each member makes a declaration of guarantee.

**31. Conversion of private company limited by shares to unlimited company**

A private company limited by shares may be converted into an unlimited company if all its members agree in writing to its conversion.

**32. Conversion of company limited by guarantee to company limited by shares or unlimited company**

A company limited by guarantee may be converted into a company limited by shares or an unlimited company if—

- (a) all the members agree in writing—
  - (i) to convert the company into such a company; and
  - (ii) to a share capital for the company and the division thereof into shares of fixed amounts; and
- (b) each member agrees in writing to take up a specified number of shares.

**33. Conversion of unlimited company to private limited company**

- (1) An unlimited company may be converted into a private company limited by shares or a company limited by guarantee if—
  - (a) all its members agree in writing to its conversion;
  - (b) a special resolution amending the articles to satisfy section seventeen or nineteen, as appropriate, is passed, if the articles do not satisfy section seventeen and nineteen, as appropriate; and
  - (c) each member makes a declaration of guarantee, in the case of conversion to a company limited by guarantee.
- (2) In the case of a conversion to company limited by shares, the special resolution may—
  - (a) increase the nominal amount of the company's share capital by increasing the nominal amount of each of its shares, subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company's being wound-up; or
  - (b) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purpose of the company's being wound-up.

**34. Conversion of public company to private company limited by shares**

A public company may be converted into a private company limited by shares if a special resolution is passed that—

- (a) approves the conversion; and
- (b) amends the articles to satisfy sections sixteen and seventeen, if the company's articles do not satisfy those sections.

**35. Conversion of private company limited by shares to public company**

- (1) A private company limited by shares may be converted into a public company if a special resolution is passed that—
  - (a) approves the conversion; and

- (b) amends the articles to satisfy section fourteen, if the company's articles do not satisfy that section.

### 36. Method of conversion

- (1) If the requirements of section thirty, thirty-one, thirty-two, thirty-three, thirty-four or thirty-five (in this section called "the conversion section") are satisfied with respect to a company, the company shall, within twenty-one days after the conversion section's becoming satisfied, lodge with the Registrar an application in the prescribed form for conversion of the company in accordance with the resolution or agreement, together with the documents referred to in subsection (4).
- (2) On receiving the application the Registrar shall—
  - (a) issue a replacement certificate of incorporation in the prescribed form worded to meet the circumstances of the case and stating the date of conversion of the company; and
  - (b) make such entries in such registers as he considers appropriate.
- (3) On and from the date stated in the certificate as the date of conversion.
  - (a) the company shall be converted into a company of the status sought;
  - (b) if the company is being converted from a company with share capital to a company limited by guarantee, the shares therein shall be validly surrendered and cancelled notwithstanding section seventy-six;
  - (c) the articles of the company shall be amended in accordance with the documents lodged with the application; and
  - (d) where this Act requires different words to be the last words of the name of a company of the new status, the name of the company shall be changed accordingly.
- (4) The documents to be delivered to the Registrar are the following:
  - (a) the company's certificate of incorporation;
  - (b) a copy of each paragraph in the articles affected by any amendment, in its amended form;
  - (c) a copy of the special resolution or written agreement by the members referred to in the conversion section;
  - (d) the declarations of guarantee by each member, if the company is being converted to a company limited by guarantee;
  - (e) a statutory declaration by a director and the secretary of the company stating—
    - (i) that the conditions of the conversion section have been complied with; and
    - (ii) that in their opinion the company is solvent;
  - (f) a certificate by the auditors of the company, made not more than three months before the date of the application, that they have investigated the affairs of the company and that the company is solvent at the date of the certificate;
  - (g) certified copies, certified by a director and the secretary of the company, of every balance sheet, profit and loss account, group accounts, directors' report and auditors' report sent to the members of the company in the preceding twelve months, if the company is being converted from a public company to a private company and has been incorporated as a public company for more than fifteen months.
- (5) The conversion of the company under this section shall not alter the identity of the company, nor affect any rights or obligations of the company except as mentioned in this section, nor render defective any legal proceedings by or against the company.

- (6) Where an unlimited company is converted to a limited company and is wound-up within three years after the conversion, a member of the company who was a member immediately before the conversion shall not be entitled to a limitation of liability under section two hundred and sixty-six.
- (7) If the company fails to comply with subsection (1), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.
- (8) If a director, secretary or auditor of a company makes a declaration or certificate for the purposes of subsection (4) that in his opinion the company is solvent, without having reasonable grounds for the opinion, he shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

## 2.5 – The name of a company

### 37. Name of company

- (1) A public company shall have a name the last word of which is "PLC".
- (2) Subject to this Division, a private company limited by shares or a company limited by guarantee shall have a name the last word of which is "Limited".
- (3) The Registrar shall not, without the written consent of the Minister, register as the name of a company a name which in the Registrar's opinion suggests that the company enjoys the patronage of the President.

*[subsection (3), previously (4), renumbered, and the former subsection (3) deleted by section 4 of [Act 24 of 2011](#)]*

- (4) The Registrar may, at the request of persons who intend to form an incorporated company, give an opinion on the acceptability of a proposed name.

*[subsection (4), previously subsection (5), renumbered by section 4 of [Act 24 of 2011](#)]*

### 38. Reservation of name

- (1) A person or persons who propose to form a company may, subject to this section, reserve a name for the company by lodging with the Registrar an application in the prescribed form specifying the name proposed to be reserved (in this section called "the reserved name").
- (2) If the reserved named is acceptable to the Registrar and the Registrar is satisfied that—
  - (a) the reserved name is a registered business name of the person or persons;
  - (b) the reserved name is the name of an unincorporated association consisting of or represented by the person or persons;
  - (c) the reserved name is a name under which the person or persons are trading or conducting business, or is such a name with minor modifications or additions; or
  - (d) the person is a body corporate other than a company and the reserved name is the name of the body corporate or that name with minor modifications or additions;

the Registrar shall register the name as reserved by the person or persons for a period of three months.

- (3) While the name is so registered—
  - (a) subject to this Act, the person or persons shall be entitled to incorporate a company under the name; and



- (b) the Registrar shall treat the proposed name as the name of a company incorporated by the person or persons for the purposes of determining the acceptability of any other name as the name of a company.

### **39. Registrar may allow company to dispense with "Limited" in its name**

- (1) The Registrar may, on the application of a company limited by guarantee, grant the company written permission to omit the word "Limited" from its name for the purposes of this Act apart from this Part.
- (2) The Registrar may grant the permission on such conditions as he thinks fit, and those conditions shall be binding on the company and shall, if the Registrar so directs, be inserted in the articles of the company.
- (3) The Registrar may revoke the permission at any time, after giving written notice to the company of his intention to do so and considering any objections of the company.

### **40. Change of name**

- (1) A company may pass a special resolution to change its name.
- (2) Within twenty-one days after the date of the resolution, the company shall notify the Registrar in the prescribed form that the company intends to change its name to the name specified in the resolution (in this section called the "new name").
- (3) The Registrar, after considering the new name, shall notify the company that—
  - (a) the new name is acceptable; or
  - (b) in the opinion of the Registrar, the new name of a company would be likely to cause confusion with the name of another company or is otherwise undesirable, and that the Registrar will not register the new name.
- (4) If the new name is acceptable, the company shall, within twenty-one days after receiving the notice of the fact, lodge with the Registrar—
  - (a) the company's certificate of incorporation; and
  - (b) a copy of the resolution.
- (5) On receiving the documents referred to in subsection (4), the Registrar shall enter the new name on the Register in place of the former name, and shall issue a replacement certificate of incorporation worded to meet the circumstances of the case.
- (6) A certificate under this section shall be conclusive evidence of the alteration to which it relates.
- (7) A change of name by a company shall not affect any rights or obligations of the company nor render defective any legal proceedings that could have been continued or commenced against it by its former name, and any such legal proceedings may be continued or commenced against it by its new name.

### **41. Power of Registrar in relation to name**

- (1) The Registrar may refuse to register a proposed name of a company where it appears to the Registrar that—
  - (a) the name, if registered, is likely to cause confusion with a well known name or the name of an existing company;
  - (b) the registration is sought to prevent another person who is legitimately entitled to use the name from using the name; or

- (c) the registration of the name is otherwise undesirable or not in the public interest;
- and the Registrar may direct the Company to change its name in accordance with this Division.
- (2) The Registrar shall, where the Registrar refuses to register a proposed name of a company, notify the applicant of the reasons for the refusal within seven days of the decision.
- (3) The Registrar may, where a company does not change its name after receiving a direction under subsection (1), within fifty days or such longer period as the Registrar may allow, in writing, register the designating number of the company, together with the word "Limited" or "PLC" if required by section thirty-seven, as the name of the company, and shall issue a new certificate of incorporation for the company worded to meet the circumstances of the case.
- (4) A change of name under subsection (1) shall not affect any rights or obligations of the company nor render defective any legal proceedings that could have been continued or commenced against it by its former name, and any such legal proceedings may be continued or commenced against it by its new name.
- (5) Where the Registrar directs a company to change its name, compensation shall not be payable in respect of the name ordered to be changed.
- (6) In this section, "well known name" means a name associated generally with a company, whether within or outside the Republic, and in respect of which confusion is likely to arise if registered by another company, other than the company generally known by that name.

*[section 41 substituted by section 5 of [Act 24 of 2011](#)]*

## 2.6 – Miscellaneous

### 42. Financial year of a company

- (1) For the purposes of this Act, the "financial year" of a company is the period, whether or not a period of twelve months, that begins on one accounting date of the company and ends on the day before the next.
- (2) The first "accounting date" of a company is the date of its incorporation.
- (3) Subject to this section, the subsequent accounting dates of a company are—
- (a) the date specified in the application for its incorporation as the date on which the second financial year of the company will begin, and anniversaries of that date, if the application for incorporation specified such a date; or
  - (b) the anniversaries of the date of its incorporation, if the application for incorporation did not specify such a date.
- (4) A company may change an accounting date by lodging a notice of the change in the prescribed form with the Registrar, provided that—
- (a) the notice is lodged with the Registrar and notice of the change is given to each registered member and to the auditors (if any) of the company not later than the accounting date previous to the one to be changed; and
  - (b) the change does not result in a financial year's being longer than fifteen months.
- (5) Where a company changes an accounting date under this section, the subsequent accounting dates of the company are, unless changed under this section, the anniversaries of that changed date.

#### 43. Holding companies, subsidiaries and related companies

- (1) For the purposes of this section, "company" means a body corporate, whether or not a company for other purposes of this Act and whether or not incorporated in Zambia.
- (2) For the purposes of this Act, a company is a "holding company" of another company if the other company is a subsidiary of it under subsection (3).
- (3) For the purposes of this Act, the "subsidiaries" of a company (in this subsection called "the holding company") are the following companies:
  - (a) any company in which the holding company holds—
    - (i) more than half in nominal value of the equity share capital, if the company is incorporated in a jurisdiction that has nominal value of share capital; or
    - (ii) more than half in value of the equity share capital, if the company is incorporated in a jurisdiction that does not have nominal value of share capital;
  - (b) any company of which the holding company is a member and the composition of whose board of directors is controlled by the holding company;
  - (c) any subsidiary under paragraph (a) or (b) of a company which is itself a subsidiary of the holding company under paragraph (a) or (b) or by the repeated application of this paragraph.
- (4) For the purposes of this Act, the "wholly owned subsidiaries" of a holding company are the following companies:
  - (a) any company with no members other than the holding company and its nominees;
  - (b) any company with no members other than—
    - (i) the holding company;
    - (ii) nominees of the holding company;
    - (iii) companies which are themselves wholly owned subsidiaries of the holding company under paragraph (a) or the repeated application of this paragraph;
    - (iv) nominees of companies referred to in subparagraph (iii).
- (5) For the purposes of this Act, a company is "related" to a second company if—
  - (i) the first company is a subsidiary of the second;
  - (ii) the first company is a holding company of the second; or
  - (iii) both companies are subsidiaries of a third company.
- (6) For the purposes of this section, the composition of a company's board of directors is controlled by another company if, and only if, in relation to each of more than half of the directorships—
  - (a) the other company is able, without the consent or concurrence of any other person, to appoint or remove the holder of the directorship; or
  - (b) a person's appointment to the directorship follows necessarily from his appointment as director of the other company.
- (7) In determining whether the composition of a company's board of directors is controlled by another company—
  - (a) subject to this subsection, any shares held or power exercisable by a person who is the effective nominee of the other company shall be deemed to be held or exercisable by the other company;

- (b) any shares held or power exercisable in a fiduciary capacity shall be disregarded;
  - (c) any shares held or power exercisable by any persons by virtue of the provisions of any debentures of the company or of a trust deed for securing any issue of such debentures shall be disregarded; and
  - (d) any shares held or power exercisable by a person only by way of security for the purposes of a transaction entered into in the ordinary course of business shall be disregarded if the ordinary business of the person includes the lending of money.
- (8) For the purposes of this section, a member of a company is the effective nominee of another company if he is—
- (a) a nominee of the other company;
  - (b) a subsidiary of the other company;
  - (c) a person who is the effective nominee under paragraph (a) or (b) of a person who is himself an effective nominee of the other company under paragraph (a) or (b) or by the repeated application of this paragraph.

#### **44. Registration of related bodies corporate**

- (1) A company shall, within one month after another body corporate has become related to it, lodge with the Registrar a notice of that fact together with particulars identifying the body corporate.
- (2) If a company fails to comply with this section, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

### **Part III – Membership and registers**

#### **45. Membership of company**

- (1) The members of a company with a share capital shall be the shareholders and stockholders of the company.
- (2) On the incorporation of a company with share capital and until the first allotment of shares by the company, the members shall be those subscribers to the application for incorporation who have not given the company written notice of their ceasing to be members.
- (3) The members of a company limited by guarantee shall be the persons who are members in accordance with section nineteen.

#### **46. Membership by company of itself or of holding company**

- (1) Except as provided in this section, a company shall not be a member of itself or of a body corporate which is its holding company.
- (2) A company may, in the capacity of personal representative or trustee, be a member of itself or a body corporate which is its holding company unless it or the holding company or a subsidiary of either of them has a beneficial interest in the membership.
- (3) A company may be a member of itself or a body corporate which is its holding company by way of security for the purposes of a transaction entered into in the ordinary course of a business which includes the lending of money, but in that case shall have no right to vote at meetings of the holding company or of any class of members thereof.
- (4) This section shall not prevent a subsidiary which was a member of a body corporate before it became a subsidiary of the body corporate from continuing to be a member.

- (5) This section shall not prevent a subsidiary which was, immediately before the commencement of this Act, a member of its holding company from continuing to be a member.
- (6) A subsidiary that continues to be a member of its holding company under subsection (4) or (5)—
  - (a) shall have no right to vote at meetings of the holding company or any class of members thereof;
  - (b) shall not acquire further shares in the holding company except upon a general issue of fully-paid bonus shares, if the holding company is a company with share capital; and
  - (c) shall not, as a member, increase any interest in, or liability in relation to, the holding company, if the holding company is a company limited by guarantee.
- (7) For the purposes of this section, a company is deemed to be a member of a body corporate if a nominee of the company is a member.

#### **47. Offence if membership of private company exceeds number specified in articles**

If a private company fails to comply with the provisions of its articles on the number of its members, the company, and each officer and member in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

#### **48. Register of members**

- (1) A company shall maintain a register of its members and enter therein the following particulars:
  - (a) the full name and address of each member of which it has received notice;
  - (b) the occupation of the member, if the member is an individual;
  - (c) the fact that the member is a body corporate or an unincorporated association, as the case may be, if the member is not an individual;
  - (d) the date on which the company received the notice;
  - (e) if the company has share capital—
    - (i) the shares held by each member with the share numbers (if any); and
    - (ii) the amount paid or agreed to be considered as paid on the shares of each member;
  - (f) the amount that each member has guaranteed in his declaration of guarantee, if the company is limited by guarantee;
  - (g) the date on which the company received notice of any person's ceasing to be a member.
- (2) If the company has more than fifty members, the register shall contain an index of the names of the members in a form that enables the account of each member to be found readily.
- (3) If the company fails to comply with this section, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.
- (4) If the company fails to comply with this section because of the default of an agent charged with maintaining the register, the agent shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.

#### **49. Inspection of register**

- (1) Subject to this Part, the register and index of the names of the members of the company shall be available for inspection by any member of the company or other person in accordance with section one hundred and ninety-three.

- (2) A company may, on giving notice by advertisement in a newspaper circulating generally throughout Zambia, close for any time or times not exceeding in total thirty days in each year the register of members of the company or the part thereof relating to members holding shares of any class.

## **50. Power of court to rectify register**

- (1) If—
- (a) a company fails to correct an error in its register of members; or
  - (b) an error in the register causes a loss to a person;
- the person aggrieved or any member of the company may apply to the court for an order that the register be rectified and the person aggrieved may apply for an order that the company pay compensation for the loss.
- (2) If an application is made under this section, the court may make such orders as it thinks fit.
- (3) On an application under this section, the court may decide any question relating to the title of any person who is a party to the application to have his name entered in or removed 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 convenient to be decided for rectification of the register.
- (4) If an order is made under this section, the company shall, within twenty-one days after the making of the order, lodge a certified copy of the order with the Registrar.
- (5) If the company fails to comply with subsection (4), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

## **51. Company may keep branch register**

- (1) A company with share capital may, subject to its articles, keep a part of its register of members (in this Act called a "branch register"), being the part relating to members resident in a specified foreign country or countries, at a place in the foreign country, or one of the foreign countries.
- (2) The shares registered in a branch register shall be distinguished from the other shares of the company while they are held by members resident in a country to which the branch register applies.
- (3) The company shall arrange for the information as to any entry in a branch register to be transmitted to its registered records office as quickly as practicable, and shall maintain there, as part of its register of members, a duplicate of the branch register.
- (4) The company shall lodge with the Registrar notice of the physical address of the office where any branch register is kept, and of any change in that address and, if it is discontinued, of its discontinuance, and any such notice shall be given within twenty-one days after the initial keeping of the register in that office or of the change or discontinuance, as the case may be.
- (5) A branch register shall be maintained and shall be open for inspection in the manner required in sections forty-eight and forty-nine, or as nearly as is practicable, except that the advertisement before closing the register shall be inserted in some newspaper circulating generally in the country where the branch register is kept.
- (6) If a company fails to comply with subsection (3), (4) or (5), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.

**52. Duties in case of securities registered in branch register**

An instrument of transfer of any share registered in a branch register shall be deemed to transfer property situated outside Zambia, and, unless executed in any part of Zambia, shall be exempt from any duty chargeable in Zambia.

**53. Branch registers of foreign companies kept in Zambia**

The regulations may provide that sections forty-eight and forty-nine shall, subject to any modifications and adaptations specified in the regulation, apply to a register of members kept in Zambia by a specified body corporate, or class of bodies corporate, incorporated under the law of a foreign country or countries.

**54. No notice of trust**

- (1) Subject to section seventy, no notice of any trust, express, implied or constructive, need be entered on the register of members of a company, or be received by the company or the Registrar.
- (2) A company shall not be bound to see to the execution of any trust, whether express, implied or constructive in respect of any of its shares.
- (3) A receipt given by a member in whose name a share stands in the register of members shall be a valid and binding discharge of the company for any dividend or other money payable in respect of such share, whether or not notice of any trust relating to the share has been given to or received by the company.

**55. Register to be evidence**

The register of members shall be *prima facie* evidence of any matter by this Act directed or authorised to be inserted therein.

**Part IV – Shares and share capital****4.1 – Interpretation****56. Interpretation**

In this Part, unless the context otherwise requires, "company" means a company with share capital.

**4.2 – Issue and transfer of shares****57. Nature and transferability of shares**

- (1) The shares or other interest of a member in a company shall be personal estate and movable property, transferable by a written transfer in a manner provided by the articles of the company or by this Act.
- (2) If an instrument of transfer of fully paid shares in a company is in the prescribed form, executed by both the transferor and the transferee, or by persons duly authorised on behalf of the transferor or the transferee, the company shall not refuse registration of the transfer on the ground of form.
- (3) Subsection (2) shall not affect—
  - (a) the validity of any instrument which would be effective to transfer shares apart from that subsection;

- (b) any powers of the directors to accept in their discretion an instrument in any other form which may seem to them sufficient; or
  - (c) any right of the directors to refuse to register a person as the holder of shares on any ground other than the form in which those shares purport to be transferred to him.
- (4) Subject to sections sixty-four and sixty-six a person who transfers shares in a private company under this section shall notify the Registrar in the prescribed manner and form.

*[subsection (4) added by section 6 of [Act 24 of 2011](#)]*

## **58. Numbering of shares**

- (1) Subject to this section, each issued share in a company shall be assigned a distinguished number.
- (2) If at any time all the issued shares in a company, or all the issued shares therein of a particular class, are fully paid up, none of those shares need thereafter have a distinguishing number so long as the shares, or the shares in that class, remain fully paid up.

## **59. Redeemable shares**

- (1) The articles of a company may provide for the issue of shares which are to be redeemed, or are liable to be redeemed at the option of—
  - (a) the company;
  - (b) the share-holder, or
  - (c) either the company or the shareholder.
- (2) No redeemable shares may be issued at a time when there are no issued shares of the company which are not redeemable.
- (3) Redeemable shares shall not be redeemed unless they are fully paid.
- (4) The terms of redemption shall provide for payment on redemption.
- (5) Redeemable shares may be redeemed only out of distributable profits of the company or out of the proceeds of a fresh issue of shares made for the purposes of the redemption.
- (6) Any premium payable on redemption shall be paid either—
  - (a) out of distributable profits of the company; or
  - (b) out of the company's share premium account (including any sum transferred to that account in respect of premiums on a fresh issue made for the purposes of the redemption).
- (7) The manner and terms of the redemption shall be as provided by the articles.
- (8) Where shares are redeemed
  - (a) the shares shall be deemed to be cancelled on redemption;
  - (b) the amount of the company's issued share capital shall be diminished by the nominal value of the shares redeemed; and
  - (c) the amount of the company's authorised share capital shall not be affected.
- (9) Without prejudice to subsection (8), where a company is about to redeem any shares under this section, it may issue shares up to the nominal amount of the shares to be redeemed as if those shares had never been issued.



- (10) Subject to subsection (11), for the purposes of this Act, shares issued by a company—
- (a) up to the nominal amount of any shares which the company has redeemed under this section; or
  - (b) in pursuance of subsection (9), before the redemption of shares which the company is about to redeem under this section;
- shall be regarded as issued in place of the shares redeemed, or about to be redeemed, under this section.
- (11) Shares issued under subsection (9) shall not be regarded as issued in place of the shares about to be redeemed unless those shares are redeemed within one month after the issue of the new shares.
- (12) If a company redeems any redeemable shares, it shall, within fourteen days after doing so, lodge a notice of the redemption in the prescribed form with the Registrar.
- (13) If a company fails to comply with subsection (12), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

## 60. Capital redemption reserve

- (1) Where under section fifty-nine any shares of a company are redeemed wholly out of the profits of the company, the amount by which the company's issued share capital is diminished in accordance with subsection (8) of that section on cancellation of the shares redeemed or purchased shall be transferred to a reserve, to be called "the capital redemption reserve".
- (2) Where any shares of a company are redeemed wholly or partly out of the proceeds of a fresh issue of shares and the aggregate nominal value of the shares redeemed or purchased is greater than that of the shares issued, the amount of the difference shall be transferred to the capital redemption reserve.
- (3) The provisions of this Act relating to the reduction of the share capital of a company shall apply to a reduction in the capital redemption reserve as if that reserve were paid up share capital of the company, except that the reserve may be applied by the company in paying up unissued shares of the company to be allotted to members of the company as fully paid bonus shares.

## 61. Share premium account

- (1) Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of value of the premiums on these shares shall be transferred to an account, to be called "the share premium account", and the provisions 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.
- (2) The share premium account may be applied by the company—
  - (a) in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares;
  - (b) in writing off—
    - (i) the preliminary expenses of the company; or
    - (ii) the expenses of, the commission paid or the discount allowed on any issue of shares or debentures of the company; or
  - (c) in providing for the premium payable on redemption of any redeemable preference shares or of any debenture of the company.

## 62. Variation of class rights

- (1) For the purposes of this section—
  - (a) the abrogation of any rights attached to a class of shares; and
  - (b) any resolution of a company, other than a resolution for the creation or issue of further shares, the implementation of which would have the effect of—
    - (i) diminishing the proportion of the total votes exercisable at a general meeting of the company by the holders of the existing shares of a class; or
    - (ii) reducing the proportion of the dividends or other distributions payable at any time to the holders of the existing shares of a class;

shall be deemed to be a variation of the rights of that class.
- (2) If at any time the shares of a company are divided into different classes, the rights attached to any class may not be varied except to the extent and in the manner provided by the section.
- (3) If the articles expressly forbid any variation of the rights of a class, or contain provision for such a variation and expressly forbid any alteration of the provision, the rights or the provision for variation may not be varied except in accordance with the provision, or with the written consent of all the members of that class, or with the sanction of the court under a scheme of arrangement in accordance with section two hundred and thirty-four.
- (4) If subsection (3) does not apply, the rights attached to any class of shares may be varied with the written consent of the holders of three fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of shares of that class.
- (5) An application for the resolution to be cancelled may be made to the court within twenty-one days after the date of the resolution by the holders of not less in the aggregate than fifteen *per centum* of the issued shares of that class, and on such an application the court may confirm or cancel the resolution.
- (6) An application under subsection (5) may be made on behalf of the persons referred to in that subsection or by such of their number as they may appoint in writing for the purpose.
- (7) If no application is made under subsection (5) the company shall, within fourteen days after the end of the period for making such an application, lodge with the Registrar a copy of each paragraph of the articles affected by the variation, in its amended form.
- (8) If an application is made under subsection (5) and the court makes an order, the company shall, within fourteen days after the date of the order, lodge with the Registrar—
  - (a) a copy of the order; and
  - (b) a copy of each paragraph of the articles affected by the variation, in its amended form, if the order confirms the resolution.
- (9) The articles shall have effect as amended on and from the date of their lodgement.
- (10) If a company fails to comply with subsection (7) or (8), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.
- (11) Nothing in this section shall affect or derogate from the powers of the court under sections two hundred and thirty-four and two hundred and thirty-nine.

### 63. Return as to allotment of shares

- (1) Whenever a company makes an allotment of its shares, the company shall within one month thereafter lodge with the Registrar—
  - (a) a return of the allotments in the prescribed form, stating the number and the nominal amount of the shares comprised in the allotment, the names and addresses of each allottee, whether each allottee is an individual, a body corporate or an unincorporated association, and the amount (if any) paid or due and payable on each share; and
  - (b) subject to subsection (3), in the case of shares allotted as fully or partly paid up otherwise than in cash—
    - (i) any contract constituting the title of the allottee to the allotment;
    - (ii) any contract of sale, or for services or other consideration in respect of which that allotment was made; and
    - (iii) 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.
- (2) Where a contract referred to in subsection (1) is not in writing, the company shall lodge with the Registrar particulars of the contract.
- (3) If a company fails to comply with subsection (1), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.

### 64. Transfer of shares

- (1) Subject to section sixty-nine, a company shall not register a transfer of shares unless—
  - (a) a proper instrument of transfer has been delivered to the company; or
  - (b) the right to the shares has been transmitted by operation of law.
- (2) Transfers may be lodged with the company by either the transfer or transferee.
- (3) If a company refuses to register a transfer, the company shall, within two months after the date on which the transfer was lodged with the company, send to the transferee and transferor notice in writing of the refusal, together with a statement of the facts which are considered to justify refusal.
- (4) If a company fails to comply with subsection (1), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two hundred and fifty monetary units.
- (5) If a company fails to comply with subsection (3)—
  - (a) the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues; and
  - (b) the transfer shall be deemed to have been registered on the day on which the transfer was lodged with the company.

### 65. Restrictions on transferability

- (1) Save as expressly provided in a company's articles and in this Act, shares shall be transferable without restriction by a written transfer in accordance with section fifty-seven.

- (2) The articles of a private company shall not impose any restriction on the transferability of shares after they have been issued unless all the shareholders have agreed in writing.
- (3) A company may refuse to register a transfer of shares to any person who—
  - (a) is under eighteen years of age; or
  - (b) is of unsound mind and has been declared to be so by the court or a court of competent jurisdiction of another country.

## 66. Issue of share certificates

- (1) A company shall, within two months after the allotment of any of its shares or after the registration of the transfer of any shares, deliver to the registered holder thereof a certificate under the common seal of the company stating—
  - (a) the number and classes of shares held by him, and the distinguishing numbers thereof (if any);
  - (b) the amount paid on such shares and the amount (if any) remaining unpaid; and
  - (c) the full name and address of the registered holder and whether the holder is an individual, a body corporate or an unincorporated association.
- (2) If a share certificate is defaced, lost or destroyed, the company, at the request of the registered holder of the shares, shall renew the same on payment of a fee not exceeding one monetary unit and on such terms as to evidence and indemnity and the payment of the company's expenses of investigation evidence as the company may reasonably require.
- (3) If a company fails to comply with this section, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

## 67. Endorsement of transfer

- (1) If the holder of any shares wishes to transfer to any person part only of the shares represented by one or more certificates, the instrument of transfer together with the relevant certificates may be delivered to the company with a request to endorse the instrument of transfer.
- (2) If a company endorses on an instrument of transfer the words "certificate lodged", or words to the like effect, this shall be a representation to anyone acting on the faith of the endorsement that there has been produced to and retained by the company such certificates as show a *prima facie* title to the shares in the transferor named in the instrument of transfer, but not a representation that the certificates are genuine or that the transferor has any title to the shares.
- (3) If a person acts on the faith of a false representation made by the company under subsection (2), the company shall be liable to compensate the person for any loss suffered as a result of so acting.
- (4) For the purposes of this section, an endorsement under this section shall be deemed to be made by a company if it is made or signed by the secretary or any other person apparently authorised to endorse instruments of transfer on the company's behalf.

## 68. Share certificates as evidence

A share certificate shall be *prima facie* evidence of the title to the shares of the person named therein as the registered holder and of the amounts paid and payable thereon.

## 69. Share warrants to bearer

- (1) A company may, with respect to any fully paid-up shares (or stock) issue a warrant (in this Act called a "share warrant") stating that the bearer of the warrant is entitled to the shares therein

specified, and may provide by coupons or otherwise for the payment of the future dividends on the shares included in the warrant.

- (2) A share warrant shall entitle the bearer to the shares therein specified, and the shares may be transferred by the delivery of the share warrant.
- (3) The bearer of a share warrant shall be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members, and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register the name of a bearer of a share warrant in respect of the shares therein specified without the share warrant being surrendered and cancelled.
- (4) The articles of the company may provide that the bearer of a share warrant shall have any or all of the rights of a registered member of the company for the purposes of this Act (other than the right to receive notices).
- (5) The company shall record the issue of a share warrant in its register of members as if the shareholder had ceased to hold those shares together with—
  - (a) the fact of the issue of the warrant;
  - (b) a statement of the shares included in the warrant, distinguishing the shares by their share numbers (if any); and
  - (c) the date of the issue of the warrant.
- (6) Until the warrant is surrendered, the particulars referred to in subsection (5) shall be deemed to be the particulars required by this Act to be entered in the register of members in relation to the shares.
- (7) On the surrender of the share warrant, the date of the surrender shall be entered as if it were the date on which the company received notice of the transfer of the shares to the bearer.

## **70. Transmission of shares by operation of law**

- (1) In the case of the death of a shareholder of a company, the survivor or survivors where the deceased was a joint holder, and the legal personal or representative of the deceased where he was a sole holder or last survivor of joint holders, shall be the only persons recognised by the company as shareholders.
- (2) A person (in this section called "the representative") upon whom the ownership of a share devolves by reason of his being the legal personal representative, receiver, or trustee in bankruptcy of the holder, or by operation of law may, upon such evidence being produced as the company may reasonably require—
  - (a) be registered himself as the holder of the share; or
  - (b) transfer the share to some other person without first registering himself as the holder of the share.
- (3) A company shall have the same right, if any, to decline registration of a transfer by the representative as it would have had in the case of a transfer by the registered holder, but shall have no right to refuse registration of the representative himself.
- (4) The representative shall, prior to registration of himself or a transferee, be entitled to the same dividends and other advantages as if he were the registered holder and to the same rights and remedies as if he were a member of the company, except that he shall not, subject to any order by the court under section one hundred and forty-four, before being registered as a member in respect of the share, be entitled to vote at any meeting of the company.
- (5) The company may at any time give notice requiring the representative to elect either to be registered himself or to transfer the share, and, if the notice is not complied with within three

months, the company may thereafter suspend payment of all dividends or other moneys payable in respect of the share until the notice has been complied with.

#### **71. Evidence of transmission of shares by operation of law**

The production to a company of any document which is by law sufficient evidence that the ownership of a share has been transmitted by the operation of law shall be accepted by the company as sufficient evidence of the transmission of ownership.

#### **72. Company's lien on shares**

A company shall not have or claim a lien on shares on which there is no unpaid liability, nor shall any such lien extend to any sums due from the shareholder except in respect of the unpaid liability on the shares.

#### **73. Rights and options to subscribe for share issue to directors, officers and employees**

- (1) Subject to this section and to its articles, a company may create and issue, whether in connection with the issue of any of its shares or otherwise, rights or options in favour of any directors, officers or employees of the company or of any subsidiary of the company, being rights or options that entitle the holders to acquire from the company, upon such consideration, terms and conditions as may be fixed by the board of directors, shares of any class.
- (2) The terms and conditions of such rights or options, including the time or times at or within which and the price or prices at which they may be exercised and any limitations on transferability, shall be set forth or incorporated by reference in the instrument or instruments evidencing the rights or options.
- (3) Where a company proposes to issue such rights or options to one or more of the persons referred to in subsection (1) as an incentive to service or continued service with the company or any related company, or where it proposes to issue such rights or options to a trustee on behalf of such persons, the issue shall be authorised at a general meeting by special resolution, or shall be authorised by and be consistent with a scheme adopted at a general meeting by special resolution.
- (4) If there are any pre-emptive rights in any of the shares proposed under subsection (3) to be subject to rights or options, the issue or scheme, as the case may be, shall also be approved by the vote or written consent of the holders of a majority of the shares entitled to exercise pre-emptive rights with respect to such shares, and the vote or written consent shall release the pre-emptive rights.
- (5) The special resolution authorising the issue such rights or options, or the scheme adopted by special resolution, shall include—
  - (a) the material terms and conditions upon which the rights or options are to be issued, including any restrictions on the number of shares that eligible individuals may have the right or option to acquire;
  - (b) the method of administering the scheme, in the case of a scheme;
  - (c) the terms and conditions of payment for shares in full or by instalments;
  - (d) any limitations on the transferability of the shares; and
  - (e) the voting and dividend rights to which the holders of the shares may be entitled.
- (6) The terms and conditions shall not provide for any share certificate to be delivered to a shareholder, or confer any right to vote in respect of such shares, prior to full payment therefor.
- (7) In the absence of fraud in the transaction, the decision of the directors (or, where the directors or a sufficient quorum thereof are not themselves disinterested in the issue or scheme, the decision of the general meeting) shall be conclusive as to the adequacy of the consideration, tangible or intangible, received or to be received by the company for the issue of rights or options and for the acquisition pursuant thereto of shares in the company.

- (8) This section shall not apply to the right of holders of convertible debentures to acquire shares upon the exercise of a conversion option.

### 4.3 – Alteration of share capital

#### 74. Alteration of share capital

- (1) A company may, unless its articles provide otherwise, by special resolution alter its share capital as stated in the certificate of share capital by doing any of the following:
- (a) increasing its share capital by new shares of such an amount as it thinks expedient;
  - (b) consolidating and dividing all or any of its share capital into shares of a larger amount than its existing shares;
  - (c) converting all or any of its paid up shares into stock, and re-converting that stock into paid up shares of any denomination;
  - (d) subdividing its shares, or any of them, into shares of smaller amounts than is stated in the certificate of share capital;
  - (e) cancelling shares which, at the date of the passing of the resolution, have not been allotted to any person, and diminishing the amount of its share capital by the amount of the shares so cancelled.
- (2) Where shares are subdivided under this section, 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.
- (3) A cancellation of un-allotted shares under this section shall be deemed not to be a reduction of share capital for the purposes of this Act.
- (4) Where a company has made any alteration referred to in subsection (1), it shall within one month after so doing lodge with the Registrar—
- (a) a notice in the prescribed form specifying, as the case may be, the shares increased, consolidated, divided, subdivided, converted, redeemed or cancelled or the stock reconverted; and
  - (b) a copy of the resolution authorising the alteration.
- (5) Where an alteration under this section alters a particular stated in the company's certificate of share capital, the Registrar shall issue a replacement certificate of share capital worded to meet the circumstances of the case.
- (6) If a company fails to comply with subsection (4), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.

#### 75. Power to return accumulated profits in reduction of paid up share capital

- (1) If a company has accumulated a sum of undivided profits, which with the approval of the shareholders may be distributed among the shareholders in the form of a dividend or bonus, the company may, by special resolution, return the same, or any part thereof, to the shareholders in reduction of the paid up capital of the company, the unpaid capital being thereby increased by a similar amount.
- (2) Within twenty-one days after making a special resolution under subsection (1), the company shall lodge with the Registrar a return in the prescribed form giving the details required in the case of a special resolution reducing share capital.



- (3) The resolution shall take effect as from the date of lodgement.
- (4) The provisions of this Act with respect to reduction of share capital shall not apply to a reduction of paid up share capital under this section, except as provided in subsection (2).

## **76. Special resolution for reduction of share capital**

- (1) Subject to confirmation by the court, a company may, if so authorised by its articles, by special resolution reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, may—
  - (a) extinguish or reduce the liability on any of its shares;
  - (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is in excess of the wants of the company; or
  - (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company;and may, if and so far as is necessary, reduce the amount of its shares accordingly.
- (2) A special resolution under this section is in this Act referred to as "a resolution for reducing share capital".

## **77. Creditors may object to reduction in capital**

- (1) If a company has passed a resolution for reducing share capital, it shall, within twenty-one days after the making of the resolution, apply to the court for an order confirming the reduction.
- (2) If the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, subsections (5) and (6) shall apply to the reduction unless the court directs otherwise.
- (3) In giving a direction under subsection (2), the court may direct that subsections (5) and (6) shall not apply to a specified class or classes of creditors.
- (4) If subsection (2) does not apply, subsections (5) and (6) shall not apply unless the court directs that they shall apply.
- (5) 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 entitle the creditor to benefit from the distribution under the winding-up, shall be entitled to object to the reduction.
- (6) The court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days after which creditors not yet entered on the list will lose their right to object if they have not presented a claim to be entered on the list.
- (7) 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's securing payment of his debt or claim by appropriating—
  - (a) the full amount of the debt or claim, if the company admits the full amount of the debt, or claim, or, though not admitting it, is willing to provide for it; or
  - (b) an amount fixed by the court after the like inquiry and adjudication as if the company were being wound-up by the court, if the company does not admit and is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained.



**78. Order confirming reduction and powers of court in making such order**

- (1) The court, if satisfied with respect to every creditor of the company who is entitled to object to the reduction, that—
  - (a) his consent to the reduction has been obtained;
  - (b) his debt or claim has been discharged or determined; or
  - (c) his debt or claim has been secured;may make an order confirming the reduction on such terms and conditions as it thinks fit.
- (2) The order may require the publication of a notice of the reduction in capital on the issue of the replacement certificate of share capital under section seventy-nine.
- (3) Where the court makes any such order it may, if for any special reason it thinks it proper so to do, make an order—
  - (a) directing that the company shall, during a period specified in the order, add to its name as the last words thereof the words "and reduced"; or
  - (b) requiring the company to publish as the court directs the reasons for the reduction or such other information in regard thereto as the court may think expedient with a view to giving proper information to the public.
- (4) Where a 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 name of the company.

**79. Lodgement of order and issue of replacement certificate of share capital**

- (1) The Registrar, on the lodgement of an order of the court confirming the reduction of the share capital of a company and of a minute approved by the court showing, with respect to the share capital of the company as altered by the order—
  - (a) the amount of the share capital;
  - (b) the number of shares into which it is to be divided;
  - (c) the amount of each share; and
  - (d) the amount, if any, at the date of lodgement deemed to be paid up on each share;shall issue a replacement certificate of share capital of the company, worded to meet the circumstances of the case.
- (2) On the issue of the certificate, the resolution for reducing share capital as confirmed by the order shall take effect.
- (3) The issue of the certificate of share reduction shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is as stated in the certificate.

**80. Liability of members in respect of reduced shares**

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

- (2) If any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and, after the reduction, the company is unable within the meaning of the provisions of this Act with respect to the winding-up by the court to pay the amount of his debt or claim, then—
- (a) every person who was a member of the company at the date of issue of the replacement certificate of share capital shall be liable to contribute as if the company had commenced to be wound-up on that date; and
  - (b) if the company is wound-up, the court, on the application of any such creditor and proof of his ignorance, may if it thinks fit settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the persons on the list as if they were ordinary contributories in a winding-up.
- (3) Nothing in this section shall affect the rights of the members amongst themselves.

### **81. Offence of concealing name of creditor**

- (1) Where a company has passed a resolution for reducing share capital, an officer of a company who—
- (a) wilfully conceals the name of any creditor entitled to object to the reduction;
  - (b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or
  - (c) aids, abets or is privy to any such concealment or misrepresentation;
- shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.
- (2) An officer referred to in subsection (1) shall be personally liable to pay to the creditor the amount of his debt or claim to the extent that it is not paid by the company, whether or not he has been convicted of an offence under subsection (1).

## **4.4 – Restrictions on financial assistance**

### **82. Restrictions on financial assistance in acquisition of shares**

- (1) Subject to this Part, where a person is acquiring or is proposing to acquire any shares in a company, the company or any of its subsidiaries shall not give financial assistance directly for the purpose of that acquisition.
- (2) Subject to this Part, where a person has acquired any shares in a company and any liability has been incurred (by that or any other person) for the purpose of that acquisition, the company and its subsidiaries shall not give any financial assistance directly or indirectly for the purpose of reducing or discharging the liability so incurred.
- (3) This section shall not prohibit a company from giving any financial assistance for the purpose of any acquisition of shares in the company or its holding company if—
- (a) the giving of the assistance is an incidental part of some larger purpose of the company, and the principal purpose of the company in giving that assistance is not to reduce or discharge any liability incurred by a person for the purpose of any such acquisition; and
  - (b) the assistance is given in good faith in the interest of the company.
- (4) This section shall not prohibit—
- (a) any distribution of a company's assets by way of dividend lawfully made or any distribution made in the course of winding-up of the company;

- (b) the allotment of any bonus shares;
  - (c) anything done in pursuance of an order of the court made under this Act;
  - (d) anything done under an arrangement made in pursuance of section two hundred and thirty-four;
  - (e) anything done under an arrangement made between a company and its creditors which is binding on the creditors under section three hundred and twenty-five;
  - (f) any reduction of capital confirmed by order of the court under this Part; or
  - (g) a redemption of any share in accordance with this Part.
- (5) This section shall not prohibit—
- (a) the lending of money by the company in the ordinary course of its business, if the lending of money is part of the ordinary business of the company;
  - (b) the provision by a company, in accordance with an employee's share scheme, of money for acquisition of fully paid shares in the company to be held by or for the benefit of employees of the company (including any director holding a salaried position in the company); or
  - (c) the making by a company of loans to persons, other than directors, employed in good faith by the company, with a view to enabling those persons to acquire fully paid shares otherwise than as nominees of the company.
- (6) In giving financial assistance to any person under subsection (5), a public company shall not reduce its net assets, other than distributable profits.
- (7) A reference in this section to a person incurring any liability includes a reference to his changing his financial position by making any agreement or arrangement (whether enforceable or unenforceable and whether made on his own account or with any other person) or by any other means.
- (8) If a company fails to comply with subsection (1) or (2), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two thousand monetary units or to imprisonment for a period not exceeding two years, or to both.
- (9) In this section—
- "financial assistance" means:
- (a) financial assistance given by way of gift;
  - (b) financial assistance given by way of 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;
  - (c) financial assistance given by way of—
    - (i) a loan;
    - (ii) any other agreement under which any of the obligations of any other party to the agreement remains unfulfilled; or
    - (iii) innovation of, or the assignment of, any rights arising under any such loan or agreement; or
  - (d) any other financial assistance given by a company which has no net assets, or whereby the net assets of the company are reduced to a material extent;

"net assets", in relation to the giving of financial assistance by a company, means the amount by which the aggregate amount of the company's assets exceeds the aggregate amount of its liabilities

taking the amount of both assets and liabilities to be stated in the company's accounting records immediately before the financial assistance is given;

"liabilities" includes any amount retained as reasonably necessary for the purpose of providing for any liability or loss which is either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which it will arise.

### 83. Relaxation of restrictions for private companies

- (1) A private company may give financial assistance for the acquisition of shares in itself in accordance with this section.
- (2) A private company may give financial assistance for the acquisition of shares in a private company that is its holding company in accordance with this section unless it is the subsidiary of—
  - (a) a body corporate not incorporated in Zambia; or
  - (b) a public company;that is also a subsidiary of the holding company concerned.
- (3) Financial assistance shall not be given under this section unless—
  - (a) the company proposing to give the financial assistance is a wholly owned subsidiary; or
  - (b) the giving of the assistance is approved by special resolution of the company.
- (4) Where the financial assistance to be given by a company is for the acquisition of shares in its holding company, financial assistance shall not be given unless approved by special resolutions of—
  - (a) that holding company; and
  - (b) any other company which is both the company's holding company and a subsidiary of that holding company, other than a wholly owned subsidiary.
- (5) The directors of the company proposing to give the financial assistance and, where the shares to be acquired are shares in its holding company, the directors of the companies referred to in paragraphs (a) and (b) of subsection (4), shall, not more than seven days before the special resolution is put to a meeting, make a statutory declaration in the prescribed form complying with subsection (6) and make it available, together with the auditors' report annexed thereto, for inspection by members of the company at the meeting at which the resolution is to be voted on.
- (6) A statutory declaration for the purposes of subsection (5) shall—
  - (a) contain such particulars of the assistance to be given and of the business of the company of which they are directors as may be prescribed;
  - (b) identify the person to whom the assistance is to be given;
  - (c) state that, to the best of the directors' knowledge and belief, the company will be able to pay its debts—
    - (i) in full within twelve months of the commencement of the winding-up of the company, if it is intended to commence the winding-up of the company within twelve months of the date of the declaration; or
    - (ii) as they fall due during the year immediately following that date, in any other case.
- (7) In forming their views for the purposes of the statutory declaration, the directors shall take into account any liabilities of the company which the court would be required by section two hundred and seventy-two to take into account in determining for the purposes of that section whether the company was unable to pay its debts.
- (8) The statutory declaration shall have annexed to it a report by the auditors of the company, addressed to the directors who made the declaration, stating that the auditors have enquired into

the state of affairs of that company and are not aware of any thing to indicate that the opinion expressed by the directors in the declaration is unreasonable in all the circumstances.

- (9) Where a special resolution is required under this section to be passed approving the giving of financial assistance, financial assistance shall not be given less than one month after the date on which—

- (a) the special resolution is passed; or
- (b) the last of the resolutions is passed, where more than one such resolution is passed;

unless each member of the company who was entitled to vote on the resolution, or any of the resolutions, voted in favour of the resolution concerned.

- (10) Where an application for the cancellation of any such resolution is made under this section, financial assistance shall not be given before the final determination of the application unless the court otherwise orders.

- (11) Financial assistance shall not be given under this section more than two months after—

- (a) the date on which the directors of the company proposing to give the financial assistance made the statutory declaration under subsection (5); or
- (b) the date on which the earliest of the declarations under subsection (5) is made, where the company is a subsidiary and both its directors and the directors of any of its holding companies made such a declaration;

unless the court, on an application for the cancellation of any of the resolutions, otherwise orders.

- (12) Where a special resolution under this section is passed by a company, an application may be made to the court for the cancellation of that resolution by not fewer than one fifth of the members, being persons who did not consent to or vote in favour of the resolution, within twenty-one days after the making of the resolution.

- (13) Within twenty-one days after—

- (a) the passing of a special resolution under this section, if there was no application under subsection (12); or
- (b) the decision by the court, if there was an application made under subsection (12) but the court rejected the application;

the company shall lodge with the Registrar—

- (i) the statutory declaration together with any auditors' report annexed thereto; and
- (ii) a copy of the special resolution.

- (14) If a company fails to comply with subsection (13), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.

- (15) A director of a company who makes a statutory declaration for the purposes of this section without having reasonable grounds for the opinion expressed in that declaration shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units or to imprisonment for a period not exceeding six months, or to both.

- (16) In this section, "financial assistance" and "net assets" have the same meaning as in section eighty-two.

## 4.5 – Miscellaneous

### 84. Dividends may be paid only out of profits

No dividend shall be payable to the shareholders of a company except out of the profits arising or accumulated from the business of the company.

### 85. Exemption from Property Transfer Tax Act

Company shares that are listed on any stock exchange in Zambia shall be exempt from the provisions of the Property Transfer Tax Act, 1984.

[Cap. 422 ]

## Part V – Debentures and charges

### 5.1 – Debentures

#### 86. Issue of debentures

- (1) A company may raise loans by the issue of a debenture or of a series of debentures.
- (2) Debentures may either be secured by a charge over property of the company or be unsecured by any charge.
- (3) All debentures which by their terms, or by the terms of any resolution authorising their creation, or by the terms of any trust deed, are declared to be of the same series shall rank equally in all respects notwithstanding that they may be issued on different dates.
- (4) Any debenture stock shall be created—
  - (a) by deed under the common seal of the company in favour of trustees for the debenture stockholders; and
  - (b) as stock of a specified total amount, parts of which, represented by debenture stock certificates, are issued to separate holders.
- (5) A contract with a company to take up and pay for any debenture of the company may be enforced by an order for specific performance.
- (6) A condition contained in a debenture or in a trust deed for securing a debenture shall not be invalid by reason only of the fact that the debenture is hereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long.

#### 87. Documents of title to debentures

- (1) A company shall, within two months after the allotment of any of its debentures or after the registration of the transfer of any debentures, deliver to the registered holder thereof the debentures or a certificate of the debenture stock under the common seal of the company.
- (2) Sections sixty-four and sixty-six to seventy-one shall apply, with the necessary modifications, in relation to debentures and debenture holders.
- (3) If any restriction is imposed on the right to transfer any debentures, 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.

- (4) If a company fails to comply with subsection (1), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

## **88. Trustees for debenture holders**

- (1) A company shall not—
- (a) indemnify a person who is a trustee for debenture holders of the company or a related company against any liability which under law would otherwise attach to him in respect of any breach of trust or failure to show the degree of care and diligence required of him as trustee having regard to the powers, authorities or discretion conferred on him by the trust deed; or
  - (b) compensate such a person for the cost of meeting any such liability.
- (2) A provision of a contract between the company and such a trustee shall be void if it purports to indemnify or compensate him in contravention of subsection (1).
- (3) A release in respect of anything done or omitted to be done by a trustee may be made by a special resolution of the debenture holders.
- (4) The court may remove a trustee for the holders of any debentures and appoint another in his place if, on the application of any debenture holder, it is satisfied that the trustee has interests which conflict or may conflict with those of the debenture holders or that for any other reason it is undesirable that the trustee should continue to act.
- (5) Upon such an application the court may order the applicant to give security for the payment of the costs of the trustee.

## **89. Eligibility for appointment as trustee for debenture holders**

- (1) The following persons shall not be eligible for appointment or competent to act as trustee for the holders of debentures of a company:
- (a) an individual under the age of eighteen years;
  - (b) a person under any legal disability;
  - (c) a person prohibited or disqualified from so acting by order of a court of competent jurisdiction;
  - (d) an undischarged bankrupt;
  - (e) a person who is an officer or auditor of the company or a related company or who has been such an officer or auditor within the preceding two years, save with the leave of the court;
  - (f) a person who has been convicted within the preceding five years of an offence involving fraud or dishonesty;
  - (g) a person who has been removed within the preceding five years from an offence of trust by order of a court of competent jurisdiction.
- (2) A person who, in contravention of this section, acts or continues to act as a trustee for debenture holders shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the contravention continues.

## **90. Right to copies of trust deed**

- (1) A copy of any trust deed for securing an issue of debentures shall be provided to a holder of those debentures at his request and on payment of the sum of one monetary unit, or such lesser sum as may be required by the company, within seven days after the receipt of the request.

- (2) If the company fails to comply with this section, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

#### **91. Unsecured debentures to be so described**

- (1) No unsecured debenture or debenture stock certificate, or prospectus relating to unsecured debentures, shall be issued by a company unless the term "debenture", or such other term as is used to denote the debenture, is qualified by the word "unsecured".
- (2) If the company fails to comply with this section, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

#### **92. Register of debenture holders**

- (1) A company which issues or has issued debentures shall maintain a register of debenture holders.
- (2) Sections forty-eight to fifty-five shall apply, with the necessary modifications, in relation to the register.
- (3) A company shall, on the demand of any trustee for its debenture holders, within seven days furnish to him the names, addresses and other registered particulars of the debenture holders for which he is a trustee.
- (4) If the company fails to comply with this section, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day for which the failure continues.

#### **93. Meetings of holders of debentures secured by a trust deed**

- (1) Subject to this section, sections one hundred and thirty-nine to one hundred and fifty-five shall apply, with the necessary modifications, in relation to the holders of debentures of a company that are secured by a trust deed.
- (2) Unless the trust deed provides otherwise, the registered debenture holders shall have votes in proportion to the value of the debentures they hold.

#### **94. Meetings of other debenture holders**

- (1) The terms of any debentures not secured by a trust deed may provide for the convening of general meetings of the debenture holders or of classes of debenture holders, and for the passing at such meetings of resolutions binding on all the debenture holders or on all the debenture holders of those classes.
- (2) Whether or not provision for meetings is made under the debentures, the court may at any time direct a meeting of the debenture holders of any class to be held and conducted in such manner as it thinks fit to consider such matters as it may direct, and may give such ancillary or consequential directions as it thinks fit.
- (3) Subject to subsection (4) and unless the debentures provide otherwise, sections one hundred and forty-six to one hundred and fifty-two shall apply, with the necessary modifications, to a meeting held in accordance with this section.
- (4) Unless the terms of the debentures provide otherwise, the registered debenture holders shall have votes in proportion to the value of the debentures they hold.



**95. Re-issue of redeemed debentures**

- (1) A company shall not re-issue any debenture which has been redeemed.
- (2) A company shall not issue a new debenture in place of a redeemed debenture on terms that the new debenture shall have the same priorities as the redeemed debenture.
- (3) The issue of a new debenture in place of a redeemed debenture shall not be treated as the issue of a new debenture for the purposes of any provision limiting the amount or number of debentures which may be issued.
- (4) A purported issue or re-issue of debentures that contravenes this section shall be void.

**5.2 – Charges****96. Charge to secure fluctuating amount**

Where a charge is expressed to be made to secure an indeterminate amount, or a fluctuating amount advanced on current account by, or due and owing to, the person entitled to the charge, the charge shall not be considered to be redeemed by reason only that the current account ceases to be in debit or by reason only that no amount is due or owing, as the case may be.

**97. Company's register of charges**

- (1) This section applies to any charge on property of the company, whether or not it is required to be registered under section ninety-eight.
- (2) A company which has any property subject to a charge shall open and maintain a register of charges over its property in which it shall, on the creation of a charge over property of the company, or on the acquisition of property subject to a charge, enter the following particulars of each charge:
  - (a) the date of creation of the charge or the date of acquisition of the property, as the case may be;
  - (b) a short description of the liability (whether present or prospective) secured by the charge;
  - (c) a short description of the property charged;
  - (d) the name of the trustee, if the charge secures debentures under a trust deed;
  - (e) if the charge does not secure debentures under a trust deed—
    - (i) the name of the chargee; and
    - (ii) the name of the person whom the company believes to be the holder of the charge.
- (3) The register shall be open for inspection—
  - (a) by any member or creditor of the company or by the Registrar or his agent, without charge; and
  - (b) by any other person on payment of an amount required by the company, not exceeding ten monetary units or such higher amount as may be prescribed.
- (4) If the company fails to comply with this section, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

## 98. Registrar's register of charges

- (1) The Registrar shall maintain a register containing, with respect to each company, the particulars of the charges of the company that are lodged in accordance with this Part.
- (2) The register shall include, with respect to each company, a chronological index of the charges of the company.

## 99. Registration of charges by companies

- (1) This section applies to the following charges over the property or undertaking of a company:
  - (a) a charge for the purpose of securing any issue of a series of debentures;
  - (b) a charge on uncalled share capital of the company;
  - (c) a charge to which the Trade Charges Act applies;  
*[Cap. 415]*
  - (d) a floating charge on the whole or part of the undertaking or property of the company;
  - (e) a charge on land, wherever situated, or any interest therein;
  - (f) a charge on any present or future book debts of a company;
  - (g) a charge on calls made but not paid;
  - (h) a charge on a ship or aircraft or any share in a ship or aircraft;
  - (i) charge on goodwill, on a patent or a licence under a patent, on a trade mark, or on a copyright or a licence under a copyright;
  - (j) a charge overshares in another body corporate, not being—
    - (i) a charge in favour of a broker who has paid for a share purchased or applied for on behalf of the company; or
    - (ii) a charge created by or accompanied by delivery of the certificates for such shares.

- (2) Subject to this section, if a company—

- (a) creates any charge to which this section applies; or
  - (b) acquires property that is subject to a charge to which this section applies;

the company shall, within twenty-one days after the date of the creation of the charge, or after the acquisition of the property, as the case may be, lodge with the Registrar in the prescribed form the particulars referred to in subsection (3) together with—

- (i) particulars of the instrument by which the charge is created or evidenced sufficient to identify the instrument, if the charge is created or evidenced by an instrument by which it is already registered under this or any other Act; or
    - (ii) a certified copy of the instrument, if any, by which the charge is created or evidenced, in any other case.
- (3) The particulars required for the purposes of subsection (2) are—
  - (a) the date of creation of the charge;
  - (b) the date of acquisition of the property by the company, where the property was subject to the charge when acquired by the company;
  - (c) the amount secured by the charge;

- (d) short particulars of the property charged;
  - (e) the names of the charges; and
  - (f) any other prescribed particulars of the charge.
- (4) Where the property subject to a charge includes property outside Zambia, this section applies in relation to any instrument creating or evidencing or purporting to create or evidence the charge, 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.
- (5) Where a negotiable instrument has been given to a company to secure the payment of any debts owed to the company, the deposit of the instrument for the purposes of securing an advance to the company shall for the purposes of this section be deemed not to be a charge on those debts owed to the company.
- (6) Debentures entitling the holder to a charge on land shall for the purposes of this section be deemed not to be an interest in land.
- (7) Where a series of debentures is created by a company and contains, or gives by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled in all respects equally, subsection (3) shall be satisfied by the lodgement of the following particulars:
- (a) the total amount secured by the whole series;
  - (b) the date of the resolution authorising the issue of the series and the date of the document, 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 a certified copy of the document containing the charge, or, if there is no such document, a certified copy of one of the debentures of the series;
- together with, where more than one issue is made of debentures in the series, the lodgement, within twenty-one days after any issue, of particulars of the date and amount of the issue.
- (8) Where any 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 any such debentures, the particulars required to be lodged under this section shall include particulars as to the amount or rate *per centum* of the commission, discount, or allowance to be paid or made.
- (9) The deposit of any debentures as security for any debt of the company shall not for the purposes of this section be regarded as the issue of such debentures at a discount.
- (10) Lodgement of documents for the purposes of this section may be effected on the application of any person interested in the charge concerned, and if lodgement is effected by a 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 Registrar on the lodgement.
- (11) If the particulars and documents relating to a charge that are required by this section to be lodged with the Registrar are not lodged within the time required—
- (a) the charge shall be void against the liquidator and any creditor of the company; and
  - (b) the full debt secured by the charge shall become payable immediately by the company.
- (12) Nothing in this section shall affect the provisions of any other written law relating to the registration of charges.

## 100. Certificate to be issued by Registrar

If the particulars and documents relating to a charge that are required by this Part to be lodged with the Registrar are lodged within the time required, the Registrar shall issue a certificate of the registration of the charge stating the date of lodgement and, if applicable, the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this Part as to registration have been complied with.

## 101. Priorities

- (1) Subject to any consent (express or implied) given by the person who would otherwise be entitled to priority, charges required by this Part to be registered shall have priority in relation to one another in accordance with the times at which they were lodged.
- (2) Where another written law by its terms accords priority as between successive charges affecting the same property, subsection (1) shall not affect the priorities between those charges set by that written law.
- (3) Subject to subsection (2), where a charge (other than a floating charge) gives security over property of such a kind that this Part would require its registration, and also over other property, subsection (1) shall apply in respect of the first-mentioned property, but not in respect of the other property.

## 102. Entries of satisfaction and release of property from charge

- (1) If there is lodged with the Registrar a statement in the prescribed form, signed on behalf of a company and by the person entitled to charge, to the effect that—
  - (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;then—
  - (i) the Registrar shall enter the fact in the register of charges;
  - (ii) the statement shall, in favour of the liquidator and any creditor of the company, be binding on the person entitled to the charge who signed the statement and on any other person claiming through him.

## 103. Variation of registered charge

- (1) If a variation is made in the terms of a charge registered under this Part, other than a satisfaction or release to which section one hundred and two applies, particulars after the variation in the prescribed form shall be lodged with the Registrar within twenty-one days of the making of the variation.
- (2) The particulars shall identify the terms of the original charge that have been varied and shall indicate the nature of the variation made in each such term.
- (3) Where the effect of the variation is to increase the extent of the security or the amount for which security is available, the increase shall, for the purposes of priorities, be treated as if it were a charge, being a charge for an amount which is the amount of the increase and whose particulars were lodged at the time that the particulars of the variation were lodged.
- (4) Where by its terms a registered charge secures a fluctuating amount, or an initial sum together with the words "further advances", the making of a further advance to the company shall not, for the purposes of this section, constitute a variation in the terms of the charge.

- (5) Lodgement of documents for the purposes of this section may be effected on the application of any person interested in the charge concerned, and if lodgement is effected by a 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 Registrar on the lodgement.
- (6) If the particulars and documents relating to a charge that are required by this section to be lodged with the Registrar are not lodged within the time required—
  - (a) the charge shall be void against the liquidator and any creditor of the company; and
  - (b) the full debt secured by the charge shall become payable immediately by the company.

#### **104. Registration of enforcement of security by mortgagee**

- (1) If a person enters into possession of any of the property of a company as mortgagee under any powers contained in a charge, he shall, within seven days after so doing, lodge a notice to that effect in the prescribed form with the Registrar.
- (2) Where a person who is in possession as mortgagee of property of a company goes out of possession, he shall, within fourteen days thereafter, lodge a notice to that effect in the prescribed form with the Registrar.
- (3) A person who fails to comply with this section shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.

#### **105. Endorsement of registration on debentures of a series**

- (1) Where a company issues a debentures forming one of a series of debentures, or a certificate of debenture stock, and the payment of the debenture is secured by a charge registered under this Part, the company shall endorse on the debenture or certificate of debenture stock a statement that registration has been effected and the date of registration.
- (2) If the company fails to comply with subsection (1), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two hundred and fifty monetary units.
- (3) A person who—
  - (a) causes to be endorsed on any debenture or certificate of debenture stock a statement that registration has been effected, which he knows to be false in any particular, or
  - (b) authorises or permits the delivery of any debenture or certificate of debenture stock bearing an endorsed statement that registration has been effected, which he knows to be false in any particular;

shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two hundred and fifty monetary units or to imprisonment for a period not exceeding three months, or to both.

#### **106. Charges in favour of the State**

This Division shall bind the State in respect of all charges to which the State is entitled.

### **5.3 – Receivers**

#### **107. Application of Division**

This Division shall apply in relation to a receiver of property of a company who is appointed after the commencement of this Act, even if the appointment arose out of a transaction entered into before that commencement.

**108. Appointment of receiver by court**

- (1) When a charge over property of a company has become enforceable, the court may, on the application of the chargee, appoint—
  - (a) a receiver who is not also a manager; or
  - (b) a receiver and manager;of the property.
- (2) In the case of floating charge, the court may, whether or not the charge has become enforceable, on the application of the chargee, appoint—
  - (a) a receiver who is not also a manager; or
  - (b) a receiver and manager;of the property and undertaking of the company if it is satisfied that events have occurred or are about to occur which render it unjust to the chargee that the company should retain power to dispose of its assets.
- (3) A receiver shall not be appointed as a means of enforcing debentures not secured by any charge.
- (4) An individual shall not be appointed as a receiver unless the individual is eligible for appointment under section one hundred and eleven.

*[subsection (4) added by section 7 of [Act 24 of 2011](#)]*

**109. Notification of appointment of receiver**

- (1) A person who obtains an order for the appointment of a receiver of property of a company, or who appoints such a receiver under a power contained in an instrument, shall, within seven days after obtaining the order or making the appointment, lodge a notice with the Registrar of the order or appointment.
- (2) A person who is appointed as a receiver of property of a company shall, within fourteen days after the appointment, lodge with the Registrar a notice in the prescribed form of the physical address of the person's office, and a postal address.
- (3) Where a person who has been appointed receiver of property of a company ceases to act as receiver, he shall, within seven days after so ceasing to act as receiver, lodge with the Registrar a notice that he has ceased to act as receiver.
- (4) On lodgement of a notice under subsection (1) or (3), the Registrar shall cause a notice of the appointment of the person as receiver, or that the person has ceased to act as receiver, as the case may be, to be published in the *Gazette*.

**109A. Statement of company's affairs**

- (1) Unless the court directs otherwise, the directors of a company shall, within three months of the appointment of a receiver, prepare and submit to the receiver a statement as to the affairs of the company as at the date of the appointment of the receiver, showing—
  - (a) the particulars of its assets and liabilities;
  - (b) the names and addresses of its creditors;
  - (c) the securities held by each of the creditors;
  - (d) the dates when the securities were respectively given; and
  - (e) such further information as may be prescribed or as the receiver may require.

- (2) The statement referred to in subsection (1) shall be verified by the statutory declaration of at least one director or the secretary of the company at the date of the appointment of the receiver.
- (3) Where the directors of a company fail or neglect to prepare the statement referred to in subsection (1), the receiver shall, not more than three months after the expiry of the period referred to in subsection (1), prepare and submit a statement of the affairs of the company, from the best available information.
- (4) A receiver may, subject to the direction of the court, by notice in writing, require a person
  - (a) who is, or was, within two years before the date of the appointment of the receiver, an officer of the company; or
  - (b) who took part in the formation of the company, if the company was formed less than two years before the date of the appointment of the receiver;
 to verify, by statutory declaration, such part of the statement as that person is in a position to verify.
- (5) A receiver may serve a notice on a person referred to in subsection (4) in the prescribed manner and form.
- (6) A person required to verify a statement under subsection (4) shall, within fourteen days after receiving the notice referred to in that subsection or within such extended period as the receiver or the court may specify, submit a statutory declaration verifying those matters in the statement which that person is in a position to verify.
- (7) A receiver shall, within seven days after receiving the statement under subsection (1) or a statutory declaration under subsection (3), cause copies to be—
  - (a) filed with the court, if the receiver is appointed by the court;
  - (b) lodged with the Registrar;
  - (c) delivered to the official receiver, if the official receiver is not the receiver; and
  - (d) lodged with the holder of the charge by virtue of which the receiver was appointed.
- (8) A person required under this section to verify a statement shall be paid out of the assets of the company such costs and expenses, subject to an application to the court, as the receiver considers reasonable, incurred in, and relating to, verifying the information.
- (9) The Registrar may, where a receiver—
  - (a) does not submit a report under subsection (1), issue a reminder to the receiver to submit the statement within fourteen days;
  - (b) does not comply with the notice issued by the Registrar under paragraph (a), cause the receiver to be disqualified from acting as a receiver under this Act.
- (10) A statement made under this section may be used as evidence in any proceedings against any person making it.

*[section 109A inserted by section 8 of [Act 24 of 2011](#)]*

## **109B. Offences relating to reports**

Where a person, company or an officer in default contravenes section one hundred and nine A, the person, company or officer in default commits an offence and is liable, upon conviction—

- (a) to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding twelve months, or to both; and

- (b) in the case of a continuing failure, to a fine not exceeding fifty thousand penalty units for each day that the failure continues.

*[section 109B inserted by section 8 of [Act 24 of 2011](#)]*

## **110. Payment of preferential creditors**

- (1) Where—

- (a) a receiver is appointed, on behalf of the holder or trustee of any debenture of a company that is secured by a floating charge; or
- (b) possession is taken by or on behalf of such a person;

of property comprised in or subject to the charge, then, if the company is not at the time in the course of being wound-up, the debts which in every winding-up are, under section three hundred and forty-six (relating to preferential payments), to be paid in priority to all other debts shall be paid out of any assets coming to the hands of the receiver or the person taking possession in priority to any claim for principal or interest in respect of the debentures.

- (2) For the purpose of applying section three hundred and forty-six, the date of the appointment of the receiver or of possession being taken, as the case may be, shall be deemed to be the date of commencement of the winding-up.

## **111. Eligibility for appointment as receiver**

- (1) An individual who wishes to perform the function of a receiver shall apply for accreditation with the Registrar in the prescribed manner and form.
- (2) The Minister shall prescribe—
  - (a) the qualifications for persons to be accredited under subsection(1); and
  - (b) the form of, and procedure, for issuance of accreditation certificates.
- (3) A person shall not be appointed, act or continue to act as a receiver of the property or undertaking of a company if the person is—
  - (a) under the age of eighteen years;
  - (b) under any legal disability;
  - (c) prohibited or disqualified from so acting by an order of a court of competent jurisdiction;
  - (d) a body corporate;
  - (e) not resident in Zambia;
  - (f) a mortgagee or chargee of the company or an employee or officer of a mortgagee or chargee;
  - (g) an undischarged bankrupt;
  - (h) a person who is, or has been within the previous two years, a director or officer of the company or any related body corporate, except with the leave of court;
  - (i) a trustee under a trust deed for the benefit of debenture holders of the company, except with the leave of court;
  - (j) a person who has been convicted, within the previous five years, of an offence involving fraud or dishonesty;
  - (k) a person who has been removed, within the previous five years, from an office of trust by order of a court of competent jurisdiction;



- (l) a person who has contravened a provision of this Act in a manner which has or may materially affect creditors or contributors or persons dealing in good faith with the company;
  - (m) no longer in good standing with that person's recognised professional body, if any, as a result of professional misconduct by that person;
  - (n) not qualified to perform the functions of a receiver under subsection (1);
  - (o) a person who has, within the period of two years immediately preceding the commencement of the receivership, had an interest, direct or indirect, in a share issued by the charger; or
  - (p) disqualified from acting as a receiver by the instrument that confers the power to appoint a receiver.
- (4) The Registrar shall—
- (a) cause to be kept a register of receivers in the prescribed manner and form; and
  - (b) notify a professional body of any misconduct of a receiver or any removal of a receiver from the register of receivers.
- (5) A person who, in contravention of this section, acts or continues to act as a receiver commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

*[section 111 substituted by section 9 of [Act 24 of 2011](#)]*

#### **111A. Remuneration of receiver**

- (1) A receiver shall be entitled to the payment of a fee which shall be a percentage of the gross proceeds of the realisation of the receivership of the company.
- (2) Notwithstanding the generality of subsection (1), the rates payable to a receiver shall not exceed such amount as may be prescribed by statutory instrument.
- (3) A receiver who collects a fee in excess of the prescribed fees shall be personally liable to reimburse the amount of the excess fees so collected.

*[section 111A inserted by section 10 of [Act 24 of 2011](#)]*

#### **112. Receivers appointed by the court**

A receiver of any property or undertaking of a company appointed by the court shall be an officer of the court and shall be deemed, in relation to the property or undertaking, not to be an officer of the company, and shall act in accordance with the directions and instructions of the court.

#### **113. Receivers appointed otherwise than by the court**

- (1) A receiver of any property or undertaking of a company appointed, otherwise than by a court, under a power contained in any instrument shall, subject to section one hundred and fourteen, be deemed in relation to the property or undertaking to be an agent and officer of the company and not an agent of the persons by or on behalf of whom he is appointed, and he shall act in accordance with the instrument under which he is appointed and with any directions of the court made under this section.
- (2) The court may, on the application of such a receiver, make any order it thinks fit giving directions in relation to any matter arising in connection with the performance of the receiver's functions or declaring the rights of persons before the court or otherwise.
- (3) Subject to section one hundred and eleven A, the court may, on the application of a company or a liquidator of a company, by order, fix the amount to be paid by way of remuneration to any receiver

and may, on application made by the company or liquidator or by the receiver, vary or amend the order.

*[subsection (3) substituted by section 11 of [Act 24 of 2011](#)]*

- (4) The power of the court under subsection (3) shall—
- (a) extend to fixing the remuneration for any period before the making of the order or the application therefor, if the court is satisfied that there are special circumstances making it proper to do so;
  - (b) be exercisable notwithstanding that the receiver had died or ceased to act before the making of the order or the application therefor; and
  - (c) extend to requiring the receiver or his personal representatives to account for any amount that the receiver may have been paid or retained for his remuneration, before the making of the order, that is in excess of the remuneration so fixed for that period.

#### **114. Liabilities of receivers on contracts**

- (1) A receiver of any property or undertaking of a company shall be personally liable on any contract entered into by him as receiver except insofar as the contract expressly provides otherwise.
- (2) Where the contract was entered into by the receiver in the proper performance of his functions, he shall have, subject to the rights of any prior encumbrances, an indemnity in respect of liability thereon out of the property in respect of which he has been appointed to act as receiver.
- (3) Where the receiver was appointed, otherwise than by a court, under a power contained in any instrument, and the contract was entered into by him with the express or implied authority of those appointing him, he shall also have 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).

#### **115. Fact that receiver has been appointed to appear on correspondence**

- (1) Where a receiver of any property or undertaking of a company has been appointed, every invoice, order or business letter issued by or on behalf of the company, the receiver or the liquidator, being a document on or in which the name of the company appears, shall contain a statement that a receiver has been appointed.
- (2) If the company fails to comply with this section, the company, and each officer, liquidator and receiver in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units in respect of each document not containing the statement.

#### **116. Statement of affairs and accounts where receiver of undertaking appointed**

Where a receiver is appointed of the whole or substantially the whole of the undertaking of any company on behalf of the holders of any debentures secured by a floating charge, section two hundred and eighty-eight and three hundred and thirty-eight shall apply as regards the submission of a statement of affairs and of periodical accounts by the receiver as if the company had been ordered to be wound-up under this Act and as if the receiver had been appointed liquidator.

#### **117. Accounts of receivers**

- (1) Except where section one hundred and sixteen applies, a receiver of any property of a company shall—
  - (a) within one month, or such longer period as the Registrar may allow, after the end of the period of six months from the date of the receiver's appointment and of every subsequent period of three months until the receiver ceases to act, lodge with the Registrar an abstract showing the receiver's receipts and payments during that period of three months; and

- (b) within one month, or such longer period as the Registrar may allow, after the receiver ceases to act as receiver, lodge with the Registrar an abstract showing the receiver's receipts and payments during the period from the end of the twelve months to which the last abstract, if any, related, and the total of those receipts and payments during the whole period of the receiver's appointment.
- (2) The Registrar may require a receiver to produce any document or information concerning the affairs of the company.
- (3) A receiver who contravenes this section commits an offence and is liable, upon conviction, to a fine not exceeding one thousand penalty units for each day that the failure continues.

*[section 117 substituted by section 12 of [Act 24 of 2011](#)]*

## **118. Reports by receivers**

- (1) If a receiver, in the course of the performance of his duties as receiver of property or undertaking of a company, is satisfied that—
  - (a) there has been a contravention of, or failure to comply with, any of the provisions of this Act; and
  - (b) the circumstances are such that in his opinion the matter has not been or will not be adequately dealt with by bringing the matter to the notice of the directors of the company or, if the company is a subsidiary, of the directors of any holding company of the company;he shall as soon as is practicable report the matter to the Registrar in writing.
- (2) The court may, on its own motion or on the application of the Registrar or of any person interested in the appointment of a receiver of the property of a company, require the receiver to submit a report to the Registrar on any matter relating to the company on which the receiver may have information.

## **118A. Vacation of office of receiver**

- (1) The office of a receiver shall become vacant where the receiver—
  - (a) dies;
  - (b) becomes disqualified under this Act;
  - (c) is removed by order of court; or
  - (d) is removed from the register of receivers by the Registrar pursuant to subsection (3) of section one hundred and eleven.
- (2) A receiver may resign from office by giving one month's notice, in writing, of the receiver's intention to resign to the appointing authority or the court, as the case may require.
- (3) A receiver may be removed by the court, on application to the court by the holder of a charge by virtue of which the receiver was appointed or by revocation of the deed of appointment under which the receiver was appointed.
- (4) Where a receiver vacates office—
  - (a) the receiver's remuneration and any expenses properly incurred by the receiver; and
  - (b) any indemnity to which the receiver is entitled out of the property of the company;shall be paid out of the property of the company which is subject to a charge and shall have priority in accordance with the provisions of this Act as a preferential creditor.

- (5) Where a receiver ceases to act as a receiver or is removed by the court, the holder of the charge by virtue of which the receiver was appointed shall, within fourteen days of the cessation or removal, as the case may be, provide the Registrar notice, in writing, of the cessation or removal and the Registrar shall enter the notice in the register of receivers.
- (6) If, by the expiry of a period of one month following the removal of a receiver or the receiver's cessation of office, and no other receiver is appointed, the charge by virtue of which the receiver was appointed shall cease to attach to the property subject to the charge.
- (7) A person who contravenes this section commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both.

[section 118A added by section 13 of [Act 24 of 2011](#)]

## Part VI – Public issue of shares, etc.

### 6.1 – Interpretation

#### 119. Meaning of "invitation to the public"

- (1) In this Part, an "invitation to the public" to acquire shares or debentures of a company means an offer of, or invitation to make an offer for, shares or debentures of a company other than one—
  - (a) made to fifteen or fewer persons; or
  - (b) made—
    - (i) to fifty or fewer persons; or
    - (ii) of the company exclusively to its existing shareholders, debenture holders or employees;

on the basis that a person who accepts the invitation may not renounce or assign the benefit of any shares or debentures to be obtained thereunder in favour of any other person.

- (2) For the purpose of this Part, the issue of any kind of application form for shares or debentures of a company shall be deemed to be an invitation to acquire those shares or debentures.

#### 120. Offer of sale deemed to be made by the company

- (1) Where a company allots or agrees to allot any of its shares or debentures to a person with a view to the public's being invited to acquire any of those shares or debentures, then, for the purposes of this Act—
  - (a) an invitation to the public so made shall be deemed to be made by the company as well as by the person who in fact made it; and
  - (b) a person who acquires any of the shares or debentures in response to the invitation shall be deemed to be an allottee from the company of those shares or debentures.
- (2) Where a company allots or agrees to allot any of its shares or debentures to a person and an invitation to the public is made in respect of any of the shares or debentures—
  - (a) within six months after the allotment or agreement to allot; or
  - (b) before the company has received the whole of the consideration in respect of the shares or debentures;

it shall be presumed that the allotment or agreement to allot was made by the company with a view to an invitation to the public being made in respect of those shares or debentures.

**121. First publication of a prospectus**

- (1) The first publication of the prospectus shall be presumed to be on the date of registration thereof.
- (2) Where the shares or debentures to which the invitation relates are dealt in on a stock exchange or where the prospectus states that application has been or will be made for permission to deal therein on any stock exchange, and it is necessary to advertise the prospectus in one or more newspapers to comply with the requirements of that stock exchange, the first publication of the prospectus shall be deemed to occur when the prospectus is first so advertised.

**6.2 – Invitations to the public and prospectuses****122. Restrictions on invitations to the public to acquire shares and debentures**

- (1) In this section, "company" includes a company proposed to be formed.
- (2) A person shall not make an invitation to the public to acquire shares in a company unless—
  - (a) the company is a public company and the invitation complies with this Division; or
  - (b) the invitation is supervised by the court.
- (3) A person shall not make an invitation to the public to acquire debentures in a company unless—
  - (a) all of the following conditions are satisfied:
    - (i) the company is a public company;
    - (ii) the debentures are created by deed under the common seal of the company in favour of trustees for the debenture holders; and
    - (iii) the invitation complies with this Division; or
  - (b) the invitation is supervised by the court.
- (4) A person shall not make an invitation to the public to acquire equity shares in a company unless all the equity shares in the company already issued and all those to which the invitation relates carry an unrestricted right to vote at general meetings of the company and, on a poll, a constant number of votes which, in proportion to nominal value, is the same in the case of every share.
- (5) Subsection (4) shall not prohibit an invitation to acquire equity shares that do not comply with that subsection if—
  - (a) the rights making them equity shares are expressed by the terms of issue to be conditional upon the exercise by the holder of an option; and
  - (b) the shares will comply with that subsection if the option is exercised.
- (6) Subsection (4) shall not prohibit an invitation to acquire equity shares that do not comply with that subsection if the shares are issued, and the invitation made, in fulfilment of an obligation entered into by the company before the commencement of this Act.
- (7) If a person acquires shares or debentures in a company as a result of any invitation to the public in contravention of this section, he shall be entitled to recover compensation for any loss sustained by him from any person making the invitation, and where a person making the invitation was a body corporate, from any officer in default.
- (8) If an invitation to the public is made in contravention of this section, each person making the invitation and, where such a person is a body corporate, each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two thousand monetary units or to imprisonment for a period not exceeding two years, or to both.

**123. Prospectus required for invitations to the public to purchase share or debentures**

- (1) Subject to this section, a person may invite the public to acquire shares or debentures of a public company or of a public company proposed to be formed only if—
  - (a) within six months prior to the making of the invitation there was registered by the Registrar a prospectus relating to the shares or debentures that complies with this Division;
  - (b) every person to whom the invitation is made is supplied with a true copy of the prospectus at the time when the invitation is first made to him; and
  - (c) every copy of the prospectus states on its face that it has been registered by the Registrar and the date of registration.
- (2) An invitation published in a newspaper or magazine advertisement that summarises the contents of a prospectus shall be deemed to satisfy paragraph (b) of subsection (1) if the advertisement—
  - (a) does not contain or accompany any kind of application form for shares or debentures;
  - (b) states with reasonable prominence where copies of the full prospectus may be obtained, the fact that it has been registered and the date of registration; and
  - (c) is in terms previously approved in writing by the Registrar.

**124. Contents of prospectus**

- (1) A prospectus shall not be lodged with the Registrar unless—
  - (a) it does not contain any untrue or misleading statement;
  - (b) it contains all information that prospective purchasers of the shares or debentures and their advisors would reasonably expect to be provided in order to make a decision on purchase; and
  - (c) either—
    - (i) it deals with the matters and provides the reports specified in the Fourth Schedule; or
    - (ii) the invitation concerned is an invitation made only to existing members or debenture holders of the company (whether or not an applicant for shares or debentures will have the right to renounce in favour of other persons).

**125. Expert's consent**

- (1) This section applies to a prospectus that includes a statement purporting to be made by an expert.
- (2) The prospectus shall not be lodged with the Registrar unless it is accompanied by the written consent of the expert to the publication of the prospectus with the inclusion of the statement in the form and context in which it is included.
- (3) The prospectus shall include a statement that the expert has given his consent to the inclusion of the statement and has not withdrawn his consent.
- (4) If the expert withdraws his consent to the inclusion of the statement, he shall immediately notify the Registrar and the persons responsible for issuing the prospectus.
- (5) A person responsible for issuing a prospectus shall cease to issue the prospectus after receiving a notice from an expert under subsection (4).
- (6) A person who contravenes subsection (5), and, if that person is a body corporate, each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

## 126. Registration of prospectuses

- (1) The Registrar shall not register a prospectus for shares or debentures in a company or in a company proposed to be formed unless the copy lodged conforms with this section.
- (2) The copy shall be signed by—
  - (a) each individual named therein as a director or proposed director of the company or by his agent authorised in writing; and
  - (b) each other person making the invitation, or his agent authorised in writing.
- (3) For the purpose of paragraph (b) of subsection (2), where the invitation is made by a body corporate or members of a firm, it shall be sufficient if the copy is signed on behalf of the body corporate by not fewer than two directors or on behalf of the firm by not fewer than half the partners, and any such director or partners may sign by his agent authorised in writing.
- (4) The copy shall have endorsed thereon or attached thereto—
  - (a) the consent of any expert required by section one hundred and twenty-five; and
  - (b) a certified copy or translation of each of the documents required to be available for inspection in accordance with paragraph 49 of the Fourth Schedule.
- (5) If a copy or translation referred to in paragraph (b) of subsection (4) has already been lodged with the Registrar by the company, the Registrar may waive the requirement that it be attached or endorsed if he is satisfied that the copy originally delivered is readily identifiable and accessible.
- (6) The prospectus shall state at its head that a copy has been registered by the Registrar and also state immediately after that statement that the Registrar assumes no responsibility as to its contents.
- (7) The copy shall be accompanied by a statutory declaration by a director and the secretary of the company stating that the prospectus conforms to the requirements of this Division.
- (8) On registering the prospectus, the Registrar shall issue a certificate stating that the prospectus has been registered.

## 127. Over-subscription in debenture issue

- (1) A company shall not accept or retain subscriptions to a debentures issue in excess of the amount of the issue disclosed in the prospectus unless the prospectus specifies—
  - (a) that the company expressly reserves the right to accept or retain over-subscriptions; and
  - (b) a limit, expressed as a specific sum or money, on the amount of over-subscriptions that may be accepted or retained, being an amount not exceeding twenty-five *per centum* above the amount of the issue as disclosed in the prospectus.
- (2) Subject to the Fourth Schedule, where a company specifies in a prospectus relating to a debenture issue that it reserves the right to accept or retain over-subscriptions—
  - (a) the prospectus shall not contain any statement of, or reference to, the asset backing for the issue, other than a statement or reference to the total tangible assets and the total liabilities of the company and of its guarantor companies; and
  - (b) the prospectus shall contain a statement or reference as to what the total assets and total liabilities of the company would be if over-subscriptions to the limit specified in the prospectus were accepted or retained.

**128. Reference to stock exchange listing in prospectus-allotment of shares**

- (1) Where a prospectus states or implies that application has been or will be made for permission for the shares or debentures offered in the prospectus to be listed for quotation on the official list of a stock exchange, then, subject to subsection (8), no allotment of shares or debentures shall be made on an application made pursuant to the prospectus except in accordance with this section.
- (2) An allotment may be made—
  - (a) if the permission has been applied for in the form required by the stock exchange before the third day on which the stock exchange is open after the date of issue of the prospectus; or
  - (b) if the permission has been granted before the determination day.
- (3) If, on the determination day, the conditions of subsection (2) are not satisfied, the company shall, within fourteen days after the determination day, repay without interest any money received from any applicant in pursuance of the prospectus.
- (4) If the company fails to repay money in accordance with subsection (3), the directors shall, in addition to the liability of the company but subject to subsection (5), be jointly and severally liable to repay that money with interest at the ruling bank rate from the end of that period of fourteen days.
- (5) A director shall not be liable under subsection (4) if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.
- (6) The company shall, for so long as the conditions of subsection (2) are not satisfied, keep in a separate bank account all money received in pursuance of a prospectus.
- (7) A condition purporting to require or bind an applicant for shares or debentures to waive compliance with any requirement of this section shall be void.
- (8) The Registrar may, on the application of the company made before the determination day, by notice in the *Gazette* provide that this section shall not apply to the allotment of the shares or debentures.
- (9) For the purposes of this section, a statement in a prospectus to the effect that the articles comply with, or have been drawn up so as to comply with, a condition imposed by a stock exchange shall, unless the contrary intention appears, be deemed to imply that application has been, or will be, made for permission for the shares or debentures offered by the prospectus to be listed for quotation on the official list of the stock exchange.
- (10) For the purposes of this section, where a stock exchange grants the permission subject to a condition, the permission shall be deemed to be granted if and when the directors of the company give to the stock exchange a written undertaking to comply with the condition.
- (11) For the purposes of this section, the determination day is, subject to subsection (12), the day forty-two days after the day of issue of the prospectus.
- (12) If, before the day referred to in subsection (11), the stock exchange notifies the applicant for the permission that a later day, being a day not more than three months after the day of issue of the prospectus, will be the determination day, the determination day is that later day.

**129. Civil liability for misstatements or omissions in prospectus**

- (1) Where a prospectus—
  - (a) contains a statement which is untrue or, in the context, misleading;
  - (b) omits any matter which is material; or



- (c) omits to state any of the particulars or to set out any of the reports which, under this Act, it is required to state or set out;

then, subject to this section, the persons specified in subsection (2) shall be liable to pay compensation to any persons who acquire any shares or debentures on the faith of the prospectus for any loss they may have sustained by reason of the untrue statement or omission.

- (2) The persons liable to pay compensation under subsection (1) are the following:

- (a) every person making the invitation to which the prospectus relates;
- (b) every person who was a director of a body corporate making the invitation at the time when the prospectus was published;
- (c) where the invitation was made by the company to whose shares or debentures the invitation relates—
  - (i) every person who has authorised himself to be named in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time; and
  - (ii) every promoter of the company who was a party to the preparation of the prospectus;
- (d) the expert, if the untrue statement or omission occurs in a statement by an expert who has consented to the publication of the prospectus in accordance with section one hundred and twenty-five.

- (3) A person shall not be liable under this section if he proves—

- (a) that as regards any untrue statement, not purporting to be—
  - (i) a statement or report made by an expert (other than himself);
  - (ii) a public official document or statement; or
  - (iii) an extract from a document referred to in paragraph (i) or (ii);
 he had reasonable ground to believe and did believe up to the time of the publication of the prospectus or, where the waiting period applies, up to the expiration of the waiting period, that the statement was true;
- (b) that as regards any untrue statement purporting to be a statement or report by an expert (other than himself) or an extract therefrom—
  - (i) it was a correct and fair copy of the statement, report or extract; and
  - (ii) he had reasonable ground to believe and did believe up to the time of the publication of the prospectus that the person making the statement was competent to make it and had given the consent required by section one hundred and twenty-five and had not withdrawn that consent before the date of registration of the prospectus;
- (c) that as regards any untrue statement purporting to be a copy of or extract from a public official document or a statement made by an official person, it was a correct and fair copy of or extract from the document or statement;
- (d) that as regards any omission, he was not aware of the matter omitted, or that the matter omitted was material, up to the time of the publication of the prospectus or, where the waiting period applies, up to the expiration of the waiting period;
- (e) that after the publication of the prospectus but before the expiration of the waiting period he, on becoming aware of any untrue statement therein or omission therefrom, withdrew his consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor; or

- (f) that the prospectus was published without his knowledge and that, on becoming aware of its publication, he forthwith gave reasonable public notice that it was published without his knowledge.
- (4) A person shall not be liable under this section by reason that subparagraph (c) (i) of subsection (2) applies to him if he proves that, having consented to being named as a director or as having agreed to become a director, he withdrew his consent before the registration of the prospectus and that it was published without his authority or consent.
- (5) A person shall not be liable under this section by reason that paragraph (d) of subsection (2) applies to him if he proves—
  - (a) that as regards any untrue statement made by him, he was competent to make the statement and that he had reasonable ground to believe and did believe, up to the date of publication of the prospectus or, where the waiting period applies, up to the expiration of the waiting period, that the statement was true; or
  - (b) that, after the lodgement of the prospectus with the Registrar but before publication thereof, or, where the waiting period applies, before the expiration of the waiting period, on his becoming aware of the untrue statement or omission, he withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reason therefor.
- (6) Where—
  - (a) a person is named in a prospectus as a director of a company or as having agreed to become a director of a company and he has not consented to become a director or has withdrawn his consent before the publication of the prospectus and has not authorised or consented to the publication thereof; or
  - (b) the consent of a person is required under section one hundred and twenty-five to the publication of the prospectus and he either has not given that consent or has withdrawn it before the publication of the prospectus;

every person making the invitation to which the prospectus relates and every person who was a director of any body corporate making the invitation at the time when the prospectus was published (except any person without whose knowledge or consent the prospectus was published) shall be liable to indemnify the person referred to in paragraph (a) or (b) against all damages, costs, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, or in defending himself against any legal proceeding brought against him in respect thereof.

### 130. Offence of misstatement or omission in prospectus

- (1) Where any prospectus, advertisement or circular published in relation to any invitation to the public to acquire shares or debentures of a company contains any untrue statement or omits truthfully to state any of the matters which, under this Act, it is required to state, any person who authorised the publication of the prospectus, advertisement or circular shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding seven thousand monetary units or to imprisonment for a period not exceeding seven years, or to both.
- (2) It is a defence to a charge under subsection (1) that—
  - (a) the untrue or omitted statement was immaterial; or
  - (b) the person had reasonable ground to believe and did believe, up to the time of publication of the prospectus, that the statement was true.
- (3) For the purposes of this section, a person shall not be regarded as having authorised the publication of a prospectus by reason only of his having given the consent required by section one hundred and twenty-five, and the Registrar shall not be regarded as having authorised the publication of

an advertisement or circular by reason of his having given the certificate referred to in section one hundred and twenty-six.

### 131. Stop trading order

- (1) Where a prospectus has been registered and it appears to the Registrar that it—
- (a) contains a statement, promise, estimate or forecast that is false or misleading, whether or not the statement or other particular was false or misleading at the time the prospectus was lodged;
  - (b) fails to comply in any material respect with this Division or with the Fourth Schedule; or
  - (c) conceals or omits to state a material fact so that a statement in the prospectus is rendered misleading in the context in which it appears;

the Registrar may apply to the court for an order under subsection (2).

- (2) If the court is satisfied that the ground for the application is established, it may make an order—
- (a) cancelling the registration of the prospectus and directing the persons making the invitation to the public to which the prospectus relates—
    - (i) to withdraw the prospectus;
    - (ii) to cease to accept further subscriptions or purchases of shares or debentures offered in the prospectus; and
    - (iii) to repay with interest any money received from applicants in pursuance of the prospectus;
  - (b) declaring any contract for the subscription or purchase of shares or debentures offered in the prospectus to be voidable;
  - (c) directing the persons making the invitation to the public to which the prospectus relates to reissue forthwith the prospectus amended in such terms as the court directs; or
  - (d) protecting the rights of persons injuriously affected by the issue of the prospectus, in such terms as it thinks fit.
- (3) In exercising its powers under this section, the court may, on the application of the Registrar and on being satisfied of the existence of a *prima facie* case, make such interim orders as it considers necessary to apply for a period of not more than fourteen days after the date of the order.

### 132. Waiting period

Where an invitation is made to the public to acquire shares or debentures of a public company or of a public company proposed to be formed, an agreement for the acquisition of the shares or debentures made before the end of the waiting period, other than a *bona fide* underwriting agreement, shall not be enforceable by the company or the promoters.

### 133. Withdrawal of application after waiting period

Where an invitation is made to the public in respect of any shares or debentures of a public company, an application for such shares or debentures shall not be revocable during a period of seven days commencing on the expiry of the waiting period unless, before the expiry of that period of seven days, some person responsible for the prospectus has given a notice to the public which has the effect under section one hundred and twenty-nine of excluding or limiting the responsibility of the person giving it for any misstatement or omission in the prospectus.

### 134. Allotment and minimum subscription

- (1) No allotment of shares offered to the public shall be made unless—
  - (a) the minimum subscription has been subscribed as required by section fifteen; and
  - (b) the sum payable on application for the shares so subscribed has been received by the company.
- (2) Where a cheque is given in payment of a sum under subsection (1), the sum shall not be regarded as having been received by the company until the cheque is paid by the bank on which it is drawn.
- (3) The minimum subscription shall be calculated—
  - (a) on the nominal value of each share, if the shares are not issued at a premium; or
  - (b) on the nominal value of each share plus the premium payable, if the shares are issued at a premium.
- (4) The amount payable on application on each share offered to the public shall not be less than five *per centum* of the nominal amount of the share.
- (5) If the conditions of subsection (1) have not been satisfied after the expiry of four months from the first issue of the prospectus, any money received from applicants for shares shall forthwith be repaid to them without interest.
- (6) Subject to subsection (7), if any money received under subsection (5) is not repaid within five months after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the ruling bank rate from the expiry of the period of five months.
- (7) A director shall not be liable under subsection (6) if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.
- (8) An allotment made by a company to an applicant in contravention of this section shall, notwithstanding that the company is in the course of being wound-up, be voidable at the option of the applicant by written notice given to the company within one month after the date of the allotment.
- (9) A director who wilfully contravenes, or wilfully authorises or permits the contravention of, this section shall be liable to compensate the company and the allottee for any loss, damages or costs which the company or the allottee has sustained or incurred thereby.
- (10) Proceedings for the recovery of any compensation under subsection (9) shall not be commenced more than two years after the date of the allotment.
- (11) A condition purporting to require or bind an applicant for shares to waive compliance with any requirement of this section shall be void.
- (12) A company shall not allot, and an officer or promoter of a company or a proposed company shall not authorise or permit the allotment of, shares or debentures to the public on the basis of a prospectus more than six months after the publication of the prospectus.
- (13) An allotment of shares or debentures shall not be voidable or void by reason only that it was made in contravention of subsection (12).

### 135. Statement in lieu of prospectus

- (1) A public company that does not issue a prospectus on, or with reference to, its formation shall not allot any of its shares or debentures unless it has, not later than three days before the first allotment of the shares or debentures, lodged with the Registrar a statement in lieu of a prospectus.

- (2) The statement in lieu of a prospectus shall—
  - (a) be signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing; and
  - (b) be in the form of a prospectus and deal with such matters specified in Part A of the Fourth Schedule as apply to the formation of a company.

### **136. Prohibition of waiver and notice clauses**

A condition purporting to require or bind any person to waive compliance with this Part or purporting to attribute to him notice of any contract document or other matter not specifically referred to in any prospectus advertisement or circular, shall be void.

## **Part VII – Meetings and resolutions**

### **137. Interpretation**

- (1) In this Part, unless the context otherwise requires, "meeting" means any of the following meetings of a company:
  - (a) an annual general meeting;
  - (b) an extraordinary general meeting; and
  - (c) a class meeting.

### **138. Annual general meeting**

- (1) Subject to this section, a company shall hold, within three months after the end of each financial year of the company, a meeting to be called the annual general meeting of the company.
- (2) If, after any financial year, no annual general meeting is held in accordance with subsection (1), the Registrar may, on the application of any member of the company, convene, or direct the convening of, an annual general meeting of the company and give such ancillary or consequential directions as the Registrar thinks expedient, including directions modifying or supplementing, in relation to the convening, holding and conducting of the meeting, the operation of the company's articles, or a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.
- (3) If the company fails to comply with subsection (1), or with any direction of the Registrar under subsection (2), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding one thousand monetary units.
- (4) If the company is a private company, the annual general meeting in relation to a financial year, other than the first financial year, may be dispensed with if all the members of the company entitled to attend and vote at any annual general meeting so agree in writing before the end of the financial year.

### **139. Extraordinary general meetings**

- (1) An extraordinary general meeting of a company may be convened in accordance with other provisions of this Act, or—
  - (a) by the directors whenever they think fit; or
  - (b) if the articles so provide, by any other person in accordance with those provisions.

#### 140. Class meetings

- (1) Unless the articles provide otherwise, a meeting of members of a particular class may be convened—
  - (a) by the directors whenever they think fit; or
  - (b) by two or more members of that class, holding, at the time that notice of the meeting is sent out, not less than one-twentieth of the total voting rights of all the members having a right to vote at meetings of that class.

#### 141. Requisition of a general meeting

- (1) A member or members of the company may make a requisition for a general meeting to be held under this section if they hold, at the time when the requisition is made, not less than one-twentieth of the total voting rights of all the members having a right to vote at general meetings of the company.
- (2) The requisition shall state the nature of the business to be transacted at the meeting, and shall be signed by the requisitionists and deposited at the registered office of the company or posted to its registered postal address, and may consist of several documents in like form each signed by one or more requisitionists.
- (3) Where a requisition is made in accordance with this section, the directors shall proceed duly to convene a general meeting of the company.
- (4) If the directors do not proceed duly to convene a meeting to be held within the requisition period, the requisitionists or any of them may themselves convene a meeting, but any meeting so convened shall not be held more than three months after the receipt of the requisition by the company.
- (5) A meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.
- (6) Notwithstanding anything in the articles, the notice period for a meeting convened under this section shall be the period set out in section one hundred and forty-three for the type of meeting concerned.
- (7) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and the sum 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 wilfully authorised or permitted the failure.
- (8) For the purposes of this section, the requisition period is the period of—
  - (a) twenty-eight days, if the meeting is to be an annual general meeting or a meeting for the passing of a special resolution; or
  - (b) twenty-one days, in any other case;beginning on the date of receipt by the company of the requisition.
- (9) For the purposes of this section, the directors fail duly to convene a meeting if—
  - (a) they do not convene it within the requisition period; or
  - (b) they do not give such notice thereof as is required by section one hundred and forty-three for a meeting at which a special resolution is to be proposed, if the requisition states that a resolution is to be proposed as a special resolution at the meeting.

**142. Entitlement to receive notice of meetings**

- (1) Where a meeting of a company is to be convened, any person who is, on the day before the latest day on which notice of the meeting may be given under this Act—
  - (a) a registered member having the right to vote at a meeting of that kind;
  - (b) a person upon whom the ownership of a share devolves by reason of his being a legal personal representative, receiver or trustee in bankruptcy of such a member and of whom the company has received notice;
  - (c) a director of the company;
  - (d) an auditor of the company; or
  - (e) a person entitled under the articles to receive such notice;shall be entitled to receive notice of the meeting.
- (2) The proceedings of a meeting shall not be invalid by reason only of—
  - (a) the accidental omission to give notice of a meeting to a person entitled to receive notice; or
  - (b) the non-receipt of notice of a meeting duly sent to such a person.

**143. Length of notice for convening a meeting**

- (1) Subject to this section, notice of a meeting of a company shall be given in writing served in accordance with this Act on each person entitled to receive such notice and shall be given not less than—
  - (a) twenty-one days, in the case of an annual general meeting;
  - (b) twenty-one days, in the case of a meeting at which a special resolution will be proposed; or
  - (c) fourteen days, in any other case;and not more than fifty days before the meeting is to be held.
- (2) The articles may substitute for the minimum periods of notice provided in subsection (1) longer periods, being periods of not more than thirty days.
- (3) Where a meeting of the company is convened with a shorter period of notice than that required under this section, full notice shall be deemed to have been given if it is so agreed—
  - (a) by all the members entitled to attend and vote at the meeting, in the case of a meeting convened as the annual general meeting;
  - (b) by a majority in number of the members having a right to attend the meeting and vote on the resolution concerned, being a majority holding not less than ninety-five *per centum* of the total of such voting rights, in the case of a meeting convened as a meeting at which a special resolution will be moved, and in relation to that resolution; and
  - (c) by a majority in number of the members having a right to attend and vote at the meeting, being a majority holding not less than ninety-five *per centum* of the total of such voting rights, in the case of any other meeting.

**144. Power of court to order meeting**

- (1) If for any reason it is impracticable to convene or to conduct a meeting of a company in compliance with this Act and the articles, the court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be convened, held and conducted in such a manner as

the court thinks fit, and, where any such order is made, may give such ancillary or consequential directions as it thinks expedient, including a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

- (2) A meeting convened, held and conducted in accordance with an order under this section shall for all purposes be deemed to be a meeting of the company duly convened, held and conducted.

#### **145. Place of meetings**

Unless the articles provide otherwise, or all the members entitled to vote at that meeting agree in writing to a meeting at a place outside Zambia, a meeting of a company shall be held in Zambia.

#### **146. Attendance at meetings**

The following persons shall be entitled to attend and to speak at a meeting of a company:

- (a) each member of the company having the right to vote at the meeting;
- (b) each person upon whom the ownership of a share devolves by reason of his being a legal personal representative, receiver or trustee in bankruptcy of such a member;
- (c) each director of the company;
- (d) the secretary of the company;
- (e) each auditor of the company;
- (f) each person entitled under the articles to do so;
- (g) any other person permitted to do so by the chairman.

#### **147. Conduct of meetings and voting**

- (1) Unless the articles of a company provide otherwise, members shall have votes at any meeting of the company as follows:
  - (a) a member of a company with share capital shall have one vote for—
    - (i) each share; and
    - (ii) each whole unit of stock;that he is registered as holding;
  - (b) each member of a company limited by guarantee shall have one vote.
- (2) The articles may provide that a member shall have rights in respect of shares not registered in respect of the person, but a person who is not a member of the company shall not be entitled to vote at a meeting of the company.
- (3) Unless the articles provide otherwise, the quorum for a meeting of the company shall be two members of the company holding not less than one-third of the total voting rights in relation to the meeting.
- (4) Unless the articles provide otherwise—
  - (a) a meeting of the company may elect a chairman; and
  - (b) on matters not provided for in this Act or in the articles, the meeting may provide for the conduct of its business.
- (5) The articles may provide that a member shall not be entitled to attend a meeting of the company unless all sums presently payable by him in respect of shares in the company have been paid.



- (6) For the purposes of this section, a "unit of stock" of a company is the amount of stock having the nominal value arrived at by adding together the nominal values of all the shares of the company other than stock, and dividing the sum by the number of those shares.

#### **148. Chairman's declaration as to result of a vote**

Unless the articles of a company provide otherwise, a statement by the chairman of a meeting of the company that a motion or resolution at a meeting was passed by a specified majority shall be conclusive evidence that it was so passed unless a poll was demanded on the motion or resolution.

#### **149. Right to demand a poll**

A poll may be demanded at a meeting of a company on any question other than the election of the chairman of the meeting or the adjournment of the meeting by—

- (a) not fewer than three members having the right to vote on the question, representing not less than one-twentieth of the total voting rights of all members having the right to vote on the question, where there are more than eight such members present; or
- (b) not fewer than one third of the members present having the right to vote on the question, where there are eight or fewer such members present.

#### **150. Voting on a poll**

On a poll taken at a meeting of company or a meeting of any class of members of a company, a member entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

#### **151. Proxies**

- (1) A member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as his proxy to attend and vote instead of him.
- (2) An appointment as proxy shall be in writing under the hand of the appointer or his agent duly authorised in writing or, if the appointer is a body corporate, either under seal or under the hand of an officer or agent duly authorised.
- (3) A proxy appointed under this section shall have, subject to any instructions from the member in the instrument of appointment, all the rights and powers of the member in relation to the meeting.
- (4) If voting rights attach to shares in a company having share capital, a shareholder may appoint separate proxies to represent respectively such of the shares held by him as may be specified in their instruments of appointment.
- (5) An appointment of a director as a proxy shall not authorise the director to vote as proxy on the following business transacted at an annual general meeting:
  - (a) the declaration of a dividend;
  - (b) the consideration of the accounts and the directors' and auditors' reports;
  - (c) the election of directors in place of those retiring;
  - (d) the fixing of the remuneration of the directors; and
  - (e) the appointment of the auditors and the fixing of their remuneration.
- (6) In every notice convening a meeting of a company there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint one or more proxies to attend and vote instead of him, and, unless the articles provide otherwise, that a proxy need not also be a member.

- (7) A company shall not provide a member with a form for the appointment of a proxy unless the form permits the member to direct the proxy as to how to use his vote on different matters.
- (8) A company's articles shall not have the effect of requiring the instrument appointing a proxy, or any other document necessary to show the validity of appointment of a proxy, to be received by the company or any other person more than forty-eight hours before a meeting or adjourned meeting in order that the appointment may be effective thereat.
- (9) If a company fails to comply with subsection (6) or (7), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two hundred and fifty monetary units.
- (10) If a company, for the purpose of any meeting of the company, issues invitations to appoint as proxy a person specified or listed in the invitation, and issues the invitations to some only of the members entitled to be sent a notice of the meeting and to vote thereat, the company, and every officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two hundred and fifty monetary units.
- (11) A company shall not be regarded as issuing an invitation for the purposes of subsection (10) if the name or list is available on request to every member entitled to vote at the meeting, and is not sent to any such member except on request.

## **152. Representation of bodies corporate and unincorporated associations at meetings**

- (1) A body corporate or an unincorporated association may, if it is a member of a company, by resolution of its directors or other governing body, authorise any person as it thinks fit to act as its representative at any meeting of the company.
- (2) A person so authorised may exercise the same powers on behalf of the body corporate or unincorporated association which he represents as it could exercise if it were an individual member of the company.

## **153. Circulation of members' resolutions and supporting circulars**

- (1) A member of a company entitled to attend and vote at a meeting may, in accordance with this section, require the company to circulate, at the company's expense—
  - (a) notice of any resolution which may properly be moved and is intend to be moved at the meeting; and
  - (b) a statement of not more than five hundred words with respect to the matter referred to in the proposed resolution or any other business to be dealt with at the meeting.
- (2) A requisition for the purposes of this section shall be in writing and posted to the company's registered postal address or deposited at the company's registered office.
- (3) If a meeting of the company is proposed and the company receives a requisition—
  - (a) not less than seven days before the end of the period during which notice of the meeting is required to be given; or
  - (b) at a time when it is practicable to include the notice and statement required with the notice of the meeting;

the company shall send the notice and statement to each person entitled to receive notice of the meeting before the end of period during which notice of the meeting is required to be given.

- (4) If the company receives a requisition and subsection (3) does not apply, the company shall include the notice and statement required with the notice of the next meeting of the company for which it is practicable to do so.

- (5) If a requisition is made under this section and the resolution is not passed, a requisition shall not be made in relation to the same resolution, or one substantially to the same effect, to be moved at a meeting within three months after the meeting at which the resolution was moved unless—
- (a) the directors otherwise agree; or
  - (b) the requisition is supported in writing by members of the company representing between them not less than one-twentieth of the total voting rights of all the members having at the date of the request a right to vote on the resolution to which the request relates.

#### **154. Circulation of members' circulars**

- (1) A company shall, at the written request of any member entitled to attend and vote at a meeting, circulate to members of the company a statement of not more than one thousand words with respect to any business to be dealt with at that meeting.
- (2) Unless the company otherwise resolves, the circulation of the statement shall be at the expense of that member.
- (3) The statement shall be circulated to members of the company in any manner permitted for service of notice of the meeting and at the same time as notice of the meeting or as soon as practicable thereafter.
- (4) A company shall not be bound to circulate the statement unless—
  - (a) the request, signed by the member concerned, together with the statement, is received at the registered postal address of the company or deposited at the registered office of the company not less than ten days before the meeting; and
  - (b) there is also deposited with the request a sum reasonably sufficient to meet the company's expenses in giving effect thereto.

#### **155. General provisions in regard to members' circulars**

- (1) A company shall not be bound under section one hundred and fifty-three or one hundred and fifty-four to circulate any resolution or statement if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by those sections are being abused to secure publicity for defamatory matter.
- (2) On hearing an application under subsection (1), the court may order the company's costs to be paid in whole or in part by the member making the request, notwithstanding that he is not a party to the application.
- (3) A company shall not incur liability to any person by reason only that it has circulated a resolution or statement in compliance with section one hundred and fifty-three or one hundred and fifty-four.
- (4) If a company fails to comply with section one hundred and fifty-three or one hundred and fifty-four, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

#### **156. Ordinary extraordinary and special resolutions**

- (1) A resolution shall be an ordinary resolution if it is passed by a simple majority of votes cast by such members of the company as, being entitled so to do, vote in person or by proxy at a meeting duly convened and held.
- (2) A resolution shall be an extraordinary resolution if it is passed by a majority of not less than three-fourths of the votes cast by such members of the company as, being entitled so to do, vote in person or by proxy at a meeting duly convened and held.

- (3) A resolution shall be a special resolution if it is passed by a majority of not less than three-fourths of the votes cast by such members of the company as, being entitled so to do, vote in person or by proxy at a meeting duly convened as a meeting at which the resolution will be moved as a special resolution, and duly held.
- (4) Any reference in—
  - (a) this Act;
  - (b) the articles of a company;
  - (c) any debentures or debenture trust deed;to an ordinary, extraordinary or special resolution of a meeting of creditors or debenture holders or of any class of creditors or debenture holders shall, unless the context otherwise requires, bear a like meaning to that specified in this section, with the necessary modifications.

### 157. Written resolutions for private companies

- (1) The members of a private company may, in accordance with this section, pass a resolution in writing without holding a meeting, and such a resolution shall be as valid and effective for all purposes as if it had been passed at a meeting of the appropriate kind duly convened, held and conducted.
- (2) The resolution shall be signed by each member who would be entitled to vote on the resolution if it were moved at a meeting of the company, or by his duly authorised representative.
- (3) The resolution shall be passed when signed by the last member referred to in subsection (2), whether or not he was a member when other members signed.
- (4) If the resolution is described in the writing as a special resolution, it shall be deemed to be a special resolution for the purposes of this Act.
- (5) If the resolution states a date as being the date of the signature thereof by any member, the statement shall be *prima facie* evidence that it was signed by the member on that date.
- (6) This section shall not apply to a resolution to remove an auditor or to remove a director.

### 158. Registration of copies of certain resolutions

- (1) A certified copy of every special resolution made by a company, or by a class of members of a company, shall, within fifteen days after the making thereof, be lodged with the Registrar.
- (2) Subject to this section, every copy of the articles of a company issued by it shall have embodied in it or attached to it a copy of every special resolution of the company in force at the time of issue.
- (3) For the purposes of subsection (2), where the sole effect of a special resolution is to amend the articles, a copy of the articles that embodies the effect of the passing of the special resolution embodies the resolution.
- (4) If a company fails to comply with subsection (1), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.
- (5) If a copy of the articles is issued that fails to comply with subsection (2), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units in respect of each copy.

### 159. Date of certain resolutions

- (1) 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.

- (2) Subject to subsection (1), where a resolution is passed at an adjourned meeting of a company or of the directors be deemed to have been passed on the date of the adjourned meeting.

#### **160. Minutes of proceedings of meetings of company and of creditors**

- (1) A company shall cause minutes of all proceedings of—
- (a) meetings of the company;
  - (b) meetings of its directors and of any committee of directors;
  - (c) meetings of its debenture holders or other creditors;
- to be entered in books kept for that purpose.
- (2) Any such minute, if purporting to be signed by the Chairman of the meeting at which the proceedings took place or of the subsequent meeting, shall be *prima facie* evidence of the facts stated in the minute in relation to the proceedings.
- (3) Where minutes have been made in accordance with this section, the meeting shall be presumed to have been duly convened, held and conducted and all appointments of directors, officers, auditors and liquidators shall be presumed to be valid.
- (4) If the company fails to comply with subsection (1), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

#### **161. Inspection of minute books**

The books containing the minutes of proceedings of any meeting referred to in section one hundred and sixty shall be kept at the registered records office of the company and shall be open to inspection by any member, officer, auditor, receiver or liquidator of the company, and by the Registrar or his delegate.

### **Part VIII – Accounts, audit and annual, returns**

#### **8.1 – Accounts**

#### **162. Accounting records to be kept**

- (1) A company shall—
- (a) keep such accounting records as correctly record and explain the transactions of the company (including any transactions as trustee) and the financial position of the company; and
  - (b) keep its accounting records in such a manner as will enable—
    - (i) the preparation from time to time of true and fair accounts of the company; and
    - (ii) the accounts of the company to be conveniently and properly audited in accordance with this Act.
- (2) The company shall retain the accounting records for a period of ten years after the completion of the transactions to which they relate.
- (3) If any accounting records of the company are kept at a place other than its registered records office, the company—
- (a) shall keep at the registered records office such statements and records with respect to the matters dealt with in those accounting records as would enable the company to prepare true

and fair accounts together with any documents required by this Act to be attached to the accounts; and

- (b) for that purpose, shall, within fourteen days after the creation of any accounting record, transmit the appropriate statement or record to the registered records office.
- (4) The accounting records of the company shall be kept in writing in English, or in any form that enables the accounting records to be readily accessible and readily convertible into such writing.
- (5) The company shall make its accounting records kept at its registered records office available, at all reasonable times, for inspection without charge by the directors, secretary and auditors of the company.
- (6) The company shall, on being given fourteen days' notice in writing by any director, secretary or auditor of the company that he wishes to inspect specified accounting records, make the accounting records, wherever kept, available for inspection without charge at the registered records office or such other place as may be agreed with the person giving the notice.
- (7) If a company fails to comply with this section, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding one thousand monetary units.

### **163. Financial year of holding and subsidiary**

- (1) Subject to this section, the directors of a company which is a holding company shall take such action (if any) as is necessary to ensure that the financial year of each subsidiary of the holding company coincides with the financial year of the holding company.
- (2) The action referred to in subsection (1) need not be taken if the directors of the holding company lodge with the Registrar a statutory declaration that—
  - (a) the action would cause unreasonable expense or difficulty; and
  - (b) the members of the holding company will not be disadvantaged if the action is not taken.

### **164. Annual accounts to be prepared after each financial year**

- (1) Subject to this Division, the directors of a company shall, after the end of each financial year of the company but not later than twenty-one days before the annual general meeting of the company for that financial year, or, if no annual general meeting of the company is held within three months after the end of the financial year of the company, not later than twenty-one days before the end of that period of three months, caused to be made out—
  - (a) a profit and loss account for the financial year just ended, being a profit and loss account that gives a true and fair view of the profit or loss of the company for that financial year;
  - (b) a balance sheet as at the end of the financial year just ended, being a balance sheet that gives a true and fair view of the state of affairs of the company as at the end of that financial year;
  - (c) group accounts, if the company is a company required to provide group accounts, dealing with—
    - (i) the profit or loss of the company and its subsidiaries for their respective financial years most recently ended, giving a true and fair view of the profit or loss; and
    - (ii) the state of affairs of the company and its subsidiaries as at the end of their respective financial years most recently ended, giving a true and fair view of the state of affairs so far as it concerns members of the holding company.
- (2) The accounts referred to in subsection (1) (in this Act called the "annual accounts") shall comply with such of the requirements of the Second Schedule as are relevant to those accounts, but where accounts prepared in accordance with those requirements would not otherwise give a true and fair

view of the matters required by this section to be dealt with in the accounts, the directors of the company shall add such information and explanations as will give a true and fair view of those matters.

- (3) The directors shall take reasonable steps to ensure that the annual accounts of the company and, if it is a holding company for which group accounts are required, the group accounts, are audited as required by this Part within the time allowed by subsection (1).
- (4) The directors shall cause the auditors' report relating to the annual accounts that is furnished to the directors in accordance with this Part to be attached to, or endorsed upon, the annual accounts.
- (5) The directors shall, before the profit and loss account and balance sheet referred to in subsection (1) are made out, take reasonable steps—
  - (a) to ascertain what action has been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts;
  - (b) to cause all known bad debts to be written off and adequate provision to be made for doubtful debts;
  - (c) to ascertain whether any current assets, other than current assets to which paragraph (a) or (b) applies, are unlikely to realise in the ordinary course of business their value as shown in the accounting records of the company and, if so, to cause—
    - (i) those assets to be written down to an amount that they might be expected so to realise; or
    - (ii) adequate provision to be made for the difference between the amount of the value as so shown and the amount that they might be expected so to realise; and
  - (d) to ascertain whether any non-current asset is shown in the books of the company at an amount that, having regard to its value to the company as a going concern, exceeds the amount that it would have been reasonable for the company to expend to acquire that asset as at the end of the financial year and, unless adequate provision for writing down that asset is made, to cause to be included in the accounts such information and explanations as will prevent the accounts from being misleading by reason of the overstatement of the amount of that asset.
- (6) The directors shall cause to be attached to the annual accounts, before the auditor reports on the accounts under this Part, a statement made in accordance with a resolution of the directors and signed by at least two directors stating whether, in the opinion of the directors—
  - (a) the profit and loss account is drawn up so as to give a true and fair view of the profit or loss of the company for the financial year;
  - (b) the balance sheet is drawn up so as to give a true and fair view of the state of affairs of the company as at the end of the financial year;
  - (c) there are reasonable grounds to believe that the company will be able to pay its debts as and when they fall due; and
  - (d) the group accounts are drawn up so as to give a true and fair view of—
    - (i) the profit or loss of the company and its subsidiaries for their respective last financial years; and
    - (ii) the state of affairs of the company and its subsidiaries as at the end of their respective last financial years, so far as they concern members of the company;

if the company has group accounts.



## 165. Group accounts

- (1) Where at the end of its financial year a company was a holding company, the company shall, subject to this section, prepare—
  - (a) a set of consolidated accounts for the group of companies;
  - (b) separate accounts for each body corporate in the group; or
  - (c) a combination of sets of consolidated accounts and separate accounts together covering the group;(in this Act called the "group accounts") for inclusion in its annual accounts for that financial year.
- (2) This section shall not oblige a company to make out group accounts if it is, at the end of its financial year, a wholly-owned subsidiary of another body corporate incorporated in Zambia.
- (3) Group accounts need not deal with a subsidiary of the company if a statutory declaration made by each director has been lodged with the Registrar to the effect that—
  - (a) it is impracticable, or would be of no real value to members of the company, in view of the insignificant amounts involved, or would involve expenses or delay out of proportion to the value to members of the company; or
  - (b) the result would be misleading or harmful to the business of the company or any of its subsidiaries;and the omission of the subsidiary from the group accounts has been approved in writing by the Registrar.

## 166. Delays in preparing group accounts

- (1) The directors of a subsidiary shall, at the request of the directors of the holding company, supply all such information as is required for the preparation of group accounts of the holding company and its subsidiaries, and of the report of the directors of the holding company.
- (2) The directors of a holding company shall take all reasonable steps to ensure that, when they prepare the group accounts and the directors' report, they have available to them all the information from each subsidiary that is to be included in the group necessary for the completion of the group accounts and directors' report of the group.
- (3) The directors of a holding company are, unless they know or have reason to suspect that any matter in any accounts, report or information furnished by the directors of a subsidiary is false or misleading, entitled to rely on the accounts, report or information for the purpose of the preparation of the group accounts and their report, so far as they relate to the affairs of the subsidiary.
- (4) Where the directors of a holding company, having taken all such steps as are reasonably available to them, are unable to obtain from the directors of a subsidiary any accounts, report or other information required for the preparation of the group accounts and the directors' report of the group, they may cause the group accounts to be made out and make the directors' report without those accounts, report or other information relating to the subsidiary, but with such qualifications and explanations as are necessary to prevent the group accounts and directors' report from being misleading.
- (5) Where the directors of a holding company have caused the group accounts to be made out and have made the directors' report in accordance with subsection (4), they shall send to the members of the holding company, within one month after receiving the accounts, report or other information from the directors of the subsidiary, a copy of the accounts and report or a statement embodying the other information, as the case may be, together with a statement by the directors of the holding



company containing such qualifications and explanations of the group accounts and of their report as are necessary having regard to the accounts, report or information received from the subsidiary.

## 167. Annual accounts to include amounts paid to directors

- (1) The annual accounts of a company shall, subject to this section, show—
  - (a) the total amount of the emoluments paid to or receivable by the directors for their services;
  - (b) the total amount of pensions paid to or receivable by the directors or past directors for their services;
  - (c) the total amount of any compensation paid to or receivable by the directors or past directors in respect of loss of office;in the financial year concerned.
- (2) The amount to be shown under paragraph (a) of subsection (1) shall include any emoluments paid to or receivable by any person in respect of his services, while a director of the company—
  - (a) as director of the company;
  - (b) as director of any subsidiary; or
  - (c) otherwise in connection with the management of the affairs of the company or any subsidiary.
- (3) The amount to be shown under paragraph (b) of subsection (1)—
  - (a) shall not include any pension paid or receivable under a pension scheme if the scheme is such that the contributions to the scheme paid in respect of the directors are adequate for the maintenance of the scheme; and
  - (b) shall include any other pension paid or receivable in respect of any of the services of a person, while a director of the company—
    - (i) as director of the company;
    - (ii) as director of any subsidiary; or
    - (iii) otherwise in connection with the management of the affairs of the company or any subsidiary;whether the pension is paid to or receivable by the person himself or, on his nomination or by virtue of any connection with him, to or by any other person.
- (4) The amount to be shown under paragraph (c) of the subsection (1) shall include any sums paid to or receivable by a director or past director by way of compensation for—
  - (a) loss of office as director of the company; or
  - (b) loss of any other office in connection with the management of the affairs of the company or of a subsidiary, where the loss arose from or in connection with the loss of office as director of the company.
- (5) The accounts shall also show, with the total amounts to be shown under subsection (1), the subtotals of the amounts that are receivable or to be paid—
  - (a) in relation to emoluments and pensions, in respect of—
    - (i) services as director of the company or a subsidiary; and
    - (ii) other services; and

- (b) in relation to compensation for loss of office, in respect of—
  - (i) loss of office as director of the company or a subsidiary; and
  - (ii) loss of any other office.
- (6) Where an amount to be shown under subsection (1) or (5) includes an amount to be paid by or receivable from a person other than the company, the accounts shall also show the subtotals of the amounts receivable from or paid by—
  - (a) the company;
  - (b) the company's subsidiaries; and
  - (c) any other person.
- (7) For the purposes of this section—

"compensation for loss of office" includes sums paid as consideration for or in connection with a person's retirement from office;

"contributions" means any payment into a pension scheme (including an insurance premium paid for the purposes of the scheme) by or in respect of which pensions will or may become payable under the scheme, other than a payment in respect of two or more persons where the amount paid in respect of each of them is not ascertainable;

"emoluments" includes fees and percentages paid to a director, any sums paid by way of expenses and allowances, any contributions paid in respect of him under any pension scheme and the estimated money value of any other benefits received by him otherwise than in cash;

"pension" includes any superannuation allowance, superannuation gratuity or similar payment;

"pension scheme" means a scheme for the provision of pensions which is maintained in whole or in part by means of contributions.

## 168. Annual accounts to include particulars of loans to officers

- (1) The annual accounts of a company shall show the particulars of any relevant loan made during the financial year to which the accounts apply, including any such loan which was repaid during that year.
- (2) The accounts shall also show the amount of any relevant loan, whenever made, that remained outstanding at the end of the financial year.
- (3) If this section is not complied with, the auditors shall include in the auditors' report on the balance sheet of the company, so far as they are reasonably able to do so, a statement giving the required particulars.
- (4) For the purposes of this section, a relevant loan is a loan, other than a loan referred to in subsection (5), made to—
  - (a) an officer of the company; or
  - (b) any person who, after the making of the loan, became during that financial year an officer of the company;that was made by—
  - (i) the company or a subsidiary of the company; or
  - (ii) any other person under a guarantee from or on a security provided by the company or a subsidiary of the company.

- (5) This section does not apply to a loan that was—
- (a) made in the ordinary course of its business by the company or a subsidiary of the company, where the ordinary business of the company or, as the case may be, the subsidiary, includes the lending of money; or
  - (b) made by the company to an employee of the company, or by a subsidiary to an employee of the subsidiary, if the loan does not exceed fifty monetary units and is certified by the directors of the company or subsidiary, as the case may be, to have been made in accordance with any practice adopted or about to be adopted by the company or subsidiary with respect to loans to its employees;
- and was not made under a guarantee from or on a security provided by the company or any subsidiary.
- (6) For the purposes of this section, a subsidiary of the company is a body corporate that was a subsidiary of the company at the end of the financial year of the company during which the loan concerned was made, whether or not it was a subsidiary at the date of the loan.

### **169. Director to make disclosure of loans and receipts**

- (1) A person who is, or has at any time within the previous five years been, a director or officer of a company shall, on the request of the company, provide the company with such information relating to himself as may be necessary for the purposes of sections one hundred and sixty-seven and one hundred and sixty-eight.
- (2) A person who fails to comply with this section shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

### **170. Balance sheet to be signed by directors**

- (1) The balance sheet of a company's annual accounts, and every copy of the balance sheet which is laid before the company in general meeting or delivered to the Registrar, shall be signed on behalf of the company by two directors.
- (2) In the case of a company authorised by law to conduct banking business, the balance sheet shall be signed by the secretary and—
  - (a) by both the directors, where there are two only; or
  - (b) by at least three directors, where there are three or more.
- (3) If a copy of the balance sheet—
  - (a) is laid before the company in general meeting or delivered to the Registrar and is not signed as required by this section; or
  - (b) not being a copy so laid or delivered, is issued, circulated or published—
    - (i) when the balance sheet has not been signed as required by this section; or
    - (ii) without a copy of the signatures;

the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.
- (4) If a copy of the balance sheet is issued, circulated or published without having annexed thereto copies of—
  - (a) the profit and loss account;
  - (b) any group accounts required under section one hundred and sixty-four to be annexed; and

- (c) the auditors' report;

the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

## 8.2 – Auditors

### 171. Appointment of auditors

- (1) A company shall, within three months after its incorporation, appoint an auditor or auditors of the company, who shall hold office until the close of its first annual general meeting.
- (2) An appointment under subsection (1) may be made by the directors or by an ordinary resolution of the company.
- (3) A company shall at each annual general meeting appoint an auditor or auditors of the company, who shall hold office until the close of the next annual general meeting held by the company.
- (4) A company shall not appoint a person as auditor unless he has previously consented in writing to the appointment and has not withdrawn the consent.
- (5) Notwithstanding any agreement between a company and an auditor, the company may, by ordinary resolution, remove the auditor before the expiration of his term of office.
- (6) If a company—
  - (a) appoints an auditor;
  - (b) removes an auditor from office;
  - (c) fails to appoint an auditor under subsection (1) or at an annual general meeting; or
  - (d) for any reason ceases to have an auditor;the company shall within fourteen days after the event lodge a notice of that fact in the prescribed form with the Registrar.
- (7) If a company fails to comply with subsection (6), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.
- (8) The directors of a company, or the company by ordinary resolution, may fill any casual vacancy in the office of auditor, and an auditor so appointed shall hold office until the close of the next annual general meeting held by the company.
- (9) If a company does not have an auditor for a period of three months, the Registrar may appoint an auditor of the company.
- (10) The remuneration of an auditor of the company, including any sums to be paid by the company in respect of the auditors' expenses—
  - (a) may be fixed by the directors, where the appointment is made by the directors;
  - (b) may be fixed by the Registrar, where the appointment is made by the Registrar; and
  - (c) shall be fixed by ordinary resolution of the company, or in such manner as the company may determine by ordinary resolution, in any other case.
- (11) Where an individual or firm holds office as auditor of a company on the commencement of this Act—
  - (a) he or it shall be deemed to have been appointed under this Act; and

- (b) he or it shall hold office until the close of the next annual general meeting held by the company.
- (12) Where a company has no auditor on the commencement of this Act, this section shall apply as if the company had been incorporated on that commencement.
- (13) Nothing in subsection (5) shall deprive a person removed thereunder 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.

## 172. Qualifications of auditor

- (1) A private company may appoint an individual or a firm as auditor of the company.
- (2) A public company may appoint—
  - (a) a registered accountant having a practice certificate issued by the Zambia Institute of Certified Accountants under the Accountants Act, or  
*[Cap. 390]*
  - (b) a firm of such registered accountants;as auditor of the company.
- (3) Where a firm is appointed as auditor of a company, each partner of the firm shall be deemed to be an auditor of the company.
- (4) An individual or firm shall not—
  - (a) consent to be appointed as auditor of a company; or
  - (b) act as auditor of a company;if the individual or firm is disqualified under this section.
- (5) For the purposes of this section, an individual is disqualified in relation to a company if—
  - (a) he is—
    - (i) an officer of the company;
    - (ii) a partner, employer or employee of an officer of the company; or
    - (iii) a partner or employee of an employee of an officer of the company; or
  - (b) he, or a company in which more than half the shares are beneficially owned by him, owes a debt of more than five hundred monetary units to the company concerned or to a related body corporate, not being a debt entered into by the company or related body corporate in the ordinary course of its business where the ordinary business of the company or related body corporate, as the case may be, includes the lending of money.
- (6) For the purposes of this section, a firm is disqualified in relation to a company if any member of the firm is disqualified under subsection (5).
- (7) An auditor of a company shall not take any action that would result in his being disqualified under this section.
- (8) A person who contravenes subsection (4) or (7) shall be guilty of an offence, and shall be liable on conviction to a fine of five hundred monetary units.
- (9) For the purposes of this section, a reference to an officer of a company includes a reference to—
  - (a) an officer of a related body corporate; and

- (b) a person who has, at any time within the immediately preceding period of twelve months, been an officer or promoter of the company or of a related company, unless the Registrar, if he thinks fit in the circumstances of the case, directs in writing that this paragraph shall not apply to the person.
- (10) For the purposes of this section, a person shall not be regarded as an officer of a company by reason only of his being or having been the liquidator of that company.
- (11) A report, notice or consent that purports to be made or given by a firm appointed as auditor of a company shall not be duly made or given unless it is signed in the firm name and in his own name by a partner of the firm.

### 173. Auditors' rights and duties and auditors' report

- (1) The auditors of a company shall make a report (in this Act called the "auditors' report") to the members of the company on the annual accounts and on the company's accounting records and other records relating to those accounts.
- (2) The auditors' report shall be furnished by the auditors to the directors of the company in sufficient time to enable the company to circulate the report in accordance with section one hundred and eighty-two.
- (3) The auditors' report shall state whether in the auditors' opinion—
  - (a) the annual accounts have been properly prepared in accordance with this Act; and
  - (b) the accounting records, other records and registers required by this Act to be kept by—
    - (i) the company; and
    - (ii) by any subsidiaries for which the auditors, or any of them, have acted as auditor; have been properly kept in accordance with this Act; and
  - (c) a true and fair view is given—
    - (i) of the state of the company's affairs as at the end of its financial year, in the case of the balance sheet;
    - (ii) of the company's profit or loss for its financial year, in the case of the profit and loss account; and
    - (iii) of the state of affairs and profit or loss of the company and its subsidiaries so far as concerns members of the company, in the case of group accounts;

and set out any defect or irregularity in the annual accounts, and any matter not set out therein without regard to which a true and fair view of the matters dealt with by the annual accounts would not be obtained.

- (4) Where the annual accounts include group accounts, the auditors' report shall also state—
  - (a) the names of the subsidiaries (if any) for which none of the auditors has acted as auditor;
  - (b) whether the auditors have examined the accounts and auditors' reports of all such subsidiaries that are covered by the group accounts;
  - (c) whether they are satisfied that the accounts of subsidiaries that are to be consolidated with other accounts are in form and content appropriate and proper for the purposes of the preparation of the consolidated accounts, and whether they have received satisfactory information and explanations as required by them for that purpose;
  - (d) whether the auditors' report on the accounts of any subsidiary was made subject to any qualification, or included any comment made under subsection (3), and, if so, particulars of the qualification or comment; and

- (e) the auditors' reason for not being satisfied as to any matter referred to in paragraph (a), (b) or (c), if he is not so satisfied.
- (5) The auditors of a company, in preparing their report under this section, shall make such investigations as will enable them to form an opinion, and shall form an opinion, as to—
- (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 profit and loss account are in agreement with the accounting records and returns;
  - (c) whether the procedures and methods used by the company and by each of its subsidiaries in arriving at the amounts taken into any consolidated accounts were appropriate to the circumstances of the consolidation, where any group accounts include consolidated accounts; and
  - (d) whether they agree with the reasons given by the directors for preparing any group accounts in the form in which they are prepared, where group accounts are prepared otherwise than as one set of consolidated accounts for the group;

and if the auditors are of the opinion that there is any deficiency in a matter referred to in this subsection, they shall state that opinion in the report.

- (6) Every auditor of a company shall have a right of access at all reasonable times to the accounting records and other records, including registers, of the company and to require from any officer such information and explanations as he thinks necessary for him to perform his duties as auditor.
- (7) Every auditor of a holding company for which group accounts are required shall have a right of access at all reasonable times to the accounting records and other records, including registers, of any subsidiary, and shall be entitled to require from any officer or auditor of any subsidiary, at the expense of the holding company, such information and explanations in relations to the affairs of the subsidiary as he requires for the purpose of reporting on the group accounts.
- (8) If the auditors fail to obtain all the information and explanations which, to the best of their knowledge and belief, are necessary for the purposes of their audit, they shall state that fact in their report.
- (9) If the auditors are unable to agree on the contents of an auditors' report, they shall provide a single report on the matters on which they agree, together with separate comments or reports on the matters on which they disagree.
- (10) An auditor of a company shall be entitled to attend any general meeting of the company and to receive all notices of and other communications relating to any general meeting which any member of the company is entitled to receive, and to be heard at any general meeting on any part of the business of the meeting which concerns him as auditor, notwithstanding that he retires at that meeting or a resolution to remove him from office is passed at that meeting.
- (11) If an auditor, in the course of the performance of his duties as auditor of a company, is satisfied that —
  - (a) there has been a contravention of, or failure to comply with, any of the provisions of this Act; and
  - (b) the circumstances are such that in his opinion the matter has not been or will not be adequately dealt with by—
    - (i) comment in the auditors' report on the annual accounts; or
    - (ii) bringing the matter to the notice of the directors of the company or, if the company is a subsidiary, of the directors of any holding company of the company;

he shall forthwith report the matter to the Registrar in writing.

**174. Circumstances in which accounts may include the auditors' report or directors' report**

- (1) A reference in this Act to a document annexed or required to be annexed to a company's annual accounts shall not include the directors' report or the auditors' report except as provided in this section.
- (2) Any information which is required by this Act to be given in the annual accounts, and is thereby allowed to be given in a statement annexed, may be given in the directors' report instead of in the accounts, and if any such information is so given the report shall be annexed to the accounts and this Act shall apply in relation thereto accordingly, except that the auditors' report shall report thereon only so far as it gives the said information.
- (3) Where an item is shown in the directors' report instead of in the accounts, the report shall also show the corresponding amount of that item for (or, as the case may be as at the end of) the immediately preceding financial year, except where that amount would not have had to be shown had the item been shown in the accounts.

**8.3 – The Directors' report****175. Interpretation**

In this Division, a reference to a subsidiary of a company that is a holding company includes only those subsidiaries which the holding company is required to cover in its group accounts.

**176. Directors' report to be attached to balance sheet**

- (1) The directors shall prepare, in conjunction with the annual accounts, a report (in this Act called "the directors' report") with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend and the amount, if any, which they propose to carry to reserves.
- (2) The report shall deal with any change during the financial year in—
  - (a) the nature of the business of the company or its subsidiaries; or
  - (b) the classes of business in which the company or any subsidiary has an interest, whether as member of another company or otherwise;so far as is material for the appreciation of the state of the company's affairs by its members and will not in the directors' opinion be harmful to the business of the company or of any of its subsidiaries.
- (3) A director of a company who wilfully fails to take all reasonable steps to comply with subsection (1) shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units or to imprisonment for a period not exceeding six months, or to both.
- (4) In any proceedings against a person for an offence under this section, it shall be a defence to prove that he reasonably believed that a competent and reliable person was charged with the duty of seeing that the provisions of that section were complied with and was in a position to discharge that duty.

**177. General matters in directors' report**

- (1) The directors' report shall state—
  - (a) the names of the persons who at any time during the financial year were directors of the company;
  - (b) the principal activities of the company and of its subsidiaries in the course of that year; and



- (c) any significant change in those activities in that year.
- (2) The directors' report shall contain particulars of—
  - (a) any significant changes in the fixed assets of the company or of any of its subsidiaries in the financial year that occurred; and
  - (b) any significant differences between the values, as included in the balance sheet, of such assets as consist of interests in land and the market values thereof.
- (3) If the company has issued any shares or debentures in that year, the directors' report shall state—
  - (a) the reasons for making the issue;
  - (b) the classes of shares issued;
  - (c) as respects each class of shares—
    - (i) the number issued; and
    - (ii) the consideration received by the company for the issue; and
  - (d) as respects each class of debentures—
    - (i) the amount issued; and
    - (ii) the consideration received by the company for the issue.
- (4) If, at any time in that year, arrangements subsisted to which the company was a party, being arrangements at least one of whose objects was to enable directors of the company to acquire benefits by means of the acquisition of shares in or debentures of the company or of any other body corporate, the directors' report shall contain a statement explaining the effect of the arrangements and giving the names of the persons who at any time in that year were directors of the company and held, or whose nominees held, shares or debentures acquired under the arrangements.
- (5) The directors' report shall contain—
  - (a) particulars of any important events affecting the company or any of its subsidiaries which have occurred during the year;
  - (b) an indication of likely future developments in the business of the company and of its subsidiaries; and
  - (c) an indication of the activities (if any) of the company or its subsidiaries in the field of research and development.
- (6) A directors' report for a company of a class prescribed for the purposes of this paragraph shall contain prescribed information about the arrangements in force during that 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.
- (7) The particulars required by subsection (6) may be given by way of notes to the company's accounts in respect of the financial year in question, instead of being stated in the directors' report.
- (8) Regulations made for the purposes of subsection (6) may—
  - (a) make different provision in relation to companies of different classes;
  - (b) enable any requirements of the regulations to be dispensed with or modified in particular cases by any specified person or by any person authorised to do so by a specified authority; and
  - (c) contain such transitional provisions as the Minister thinks necessary or expedient in connection with any provision made by the regulations.

(9) Any expression used in subsection (6) that is also used in—

(a) Part I of the Factories Act; or

[Cap. 441]

(b) Part I of the Public Health Act;

shall have the same meaning as in that Part.

[Cap. 295]

**178. Where a company carries on more than one kind of business, attribution of turnover and profitability**

(1) If in the course of a financial year, a company has carried out business of two or more classes that in the opinion of the directors differ substantially from each other, the directors' report relating to that year shall state—

(a) the proportions in which the turnover for that year (so far as stated in the annual accounts for that year) is divided amongst those classes (describing them); and

(b) as regards business of each class, the extent or approximate extent (expressed, in either case, in monetary terms) to which, in the opinion of the directors, the carrying on of business of that class contributed to or restricted, the profit of or loss,

before taxation of the company for that year.

(2) If—

(a) a company has subsidiaries at the end of its financial year and submits in respect of that year group accounts prepared as consolidated accounts; and

(b) the company and the subsidiaries dealt with by the consolidated accounts carried on between them in the course of the year business of two or more classes that, in the opinion of the directors, differ substantially from each other;

the directors' report relating to that year shall also state the matters referred to in subsection (1) in relation to the company and its subsidiaries.

**179. Average number by the month of a company's employees and amount, by the year, of their wages**

(1) The directors' report of a company relating to a financial year shall state—

(a) the average number of persons employed by it in each month in that year; and

(b) the total remuneration paid or payable in respect of that year to the persons employed by it.

(2) If, at the end of a financial year, a company has subsidiaries, the directors' report relating to the year shall also state the matters referred to in subsection (1) in relation to the company and the subsidiaries.

(3) If the average number of employees for the purposes of subsection (1) or (2) is less than one hundred, the directors' report may state only that the average number of employees for that financial year was less than one hundred.

(4) This section shall not apply to a company that is a wholly owned subsidiary of a company incorporated in Zambia.

- (5) For the purposes of this section, the average number of persons employed in a month shall be calculated as follows:
  - (a) for each whole calendar month during the financial year, the number of persons who, under contracts of service, were employed during the month (whether throughout it or not) by the employer or employers concerned is ascertained;
  - (b) the numbers so ascertained are added together;
  - (c) the sum is divided by the number of whole calendar months in the financial year;
  - (d) the quotient is the average number of persons employed in a month.
- (6) For the purposes of this section, no regard shall be had to a person who worked wholly or mainly outside Zambia.
- (7) In this section, "remuneration" means gross remuneration including bonuses (whether payable under contract or not).

### 180. Particulars of gifts and donations

- (1) If a company, during a financial year, makes gifts or donations for any purpose with a total value of more than fifty monetary units, the directors' report relating to the year shall state the total value.
- (2) If, at the end of a financial year, a company has subsidiaries, subsection (1) shall apply to the company as if any gift or donation made by a subsidiary during the financial year had been made by the company, whether or not the subsidiary was a subsidiary at the time when the gift or donation was made.

### 181. Particulars of exports

- (1) Where the business of a company consists of or includes the supplying of goods, the directors' report in relation to a financial year shall, unless the turnover for that year did not exceed five hundred monetary units—
  - (a) state the value of any goods exported by the company from Zambia; or
  - (b) state that no goods were exported by the company from Zambia during that year, if no goods were exported.
- (2) If, at the end of a financial year, a company whose business consists of or includes the supplying of goods, has subsidiaries, the directors' report relating to that year shall, unless the turnover of the company and its subsidiaries for that year did not exceed five hundred monetary units, state the matters referred to in subsection (1) in relation to the company and its subsidiaries.
- (3) For the purposes of this section, goods exported by a company or subsidiary as the agent of another person shall be disregarded.
- (4) This section shall not require the disclosure of information if—
  - (a) it is in the national interest that the information should not be disclosed; and
  - (b) the Minister issues a certificate to that effect.

## 8.4 – Provision of accounts and reports to members

### 182. Circulation of annual accounts

- (1) Not later than twenty-one days before an annual general meeting of a company, or, if no annual general meeting is to be held within three months after the end of a financial year, twenty-one days before the end of that three months, a copy of—
  - (a) the annual accounts (including any group accounts);
  - (b) the auditors' report or reports on the accounts; and
  - (c) the directors' report;relating to the previous financial year shall be sent to—
  - (i) each person entitled to receive notice of the annual general meeting; and
  - (ii) each registered debenture holder of the company.
- (2) If the copies of the documents are not sent within the period allowed by subsection (1), they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed in writing by all the members entitled to attend and vote at the meeting.
- (3) Where a firm has been appointed as auditor to the company, this section shall not require copies to be sent to each member of the firm who is an auditor of the company if a copy of each document is sent to the firm.
- (4) Any member or debenture holder of a company, whether or not he is entitled to receive notice of the company's annual general meeting, may require the company to send him, without charge and within seven days after the requisition is made, a copy of the most recent annual accounts of the company, together with a copy of the relevant auditors' report and directors' report.
- (5) If the company fails to comply with subsection (1), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.
- (6) If the company fails to comply with subsection (4), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding one hundred monetary units unless it is proved that the person making the demand has already been furnished with a copy of the document.
- (7) This section shall not apply in relation to the annual accounts, auditors' report and directors' report of a company for a financial year that began before the commencement of this Act, and the right of any person to be furnished with a copy of any of those documents, and the liability of the company in respect of a failure to satisfy that right, shall be same as they would have been if this Act had not been passed.

### 183. Tabling of accounts

At an annual general meeting of a company—

- (a) the annual accounts (including any group accounts);
- (b) the auditors' report; and
- (c) the directors' report; relating to the previous financial year shall be laid before the company and shall—
  - (i) remain open and accessible throughout the meeting to any person attending the meeting; and

- (ii) be read at that meeting, if any member requests it.

## 8.5 – Annual returns

### 184. Annual return to be made to the Registrar

- (1) A company shall, after the end of each financial year of the company, lodge with the Registrar a return (in this Act called the "annual return") in accordance with this Division—
  - (a) within one month after the annual general meeting, if an annual general meeting is held within three months after the end of the financial year; or
  - (b) within three months after the end of the financial year, in any other case.
- (2) The annual return shall be signed by a director and by the secretary of the company.
- (3) The annual return shall state the position as at the date of the annual general meeting of the company, or if there was no annual general meeting, as at the date on which the annual return was made.
- (4) The Registrar may cause to be published from time to time, in the *Gazette* or in any newspaper, a list of companies whose annual returns are overdue.
- (5) No liability shall attach to the Registrar for any publication made in good faith under subsection (4).

### 185. Annual return to be made by a public company

- (1) The annual return of a public company shall—
  - (a) deal with the matters specified in the Third Schedule; and
  - (b) be in the prescribed form or as near thereto as circumstances admit.
- (2) The annual return may, if the return for either of the two immediately preceding years has given as at the date of that return the full particulars required by the Third Schedule, give only such of the particulars required by that Schedule 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 that date in the amount of stock held by a member.

### 186. Documents to be annexed to annual return of a public company

A public company shall lodge with its annual return a certified copy, certified by both a director and the secretary of the company, of every balance sheet, profit and loss account, group accounts, directors' report and auditors' report sent to members and debenture holders of the company in accordance with section one hundred and eighty-two since the last annual return was made.

### 187. Annual return to be made by a private company

- (1) The annual return of a private company shall state—
  - (a) the registered office of the company;
  - (b) the registered postal address of the company;
  - (c) the registered records office of the company;
  - (d) all the particulars with respect to any person who at the date of the return is a director or secretary of the company that this Act requires to be contained in the register of the directors and secretary of a company; and
  - (e) particulars identifying the bodies corporate related to the company at the date of the return.

- (2) There shall be annexed to the annual return a statement containing particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Registrar under this Act.

### **188. Additional certificates to be lodged by a private company**

- (1) A private company shall lodge with its annual return a certificate that the company has not since the date of the last return or, where there has been no return since the company was incorporated as or converted to a private company, since the date of the incorporation or conversion, issued any invitation to the public to subscribe for any shares or debentures of the company.
- (2) If the company has more than fifty members, the company shall lodge with its annual return a certificate that the excess consists wholly of persons who under section sixteen are to be excluded in reckoning the number of members.
- (3) The certificates required by this section shall be signed by a director and by the secretary of the company.

### **188A. Filing of "no change" return**

- (1) Where the status of a company required to file a return under this division has not changed, the company shall file a "no change" return indicating the financial year in which the return is filed and containing a general statement that there has been no change in any given particulars in the return from the filing of the previous return.
- (2) A "no change" return referred to in subsection (1) shall be in the prescribed form and accompanied by the prescribed fee.
- (3) Notwithstanding the filing of a "no change" return, the Registrar may cause to be inspected any records of the company which the Registrar considers necessary for the better carrying out of this Act.

*[section 188A inserted by section 14 of [Act 24 of 2011](#)]*

### **188B. Filing of returns by company in liquidation**

Where a company has been placed in receivership or is in the process of being wound up under Part [XIII](#), a receiver or liquidator of the company shall cause an annual return to be filed until the completion of the winding up.

*[section 188B inserted by section 14 of [Act 24 of 2011](#)]*

### **189. Offence relating to annual return**

Where a company fails to lodge an annual return and any other documents in accordance with this Division or lodges documents which do not comply with this Division, the company and each officer in default commits an offence and is liable, upon conviction, to a fine not exceeding ten thousand penalty units.

*[section 189 substituted by section 15 of [Act 24 of 2011](#)]*

### **189A. Power to strike out name of company from register**

- (1) Where a company or officer fails to comply with this Division, the Registrar may, without prejudice to any other provisions of this Act—
  - (a) strike out the name of the company from the register of companies; or
  - (b) disqualify an officer of the company from forming or becoming a director of another company for a period of five years.

- (2) Where the Registrar has reasonable cause to believe that a company or an officer has failed to comply with this Division, the Registrar may send to the company a letter to that effect and also stating that, if an answer showing cause to the contrary is not received within one month from the date of the letter, a notice will be published in the *Gazette* with a view to striking out the name of the company from the Register of companies or disqualifying an officer of the company from forming or becoming a director of another company for a period of five years.
- (3) If the Registrar, at the expiration of the period of one month after the sending of the letter, is not satisfied that the company is in compliance with this Division, the Registrar may at any time thereafter cause to be published in the *Gazette* and send to the company a notice that at the expiration of three months from the date of that notice, unless cause is shown to the contrary, the name of the company will be struck off the Register of companies or an officer of the company will be disqualified from forming or becoming a director of another company for a period of five years.
- (4) The Registrar shall, after the expiration of three months from the publication in the *Gazette* of a notice under this section, unless cause to the contrary is shown, strike the name of the company off the register or disqualify an officer of the company from forming or becoming a director of another company for a period of five years and shall cause notice thereof to be published in the *Gazette*.
- (5) A company shall be dissolved on the publication in the *Gazette* of the notice referred to in subsection (4), but—
  - (a) the liability, if any, of every 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 which has been dissolved under section three hundred and sixty-one.
  - (6) A notice to be sent under this section to a liquidator may be addressed to the liquidator at the liquidator's last known place of business.
  - (7) The fees of the Registrar in respect of the striking off of a company or disqualification of an officer under this section and the costs incurred by the Registrar in publishing notices in the *Gazette* shall be payable by the company and recovered from it.

[section 189A added by section 16 of [Act 24 of 2011](#)]

## Part IX – Management and administration

### 190. Registered office and postal address

- (1) For the purposes of this Act, on the incorporation of a company—
  - (a) the registered office of the company is the place the physical address of which was notified in the application for incorporation; and
  - (b) the registered postal address is the postal address notified in the application.
- (2) A company may change its registered office or registered postal address by lodging a notice in the prescribed form with the Registrar, specifying the date from which the change will take effect.

### 191. Registered records office

For the purposes of this Act, a company's registered records office is—

- (a) the place specified as the company's registered records office in a notice in the prescribed form lodged with the Registrar, if such a notice has been lodged and not revoked by the company; or
- (b) company's registered office, if no such notice is current.

**192. Records and registers of a company**

- (1) Any record, register or book required by this Act to be kept by a company may be kept either in a bound or loose leaf form, or by a system of mechanical or electronic recording or otherwise.
- (2) A company and its officers shall take adequate precautions to prevent loss or destruction of the records, registers and books, to prevent the falsification of entries and to facilitate the detection and correction of inaccuracies therein.
- (3) Where any system of mechanical or electronic recording is adopted, adequate arrangements shall be made for making the information therein available in written form in English to anyone lawfully inspecting the record, register or book.
- (4) Where a record, register or book is kept by means of a system of electronic recording, a company shall for the purposes of this Act be deemed to keep the record, register, or book at any place where the information therein is made available for inspection.
- (5) If a company fails to comply with this section, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

**193. Inspection by members and others**

- (1) Subject to this Act, where this Act requires any record, register or book kept by a company to be made available for inspection by a person, the record, register or book shall, during business hours, be open to inspection by the person at the company's registered records office.
- (2) Where an inspection is made under subsection (1)—
  - (a) by a member, director, or auditor of the company, or by the Registrar or his delegate, no charge may be made by the company; and
  - (b) by any other person, the company may make a charge not exceeding one monetary unit, or such larger amount as may be prescribed, for each inspection.
- (3) The company may by ordinary resolution restrict the hours during which a record, book or register shall be available for inspection provided that it is available for inspection during not less than two hours in any working day.
- (4) Any person who is entitled to inspect any such record, register or book may require a copy of the whole or any part thereof on payment of a charge not exceeding one monetary unit, or such larger amount as may be prescribed, for every hundred words or part thereof required to be copied.
- (5) The company shall cause any copy so required by any person to be sent to that person not more than ten days after the day on which the requirement is received by the company.
- (6) If the company fails to comply with this section—
  - (a) the court, on the application of a person aggrieved, may order—
    - (i) that the company comply immediately; and
    - (ii) that the company, and any officer in default, shall be liable to pay all costs of and incidental to the application for the order;whether or not any person has been convicted under paragraph (b); and
  - (b) the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.



**194. Publication of name of company**

- (1) A company shall—
  - (a) paint or affix, and keep painted or affixed, its name, in easily legible Roman letters above or adjacent to the principal entrance to its registered office, its registered records office and to every other office or place in which its business is carried on; and
  - (b) have its—
    - (i) name in Roman letters; and
    - (ii) designating number in Arabic numerals;accurately stated in all business letters, invoices, receipts, notices and other publications of the company, and in all negotiable instruments or orders for money, goods or services purporting to be signed or endorsed by or on behalf of the company.
- (2) If a company fails to comply with subsection (1), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.
- (3) If any officer of the company or other person signs, endorses or authorises the signing or endorsement on behalf of the company of any negotiable instrument or order for money, goods or services that does not comply with paragraph (b) of subsection (1), the person shall be personally liable to discharge the obligation thereby incurred unless it is duly discharged by the company or otherwise, but without prejudice to any right of indemnity which the person may have against the company or any other person.

**195. Seal of company**

- (1) A company shall have a common seal bearing its name and the words "common seal" thereon in legible Roman letters.
- (2) The common seal shall not be used except with the authority of a resolution of the directors of a committee of the directors specifically empowered to authorise the affixing of the seal.

**196. Official seal for use abroad**

- (1) A company may, subject to its articles, have for use in any place outside Zambia 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 the places where it is to be used.
- (2) Every 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.
- (3) The company may, by writing under its common seal, authorise any agent appointed for that purpose to affix the official seal to any document to which the company is a party in that place.
- (4) Any person dealing with such an agent in reliance on the writing conferring the authority shall be entitled to assume that the authority of the agent continues during the period, if any, specified in the writing or, if no period is therein specified, until that person has actual notice of the revocation or determination of the authority.
- (5) The person affixing any such official seal shall, by writing under his hand, certify on the document to which the seal is affixed the date on which and the place at which it is affixed.

**197. Form of contracts and instruments**

- (1) Any contract or instrument which, if entered into by a person other than a body corporate, would not be required to be under seal may be entered into or executed without seal on behalf of a

company by the secretary, a director, or any person generally or specifically authorised by the directors to do so.

- (2) Any document purporting to be a document under the seal of a company, or issued on behalf of the company, shall be received in evidence and shall be presumed to be duly executed or issued.

### **198. Bills of exchange and promissory notes**

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

### **199. Execution of deeds abroad**

- (1) A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place outside Zambia.
- (2) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have the same effect as if it were under its common seal of the company.

### **200. Service of documents on company**

- (1) A document may be served on a company by—
  - (a) leaving it at the registered office of the company; or
  - (b) personal service on a director or secretary.
- (2) A document sent by post to the registered postal address of the company shall be deemed to have been served on the company if it is proved, by a receipt issued or otherwise, that the document, or a post office notification of the document, was delivered to the registered postal address.
- (3) Nothing in the section shall affect any provision in this Act relating to the service of any document, or detract from the power of any court to direct how service shall be effected of any document relating to legal proceedings before the court.

### **201. Service of documents by company**

- (1) For the purposes of this Act, a document may be served by a company on any member, debenture holder, director or secretary of the company—
  - (a) personally;
  - (b) by sending it by registered post in a prepaid letter addressed to him at his registered postal address or at any other address supplied by him to the company for the giving of notices to him; or
  - (c) by leaving it for him at his registered address with some person apparently over the age of eighteen years.
- (2) A document may be served by a company on the joint holders of any share of debenture of the company by serving it on the joint holder named first in the register of members of debenture holders in respect of the share of debenture.
- (3) A document may be served by a company on the person upon whom the ownership of any share or debenture has devolved by reason of his being a legal personal representative, receiver, or trustee in bankruptcy of a member of debenture holder—
  - (a) personally;

- (b) by sending it by registered post in a prepaid letter addressed to him at a postal address notified by him to the company;
  - (c) by serving it in any manner in which it might have been served if the death, receivership or bankruptcy had not occurred, if the company has not received notice of a postal address for the person; or
  - (d) by leaving it for him at a place the address of which has been notified by him to the company, with some person apparently over the age of eighteen years.
- (4) Where a document is sent by registered post, service shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the document and to have been effected at the expiration of seven days or, if it is sent to an address outside Zambia, twenty-one days, after the letter containing the same is posted.
- (5) For the purposes of subsection (4), where a letter is sent to an address outside Zambia, it shall be despatched by airmail.

## **202. Liability of company not affected by officer's fraud or forgery**

Where a company would be liable for the acts of any officer or agent, the company shall 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.

## **Part X – Directors and secretary**

### **10.1 – Appointment and powers**

## **203. The directors of a company**

- (1) For the purposes of this Act, any person who is appointed by the members of a company to direct and administer the business of the company shall be deemed to be a director of the company, whether or not he is called a director.
- (2) In this Act, unless the context otherwise requires—
  - (a) a reference to "the directors" is a reference to the directors acting collectively;
  - (b) where a decision of the directors is required for them so to act, the decision shall be made by resolution of the directors;
  - (c) a requirement that a document be signed by the directors shall be read as a requirement that a majority of the directors sign the document.
- (3) A person, not being a duly appointed director of the company, who holds himself out, or knowingly allows himself to be held out, as a director of the company—
  - (a) shall be deemed to be a director for the purposes of all duties and liabilities (including liabilities for criminal penalties) imposed on directors by this Act; and
  - (b) shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.
- (4) A person, not being a duly appointed director of a company, on whose directions or instructions the duly appointed directors are accustomed to act shall be deemed to be a director for the purposes of all duties and liabilities (including liabilities for criminal penalties) imposed on directors by this Act.

- (5) If a company—
  - (a) holds out a person; or
  - (b) allows a person to hold himself out;as a director of the company, knowing that the person is not a duly appointed director, the company shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.
- (6) No limitation upon the authority of a director of a company, whether imposed by the articles or otherwise, shall be effective against a person who does not have knowledge of the limitation unless, taking into account his relationship with the company, he ought to have had such knowledge.
- (7) For the purposes of this section, a person shall not be considered to be a person in accordance with whose directions or instructions the directors of a company are accustomed to act, by reason only that the directors of the company act on advice given by him in a professional capacity.

#### **204. Company to have at least two directors**

- (1) A company shall have at least two directors.
- (2) If a company carries on business for a period of more than two months with fewer than two directors, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day after that period of two months that the company carries on business.

#### **205. The secretary**

- (1) A company shall have a secretary.
- (2) The persons named in the application for incorporation as the first secretary or joint secretaries of a company shall, on the incorporation of the company, be deemed to have been appointed as such for a term of one year.
- (3) Unless the articles provide otherwise, the secretary, other than the first secretary, shall be appointed by the directors for such a term as they think fit.
- (4) A secretary shall be appointed on such remuneration and other conditions as the directors think fit, and may be removed by them, subject to his right to claim damages from the company if removed in breach of contract.
- (5) The secretary may be a body corporate.
- (6) Two or more persons may act jointly as the secretary of a company.
- (7) The secretary of a company shall be—
  - (a) resident in Zambia, if an individual;
  - (b) incorporated in Zambia, if a body corporate.
- (8) 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 capable of acting, 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 for that purpose by the directors.
- (9) If a company carries on business for more than two months without a secretary or in contravention of subsection (7), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day after that period of two months that the business is carried on.

## 206. Appointment of directors

- (1) The number of directors of a company shall be the number of first directors named in the application for incorporation, or such other number as the company may decide by ordinary resolution.
- (2) The persons named in the application for incorporation as the first directors of a company shall, on the incorporation of the company, be deemed to have been appointed as such with a term of office that expires at the end of the first annual general meeting.
- (3) Subsections (4) to (16) apply to a company unless the articles provide otherwise.
- (4) Where the company changes the number of directors it may, by ordinary resolution, determine in what rotation the increased or decreased number is to retire from office.
- (5) At all annual general meetings held by the company, other than the first annual general meeting, one third of the directors, or, if one third is not a whole number, the whole number next largest than one third, shall retire from office.
- (6) The directors to retire under subsection (5) shall be those who have been longest in office, but, as between those who were appointed on the same day, those to retire shall (unless they agree otherwise among themselves) be determined by lot.
- (7) The company may, at the meeting at which a director retires under subsection (2) or (5), appoint a person to fill the office by ordinary resolution.
- (8) A retiring director is eligible for re-appointment.
- (9) If an office is not filled under subsection (7), and the retiring director offers himself for re-appointment and is not disqualified under this Act from holding office as a director, the retiring director shall be deemed to have been re-appointment unless at the meeting—
  - (a) it is expressly resolved not to fill the vacated office; or
  - (b) a resolution for the re-appointment of the director is put and lost.
- (10) If there are fewer directors than the number set in accordance with this section, the directors may appoint a person to be a director.
- (11) A director appointed under subsection (10) holds office only until the next annual general meeting held by the company, and at that meeting shall not be taken into account in determining the number of directors to retire.
- (12) A director appointed under subsection (10) shall be eligible for re-appointment as a director at the next annual general meeting.
- (13) Where a director's office becomes vacant otherwise than under subsection (5), the company may, by ordinary resolution, appoint a replacement, who shall be subject to retirement as if he had become a director on the day on which the person he replaced as director had last been appointed or re-appointed.
- (14) The directors shall be paid such remuneration as is from time to time determined by the company by ordinary resolution.
- (15) The remuneration shall accrue from day to day.
- (16) If the company by ordinary resolution so decides, the directors shall be paid, subject to the resolution, 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 meetings of the company, or otherwise in connection with the business of the company.

## 207. Eligibility of persons to be directors

- (1) A person shall not be appointed as or continue to hold office as a director of a company if the person is—
  - (a) a body corporate;
  - (b) an infant or any other person under legal disability;
  - (c) any person prohibited or disqualified from so acting by any order of a court; or
  - (d) an undischarged bankrupt.
- (2) A director of a company shall cease to hold office as such if—
  - (a) he is adjudged bankrupt; or
  - (b) he is removed by order of a court from an office of trust on account of misconduct.
- (3) A person who, in contravention of subsection (1) or (2), takes office, or continues to hold office, as a director of a company shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units or to imprisonment for a period not exceeding six months, or to both.
- (4) The articles of a company may provide further restrictions or qualifications on the appointment or continuation in office of its directors.
- (5) A person shall not be appointed as a director of a company unless he has consented in writing to be so appointed.
- (6) A contravention of this section shall not invalidate any transaction entered into by a company.

## 208. Residential requirements of directors

Where a company is registered in Zambia, at least half of the directors of a company, including—

- (a) the managing director, if the company has a managing director; and
- (b) at least one executive director, if the company has executive directors;

shall be resident in Zambia.

*[section 208 amended by section 2 of [Act 1 of 2000](#) and substituted by section 17 of [Act 24 of 2011](#)]*

## 209. Directors' share qualification

- (1) Unless the company's articles otherwise provide, a director need not be a member of the company or hold any shares therein.
- (2) Where the articles require a director to hold a specified share qualification, a person appointed as a director shall obtain his qualification within two months after his appointment or such shorter period as may be fixed by the articles.
- (3) If a company amends its articles so as to introduce or increase the requirement of a share qualification, every director holding office at the date of the amendment shall obtain his qualification within two months after the amendment or such shorter period as may be fixed by the articles.
- (4) A director who—
  - (a) fails to comply with subsection (2) or (3); or

- (b) ceases to hold the specified share qualification, at any time after so complying;  
shall cease to hold office.
- (5) A person who ceases to hold office under subsection (4) shall not be re-appointed as a director of the company until he has obtained his qualification.

## 210. Vacation office of director

- (1) A director may resign his office by notice in writing to the company.
- (2) In addition to the other circumstances specified in this Act, an office of director shall become vacant if the director—
  - (a) is absent from meetings of the directors held during a period of six months, without the consent of the directors;
  - (b) holds any office of profit under the company, except that of managing director or principal executive officer, without the consent of the company by ordinary resolution; or
  - (c) is directly or indirectly interested in any contract or proposed contract with the company and fails to declare his interest as required by this Act.
- (3) The articles of a company may provide for the termination or vacation of office in circumstances additional to those specified in this Act.

## 211. Removal of director

- (1) A company may, by ordinary resolution at a general meeting of the company remove from office all or any of the directors, subject to their rights to claim damages from the company if removed in breach of contract.
- (2) A resolution to remove a director shall not be moved at any general meeting unless notice of the intention to move it has been given to the company not less than twenty-eight days before the meeting.
- (3) On receipt of notice of an intended resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned and the director (whether or not he is a member of the company) shall be entitled—
  - (a) to be heard on the resolution at the meeting;
  - (b) to send to the company a written statement (in this section called "the director's statement"), copies of which the company shall, subject to this section, send with every notice of the general meeting or, if the statement is received too late, shall forthwith circulate to every person entitled to notice of the meeting in the same manner as notices of meetings are required to be given; and
  - (c) to require that the director's statement be read to the meeting.
- (4) The company shall not be obliged to send or circulate the director's statement if it is received by the company less than seven days before the meeting.
- (5) The court, on application by the company or any other person who claims to be aggrieved and on being satisfied that the director's statement is unreasonably long or that the rights conferred by this section are being abused to secure publicity for defamatory matter, may order—
  - (a) that the company shall not send or circulate the director's statement and that the statement not be read at the meeting; and
  - (b) that the costs of the applicant are to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.

- (6) On a resolution to remove a director no share shall, on a poll, carry a greater number of votes than it would carry in relation to the generality of matters to be voted on at a general meeting of the company.
- (7) A vacancy created by the removal of any director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.

## **212. No directions or instructions to be given to directors by a person not eligible to be a director**

- (1) A person shall not give directions or instructions to the duly appointed directors of a company if the person is not eligible to be a director of the company.
- (2) A person who contravenes this section shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units or imprisonment for a period not exceeding six months, or to both.

## **213. Alternate directors**

- (1) Subject to any restriction in the articles of a company, a director may—
  - (a) either generally, or in respect of a specified period or specified circumstances; and
  - (b) with the approval of the directors;appoint a person who is not a director as his alternate director.
- (2) An appointment as alternate director shall be in writing signed by the director making the appointment and the person appointed and lodged with the company.
- (3) A person shall not be appointed as an alternate director by more than one director.
- (4) Subject to this section, this Act, including the provisions on registration of directors' particulars and interests, shall apply to an alternate director as if he were a director and not the agent of the director who appointed him.
- (5) An appointment of a person as an alternate director shall confer on him—
  - (a) the right to attend any meeting of the directors or any committee of directors at which the director who appointed him is not present; and
  - (b) one vote at such a meeting or committee.
- (6) Except in relation to meetings, both the director who appointed an alternate director and the alternate director may act as director of the company.
- (7) An alternate director shall not be required to hold any shares.
- (8) An alternate director shall not himself appoint an alternate director.
- (9) The company shall not be liable to pay additional remuneration by reason of the appointment of an alternate director.
- (10) The articles may provide that an alternate director shall be entitled to receive from the company during the currency of his appointment the remuneration to which the director who appointed him would, but for the appointment, have been entitled, and that the director who appointed him shall not be entitled to that remuneration, but, in the absence of such a provision, the alternate shall not be entitled to be remunerated otherwise than by the director who appointed him.
- (11) The appointment of an alternate director shall cease—
  - (a) at the expiration of the period, if any, for which he was appointed;



- (b) if the director who appointed him gives written notice to that effect to the company;
- (c) if the director who appointed him ceases for any reason to be a director; or
- (d) if the alternate resigns by notice in writing to the company.

#### **214. Managing director**

- (1) This section applies to a company unless the articles provide otherwise.
- (2) The directors may from time to time appoint one or more of their number to the office of managing director for such period and on such terms as they think fit, and subject to the terms of any agreement entered into in a particular case, may revoke any such appointment.
- (3) The managing director shall not, while holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors, but his appointment shall terminate automatically if he ceases for any reason to be a director.
- (4) The managing director shall receive remuneration, subject to the terms of any agreement entered into in a particular case, as determined by the directors.

#### **215. Powers and duties of directors**

- (1) Subject to this Act, the business of a company shall be managed by the directors, who may pay all expenses incurred in promoting and forming the company, and may exercise all such powers of the company as are not, by this Act or the articles, required to be exercised by the company by resolution.
- (2) Subsections (2) to (6) shall apply to a company unless the articles provide otherwise.
- (3) Without limiting the generality of subsection (1), the directors may exercise the powers of the company to borrow money, to charge any property or business of the company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the company or of any other person.
- (4) The directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the directors), for such periods and subject to such conditions as they think fit.
- (5) A power of attorney under subsection (5) may contain such provisions for the protection and convenience of persons dealing with the attorney as the directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in him.
- (6) All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the company, shall be signed, drawn, accepted, endorsed or otherwise executed, by any two directors or in such other manner as the directors determine.

#### **216. Limitations on powers of directors**

- (1) The directors of a company shall not, without the approval in accordance with this section of an ordinary 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 in the company; or
  - (c) create or grant any rights or options entitling the holders thereof to acquire shares of any class in the company.

- (2) The approval for a transaction referred to in paragraph (a) of subsection (1) shall be an approval of the specific transaction proposed by the directors.
- (3) [subsection (3) deleted by section 3 of *Act 1 of 2000*]
- (4) This section shall not prohibit—
  - (a) the issue of any shares under a *bona fide* underwriting agreement; or
  - (b) the issue to a director of such shares, if any, as, under the articles of the company, he is required to hold by way of share qualification.
- (5) The validity of any transfer or disposition of property to a person dealing with the company in good faith shall not be affected by a failure to comply with this section.
- (6) This section shall not limit the powers of any liquidator or receiver of the property of a company.

## 217. Proceedings of directors

- (1) This section shall apply to a company unless the articles provide otherwise.
- (2) The directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.
- (3) A director may at any time, and a secretary shall on the requisition of a director, convene a meeting of the directors.
- (4) A question arising at a meeting of directors shall be decided by a majority of votes of directors present and voting, and any such decision shall for all purposes be deemed a decision of the directors.
- (5) In case of an equality of votes, the chairman of the meeting, in addition to his deliberative vote (if any), has a casting vote.
- (6) The directors may delegate any of their powers to a committee or committees of directors, and such a power duly exercised by the committee shall be deemed to have been exercised by the directors.
- (7) If all the directors eligible to vote on a resolution sign a document or documents containing the terms of the resolution and a statement that they are in favour of the resolution, the resolution shall be deemed to have been passed at the time at which the document is signed by the last director to sign.

## 10.2 – Interests of directors

### 218. Contracts in which directors are interested

- (1) For the purposes of this section, a director has an interest in a contract of the company if—
  - (a) he will derive any material benefit, whether direct or indirect, from the contract; or
  - (b) another party to the contract is a firm or body corporate and he has a material interest, whether direct or indirect, in the firm or body corporate;but he shall not be considered to have a material interest in a body corporate by reason only that—
  - (i) he holds debentures of the body corporate; or
  - (ii) he holds shares in the body corporate comprising less than five *per centum* of the shares, or, where the company has classes of shares, less than five *per centum* of the shares in each class.
- (2) For the purposes of paragraph (a) of subsection (1), a benefit accruing to a spouse of the director or to a child under the age of twenty-one shall be deemed to be a benefit accruing to the director.

- (3) Unless the articles of a company provide otherwise, a director shall be entitled, subject to this Act, to enter into a contract with the company, and such a contract shall not be voidable, nor shall the director be liable to account for any profit made thereby, by reason only of his being a director or of the fiduciary relationship thereby established.
- (4) A director who is interested in any contract or proposed contract of the company shall declare the nature and extent of his interest at a meeting of the directors or shareholders of the company.
- (5) If the director is interested in a proposed contract at the time that it is first considered at a meeting of the directors or shareholders, the declaration shall be made at that meeting or an earlier one.
- (6) If the director becomes interested in a contract or proposed contract at some later time, the declaration shall be made at the next meeting after he becomes so interested.
- (7) For the purposes of this section, a general declaration in writing by a director that—
  - (a) states that he has an interest in a specified body corporate or firm;
  - (b) specifies the nature and extent of the interest; and
  - (c) states that he is to be regarded as interested in any contract which may, after the date of the notice, be made with that body corporate or firm;

shall be a sufficient declaration of interest in relation to any contract so made unless, at the time the question of confirming or entering into any contract is first taken into consideration by the company, the extent of his interest in the body corporate or firm is greater than is stated in the declaration.

- (8) Subject to this section and the Articles, where a contract or arrangement in which a director is interested is considered at a meeting—
  - (a) the director shall not be counted in the quorum required for that business;
  - (b) the director shall not vote in respect of that business;
  - (c) one director shall not approve the contract until it has been evaluated by an external auditor and verified to be a contract that is being concluded in a transparent manner and on equitable terms; and
  - (d) one director shall cause a report of the evaluation conducted under paragraph (c) to be included in the auditor's annual report.

*[subsection (8) substituted by section 18(a) of [Act 24 of 2011](#)]*

- (9) Subsection (8) shall not apply in respect of—
  - (a) an arrangement for giving the director any security or indemnity in respect of money lent by him to, or obligation undertaken by him for the benefit of, the company;
  - (b) an 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 has assumed responsibility in whole or in part under a guarantee or indemnity, or by the deposit of a security; or
  - (c) a contract by the director to subscribe for or underwrite shares or debentures of the company.
- (10) Where a member or director or any interested party to a party related transaction is of the view that the transaction is not in the interest of the company, the member, director or interested party may petition the court in accordance with section two hundred and thirty-nine.

*[subsection (10) inserted by section 18(b) of [Act 24 of 2011](#)]*

- (11) A director who fails to comply with this section shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

*[subsection (11), previously subsection (10), renumbered by section 18(c) of [Act 24 of 2011](#)]*

## **218A. Third party declarations**

- (1) A third party may, where the third party intends to enter into a transaction with a company disclose —
- (a) any possible conflict of interest that may arise as a result of the person transacting with the company in the proposed manner;
  - (b) the nature of the conflict of interest and the director or directors to whom such a conflict of interest applies; and
  - (c) the extent to which the parties to the transaction stand to gain personally from the actions of the company.
- (2) A disclosure of interest made by a third party shall be treated in the same manner that a disclosure made by a director would be treated.

*[section 218A inserted by section 19 of [Act 24 of 2011](#)]*

## **218B. Shareholder approval for certain transactions**

Where a company wishes to enter into a transaction that is subject to a declaration under sections two hundred and eighteen and two hundred and eighteen A for which the value exceeds the threshold prescribed by the Articles, the transaction shall only be entered into with the approval of a simple majority of the members.

*[section 218B inserted by section 19 of [Act 24 of 2011](#)]*

## **219. Prohibition of loans by companies to directors**

- (1) This section shall apply to the following companies:
- (a) a public company;
  - (b) a company related to a public company;
  - (c) a company in a prescribed class of company.
- (2) A company to which this section applies shall not—
- (a) make a loan to a director of the company or of a related body corporate;
  - (b) enter into any guarantee or provide any security in connection with a loan made by any other person to a director of the company or of a related body corporate; or
  - (c) subject to this section—
    - (i) make a loan to; or
    - (ii) enter into any guarantee or provide any security in connection with a loan made by any other person to;
- a body corporate in which a director or directors of the company, or their nominees, hold shares having in total one-fifth or more of the value of its issued share capital.
- (3) This section shall not prohibit a company from making a loan to a related body corporate, or entering into a guarantee or providing security in connection with a loan made by any other person to a related body corporate.

- (4) This section shall not prohibit a company whose ordinary business includes the lending of money, or the giving of guarantees in connection with loans made by other persons, from making a loan to, or entering into a guarantee or providing security in connection with, a director or a body corporate referred to in paragraph (c) of subsection (2)—
  - (a) if the prior approval of the company has been 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, were disclosed; or
  - (b) on condition that the loan shall be repaid, or the liability under the guarantee or security shall be discharged, within eighteen months, if approval is not given by the company within twelve months 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, are disclosed.
- (5) A company may advance to director of the company or of a related body corporate funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purposes of enabling him properly to perform his duties as an officer or employee of the company, provided that the total amount advanced to such persons does not exceed one *per centum* of the assets of the company less the liabilities of the company as shown in the last audited balance sheet of the company.
- (6) If a company fails to comply with this section—
  - (a) the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units; and
  - (b) the directors who authorised the making of the loan or the entering into the guarantee or the providing of the security shall be jointly and severally liable to indemnify the company against any loss arising therefrom.
- (7) This section shall not apply in relation to a loan, guarantee or security made or provided before the commencement of this Act.

## **220. Duties of directors in connection with sales or purchases of the company's securities**

- (1) If a director of a company, having acquired in that capacity any special information which may substantially affect the value of the share or debentures of the company or any related body corporate, buys or sells any such shares or debentures without disclosing such information to the seller or purchaser thereof, the purchase or sale shall be voidable at the option of the seller or purchaser within twelve months after the date of the agreement to sell or buy.
- (2) For the purposes of this section, any shares or debentures bought or sold shall be deemed to have been bought or sold by a director if he held before or after the transaction, directly or indirectly, any beneficial interest therein, unless it is proved that the sale or purchase was not made by him or on his instructions 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 the capacity of director.
- (3) Nothing in this section shall derogate from any right or remedy which may be available under any other law.

### 10.3 – Payments to directors

#### 221. Interpretation

- (1) For the purposes of this Division "payment"—
  - (a) does not include the payment of damages awarded or approved by any court for breach of an independent service agreement or the *bona fide* payment of any pension or superannuation benefit in respect of past services in accordance with a service agreement; and
  - (b) includes any other benefit or advantage whether in cash or in kind.
- (2) For the purposes of this Division—
  - (a) a service agreement shall be considered independent only if it was not entered into in contemplation of such a transfer as is referred to in subsection (1) of section two hundred and twenty-two or such an offer as is referred to in section two hundred and twenty-three;
  - (b) a service agreement shall be presumed to have been entered into in contemplation of such a transfer or offer unless it was made more than one year before the date of the agreement to transfer or the making of the offer, and
  - (c) if—
    - (i) any payment (not being remuneration properly payable) is received by a director or former director within a period of one year before or two years after the date of the agreement to make such a transfer or offer; and
    - (ii) the company or the person to whom the transfer or by whom the offer was made was privy to the making of the payment; the payment shall be presumed to have been received by him in connection with the transfer or offer.

#### 222. Payments to directors for loss of office or on transfer of undertaking

- (1) A company shall not make to any director or former director of the company or of a related body corporate any payment by way of compensation for loss of any office in the company or in a related body corporate, or as consideration for or in connection with his retirement from office, unless the particulars relating to the proposed payment (including the amount thereof) have been disclosed to the members of the company and the proposal has been approved by an ordinary resolution of the company.
- (2) A person shall not make a payment to a director or former director of a company in connection with the transfer of the whole or any part of the undertaking or property of the company or of a related body corporate, whether the payment is expressed to be by way of compensation for loss of office or otherwise, unless the particulars relating to the proposed payment, including the amount thereof, have been disclosed to the members of the company and the proposal has been approved by an ordinary resolution of the company.
- (3) If a payment is made in contravention of this section, the amount of the payment shall be deemed to have been received in trust for the company.

#### 223. Payments to directors in connection with takeover bids

- (1) Where—
  - (a) an offer is made for the acquisition of any shares of a company on the terms that the offer is available for acceptance—
    - (i) by all the shareholders of the company or by all the holders of shares of the class to which the offer related; or

- (ii) by the holders of shares which, together with any shares already beneficially owned by the person making the offer or any body corporate in which that person is a controlling shareholder, confer the right to exercise or control the exercise of not less than one-third of the votes at any general meeting of the company; and
- (b) in connection with the offer a payment (in this section called "the relevant payment") is made, or has been made or is proposed to be made to a person (in this section called the "payee director") who is a director or former director of the company or of a related body corporate, being a payment other than payment to purchase shares held by the payee director at the same price receivable under the offer by other holders of shares in that class;

the director or former director shall take all reasonable steps to ensure that particulars of the relevant payment are included in or sent with any notice of the offer made for their shares which is given to any shareholders.

- (2) If the payee director fails to comply with subsection (1), he shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.
- (3) If a person who has been properly directed by the payee director to include in, or send with, a notice of offer referred to in subsection (1) the particulars referred to in that subsection fails to do so, he shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two hundred and fifty monetary units.
- (4) If the relevant payment, or a part thereof, is made to the payee director, then subsection (5) shall apply unless—
  - (a) the payee director has complied with subsection (1); and
  - (b) the making of the relevant payment has been—
    - (i) agreed to by all the holders of the shares to which the offer relates; or
    - (ii) approved by an ordinary resolution passed at a meeting of such holders, summoned for the purpose.
- (5) If this subsection applies, then, subject to this section—
  - (a) the person making the payment and the payee director shall be jointly and severally liable to distribute the amount of the relevant payment among any persons who have sold their shares as a result of the offer in proportion to the number of shares sold by them;
  - (b) the payee director shall hold any amounts received by him in connection with the relevant payment on trust for such persons; and
  - (c) the expenses incurred in distributing the payment shall be borne by the persons liable to make the distribution and not retained out of the payment.
- (6) If, in proceedings instituted less than three months after the first transfer of any shares in pursuance of the offer, the court awards or approves the payment of damages to the payee director for breach of an independent service agreement, the amount of the damages, and of any costs awarded to the payee director in the proceedings, shall be paid to or retained by the payee director out of the amount of the relevant payment and subsection (5) shall apply only to the balance thereof, if any.
- (7) If the offer does not apply to all the shareholders or to all shareholders of a class, a meeting called for the purposes of subparagraph (b) (ii) of subsection (4) shall be convened, held and conducted as nearly as may be as if it were a meeting of the shareholders or of a class of shareholders.
- (8) The notices convening a meeting called for the purposes of subparagraph (b) (ii) of subsection (4) shall include a statement to the effect that, if the resolution approving the payment is not passed, the payment will be distributable among the persons who have sold their shares in pursuance of the

offer, except to the extent that the court may award or approve the payment to the payee director of damages for breach of an independent service agreement.

- (9) The offer shall not include any provision that the offer is conditional upon approval of the relevant payment, and any provision purporting to have that effect shall be void.
- (10) For the purposes of this section—
  - (a) shares shall be deemed to be beneficially owned by a body corporate if they are owned beneficially by—
    - (i) the body corporate;
    - (ii) another body corporate related to the body corporate;
    - (iii) a controlling shareholder of a body corporate referred to in paragraph (i) or (ii);
  - (b) a person shall be deemed to be a controlling shareholder of a body corporate if—
    - (i) the body corporate or its directors are accustomed to act in accordance with the directions or instructions of the person or his nominee; or
    - (ii) at a general meeting of the body corporate, the person is entitled to exercise or control the exercise of one-third or more of the votes.

## 10.4 – Registers

### 224. Register of directors and secretaries

- (1) A company shall keep a register of its directors and secretaries in the prescribed form.
- (2) The Register shall be available for inspection by any person.
- (3) If a company fails to comply with this section, the company and each officer in default commits an offence and is liable, upon conviction, to a fine not exceeding ten thousand penalty units for every day during which the default continues.
- (4) A director or secretary of a company shall give notice, in writing, to the Registrar of such matters relating to the director or secretary as may be necessary for the purposes of this section, and a person who fails to do so commits an offence and is liable, upon conviction, to a fine not exceeding ten thousand penalty units for every day during which the default continues.

*[section 224 substituted by section 20 of [Act 24 of 2011](#)]*

### 225. Register of shares and debentures held by or in trust for directors and secretary

- (1) A company shall keep a register showing in respect of each director and of the secretary the number, description and amount of any shares in or debentures of the company or any related body corporate 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).
- (2) The register need not include shares in a body corporate which is the wholly-owned subsidiary of another body corporate.
- (3) Where a transaction involving any shares results in change in the register, the register shall also show the date of, and price or other consideration for, the agreement for the transaction.
- (4) 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.



- (5) For the purposes of this section—
  - (a) a director shall supply the company with the information relating to himself required to be registered; and
  - (b) the company shall be entitled to rely on the information provided by the director.
- (6) This section shall not require the company to make any inquiry into the rights of any person in relation to any shares, nor shall the company be taken to have, as a result of anything done under this section, any notice of a matter relating to the rights of any person in relation to the shares other than actual notice.
- (7) The register shall be open to inspection—
  - (a) by any member or holder of debentures of the company during the period beginning fourteen days before the date of the company's annual general meeting and ending three days after the date of its conclusion; and
  - (b) by any person acting on behalf of the Registrar, at that or any other time.
- (8) The register shall be produced at the commencement of the company's annual general meeting and remain open and accessible throughout the meeting to any person attending the meeting.
- (9) If the company fails to comply with a provision of this section, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.
- (10) A director who fails to comply with subsection (5) shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.
- (11) If the company fails to allow inspection of the register in accordance with this section, the court may order an immediate inspection of the register.
- (12) 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 have an interest or right in or over, any shares or debentures if a body corporate other than the company holds them or has that interest or right in or over them, and either—
    - (i) that body corporate or its directors are accustomed to act in accordance with his directions or instructions; or
    - (ii) he is entitled to exercise or control the exercise of one third or more of the voting power at any general meeting of that body corporate.

## 226. Registration of particulars of directors and secretaries

- (1) A company shall, within twenty-one days after any change occurs among its directors or in its secretary or in any of the particulars contained in the register of directors and secretaries, lodge with the Registrar notice of the change in the prescribed form, specifying the date of the change.
- (2) Any notification of a person's having become a director or secretary of the company shall state that the person has consented in writing to act in the relevant capacity.
- (3) If the company fails to comply with this section, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

## 10.5 – Miscellaneous

### 227. Where one director is named in letters, etc, all are to be named

- (1) A company to which this section applies shall not state, in any form, the name of any of its directors (otherwise than in the text or as a signatory) on any business letter, trade catalogue, circular or showcard on which the company's name appears unless it also states in legible characters the Christian name, or the initial thereof, and surname of every director (other than an alternate director) of the company.

- (2) For the purposes of this section—

"Christian name" includes a recognised abbreviation of a Christian name;

"director" includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

"showcard" means a card or pamphlet containing or exhibiting articles dealt with or samples of representations thereof.

### 228. Limited company may have directors with unlimited liability

- (1) In a limited company, the liability of the directors and managers may, if the articles so provide, be unlimited.
- (2) In a limited company in which the liability of directors or managers is unlimited, a person shall not be elected or appointed to the office of director or manager unless he has signed a statement that he understands and accepts that the liability of the person holding that office will be unlimited.
- (3) If a person is elected or appointed to the office of director or manager in contravention of this section—
  - (a) the person will have unlimited liability;
  - (b) the member who proposed the person for election or appointment to the office of director or manager, the promoters of the company, the directors of the company, any managers of the company and the secretary of the company shall indemnify the person against his liability under paragraph (a); and
  - (c) the persons referred to in paragraph (b) shall each be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.

### 229. Avoidance of acts in dual capacity as director and secretary

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.

### 230. Restraining fraudulent persons from managing companies

- (1) Where—
  - (a) a person is convicted, whether in Zambia or elsewhere, on an indictment, or on any other process analogous to or in substitution of indictment—
    - (i) of any offence involving fraud or dishonesty; or
    - (ii) of any offence in connection with the promotion, formation or management of a body corporate; or

- (b) in the course of winding-up a body corporate, whether in Zambia or elsewhere, a person has been found guilty of—

- (i) any fraud in relation to the body corporate; or
  - (ii) any breach of duty in relation to the body corporate;

the court, on its own motion or on the application of any of the persons referred to in subsection (3), may order that the person shall not, without leave of the court, be a director of or in any way, whether directly or indirectly, be concerned or take part in the management of any company, or act as secretary, auditor or liquidator of any company, or as receiver of the property or as trustee for the debenture holders of any company, for such period not exceeding five years as may be specified in the order.

- (2) In subsection (1), "the court" means the High Court for Zambia or—

- (a) in relation to the making of an order against a person under paragraph (a) thereof, the court before which he

*[Please note: incomplete paragraph as in original.]*

- (b) in relation to the making of an order against a person under paragraph (b) thereof, the court having jurisdiction to wind-up the body corporate, if that court is in Zambia; or
  - (c) in relation to the granting of leave, the court which made the order from which leave is sought.

- (3) An application for an order under this section may be made by—

- (a) the Registrar;
  - (b) the trustee in bankruptcy of the person concerned; or
  - (c) the liquidator of any body corporate.

- (4) A person intending to apply for the making of an order under this section shall give not less than twenty-eight days' written notice of his intention to the person against whom the order is sought.

- (5) A person against whom an order has been made under this section who intends to apply for leave to act as a director or in any other capacity in relation to the property or affairs of a company shall, unless the court otherwise orders, give at least twenty-eight days' written notice of his intention to any person on whose application the order was made, and that person may be a party to the proceedings.

- (6) Where any order is made or leave is granted under this section—

- (a) the person who sought the order or leave shall lodge a copy thereof with the Registrar; and
  - (b) the Registrar shall cause a summary thereof to be published in the *Gazette*.

- (7) A person who contravenes an order made under this section shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two thousand monetary units or imprisonment for a term not exceeding two years, or to both.

## 231. Prohibition of assignment of offices

A director or other officer of a company shall not assign his office to another person, and any purported assignment of the office shall be void.

**232. Validity of acts of officers**

An act done by a director, the directors or the secretary shall not be invalid only because it is afterwards discovered that there was some defect in the appointment or qualification of a person to be a director or secretary or a member of a committee of directors, or to act as a director or secretary.

**233. Company may not indemnify officers**

- (1) Subject to this Act, a company shall not indemnify a director or other officer of the company or a related body corporate against, or compensate him for, any liability which under law would otherwise attach to him in respect of any civil or criminal liability for any negligence, default, breach of duty or breach of trust which he may commit in relation to the company or a related body corporate after the commencement of this Act.
- (2) Any provision in a contract between the company and such a director or officer purporting to indemnify or compensate him in contravention of subsection (1) shall be void.
- (3) This section shall not prevent a company from indemnifying or compensating such a director or officer from any costs or liability incurred by him in defending any proceedings, whether civil or criminal, in which—
  - (a) judgement is given in his favour;
  - (b) he is acquitted; or
  - (c) relief is granted to him by the court.

**Part XI – Schemes of arrangement, take-overs and the protection of minorities****234. Power to compromise with creditors and members**

- (1) In this section, "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 in shares of different classes or by both methods.
- (2) Where a compromise or arrangement is proposed between—
  - (a) a company and its creditors or any class of its creditors; or
  - (b) a company and its members or any class of its members;the court may, on the application of the company or of any creditor or member of the company, or, in the case of a company being wound-up, of the liquidator, order a meeting of the creditors, the class of creditors, the members or the class of members, as the case may be, to be convened, held and conducted in such manner as it thinks fit to consider the compromise or arrangement.
- (3) Subject to the order of the court, Part VII shall apply to a meeting of members or a class of members ordered to be convened pursuant to this section.
- (4) Subject to the order of the court, sections one hundred and forty-six to one hundred and fifty-two shall apply, with the necessary modifications, to a meeting of creditors or a class of creditors ordered to be convened pursuant to this section.
- (5) Unless the court orders otherwise, the voting power at the meeting of creditors ordered to be convened pursuant to this section shall be assigned to the creditors in proportion to the amount of the debt outstanding from the company to each creditor.

- (6) If a meeting, by extraordinary resolution, agrees to any compromise or arrangement, the compromise or arrangement—
  - (a) shall be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be; and
  - (b) shall be binding on the company if and when—
    - (i) it has been approved by order of the court; and
    - (ii) a copy of the order has been lodged with the Registrar.
- (7) Where an extraordinary resolution agreeing to a compromise or arrangement has been passed at a meeting convened pursuant to this section, the company or any person who was entitled to vote at the meeting may apply to the court for approval of the compromise or arrangement.
- (8) At the hearing by the court of the application for approval of the compromise or arrangement, any member or creditor of the company claiming to be affected thereby shall be entitled to be represented and to object.
- (9) The court may prescribe such terms as it thinks fit as a condition of its approval, including a condition that any member shall have the right to require the company to purchase his shares at a price fixed by the court or to be determined in a manner provided in the order, and, in that case, for the reduction of the company's capital accordingly.
- (10) Where an order is made approving the compromise or arrangement—
  - (a) the company shall lodge a copy with the Registrar within twenty-one days after the making of the order; and
  - (b) a copy of the order shall be annexed to or incorporated in every copy of the articles issued after the order has been made.
- (11) Where an order under this section has the effect of altering the share capital of the company, the Registrar, on lodgement of the copy of the order, shall issue a replacement certificate of share capital for the company, worded to meet the circumstances of the case.
- (12) If the company fails to comply with paragraph (a) of subsection (10), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.
- (13) If the company issues a copy of the articles that fails to comply with paragraph (b) of subsection (10), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units in respect of each copy issued.

## 235. Information as to compromises with creditors and members

- (1) In this section, "arrangement" has the same meaning as in section two hundred and thirty-four.
- (2) Where a meeting of creditors or any class of creditors or of members or any class of members is convened under section two hundred and thirty-four the company shall prepare a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors in the company or a related body corporate, whether as directors or as members or as creditors of the company or otherwise, and the effect thereon of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons.
- (3) Where the compromise or arrangement affects the rights of debenture holders of the company, the statement shall give the same explanation as respects the debenture holders of the company or any trustees of any instrument for securing the issue of the debentures as it is required to give as respects the company's directors.
- (4) A copy of the statement shall be sent to every creditor or member with the notice of the meeting.

- (5) Every notice of the meeting given by advertisement shall include either a copy of the statement or notice of the way in which the members or creditors entitled to attend the meeting may obtain copies of the statement.
- (6) Where notice of the meeting is given by advertisement, the company shall supply a copy of the statement, free of charge, to any creditor or member who applies in the way indicated in the advertisement.
- (7) If the company fails to comply with this section, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.
- (8) It shall be a defence to a prosecution under subsection (7) to show that failure was due to the refusal of any other person to supply the necessary particulars as to his interests in the company or a related body corporate.
- (9) A person who is director of the company or a trustee for debenture holders of the company shall give notice to the company of such matters relating to himself as may be necessary for the purposes of this section, and a person who fails to do so shall be guilty of an offence, and shall be liable on conviction to a fine of five hundred monetary units.

## **236. Reconstruction and amalgamation of companies**

- (1) Where an application is made to the court under section two hundred and thirty-four to approve a compromise or arrangement referred to in that section, and it is shown to the court that—
  - (a) the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for—
    - (i) the reconstruction of any company or companies; or
    - (ii) the amalgamation of any two or more companies; and
  - (b) 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 "the 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 approving the compromise or arrangement or by a subsequent order, provide for all or any of the following:

- (i) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of the transferor company;
- (ii) the allotment or appropriation by the transferee company of any shares, debentures, policies or other like interests in the transferor company which under the compromise or arrangement are to be allotted or appropriated by the transferor company to or for any person;
- (iii) the continuation by or against the transferee company of any legal proceedings pending by or against the transferor company;
- (iv) the dissolution, without winding-up, of the 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 supplementary matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.

- (2) Where an order under this section provides for the transfer of property or liabilities—
  - (a) the property shall, by virtue of the order, be transferred to and vest in the transferee company and shall, if the order so directs, be freed from any charge which is under the compromise or arrangement to cease to have effect; and
  - (b) the liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company.
- (3) Where an order is made under this section, every company in relation to which the order is made shall cause a copy thereof to be lodged with the Registrar within fifteen days after the making of the order.
- (4) If a company fails to comply with subsection (3), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.
- (5) In this section—
  - (a) "property" includes property rights and powers of every description; and
  - (b) "liabilities" includes duties of every description;notwithstanding that such rights, powers or duties are of such a character that under the common law they could not be assigned or performed vicariously.

### **237. Power to acquire shares of minority on take-over**

- (1) This section shall apply where body corporate, whether a company within the meaning of this Act or not, (in this section referred to as "the transferee company"), has made an offer to the holders of shares in a company (in this section referred to as "the transferor company") and each of the following conditions is satisfied:
  - (a) the offer by the transferee company is made to the holders of the whole of the shares in the transferor company, other than those already held by the transferee company or any of its related companies or by nominees for the transferee company or any of its related companies;
  - (b) the consideration for the acquisition or a substantial part thereof is either—
    - (i) the allotment of shares in the transferee company; or
    - (ii) the allotment of shares in the transferee company or, at the option of the holders, a payment of cash;
  - (c) the same terms are offered to all the holders of the shares to whom the offer is made or, where there are different classes of shares, to all the holders of shares of the same class;
  - (d) the notice of the offer sent to the shareholders included—
    - (i) a description of the effect of this section;
    - (ii) a statement that, if paragraph (e) is satisfied, the transferee company intends to take advantage of this section; and
    - (iii) a statement that the shareholder may apply to the court under subsection (3);
  - (e) within four months after the making of the offer it has been accepted in respect of sufficient shares in each class to make up, together with any shares held by the transferee company, nine-tenths of the shares of that class.

- (2) If this section applies, the transferee company may, within the period of two months beginning when subsection (1) is satisfied, give to each shareholder who has not accepted the offer in respect of all his shares a notice stating—
- (a) that it desires to acquire his shares;
  - (b) that if no action is taken by the shareholder, the shares will be compulsorily acquired under this section;
  - (c) the alternative that will apply unless the shareholder directs otherwise, if the offer consists of alternatives.
- (3) A copy of the notice referred to in subsection (2) shall be sent to the transferor company.
- (4) At any time within the period beginning when the offer is made and ending three months after subsection (1) is satisfied, the shareholder may apply to the court for an order that—
- (a) the shares may not be compulsorily acquired under this section; or
  - (b) the terms of the offer applying to the shareholder in respect of the shares, or of the shares of a particular class, shall be varied as specified by the court;
- and the court may make such an order.
- (5) Where the court makes an order that the terms of the offer shall be varied, then, unless the court orders otherwise, the transferee company shall give notice of the varied terms to all other holders of shares of the same class and to all former holders of shares of the same class who accepted the original offer, and at any time within two months after receiving the notice—
- (a) a holder of shares of that class shall be entitled to accept either the original offer or the offer as varied by the court; and
  - (b) a former holder of shares of that class who accepted the original offer shall be entitled to require the transferee company to pay or transfer to him any additional consideration to which he would have been entitled, had his shares been acquired under the offer as varied by the court.
- (6) If a shareholder has not accepted the offer by the end of the acquisition day, the transferee company shall, unless the court has directed otherwise, within seven days after that day send to the transferor company an instrument of transfer of the shares of that shareholder executed—
- (a) on behalf of the shareholder by a person appointed by the transferee company; and
  - (b) on its own behalf by the transferee company;
- and transfer to the transferor company the consideration (whether shares, cash or any other consideration) payable by the transferee company for the shares, and the transferor company shall thereupon register the transferee company as the holder of those shares.
- (7) For the purposes of this section, the acquisition day is the day—
- (a) three months after the day on which subsection (1) is satisfied: or
  - (b) on which the last of any applications under subsection (4) is disposed of;
- whichever is the later.
- (8) Any sums received by the transferor company under subsection (6) shall be paid into a separate bank account and any such sums and all shares or other consideration so received shall be held by the transferor company in trust for the several persons entitled to them.



**238. Rights of minority on take-over**

- (1) Where—
- (a) an offer is made to the shareholders of a company (in this section called "the transferor company") or any of them for the purchase of their shares;
  - (b) in pursuance of the offer, shares in the transferor company are transferred to another body corporate (referred to in this section as "the transferee company"), whether the body corporate is a company within the meaning of this Act or not; and
  - (c) after the transfer of shares, the transferee company holds more than three-fourths of the shares in the transferor company or in a class of those shares;
- then—
- (i) the transferee company shall within one month after the date of the transfer, unless after a previous transfer it has already complied with this requirement, give notice of that fact to the holders of the remaining shares or of the remaining shares of that class, as the case may be; and
  - (ii) any such holder may, within three months after the giving to him of the notice require the transferee company to acquire all or any of his shares.
- (2) For the purposes of subsection (1), where a share is transferred to or held by—
- (a) a body corporate related to the transferee company; or
  - (b) a nominee of the transferee company or of a body corporate related to the transferee company; the share shall be deemed to be transferred to or held by the transferee company.
- (3) Where a shareholder under subsection (1) requires the transferee company to acquire any shares, the transferee company shall be entitled and bound to acquire those shares on the terms of the offer 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.

**239. Remedy against oppression**

- (1) In this section, "oppressive" means—
- (i) oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members of a company; or
  - (ii) contrary to the interests of the members as a whole;
- whether in the capacity of the member or members concerned as a member or members of the company, or otherwise.
- (2) The court may, on the application of a member of a company, make an order or orders under this section if it is of the opinion—
- (a) that the affairs of the company are being conducted, or the powers of the directors are being exercised, in a manner that is oppressive; or
  - (b) that—
    - (i) some act or omission, or proposed act or omission, by or on behalf of the company has been done or is threatened; or
    - (ii) some resolution of the members, or any class of them, has been passed or is proposed;which was or would be oppressive;
- for the purpose of remedying the situation of the member or members concerned.

- (3) Subject to this section, an order or orders under this section may include, but is not limited to, one or more of the following;
- (a) an order directing or prohibiting any act or cancelling or varying any transaction or resolution;
  - (b) an order regulating the conduct of the company's affairs in the future;
  - (c) an order for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, for the reduction of the company's capital accordingly;
  - (d) an order that the company be wound-up;
  - (e) an order appointing a receiver of property of the company.
- (4) Where an order under this section makes any alteration to the company's share capital or articles then, notwithstanding anything in any other provision of this Act but subject to any provisions of the order, the company shall not without the leave of the court make any further alteration to the share capital or articles inconsistent with the order.
- (5) Where an order is made under this section that a company be wound-up, Part XIII shall apply to the winding-up, with any necessary modifications, as if the order had been made upon an application duly filed by the company for a winding-up by the court.
- (6) A copy of any order under this section altering the company's share capital or articles shall be lodged by the company with the Registrar within fifteen days after the making of the order.
- (7) Where the order alters the company's share capital, the Registrar, on the lodgement of the order, shall issue a replacement certificate of share capital for the company, worded to meet the circumstances of the case.
- (8) A person who contravenes an order under this section that is applicable to the person shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding one thousand monetary units or to imprisonment for a period not exceeding twelve months, or to both.
- (9) If the company fails to comply with subsection (6), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.

## Part XII – Foreign companies

### 240. Interpretation

- (1) In this Part, unless the context otherwise requires—

**"documentary agent"** means a person appointed as a documentary agent of a foreign company for the purposes of section two hundred and forty-five;

**"established place of business"** means a place of business of a foreign company that is an established place of business under section two hundred and forty-one;

**"existing foreign company"** means a body corporate incorporated outside Zambia which immediately before the commencement of this Act was registered as a foreign company under the former Act;

**"foreign company"** means—

- (a) a body corporate formed outside Zambia that has registered under this Part; or
- (b) an existing foreign company, subject to section two hundred and forty-three;

**"local director"** means a local director of a foreign company appointed under section two hundred and forty-eight;

**"registered principal office"** means the office of a foreign company registered under section two hundred and forty-five as its principal place of business.

#### 241. Established place of business

- (1) For the purposes of this Part, and subject to this section, a body corporate formed outside Zambia has an "established place of business" if it has any of the following in Zambia;
  - (a) a branch or management office;
  - (b) an office for the registration of transfer of shares;
  - (c) a factory or mine; or
  - (d) any other fixed place of business.
- (2) An agency in Zambia of a body corporate formed outside Zambia in which the agent—
  - (a) does not have, or does not habitually exercise, a general authority to negotiate and conclude contracts on behalf of the body corporate; and
  - (b) does not maintain a stock of merchandise belonging to that body corporate from which he regularly fills orders on its behalf;is not an established place of business of the body corporate for the purpose of this Part.
- (3) If a body corporate formed outside Zambia carries on business dealings in Zambia through a broker or general commission agent acting in the ordinary course of his business as such, the office of the broker or agent is not an established place of business of the body corporate for the purposes of this Part.
- (4) If a body corporate formed outside Zambia has a subsidiary which is incorporated in Zambia or has an established place of business in Zambia, then—
  - (a) an office of the subsidiary; or
  - (b) an established place of business of the subsidiary;shall not be regarded for that reason only as an established place of business of the body corporate.

#### 242. Financial year of a foreign company

- (1) For the purposes of this Act, the "financial year" of a foreign company is the period, whether or not a period of one year, that begins on one accounting date of the company and ends on the day before the next.
- (2) The first "accounting date" of a foreign company is
  - (a) the date of its registration as a foreign company; or
  - (b) the date on which it first had an established place of business;whichever is earlier.
- (3) Subject to this section, the subsequent accounting dates of a foreign company are—
  - (a) the date specified in the application for its registration as the date on which the second financial year of the company will begin, and anniversaries of that date, if the application for registration specified such a date; or

- (b) the anniversaries of the date of its incorporation, if the application for registration did not specify such a date.
- (4) A foreign company may change an accounting date by lodging a notice of the change in the prescribed form with the Registrar, provided that the change does not result in a financial year's being longer than fifteen months.
- (5) Where a foreign company changes an accounting date under this section, the subsequent accounting dates of the company are unless changed under this section, the anniversaries of that date.

#### **243. Application Part to listing foreign companies**

- (1) Subject to this Act, this Act applies to an existing foreign company as if
  - (a) it had been duly registered under this Act as a foreign company; and
  - (b) any document that, in accordance with the former Act, was duly lodged by it with the Registrar, or duly registered by the Registrar, had been duly lodged or registered under this Act.

#### **244. Register of foreign companies**

The Registrar shall maintain a register of foreign companies for the purposes of this Part.

#### **245. Registration of a foreign company**

- (1) A body corporate formed outside Zambia (in this section called an "external company") may register under this section as a foreign company by lodging with the Registrar the application for registration and the other documents required to accompany it under this section.
- (2) The application shall be in the prescribed form and contain the following particulars relating to the company:
  - (a) its name;
  - (b) the nature of its business or businesses or other main objects;
  - (c) the relevant particulars of each of one or more individuals resident in Zambia, or bodies corporate incorporated in Zambia, authorised to accept on behalf of the company service of process or any notice required to be served on the company (in this Part called "documentary agents");
  - (d) the relevant particulars of the persons who are to be local directors of the company, specifying which is to be the local chairman;
  - (e) if the company has shares, the number and nominal value, if any, of its authorised and issued shares, and the amount paid thereon, distinguishing between the amounts paid and payable in cash and the amounts paid and payable otherwise than in cash;
  - (f) the address of the company's registered or principal office in the country of its incorporation;
  - (g) subject to subsection (5), the physical address of an office in Zambia to be its registered office;
  - (h) a postal address in Zambia.
- (3) The application may also specify a date, being a date, not more than fifteen months after the date of lodgement of the application, on which the second financial year of the company will begin.

- (4) The application shall be accompanied by—
  - (a) a certified copy of the charter, statutes, regulations, memorandum and articles, or other instrument constituting, or defining the constitution of, the company;
  - (b) in relation to each documentary agent and local director, a statement signed by him accepting appointment as such; and
  - (c) the particulars and documents referred to in subsection (2) of section ninety-nine relating to any charge on any property in Zambia acquired by the company more than fourteen days before the lodgement of the application, of, if there are no such charges, a statement in the prescribed form to that effect.
- (5) If an external company has not set up or acquired an established place of business when it lodges an application for registration as a foreign company, it shall do so within twenty-eight days after the lodgement.
- (6) For the purposes of this section, the relevant particulars of a person are the following:
  - (a) in the case of an individual—
    - (i) his present forenames or surname;
    - (ii) any former forename or surname;
    - (iii) his residential and postal address;
    - (iv) his business occupation (if any);
  - (b) in the case of a body corporate—
    - (i) its name and, if a company, its designating number;
    - (ii) its registered office; and
    - (iii) its registered postal address.

#### **246. External company must register if it has an established place of business**

- (1) If a body corporate formed outside Zambia sets up or acquires an established place of business in Zambia, it shall, within twenty-eight days after so doing, apply for registration as a foreign company under section two hundred and forty-five.
- (2) If a body corporate fails to comply with subsection (1), the body corporate, and any officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.

#### **247. Returns required on alteration of registered particulars**

- (1) If any alteration is made in the charter, statutes, regulations, memorandum and articles, or other instrument relating to a foreign company referred to in paragraph (4)(a) of section two hundred and forty-five the company shall, within two months after the date on which that alteration takes effect, lodge with the Registrar a notice in the prescribed form giving details of the alteration.
- (2) If any alteration is made in any of the particulars contained in the application referred to in subsection (2) of section two hundred and forty-five the company shall, in accordance with this section, lodge with the Registrar a notice in the prescribed form giving details of the alteration.
- (3) In the case of any alteration in any of the particulars referred to in paragraphs(a), (b), (e) or (f) of subsection (2) of section two hundred and forty-five the notice required by subsection (2) shall be lodged within two months after the date of effect of the alteration.

- (4) In the case of any alteration in any of the particulars referred to in subparagraphs (c), (d), (g) or (h) of subsection (2) of section two hundred and forty-five the notice required by subsection (2) shall be lodged within twenty-eight days after the date of the alteration.
- (5) Where the particulars lodged pursuant to this section include the name of a person appointed as a documentary agent or as a local director or manager, the notice shall be accompanied by a consent signed by the person to act in that capacity.

#### **248. Foreign company to appoint local director**

- (1) A foreign company shall have at all times at least one individual, in this Act referred to as a "local director", empowered and authorised to conduct and manage all the affairs, properties, business and other operations of the company in Zambia.
- (2) A local director of the company shall be resident in Zambia, and if the company has more than one local director, at least one of them shall be a resident of Zambia.
- (3) A contravention of subsection (2) which continues for more than two months shall constitute grounds for windingup of the company by the court on the application of the Registrar.
- (4) A company which intends to decrease the number of its local directors shall notify the Registrar in writing.
- (5) A company shall designate the director referred to in subsection (1), as the local chairperson.
- (6) A company shall not appoint as a local director, a person who, under Part X, is not qualified to be a director of a company incorporated under this Act.

*[section 248 substituted by section 21 of [Act 24 of 2011](#)]*

#### **249. Responsibilities of local directors**

- (1) If a person registered as a local director of a foreign company does an act ostensibly on behalf of the company in the course of carrying on the business of the company in Zambia, the act shall bind the company unless—
  - (a) the local director has no authority so to act; and
  - (b) the person with whom he is dealing has actual knowledge of the absence of authority, or, having regard to his position with, or relationship to, the company, ought to know of the absence of authority.
- (2) The company shall, in all trade circulars and business correspondence on or in which the company's name appears, and which are despatched by or on behalf of the company—
  - (a) in Zambia, whether to persons in Zambia or not;
  - (b) outside Zambia exclusively to persons in Zambia; or
  - (c) exclusively for the purposes of the company's operations in Zambia;state in legible Roman characters in respect of each local director—
  - (i) his forenames or the initials thereof and his surname; and
  - (ii) any former forename or surname.
- (3) The Registrar may, if in his opinion special circumstances exist which justify it, by notice published in the *Gazette*, and subject to any conditions specified in the notice, exempt the company from the requirements of subsection (2).

- (4) The company shall maintain a register of its local directors, to be kept at its registered office or the office notified to the Registrar for the purposes of section two hundred and fifty-two, and section two hundred and twenty-four shall apply to the register with the necessary modifications.

## 250. Service on foreign company

- (1) A document may be served on a foreign company by—
- (a) leaving it at an address registered as the address of a documentary agent of the company;
  - (b) personal service on a documentary agent of a company, if the agent is an individual;
  - (c) service in accordance with this Act on the documentary agent, if the documentary agent is a company;
  - (d) leaving it at the registered office of the company, if the company has no registered documentary agent, or no registered address for such an agent;
  - (e) personal service on a local director;
  - (f) leaving it at the registered office or principal place of business of the company in the country of its incorporation; or
  - (g) personal service on a director or secretary of a company in the country of its incorporation.
- (2) A document sent by registered or other receipted post to the address registered as the postal address of a documentary agent of the company shall be deemed to have been served on the company if it is proved, by a receipt issued or otherwise, that the document, or a post office notification of the document, was delivered to the registered postal address.
- (3) Service in accordance with subsection (1), other than paragraph (d), shall continue to be effective in relation to the company for a period of two years after the company ceases to be registered as a foreign company.
- (4) Nothing in this section shall derogate from the power of any court to direct how service shall be affected of any document relating to legal proceedings before the court.

## 251. Annual accounts of foreign company

- (1) A foreign company shall, within three months after the end of each financial year of the company, lodge with the Registrar annual accounts and an auditors' report corresponding as nearly as practicable with the annual accounts and auditors' report in relation to the operations and assets in Zambia of the company that would be required under Part VIII if those operations and assets were the whole operations and assets of a public company incorporated under this Act.
- (2) For the purposes of subsection (1), the foreign company shall appoint an auditor or auditors.
- (3) An auditor of a foreign company shall be—
- (a) a registered accountant having a practice certificate issued by the Zambia Institute of Certified Accountants under the Accountants Act, 1982; or  
*[Cap. 391]*
  - (b) a firm of such registered accountants.
- (4) If the foreign company is required under its articles or other provisions of the constitution regulating its conduct, or under the laws of the country in which it is incorporated, to circulate annual accounts to its members or lay them before its members in general meeting, the company shall, within twenty-eight days after complying with those requirements, lodge with the Registrar a certified copy of the accounts together with, if the accounts are in a language other than English, a certified translation of them into English.

- (5) In the profit and loss account in the accounts referred to in subsection (1), the company may make such apportionments and add such notes and explanations as are, in its opinion, necessary or desirable in order to give a true and fair view of the profit or loss on its operations in Zambia, and for this purpose may debit a reasonable rate of interest on capital employed in Zambia.
- (6) In relation to the accounts and reports referred to in subsection (1), the Registrar may, on the application or with the consent of the local directors of the company, modify, in relation to the company, any of the requirements of this section or Part VIII to suit the circumstances of the company, provided that the accounts and reports give a true and fairview of the profit or loss on the operations of the company, and of the state of affairs of the company, in Zambia.

## 252. Keeping of accounting records by foreign company

- (1) A foreign company shall—
  - (a) keep such accounting records as correctly record and explain the transactions of the company relating to its operations and assets in Zambia (including any transactions as trustee) and the financial position of the company in relation to those operations and assets; and
  - (b) keep its accounting records in such a manner as will enable—
    - (i) the preparation from time to time of true and fair accounts of those operations and assets of the company; and
    - (ii) those accounts of the company to be conveniently and properly audited in accordance with this Part.
- (2) The company shall retain the accounting records for a period of ten years after the completion of the transactions to which they relate.
- (3) The company shall keep at its registered office, or at another office notified to the Register in writing, such statements and records with respect to the matters dealt with in its accounting records as would enable the company to prepare true and fair accounts together with any documents required by this Part to be attached to the accounts.
- (4) The accounting records of the company shall be kept in writing or in any form that enables the accounting records to be readily accessible and readily convertible into writing.
- (5) The accounting records of the company shall be kept in English, unless the use of another language is approved in writing by the Registrar.
- (6) The company shall make its accounting records available in writing at all reasonable times for inspection without charge by the local directors and auditors of the company and by the Registrar or his delegate.
- (7) If the company fails to comply with this section—
  - (a) the Registrar may apply for an order that the company be wound-up in accordance with section two hundred and fifty-seven; and
  - (b) the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two thousand monetary units or to a term of imprisonment not exceeding two years, or to both.
- (8) The Registrar may, if he considers that the special circumstances of the company justify it, exempt the company, generally or in respect of any particular financial year, from any of the provisions of this section.



**253. Name of foreign company**

- (1) Subject to this section, the name of a foreign company in Zambia shall be—
  - (a) the name of the company in the country of its incorporation, if that name is in English; or
  - (b) the name of the company in the country of its incorporation or a translation thereof, as the company chooses, if that name is in Roman characters in a language other than English;
  - (c) a translation or transliteration of the name of the company in the country of its incorporation, as the company chooses, if that name is not in Roman characters.
- (2) The Registrar may, on the application of the foreign company, whether before or after registration of the company, permit the company to have a different name in Zambia.
- (3) If, in the opinion of the Registrar, whether formed before or after the registration of a foreign company, the name of the foreign company is likely to cause confusion with the name of another body corporate or is otherwise undesirable, the Registrar may direct that the foreign company shall adopt another name for use in Zambia, being a name approved by the Registrar.
- (4) If the Registrar makes a direction under subsection (3) in the case of a body corporate applying for registration as a foreign company, he shall not register the body corporate until it adopts such a new name.
- (5) If the Registrar makes a direction under subsection (3) in the case of a foreign company already registered, and it does not adopt such a name within forty-two days after the issue of the direction, he shall register the designating number of the company, together with the words "Foreign Company", as the name of the company.
- (6) A change of name under this section, or the use of a name different from the name used by the foreign company in the country of its incorporation shall not affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced by or against the company by its new name that might have been continued or commenced by or against the company by its former name.

**254. Publication of name of foreign company**

- (1) Section one hundred and ninety-four shall apply to a foreign company as if its name included at the end—
  - (a) the words "incorporated in " followed by the country of its incorporation; and
  - (b) the words "with limited liability", if the liability of the members is limited;but shall not apply in relation to business correspondence of the company despatched outside Zambia.

**255. Registration of charges by foreign company**

Section ninety-nine shall apply in relation to a foreign company as if—

- (a) a reference to a company were a reference to the foreign company;
- (b) a reference to a charge were a reference to a charge over property of the company situated in Zambia; and
- (c) a reference to the acquisition of property by the company included a reference to the acquisition of property before its registration as a foreign company.

**256. Notification of winding-up of foreign company**

- (1) Where, in the case of a foreign company—
  - (a) a winding-up order is made by a court of the country of its incorporation;
  - (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 has ceased to exist according to the law of the country of its incorporation.

the company, or, if the company is dissolved, the documentary agents and local directors of the company, shall lodge a notice thereof with the Registrar within twenty-eight days after the event.

- (2) Where an event referred to in paragraph (a) or (b) of subsection (1) has occurred, the company shall cause a statement to appear in legible Roman characters on every invoice, order or business letter thereafter issued in Zambia by or on behalf of the company, being a document on or in which the company's name appears, to the effect that the company is being wound-up in the country of its incorporation.
- (3) A person who carries on, or purports to carry on, in Zambia business on behalf of a foreign company after the date on which it was dissolved or otherwise ceased to exist in the country of its incorporation shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding thirty monetary units for each day that he carries on or purports to carry on the business.
- (4) Nothing in this action shall derogate from the provisions of section two hundred and fifty-seven.

**257. Winding-up of foreign company in Zambia**

- (1) The undertaking in Zambia of a foreign company may be wound-up in accordance with this section whether or not the company has been dissolved or has otherwise ceased to exist according to the law of the country of its incorporation.
- (2) For the purposes of a winding-up under this section, the foreign company shall be treated as if it were a company incorporated in Zambia whose whole operations and assets were the operations and assets in Zambia of the foreign company.
- (3) Subject to this section, Part XIII shall apply, with any necessary modifications, to the winding-up of a foreign company.
- (4) A foreign company may be wound-up by the court on the following grounds in addition to those referred to in section two hundred and seventy-two;
  - (a) if it is in the course of being wound-up, voluntarily or otherwise, in the country of its incorporation;
  - (b) if it is dissolved in the country of its incorporation or has ceased to carry on business in Zambia, or is carrying on business for the purposes only of winding-up its affairs;
  - (c) if the court is of the opinion that the company is being operated in Zambia for any unlawful purpose.
- (5) The court may, in the winding-up order or on subsequent application by the liquidator, direct that all transactions in Zambia by or with the foreign company shall be deemed to be or have been validly done notwithstanding that they occurred after the date when the company was dissolved or otherwise ceased to exist according to the law of the country of its incorporation, and may make the order on such terms and conditions as it deems fit.

**258. Cessation of business of foreign company**

- (1) If a foreign company ceases to have an established place of business in Zambia, it shall, within twenty-eight days after so ceasing, lodge a notice of that fact in the prescribed form with the Registrar.
- (2) The Registrar shall register the notice and the company shall, subject to this section, thereupon cease to be registered as a foreign company.
- (3) The company shall maintain a documentary agent, and continue to notify the Registrar of the particulars of its documentary agents, for a period of two years after lodging the notice of its ceasing to have an established place of business.
- (4) Where the Registrar has reason to believe that a foreign company has ceased to have an established place of business in Zambia, he shall serve a notice on the company of that fact and stating the effect of subsection (5).
- (5) If, at the end of three months after the giving of a notice under subsection (4), the Registrar is not satisfied that the foreign company is maintaining an established place of business in Zambia, the company shall be deemed to have lodged a notice under subsection (1) on that day.
- (6) Any person who, while a body corporate was registered as foreign company, would have had the right to inspect a document or register held by the Registrar in relation to the company, shall have the right to do so during the period of two years following the lodging of a notice by the company under subsection (1).

**259. Penalties and disabilities**

- (1) If a foreign company fails to comply with any of the obligations imposed upon it by this Part, the foreign company and any officer or documentary agent in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.
- (2) If a local director or a documentary agent of a foreign company wilfully fails to comply with any of the obligations imposed upon him by this Part, the local director or documentary agent shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.
- (3) Subsections (1) and (2) shall not apply in respect of any act or omission which constitutes an offence under another provision of this Part, or of this Act as applied by this Part.
- (4) Subject to this section, if a foreign company fails to lodge with the Registrar any document required by this Part to be so lodged, the rights of the foreign company under or arising out of or incidental to any contract made in Zambia while the failure continues shall not be enforceable by action or other legal proceedings.
- (5) A court may, on the application of a foreign company to which subsection (4) applies and if it is satisfied that it is just and equitable to do so, grant relief, either generally or on conditions, from any disability imposed by subsection (4).
- (6) Nothing in this section shall prejudice the rights of any other parties against the foreign company in respect of a contract referred to in subsection (4).
- (7) If another party commences an action or proceedings against a foreign company to which subsection (4) applies, this section shall not preclude the foreign company from enforcing in the action or proceedings by way of counter-claim, set-off or otherwise, such rights as it may have against the party in respect of that contract.

**260. Invitations to the public relating to foreign companies**

- (1) Part [VI](#) shall apply in relation to foreign companies, with the necessary modifications, as if a foreign company were a public company.
- (2) At the request of a foreign company, the Registrar may, if he thinks fit, waive or modify the provisions of Part [VI](#) in relation to the company.
- (3) Any prospectus registered by a foreign company for the purposes of an invitation to the public to acquire shares or debentures shall, in addition to complying with Part [VI](#) and subject to any modifications made under subsection [\(2\)](#), also contain particulars of—
  - (a) the instrument constituting or defining the constitution of the company;
  - (b) the law, or provisions having the force of law, by or under which the incorporation of the company was effected;
  - (c) an address in Zambia where copies of the foregoing, or, if the same are in a language other than English, certified translations thereof, can be inspected;
  - (d) the date on which and the country in which the company was incorporated; and
  - (e) whether the liability of the members is limited.
- (4) A breach of subsection [\(3\)](#) shall be deemed to be a breach of section one hundred and thirty.

**261. Invitations to the public relating to other external bodies corporate**

- (1) In this section, "non-Zambian company" means any body corporate formed or proposed to be formed outside Zambia, other than a foreign company.
- (2) Part [VI](#) shall apply, with the necessary modifications, in relation a non-Zambian company as if it were a public company.
- (3) At the request of a non-Zambian company, the Registrar may, if he thinks fit, waive or modify the provisions of Part [VI](#) in relation to the company.
- (4) Any prospectus registered by a non-Zambian company for the purposes of an invitation to the public to acquire shares or debentures shall, in addition to complying with Part [VI](#) and subject to any modifications made under subsection [\(2\)](#), also contain particulars of—
  - (a) the instrument constituting or defining the constitution of the company;
  - (b) the law, or provisions having the force of law, by or under which the incorporation of the company was effected;
  - (c) an address in Zambia where copies of the foregoing, or, if the same are in a language other than English, certified translations thereof, can be inspected;
  - (d) the date on which and the country in which the company was incorporated; and
  - (e) whether the liability of the members is limited.
- (5) A breach of subsection [\(4\)](#) shall be deemed to be a breach of section one hundred and thirty.

## Part XIII – Winding-up

### 13.1 – General

#### 262. Interpretation

For the purposes of this Part, a reference to a member of a company includes, unless the context otherwise requires, a reference to a person claiming or alleged to be liable to contribute to the assets of the company in a winding up, for the purpose of any proceedings for determining, and of all proceedings prior to the final determination of, the persons who are so liable (including the presentation of a winding-up petition).

#### 263. Modes of winding-up

- (1) The winding-up of a company under this Part shall be—
  - (a) a winding-up by the court; or
  - (b) a voluntary winding-up, being—
    - (i) a members' voluntary winding-up; or
    - (ii) a creditors' voluntary winding-up.

#### 264. Application of repealed Act

The provisions of this Act relating to the winding-up of a company shall not apply in relation to a winding-up that was commenced before the commencement of this Act, and such a winding-up shall be continued as if this Act had not been passed.

#### 265. Liability of members on winding-up

- (1) This section shall apply only in the case of a company limited by guarantee, an unlimited company and a company having shares which are not fully paid up.
- (2) When a company is wound-up, every member at the time of the commencement of the winding-up shall, subject to section two hundred and sixty-six, be liable to contribute to the assets of the company 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 members among themselves.
- (3) A sum due to any member in his capacity as a member by way of dividends or otherwise—
  - (a) shall not be regarded as a debt of the company payable to that member in a case of competition between himself and any other creditor not a member; and
  - (b) may be taken into account for the purpose of the final adjustment of the rights of the members among themselves.

#### 266. Limitation of liability

- (1) In the case of a public company or a private company limited by shares, section two hundred and sixty-five shall not require from any member a contribution exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a member.
- (2) In the case of a company limited by guarantee, section two hundred and sixty-five shall not require from any member a contribution exceeding the amount that he undertook, in the declaration of guarantee, to contribute to the assets of the company in the event of its being wound-up.

**267. Nature of liability of a member**

The liability of a member shall create a debt in the nature of a specially accruing debt due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

**268. Liability in case of death of bankruptcy of a member**

- (1) If a member dies, whether before or after he has been placed on the list of those liable to contribute to the assets of the company, his personal representatives shall be so liable in due course of administration and, if they fail to pay any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased member and for compelling payment therefrom of the money due.
- (2) If a member becomes bankrupt, either before or after he has been placed on the list of those liable to contribute to the assets of the company—
  - (a) his trustee in bankruptcy shall represent him for all the purposes of the winding-up, and shall be liable to contribute accordingly; and
  - (b) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as to calls already made.

**269. Jurisdiction to wind-up companies**

- (1) The court shall have jurisdiction to wind-up, in accordance with this Act—
  - (a) a body corporate incorporated in Zambia;
  - (b) a body corporate incorporated in a foreign country and—
    - (i) registered as a foreign company; or
    - (ii) having any business or undertaking or assets in Zambia.

**13.2 – Winding-up by the court****270. Application of Division**

This Division shall apply in the case of the winding-up of a company by the court.

**271. Persons who may petition for a company to be wound-up by the court**

- (1) Subject to this section, a company may be wound-up by the court on the petition of—
  - (a) the company;
  - (b) any creditor, including a contingent or prospective creditor, of the company;
  - (c) a member;
  - (d) any person who is the personal representative of a deceased member;
  - (e) the trustee in bankruptcy of a bankrupt member;
  - (f) any liquidator of the company appointed in a voluntary liquidation; or
  - (g) the Registrar.

- (2) In the case of a public company or a private company limited by shares, a member shall not be entitled to present a winding-up petition unless his shares, or some of them—
  - (a) were originally allotted to him;
  - (b) have been held by him, and registered in his name for at least six months; or
  - (c) have devolved on him by operation of law.
- (3) The court shall not hear a winding-up petition presented by a contingent or prospective creditor until—
  - (a) such security for costs has been given as the court thinks reasonable; and
  - (b) A *prima facie* case for winding-up has been established to the satisfaction of the court.
- (4) Where a company is being wound-up voluntarily, the court shall not make a winding-up order unless it is satisfied that the voluntary winding-up cannot be continued with due respect to the interests of the creditors or members.

## 272. Circumstances in which company may be wound up by court

- (1) The court may order the winding-up of a company on the petition of a person other than the Registrar if—
  - (a) the company has by special resolution resolved that it be wound-up by the court;
  - (b) the company does not commence its business within twelve months after its incorporation or suspends its business for twelve months;
  - (c) the company is unable to pay its debts;
  - (d) the period, if any, fixed for the duration of the company by the articles expires of the event, if any, occurs on the occurrence of which the articles provide that the company is to be dissolved;
  - (e) the number of members is reduced below two; or
  - (f) in the opinion of the court, it is just and equitable that the company should be wound-up.
- (2) The court may order the winding-up of a company on the petition of the Registrar on the grounds specified in paragraph (b), (d), (e or f) of subsection (1) or on the ground that the company has persistently failed to comply with any of the provisions of this Act.
- (3) For the purposes of this section, a company is unable to pay its debts if—
  - (a) there is due from the company to any creditor (including a creditor by assignment) an amount exceeding fifty monetary units, and—
    - (i) the creditor has, more than twenty-one days previously, served on the company a written demand under his hand requiring the company to pay the amount so due; and
    - (ii) the company has failed to pay the sum or to secure or compound it to the reasonable satisfaction of the creditor;
  - (b) execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
  - (c) the company is unable to pay its debts as they fall due.
- (4) 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.

**273. Commencement of winding-up by court**

- (1) Where, before the presentation of the 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 otherwise directs, all proceedings taken in the voluntary winding-up shall be deemed to have been validly taken.
- (2) In any other case the winding-up shall be deemed to have commenced at the time of the presentation of the petition for the winding-up of the company by the court.

**274. Payment of preliminary costs**

- (1) The person, other than the company itself or the liquidator thereof, on whose petition a winding-up order is made shall at his own cost prosecute all proceedings in the winding-up until a liquidator has been appointed.
- (2) The liquidator shall, unless the court orders otherwise, reimburse to the petitioner, out of the assets of the company, the taxed costs incurred by the petitioner in any such proceedings.
- (3) Where any winding-up order is made upon the petition of the company or the liquidator thereof, the costs incurred shall, subject to any order of the court, be paid out of the assets of the company in like manner as if they were the costs of any other petitioner.

**275. Powers of court on hearing petition**

- (1) On hearing a winding-up petition, the court may—
  - (a) dismiss it with or without costs;
  - (b) adjourn the hearing conditionally or unconditionally; or
  - (c) make any interim order or other order that it thinks fit;but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets or, in the case of a petition by a member, that there will be no assets available for distribution amongst the members.
- (2) The court may, on the petition's coming on for hearing or at any time on the application of the petitioner, the company, or any person who has given notice that he intends to appear on the hearing of the petition—
  - (a) direct that any notices be given or any steps taken before or after the hearing of the petition;
  - (b) dispense with any notices being given or steps being taken which are required by or under this Act, or by any prior order of the court;
  - (c) direct that oral evidence be taken on the petition or any matter relating thereto;
  - (d) direct a speedy hearing or trial of the petition or any issue or matter;
  - (e) allow the petition to be amended or withdrawn; and
  - (f) give such directions as to the proceedings as the court thinks fit.
- (3) Where the petition is presented by members on the ground that it is just and equitable that the company should be wound-up, and the court is of opinion that—
  - (a) the petitioners are entitled to relief either by winding-up the company or by some other means; and



- (b) in the absence of any other remedy, it would be just and equitable that the company should be wound-up; the court shall make a winding-up order unless it is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound-up instead of pursuing that other remedy.

## **276. Power to stay or restrain proceedings against company**

At any time after the presentation of a winding-up petition and before a winding-up order has been made, the company or the creditor or member may, where any action or proceeding against the company is pending, apply to the court to stay or restrain further proceedings in the action or proceeding, and the court may stay or restrain the proceedings accordingly on such terms as it thinks fit.

## **277. Avoidance of dispositions**

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 winding-up by the court shall be void unless the court otherwise orders.

## **278. Avoidance of attachments**

Any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of a winding-up by the court shall be void.

## **279. Copy of order to be registered**

- (1) Within fifteen days after the making of a winding-up order the petitioner shall—
  - (a) lodge a copy of the order with the Registrar;
  - (b) cause a copy to be served upon the secretary of the company or upon such other person or in such manner as the court directs;
  - (c) deliver a copy to the official receiver, if the official receiver has not been appointed as liquidator or if no liquidator has been appointed; and
  - (d) deliver a copy to the liquidator (if any) with a statement that the requirements of this subsection have been complied with.
- (2) Within fifteen days after receiving a copy of a winding-up order under subsection (1), the Registrar shall cause a notice of the making of the order to be published in the *Gazette*.
- (3) If the petitioner fails to comply with subsection (1), he shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

## **280. Provisional liquidator**

- (1) The court may appoint the official receiver or any other person to be liquidator provisionally at any time after the presentation of a winding-up petition and before the making of a winding-up order.
- (2) The provisional liquidator shall have and may exercise all the functions and powers of a liquidator subject to such limitations and restrictions as may be prescribed, or as the court specifies in the order appointing him.

## **281. Stay of actions**

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.

**282. Appointment and style of liquidator**

- (1) The court may in the winding-up order appoint a liquidator, or may give directions as to the appointment of a liquidator, by the members or creditors of a company or otherwise as it thinks fit.
- (2) If the order makes no direction as to the liquidator, the official receiver shall be the liquidator of the company.
- (3) Where a provisional liquidator has been appointed before the making of the winding-up order, he shall continue to act as such until he or another person becomes liquidator and is capable of acting as such.
- (4) Where no provisional liquidator has been appointed before the making of the winding-up order, the official receiver shall 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.
- (5) The official receiver shall be the liquidator during any vacancy or at any time when there is no liquidator capable of acting.
- (6) Any vacancy in the office of the liquidator appointed by the court may be filled by the court.
- (7) A liquidator appointed by the court may resign or on cause shown be removed by the court.
- (8) A liquidator shall be described, where a person other than the official receiver is liquidator, by the style of "the liquidator" or 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.
- (9) If more than one liquidator is appointed by the court, the court shall declare whether anything by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.
- (10) The Registrar shall, where a liquidator is appointed under subsection (1) or is released under section two hundred and ninety-one, cause the name, business address and details of appointment or release of the liquidator to be notified in the *Gazette* for public information.

*[subsection (10) added by section 22 of [Act 24 of 2011](#)]*

**283. Provisions where a person other than official receiver is appointed liquidator**

- (1) If a person other than the official receiver is appointed liquidator in the winding-up of a company by the court, that person—
  - (a) shall not be capable of acting as liquidator until he has lodged a notice of his appointment with the Registrar and given such security as may be directed by the court, or by the official receiver, to the satisfaction of the official receiver; and
  - (b) shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling the official receiver to perform his duties under this Act.
- (2) Paragraph (a) of subsection (1) shall not apply in the case of a provisional liquidator unless the court so orders.

**284. Control of liquidators by official receiver**

- (1) Where, in the winding-up of a company by the court, a person other than the official receiver is the liquidator, the official receiver shall take cognizance of his conduct and if the liquidator does not faithfully perform his duties and duly observe all the respect to the performance of his duties, or if any complaint is made to the official receiver by any creditor or member in regard thereto, the official receiver shall inquire into the matter, and take such action as he thinks fit.

- (2) The official receiver 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 apply to the court to examine him or any other person on oath concerning the winding-up.
- (3) An official receiver may—
  - (a) direct an investigation to be made of the books and vouchers of a liquidator;
  - (b) recommend the prosecution of a liquidator, where the official receiver reasonably believes that the liquidator has committed an offence under this Act; or
  - (c) recommend the disqualification of a person from carrying out the functions of a liquidator.

*[subsection (3) substituted by section 23 of [Act 24 of 2011](#)]*

## **285. Remuneration of liquidators**

- (1) Subject to section three hundred and forty-six A, a liquidator, other than the official receiver, shall be entitled to receive such salary or remuneration by way of commission or otherwise as is determined—
  - (a) by agreement between the liquidator and the committee of inspection, if any;
  - (b) by an extraordinary resolution passed at a meeting of creditors convened by the liquidator by a notice to each creditor to which was attached a statement of all receipts and expenditure by the liquidator and the amount of remuneration sought by the liquidator, failing an agreement or where there is no committee of inspection; or
  - (c) by the court, failing a determination under paragraph (a) or (b).

*[subsection (1) substituted by section 24 of [Act 24 of 2011](#)]*

- (2) Where the salary or remuneration of a liquidator is determined under paragraph (a) of subsection (1), the court may, on the application of one or more members whose shareholdings represent in total not less than five *per centum* of the issued capital of the company (or who, in the case of a company having no share capital, constitute not less than five *per centum* of the members), confirm or vary the determination.
- (3) Where the salary or remuneration of a liquidator is determined under paragraph (b) of subsection (1), the court may, on the application of the liquidator or one or more members as described in subsection (2), confirm or vary the determination.
- (4) Subject to any order of the court, the official receiver when acting as a liquidator or provisional liquidator of a company shall be entitled to receive such remuneration by way of commission or otherwise as may be prescribed.

## **286. Custody and vesting of company's property**

- (1) Where a winding-up order has been made or a provisional liquidator has been appointed, the liquidator or provisional liquidator shall take into his custody or under his control all the property and things in action to which the company is or appears to be entitled.
- (2) 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, and thereupon the property to which the order relates shall vest accordingly and the liquidator may, after giving such indemnity, if any, as the court directs, bring or defend any action or other legal proceedings which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding-up the company and recovering its property.

- (3) Where an order is made under this section, the liquidator of a company in relation to which the order is made shall within fifteen days after the making of the order—
  - (a) lodge a copy of the order with the Registrar; and
  - (b) in the case of property vested in the liquidator in respect of the transfer of which any written law provides for registration, deliver a copy of the order to the proper officer of the appropriate authority for the registration of the transfer, together with a written application to the officer for the registration of the order.
- (4) A liquidator who fails to comply with subsection (3) shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.
- (5) No vesting order referred to in this section shall have any effect or operation in transferring or otherwise vesting any such property as is referred to in paragraph (b) of subsection (3) until delivered to the appropriate authority as required by the written law.

## 287. Statement of company's affairs

- (1) Unless the court directs otherwise, the company shall, within three months of the appointment of a liquidator, prepare and submit to the liquidator a statement as to the affairs of the company as at the date of the winding-up order showing—
  - (a) the particulars of its assets, debts and liabilities;
  - (b) the names and addresses of its creditors;
  - (c) the securities held by each of the creditors;
  - (d) the dates when the securities were respectively given; and
  - (e) such further information as may be prescribed or as the liquidator requires.

*[subsection (1) amended by section 25 of [Act 24 of 2011](#)]*

- (2) The statement shall be verified by the statutory declaration of—
  - (a) at least one director as at the date of the winding-up order or;
  - (b) the secretary of the company at that date.
- (3) The liquidator, subject to the direction of the court, may by notice in writing, require a person—
  - (a) who is, or was within two years before the date of the winding-up order, an officer of the company; or
  - (b) who took part in the formation of the company, if the company was formed less than two years before the date of the winding-up order;to verify, by statutory declaration, such parts of the statement as he is in a position to verify.
- (4) The liquidator may serve a notice on a person under subsection (3) either personally or by sending it by post to the address of that person last known to the liquidator.
- (5) A person required to verify the statement shall, within fourteen days after receiving the notice or within such extended time as the liquidator or the court for special reasons specifies, submit a statutory declaration verifying those matters in the statement which he is in a position to verify and specifying any matters in the statement which in his opinion are incorrect.
- (6) Within seven days after receiving the statement or any statutory declaration under subsection (3), the liquidator shall cause copies to be—
  - (a) filed with the court;
  - (b) lodged with the Registrar; and

- (c) delivered to the official receiver, if the official receiver is not the liquidator.
- (7) Any person required under this section to verify the statement may be allowed, and be paid out of the assets of the company, such costs and expenses incurred in and relating to doing so as the liquidator considers reasonable, subject to an appeal to the court.
- (8) If a company fails to comply with subsection (1), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.
- (9) A person who fails to comply with subsection (5) shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two hundred and fifty monetary units or to imprisonment for a period not exceeding three months, or to both.
- (10) A statement made under this section may be used as evidence in any proceedings against any person making it.
- (11) A liquidator who fails to comply with subsection (6) shall be guilty of an offence, and shall be liable to a fine of three monetary units for each day that the failure continues.

## 288. Report by liquidator

- (1) A liquidator shall, not later than six months or such longer period as the court may allow after receipt of the statement of company affairs, submit to the court, the Registrar, the official receiver, the holder of the charge by virtue of which the liquidator was appointed and to any trustees for secured creditors of the company and, so far as the liquidator is aware of their address, a report on the state of affairs with respect to the property in liquidation, including—
  - (a) the amount of capital issued, subscribed and paid up and the estimated amount of assets and liabilities;
  - (b) the cause of the failure of the company, if it has failed;
  - (c) whether, in the opinion of the liquidator, further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company or the conduct of its business;
  - (d) particulars of assets comprising the property in liquidation;
  - (e) particulars of the debts and liabilities to be satisfied from the property in liquidation;
  - (f) the names and addresses of the creditors with an interest in the property in liquidation;
  - (g) particulars of any encumbrance over the property in liquidation held by any creditor including the date on which it was created;
  - (h) particulars of any default by the grantor in making relevant information available;
  - (i) the events leading up to the liquidator's appointment, so far as the liquidator is aware of them;
  - (j) the disposal or proposed disposal, by the liquidator, of any property of the company and the carrying on or proposed carrying on, by the liquidator, of any business of the company;
  - (k) the amount of the principal and interest payable to preferential creditors;
  - (l) the amount, if any, likely to be available for the payment of other creditors; and
  - (m) such other information as may be prescribed.

*[subsection (1) substituted by section 26(a) of [Act 24 of 2011](#)]*
- (2) The liquidator may also make further reports stating—
  - (a) the manner in which the company was formed;

- (b) whether in his opinion any fraud has been committed or any material fact has been concealed—
    - (i) by any person in its promotion or formation; or
    - (ii) by any officer in relation to the company since its formation;
  - (c) whether any officer of the company has contravened or failed to comply with any of the provisions of this Act; and
  - (d) any other matter which in his opinion it is desirable to bring to the notice of the court.
- (3) The Registrar may, where a liquidator—
- (a) does not submit a report under subsection (1), issue a reminder to the liquidator to submit the report within fourteen days of the receipt of the reminder; or
  - (b) does not comply with the notice issued by the Registrar under paragraph (a), cause the liquidator to be disqualified from acting as a liquidator by removing the liquidator from the register of liquidators.

*[subsection (3) added by section 26(a) of [Act 24 of 2011](#)]*

## **289. Powers of liquidator**

- (1) The liquidator may, during the four weeks following the date of the winding-up order, carry on the business of the company so far as is necessary for the satisfactory winding-up thereof.
- (2) The liquidator may, with the authority either of the court or of the committee of inspection—
  - (a) carry on the business of the company, so far as is necessary for the beneficial winding-up thereof, after the four weeks following the date of the winding-up order;
  - (b) pay any class of creditors in full, subject to section three hundred and forty-six;
  - (c) make any compromise or arrangement with creditors, persons claiming to be creditors, or persons having or alleging themselves to have any claim against the company, whether present or future, certain or contingent, ascertained or sounding only in damages or whereby the company may be rendered liable;
  - (d) compromise any debts and liabilities capable of resulting in debts and any claims of any kind, whether present or future, certain or contingent, ascertained or sounding only in damages, that subsist or are supposed to subsist between the company on the one hand and a member, a debtor or person apprehending liability on the other;
  - (e) make agreements on all questions in any way relating to or affecting the assets or the winding-up of the company; and
  - (f) take any security for the discharge of any such debt, liability or claim, and give a complete discharge in respect thereof.
- (3) For the purpose of winding-up the affairs of the company and distributing its assets the liquidator may—
  - (a) bring or defend any action or other legal proceeding in the name and on behalf of the company;
  - (b) compromise any debt due to the company, other than a debt due from a member, where the amount claimed by the company to be due to it does not exceed fifty monetary units;
  - (c) sell the real and personal property and things in action of the company by public auction, public tender or private contract either by transferring the whole thereof to any person or company or selling the same in parcels;

- (d) execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose use when necessary the company's seal;
  - (e) prove, rank and claim in the bankruptcy of any member or debtor for any balance against his estate, and receive dividends in the bankruptcy in respect of that balance as a separate debt due from the bankrupt and rateably with the other separate creditors;
  - (f) 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;
  - (g) raise on the security of the assets of the company any money necessary;
  - (h) take out letters of administration of the estate of any deceased member or debtor, and do any act necessary for obtaining payment of any money due from a member or debtor or his estate which cannot be conveniently done in the name of the company, in which case, for the purposes of enabling the liquidator to take out the letters of administration or recover the money, the money due shall be deemed due to the liquidator himself;
  - (i) appoint a legal practitioner to assist him in his duties;
  - (j) appoint an agent to do any business which the liquidator is unable to do himself;
  - (k) give notice of the winding-up in any jurisdiction where the company does business; and
  - (l) do all such other things as are necessary for winding-up the affairs of the company and distributing its assets.
- (4) The exercise by the liquidator of the powers conferred by this section shall be subject to the control of the court, and any creditor or member may apply to the court with respect to any exercise or proposed exercise of any of these powers.

## 290. Exercise and control of liquidator's powers

- (1) Subject to this Act, the liquidator shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions given by resolution of the creditors or members at any general meeting or by the committee of inspection, and any directions so given by the creditors or members shall in case of conflict override any directions given by the committee of inspection.
- (2) The liquidator may summon general meetings of the creditors or members for the purpose of ascertaining their wishes, and he shall summon meetings at such times as the creditors or members by resolution direct or whenever requested in writing to do so by—
  - (a) members whose shareholdings represent in total not less than one twentieth of the issued capital of the company, in the case of a company with share capital;
  - (b) not fewer than one tenth of the members, in the case of a company limited by guarantees; or
  - (c) creditors representing in the aggregate not less than one twentieth of the value of the creditors of the company.
- (3) The liquidator may apply to the court for directions in relation to any particular matter arising under the winding-up.
- (4) Subject to this Act, the liquidator shall use his own discretion in the management of the affairs and property of the company and the distribution of its assets.



**291. Release of liquidator and dissolution of company**

When the liquidator—

- (a) has realised all the property of the company or so much thereof as can in his opinion be realised without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors and adjusted the rights of the members among themselves and made a final return, if any, to the members; or
- (b) has resigned or has been removed from his office;

he may apply to the court for an order—

- (i) that he be released; or
- (ii) that he be released and that the company be dissolved.

**292. Orders for release or dissolution**

- (1) In deciding whether to grant an application under section two hundred and ninety-one, the court—
  - (a) may cause a report on the accounts of a liquidator (not being the official receiver) to be prepared by the official receiver or by an auditor appointed by the court; and
  - (b) shall take into consideration—
    - (i) the report;
    - (ii) any objection which is made against the release of the liquidator by the official receiver, auditor or any creditor or member or other person interested; and
    - (iii) whether the liquidator has complied with all the requirements of the court.
- (2) If the court does not grant the release of a liquidator, the court may, on the application of any creditor or member or person interested, if it thinks it just and equitable, make an order that the liquidator shall be liable to the person or persons concerned for any damages caused to them by any act or omission, or specified acts or omissions, the liquidator may have done or made contrary to his duty.
- (3) An order of the 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 any 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 from office.
- (5) Where the court has made—
  - (a) an order that the liquidator be released; or
  - (b) an order that the liquidator be released and that the company be dissolved;a copy of the order shall within twenty-one days after the making thereof be lodged by the liquidator—
  - (i) with the Registrar; and
  - (ii) with the official receiver, of the liquidator.
- (6) A liquidator who fails to comply with subsection (5) shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.



**293. Dissolution of the company**

Where the court has made an order that the company be dissolved, the Registrar shall, upon lodgement with him of a copy of the order, strike the name of the company off the register and notify the same in the *Gazette*, and the company shall thereupon be dissolved as at the date of the publication of the notice in the *Gazette*.

**294. Meetings to determine whether committee of inspection to be appointed**

- (1) The liquidator may, and if requested by any creditor or member shall, summon separate meetings of the creditors and members for the purpose of—
  - (a) determining whether or not the creditors or members require a committee of inspection to act with the liquidator;
  - (b) appointed members of the committee, if a committee is required.
- (2) If there is a difference between the determinations of the meetings of the creditors and members, the court shall decide the matter and make such order as it thinks fit.

**295. Constitution and proceedings of committee of inspection**

- (1) The committee of inspection shall consist of creditors and members of the company or persons holding—
  - (a) general powers of attorney from creditors or members; or
  - (b) special authorities from creditors or members authorising the persons named therein to act on such a committee;and shall be appointed by the meetings of creditors and members in such proportions as are agreed or, if there is no agreement, as are determined by the court.
- (2) The committee shall meet at such times and places as they from time to time decide, and the liquidator or any member of the committee may also call a meeting of the committee as he thinks necessary.
- (3) The committee may act by a majority of members present at a meeting, but shall not act unless a majority of the committee is 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—
  - (a) becomes bankrupt;
  - (b) assigns his estate for the benefit of his creditors or makes an arrangement with his creditors pursuant to any written law relating to bankruptcy; or
  - (c) is absent from five consecutive meetings of the committee without the prior leave or subsequent consent of a majority of those members who together with himself represent the creditors or members, as the case may be;his office shall thereupon 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 members, if he represents members, of which meeting seven days' notice in writing has been given stating the object of the meeting.

- (7) A vacancy in the committee may be filled by the appointment by the committee of the same or another creditor or member or person holding a general power or special authority as referred to in subsection (1).
- (8) The liquidator may at any time of his own motion, and shall within seven days after the request in writing of a creditor or member, summon a meeting of creditors or of members, as the case requires, to consider any appointment made under subsection (7), and the meeting may—
  - (a) confirm the appointment; or
  - (b) revoke the appointment and make another appointment.
- (9) The continuing members of the committee, if not fewer than two, may act notwithstanding any vacancy in the committee.

## 296. Power to stay winding-up

- (1) At any time after an order for winding-up has been made, the court may, on the application of the liquidator or of any creditor or member and if it is satisfied that all proceedings in relation to the winding-up ought to be stayed, make an order staying the proceedings either altogether or for a specified time on such terms and conditions as the court thinks fit.
- (2) On any such application the court may, before making an order, require the liquidator to furnish a report with respect to any facts or matters which are in his opinion relevant.
- (3) A copy of an order made under this section shall be lodged by the company with—
  - (a) the Registrar, and
  - (b) the official receiver;within twenty-one days after the making of the order.
- (4) If the company fails to comply with subsection (3), the company, and each officer in default, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.

## 297. Appointment of special manager

- (1) The liquidator may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or members generally, require the appointment of a special manager of the estate or business of the company other than himself, request the court to appoint a special manager of the estate or business to act during such time as the court directs with such powers, including any of the powers of a receiver or receiver and manager, as are entrusted to him by the court.
- (2) The special manager—
  - (a) shall give such security and account in such a manner as the court directs;
  - (b) shall receive such remuneration as is fixed by the court;
  - (c) may at any time resign after giving not less than one month's notice in writing to the liquidator of his intention to resign; and
  - (d) may, on cause shown, be removed by the court.

## 298. Claims of creditors and distribution of assets

- (1) The court may fix a date on or before which creditors are to prove their debts or claims and after which they will be excluded from the benefit of any distribution made.

- (2) The court shall adjust the rights of the members among themselves and distribute any surplus among the persons entitled thereto.
- (3) 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 fit.

### **299. Inspection of books by creditors and members**

The court may, at any time after making a winding-up order, make any order for inspection of the books and papers of the company by creditors and members that the court thinks fit, and any books and papers in the possession of the company may be inspected by creditors or members in accordance with the order.

### **300. Power to summon persons connected with company**

- (1) The court may 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.
- (2) The court may examine the officer or person on oath concerning the matters referred to in subsection (1) either orally or on written interrogatories and may reduce his answers to writing and require him to sign them.
- (3) Any writing so signed may be used in evidence in any legal proceedings against the officer or person.
- (4) The court may require him to produce any books and papers in his custody or power relating to the company, but, if he claims any lien on books or papers, the production shall be without prejudice to that lien, and the court shall have jurisdiction to determine all questions relating to that lien.
- (5) An examination under this section may, if the court so directs, be held before the Registrar of the High Court.
- (6) Any person summoned for examination under this section may at his own cost employ a legal practitioner who shall be at liberty to put to him such questions as the court thinks just for the purpose of enabling him to explain or qualify any answers given by him.
- (7) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful excuse made known to the court at the time of its sitting and allowed by it, the court may cause him to be apprehended and brought before the court for examination.

### **301. Power to order public examination**

- (1) Where the liquidator has made a report stating that, in his opinion—
  - (a) a fraud has been committed;
  - (b) any material fact has been suppressed or concealed by any person in the promotion or formation of the company or by any officer in relation to the company since its formation; or
  - (c) any officer of the company has failed to act honestly or diligently or has been guilty of any impropriety or recklessness in relation to the affairs of the company;

the court may, after consideration of the report, direct that—

- (i) the person or officer;

- (ii) any other person who was previously an officer of the company, or who is known or suspected to have in his possession any property of the company or is supposed to be indebted to the company; or
- (iii) any person whom the court thinks capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company;

shall attend before the court on a day appointed and be publicly examined as to the promotion or formation or the conduct of the business of the company, and, in the case of an officer or former officer, as to his conduct and dealings as an officer thereof.

- (2) The liquidator and any creditor or member may take part in the examination either personally or by a legal practitioner.
- (3) The court may put or allow to be put such questions to the person examined as the court thinks fit.
- (4) The person examined shall be examined on oath and shall answer all such questions as the court puts or allows to be put to him.
- (5) If a person directed to attend before the court under this section applies to the court to be exculpated from any charges made or suggested against him, the liquidator shall appear on the hearing of the application and call the attention of the court to any matters which appear to him to be relevant, and if the court, after hearing any evidence given or witnesses called by the liquidator, grants the application, the court may allow the applicant such costs as it thinks just.
- (6) A person ordered to be examined under this section—
  - (a) shall before his examination be furnished with a copy of the liquidator's report; and
  - (b) may at his own cost engage a legal practitioner, who shall be at liberty to put to him or any other person giving evidence such questions as the court thinks just.
- (7) Notes of the examination—
  - (a) shall be reduced to writing;
  - (b) shall be read over to or by and signed by the person examined;
  - (c) may thereafter be used in evidence in any legal proceedings against him; and
  - (d) shall at all reasonable times, be open to the inspection of any creditor or member.
- (8) The court may, if it thinks fit, adjourn the examination from time to time.
- (9) An examination under this section may, if the court so directs, be held before the Registrar of the High Court.
- (10) For the purposes of this section, "officer" includes a banker, legal practitioner or auditor of the company.

### **302. Power to arrest absconding member or officer**

- (1) The court, at any time before or after the making of a winding-up order, on proof of probable cause for believing that a member or officer or former member or officer of the company is about to—
  - (a) quit Zambia;
  - (b) otherwise to abscond; or

- (c) remove or conceal any of his property for the purpose of evading payment of any money due to the company or of avoiding examination respecting the affairs of the company;

may cause the member, officer or former member or officer to be arrested and his books and papers and movable personal property to be seized and him and them to be kept safely until such time as the court orders.

- (2) For the purposes of this section, "officer" includes a banker, legal practitioner or auditor of the company.

### **303. Powers of court cumulative**

Any powers by this Act conferred on the court shall be in addition to and not in derogation of any power of instituting proceedings against any member or debtor of a company or the estate of any member or debtor for the recovery of any debt or other sum.

## **13.3 – Voluntary winding-up**

### **304. Voluntary winding-up**

This Division shall apply to every voluntary winding-up of a company.

### **305. Circumstances in which a company may be wound-up voluntarily**

- (1) A company may be wound-up voluntarily if the company so resolves.
- (2) The resolution shall be a special resolution unless the period, if any, fixed by the articles for the duration of the company has expired or the event, if any, has occurred, on the occurrence of which the articles provide that the company is to be dissolved.
- (3) Upon the passing of a resolution for voluntary winding-up, the company shall within seven days thereafter lodge a copy of the resolution with the Registrar, and the Registrar shall within seven days after the lodgement cause notice thereof to be published in the *Gazette*.
- (4) If the company fails to comply with subsection (3), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

### **306. Commencement of voluntary winding-up**

For the purposes of this Act, a voluntary winding-up commences at the time of the passing of the resolution for voluntary winding-up.

### **307. Effect of voluntary winding-up**

- (1) The company shall from the commencement of the winding-up cease to carry on its business, except so far as in the opinion of the liquidator is required for the beneficial winding-up thereof, but the corporate state and corporate powers of the company shall continue until it is dissolved.
- (2) 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 after the commencement of the winding-up, shall be void.

### **308. Declaration of solvency**

- (1) Where it is proposed to wind-up a company voluntarily, the directors of the company may, before the date on which notices of the meeting at which the resolution for the winding-up of the company is to be proposed are sent out, at a meeting of directors make a written declaration to the effect that they have made a full inquiry into the affairs of the company, and have formed the

opinion that the company will be able to pay its debts and liabilities in full within a period specified in the declaration, being a period of not more than twelve months after the commencement of the winding-up.

- (2) There shall be attached to the declaration a statement of affairs of the company showing—
  - (a) the assets of the company, and the total amount expected to be realised therefrom;
  - (b) the liabilities of the company; and
  - (c) the estimated expenses of winding-up, made up to the latest practicable date before the making of the declaration.
- (3) The declaration shall have no effect for the purposes of this Act unless—
  - (a) it is made at the meeting of directors referred to in subsection (1);
  - (b) it is made less than five weeks before the passing of the resolution for voluntary winding-up; and
  - (c) it is lodged with the Registrar on or before the date on which the notices of the meeting at which the resolution for the winding-up of the company is to be proposed are sent out.
- (4) A director who makes 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 period stated in the declaration shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units or to imprisonment for a period not exceeding six months, or to both.
- (5) If the company is wound-up in pursuance of a resolution for voluntary winding-up passed within a period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed that the director did not have reasonable grounds for his opinion.

### **13.4 – Provisions applicable only to members' voluntary winding-up**

#### **309. Provisions applicable only to members' voluntary winding-up**

This Division shall apply to a members' voluntary winding-up of a company.

#### **310. Appointment of liquidator**

- (1) After the commencement of the winding-up of the company, the company shall by ordinary resolution appoint one or more liquidators for the purposes 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 the liquidator, all the powers of the directors shall cease except so far as the liquidator, or the company by ordinary resolution with the consent of the liquidator, approves the continuance thereof.
- (3) Subject to any direction of the court on the application of any member, creditor or liquidator, the company may, by special resolution, of which the requisite notice has been given not only to the members but also to the creditors and the liquidator, remove any liquidator.
- (4) If a vacancy occurs by resignation, removal or otherwise in the office of a liquidator, the company by ordinary resolution may fill the vacancy and for that purpose a general meeting may be convened by any member, or, if there were more liquidators than one, by the continuing liquidators.

#### **311. Duty of liquidator to call creditors**

- (1) If the liquidator is at any time of the opinion that the company will not be able to pay or provide for the payment of its debts in full within the period stated in the solvency declaration, he shall

forthwith convene a meeting of the creditors and lay before the meeting a statement of the assets and liabilities of the company.

- (2) The notice of the meeting shall draw the attention of the creditors to the right conferred upon them by subsection (3).
- (3) The creditors may, at the meeting convened under subsection (1), appoint some other person to be liquidator of the company instead of the liquidator appointed by the company.
- (4) Within seven days after a meeting has been held pursuant to subsection (1), the liquidator shall lodge with—
  - (a) the Registrar; and
  - (b) the official receiver;
 a notice that the meeting has been held, stating the decisions, if any, taken at the meeting.
- (5) Where the liquidator has convened a meeting under subsection (1), the winding-up shall thereafter proceed as if the winding-up were a creditors' voluntary winding-up, but the liquidator shall not be required to summon an annual meeting of creditors at the end of the first year from the commencement of the winding-up if the meeting held under subsection (1) was held less than three months before the end of that year.
- (6) A liquidator who fails to comply with subsection (1) or (4) shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

### 312. Staying of members' voluntary winding-up

- (1) At any time during the course of a voluntary winding-up prior to the dissolution of the company, the company may, by special resolution, resolve that the winding-up proceedings be stayed.
- (2) After the passing of the special resolution, application may be made to the court by the liquidator or any member of the company and the court may, in its discretion and subject to such terms and conditions as it thinks fit, order that the winding-up be stayed, that the liquidator be discharged, and that the directors resume the management of the company.
- (3) Not less than twenty-eight days' written notice of the hearing of any application to the court under subsection (2) shall be given by the applicant to the official receiver, to every director of the company, and to any liquidator of the company, and the official receiver shall cause a copy of the notice to be published in the *Gazette* not later than seven days before the hearing.
- (4) The official receiver and any director, liquidator, member or creditor of the company shall be entitled to appear on the hearing of the application and to call witnesses and give evidence.
- (5) If the court makes an order confirming the resolution, the company shall within twenty-one days thereafter lodge a copy of the order and resolution with the Registrar, who shall cause a notice thereof to be published in the *Gazette*.
- (6) On the publication of the notice, the winding-up shall cease and the company shall continue as a going concern subject to any terms or conditions in the order.
- (7) If the company fails to comply with subsection (5), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.

## 13.5 – Provisions applicable only to creditors' voluntary winding-up

### 313. Provisions applicable only to creditors' voluntary winding-up

This Division shall apply to a creditors' voluntary winding-up of a company.

### 314. Meetings of creditors

- (1) Where a resolution for the voluntary winding-up of a company has been proposed, and no declaration of solvency made, the company shall cause a meeting of the creditors of the company (in this section called "the meeting") to be convened for the day, or the day after the day, on which the meeting is to be held at which the resolution for voluntary winding-up is to put, or on which the resolution is expected to be passed under section one hundred and fifty-seven.
- (2) The company shall cause notice of the meeting of creditors to be sent to each creditor, being notice—
  - (a) not less than the notice to members of any meeting for the purposes of the resolution for voluntary winding-up; and
  - (b) in any case, of not less than seven days.
- (3) The notice to the creditors shall be accompanied by a statement showing the names of all creditors and the amounts of their claims.
- (4) The company shall cause notice of the meeting of the creditors to be published at least seven days before the date of the meeting in the *Gazette* and in any newspaper circulating generally in Zambia.
- (5) The company shall—
  - (a) cause a full statement of the company's affairs to be laid before the meeting of creditors, showing in respect of assets the method and manner in which the valuation of the assets was arrived at, together with a list of the creditors and the estimated amount of their claims; and
  - (b) appoint a director to attend the meeting.
- (6) The director so appointed and the secretary shall attend the meeting and disclose to the meeting the company's affairs and the circumstances leading up to the proposed winding-up.
- (7) The creditors at the meeting may appoint one of their number, or the director appointed under subsection (5), to preside at the meeting.
- (8) If the meeting of the company is adjourned and the resolution for winding-up is passed at an adjourned meeting, any resolution passed at the meeting of the creditors shall have effect as if it had been passed immediately after the passing of the resolution for winding-up.
- (9) The company shall nominate a liquidator for the company.
- (10) The creditors may, by ordinary resolution, nominate at the meeting a liquidator for the company.
- (11) If the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator.
- (12) If no person is nominated by the creditors, the person nominated by the company shall be liquidator.
- (13) Where different persons are nominated as liquidator, any director, member or creditor may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors.
- (14) If a liquidator, other than a liquidator appointed by or by the direction of the court, resigns or otherwise vacates that office, the creditors may fill the vacancy and, for that purpose, a meeting of the creditors may be summoned by any two of their number.
- (15) If the company fails to comply with subsection (1), (2), (3), (4) or (5), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.



- (16) If the nominated director or the secretary of the company fails to comply with subsection (6), he shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two hundred and fifty monetary units.

### **315. Appointment of committee of inspection**

- (1) There shall be a committee of inspection for the winding-up of a company if the creditors, at the meeting convened under section three hundred and eleven or three hundred and fourteen or at any subsequent meeting, so decide by ordinary resolution and appoint not more than five persons, whether creditors or not, to be members of the committee.
- (2) The company may, at the time of the passing of the resolution for voluntary winding-up is passed or at any time subsequently, by ordinary resolution, appoint not more than five persons to be, subject to this section, members of any committee of inspection.
- (3) The creditors may resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on any application to the court under this subsection the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.
- (4) Subject to this section, section two hundred and ninety-five shall apply with respect to a committee of inspection appointed under this section.

### **316. Fixing of liquidator's remuneration and vesting of directors' powers in liquidator**

- (1) The committee of inspection, or, if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator.
- (2) On the appointment of a liquidator, all the powers of the directors shall vest in the liquidator, and the powers and authority of every director shall cease, except so far as the committee of inspection, or, if there is no such committee, the creditors, sanction the continuance thereof.

### **317. Stay of proceedings**

- (1) Any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of a creditors' voluntary winding-up shall be void.
- (2) After the commencement of the winding-up, 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 directs.

## **13.6 – Provisions applicable to every voluntary winding-up**

### **318. Provisions applicable to every voluntary winding-up**

This Division shall apply to every voluntary winding-up of a company.

### **319. Distribution of property of company**

Subject to the provisions of this Act as to preferential payments, the property of a company shall, on its winding-up, be applied *pari passu* in satisfaction of its liabilities, and subject to that application shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

### **320. Review by court of liquidators appointment and remuneration**

- (1) If for any reason 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.
- (3) Any member or creditor or the liquidator may at any time before the dissolution of the company apply to the court to review the remuneration of the liquidator, and the decision of the court shall be conclusive.

### **321. Powers and duties of liquidators**

- (1) The liquidator may—
  - (a) with the approval of—
    - (i) a resolution of the company, in the case of a members' voluntary winding-up; or
    - (ii) the court or the committee of inspection, in the case of a creditors' voluntary winding-up;exercise any of the powers given by section two hundred and eighty-nine to a liquidator in a winding-up by the court;
  - (b) exercise any of the other powers by this Act given to the liquidator in a winding-up by the court; and
  - (c) convene meetings of the company for the purpose of obtaining the sanction of the company in respect of any matter or for any other purpose he thinks fit.
- (2) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as is determined at the time of their appointment, or in default of such a determination, by any number not less than two.

### **322. Power of liquidator to accept shares, etc., as consideration for sale of property of company**

- (1) Where it is proposed that the whole or part of the business or property of a company (in this section called "the company") be transferred or sold to another body corporate (in this section called "the corporation"), the liquidator may, with the approval of—
  - (a) a special resolution of the company, in the case of a members' voluntary winding-up; or
  - (b) the court or the committee of inspection, in the case of a creditors' voluntary winding-up;receive, in compensation or part compensation for the transfer or sale, fully paid shares, debentures or other like interests in the corporation for distribution among the members of the company or may enter into any other arrangement whereby the members of the company may, in lieu of receiving cash, shares, debentures or other like interests or in addition thereto, participate in the profits of or receive any other benefit from the corporation.
- (2) If, within one year after the date of the passing of such a special resolution, the winding-up becomes a winding-up by the court because of an order made under section two hundred and seventy-two, the transfer or sale and distribution or arrangement shall not be valid unless approved by the court.
- (3) Subject to this section, any transfer or sale and distribution or arrangement under this section shall be binding on the company and all the members thereof and each member shall be deemed to have agreed with the corporation to accept the fully-paid shares, debentures, or other like interests to which he is entitled under the distribution or arrangement.
- (4) If any member of the company, in respect of any shares held by him, expresses his dissent in writing addressed to the liquidator and served upon the liquidator within twenty-eight days after the passing of the special resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase the shares that he holds at a price to be determined by agreement or by arbitration in the manner provided by subsection (7).

- (5) If the liquidator elects to purchase the member's shares, the purchase money shall be paid before the company is dissolved and be raised by the liquidator in such manner as is determined by special resolution.
- (6) A special resolution shall not be valid for the purposes of this section unless it is passed before or concurrently with the resolution for voluntary winding-up.
- (7) For the purposes of an arbitration under this section—
  - (a) the Arbitration Act shall apply as if there were a submission for reference to two arbitrators, one to be appointed by each party.  
*[Cap. 41]*
  - (b) the appointment of an arbitrator may be made under the hand of the liquidator, or if there is more than one liquidator then under the hands of any two or more of the liquidators; and
  - (c) the court may give any directions necessary for the initiation and conduct of the arbitration and the directions shall be binding on the parties.
- (8) Nothing in this section shall authorise any variation or abrogation of the rights of any creditors of the company.

### 323. Annual meetings of members and creditors

- (1) If a winding-up continues for more than one year, the liquidator shall convene—
  - (a) a general meeting of the company, in the case of a members' voluntary winding-up; and
  - (b) separate meetings of the creditors and of the company, in the case of a creditors' voluntary winding-up;within three months after the end of the first year after the commencement of the winding-up and of each succeeding year, and shall lay before every such meeting an account of his acts and dealings and of the conduct of the winding-up during the preceding year.
- (2) In the case of a creditors' voluntary winding-up, the meeting of the company shall be held after, but not more than one month after, the meeting of the creditors.
- (3) A liquidator who fails to comply with this section shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

### 324. Final meeting and dissolution of company

- (1) As soon as the affairs of the company are fully wound-up, the liquidator shall make up a report showing how the winding-up has been conducted and the property of the company has been disposed of, and thereupon shall convene—
  - (a) a general meeting of the company, in the case of a members' voluntary winding-up; and
  - (b) separate meetings of the creditors and of the company, in the case of a creditors' voluntary winding-up;for the purpose of laying before the meetings the report and giving any explanation thereof.
- (2) In the case of a creditors' voluntary winding-up, the meeting of the company shall be held after, but not more than one month after, the meeting of the creditors.
- (3) A notice of the meetings shall be published in one issue of the *Gazette* and in one issue of a newspaper in general circulation throughout Zambia, which notice shall specify the time, place and object of each meeting and shall be published one month at least before each such meeting.

- (4) The liquidator shall, within seven days after the meeting or the later of the meetings, lodge with the Registrar and with the official receiver a return in the prescribed form of the holding of the meetings or meeting and of the date or dates thereof, with a copy of the report attached to the return.
- (5) The quorum at a meeting of the company shall be two members and at a meeting of the creditors shall be two creditors.
- (6) If a quorum is not present at a meeting, the liquidator shall, in lieu of the return referred to in subsection (4), lodge with the Registrar and the official receiver a return (with account attached) that the meeting or meetings were duly summoned and that no quorum was present thereat.
- (7) Upon the lodgement of the return, the Registrar shall strike the name of the company off the register and cause notice thereof to be published in the *Gazette*, and the company shall thereupon be dissolved as at the date of the publication of the notification in the *Gazette*.
- (8) A liquidator who fails to comply with this section shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

### **325. When an arrangement is binding on creditors**

- (1) Any arrangement entered into between a company about to be or in the course of being wound-up and its creditors shall, subject to the right of appeal under this section, be binding on the company if approved by a special resolution, and on the creditors if approved by a special resolution of the creditors.
- (2) Any dispute with regard to the value of any security or lien or the amount of a debt or set-off the subject of the arrangement may be settled by the court on the application of the company, the liquidator, or the creditor.
- (3) Any creditor or member may, within twenty-one days after the completion of the arrangement, appeal to the court against it, and the court may thereupon amend, vary or confirm the arrangement, as it thinks just.

### **326. Application to court to have questions determined or powers exercised**

- (1) The liquidator or any member or creditor may apply to the court—
  - (a) to determine any question arising in the winding-up of a company; or
  - (b) to exercise 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 exercise of power will be just or beneficial, may accede wholly or partially to any such application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

### **327. Costs**

All proper costs, charges and expenses of and incidental to 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.

### **328. Limitation on right to wind-up voluntarily**

Where a petition has been presented to the court to wind-up a company on the ground that it is unable to pay its debts, the company shall not resolve that it be wound-up voluntarily, except with the leave of the court.

### 13.7 – Provisions applicable to every mode of winding-up

#### 329. Provisions applicable to every mode of winding-up

This Division shall apply to every winding-up of a company.

#### 330. Meetings of creditors

The court may at any time during the course of a winding-up direct a meeting of the creditors of any class to be held and conducted in such manner as it thinks fit to consider such matters as it shall direct, and may give such ancillary or consequential directions as it thinks fit.

#### 331. Conduct of meetings of creditors

- (1) A person shall be accounted a creditor of a company for the purposes of a meeting of creditors under this Part if, upon an account fairly stated, after allowing the value of security or liens held by him and the amount of any debt or set-off owing by him to the company, there appears to be a balance due to him.
- (2) At a meeting of creditors, unless the court directs otherwise—
  - (a) each creditor shall have votes in proportion to amount of the balance apparently due to him by the company upon an account fairly stated, after allowing the value of security or liens held by him and the amount of any debt or set-off owing by him to the company; and
  - (b) sections one hundred and forty-six to one hundred and fifty-two shall apply with the necessary modifications.
- (3) Subject to this Part and to any direction by the court, fourteen days' notice of a meeting of creditors shall be given either personally or in a newspaper circulating generally in Zambia.

#### 332. Eligibility for appointment as liquidator

- (1) An individual who wishes to perform the function of a liquidator shall apply for accreditation with the Registrar in the prescribed manner and form.
- (2) The Minister shall prescribe—
  - (a) the qualifications for persons to be accredited under subsection (1); and
  - (b) the form of and procedure for issuance of accreditation certificates.
- (3) A person shall not be appointed to act or continue to act as a liquidator of the property or undertaking of a company if the person—
  - (a) is under the age of eighteen years;
  - (b) is under any legal disability;
  - (c) is prohibited or disqualified from so acting by any order of a court of competent jurisdiction;
  - (d) is a body corporate;
  - (e) is a mortgagee or chargee of the company or an employee or officer of the mortgagee or chargee;
  - (f) is an undischarged bankrupt;
  - (g) is a person who is, or has been within the previous two years, a director or officer of the company or any related body corporate, except with the leave of court;

- (h) has been a receiver of the company during the preceding three years;
  - (i) is removed from the register of liquidators kept by the Registrar in accordance with subsection (4); or
  - (j) is not eligible to be a liquidator or receiver under this Act.
- (4) The Registrar shall—
- (a) cause to be kept a register of liquidators in the prescribed manner and form; and
  - (b) notify a professional body of any misconduct of a liquidator or of any removal of a liquidator from the register of liquidators.

[section 332 substituted by section 27 of [Act 24 of 2011](#)]

### 333. Acts of liquidator valid

- (1) Subject to this Act, the acts of a liquidator shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.
- (2) Any conveyance, assignment, transfer, mortgage, charge or other disposition of a company's property made by a liquidator shall, notwithstanding any defect or irregularity affecting the validity of the winding-up or the appointment of the liquidator, be valid in favour of any person taking such property *bona fide* and for value and without notice of the defect or irregularity.
- (3) Every person making or permitting any disposition of property to any liquidator shall be protected and indemnified in so doing notwithstanding any defect or irregularity affecting the validity of the winding-up or the appointment of the liquidator not then known to the person.
- (4) For the purposes of this section a disposition of property includes a payment of money.

### 334. General provisions as to liquidators

- (1) A liquidator shall keep proper books at his office in which he shall cause to be made entries or minutes of proceedings at meetings and of such other matters, if any, as may be prescribed.
- (2) Any creditor or member may, subject to the control of the court, personally or by his agent inspect the liquidator's books at his office in accordance with section one hundred and ninety-three.
- (3) The court shall take cognizance of the conduct of liquidators, and if a liquidator does not faithfully perform his duties and observe the prescribed requirements or the requirements of the court, or if any complaint is made to the court by any creditor or member or by the official receiver in regard thereto, the court shall inquire into the matter and take such action as it thinks fit.
- (4) The Registrar or the official receiver may report to the court any matter which in his opinion is misfeasance, neglect or omission on the part of the liquidator, and the court may order the liquidator to make good any loss which the estate of the company has sustained thereby and make such other order as it thinks fit.
- (5) The court may at any time require a liquidator to answer any inquiry in relation to the winding-up and may examine him or any other person on oath concerning the winding-up, and may direct an investigation to be made of the books and vouchers of the liquidator.
- (6) The court may require any member, trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer to the liquidator or provisional liquidator forthwith, or within such time as the court directs, any money, property, books and papers in his hands to which the company is *prima facie* entitled.

- (7) Subject to the provisions of this Act, a liquidator shall act in good faith, not make a secret profit and avoid any conflict of interest.

*[subsection (7) added by section 28 of [Act 24 of 2011](#)]*

- (8) Except as otherwise directed by the court or by a resolution of creditors or members passed at a general meeting or by a committee of inspection, a liquidator shall—
- (a) dispose of company assets by public tender or the most transparent manner under the circumstances; and
  - (b) not less than twenty-one days before such disposal, furnish the Registrar with a notice, in the prescribed manner and form, of the intention to dispose of the assets.

*[subsection (8) added by section 28 of [Act 24 of 2011](#)]*

### **335. Powers of official receiver where no committee of inspection**

- (1) Where a person other than the official receiver is the liquidator and there is no committee of inspection, the official receiver may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Act authorised or required to be done or given by the committee.
- (2) Where the official receiver is the liquidator and there is no committee of inspection, the official receiver may in his discretion do any act or thing which is by this Act required to be done by, or subject to any direction or permission given by, the committee.

### **336. Appeal against decision of liquidator**

Any person aggrieved by any act or decision of the liquidator may apply to the court, which may confirm, reverse, or modify the act or decision complained of and make such order as it thinks just.

### **337. Notice of appointment and address**

- (1) A liquidator shall, within fourteen days after his appointment, lodge with the Registrar and with the official receiver notice of his appointment and of the situation of his office and of his postal address and, in the event of any change in the situation of his office or in his postal address, shall within twenty-one days after the change lodge with the Registrar and with the official receiver notice of the change.
- (2) Service made by leaving any document at the office of the liquidator given in such a notice, or by sending it in a properly addressed and prepaid registered letter posted to the postal address given in such a notice, shall be good service upon the liquidator and upon the company.
- (3) A liquidator shall, within twenty-one days after his resignation or removal from office, lodge notice thereof with the Registrar and with the official receiver.
- (4) If a liquidator fails to comply with this section, he shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

### **338. Liquidator's accounts**

- (1) A liquidator shall, within one month after—
  - (a) the end of the period of six months from the date of his appointment;
  - (b) the end of every subsequent period of six months; and

- (c) ceasing to act as liquidator or obtaining an order of release;

lodge with the Registrar and, if the liquidator is not the official receiver, with the official receiver, accounts of his receipts and payments and a statement of the position in the wind-up, verified by a statutory declaration.

- (2) The official receiver may cause the accounts of any liquidation to be audited by an auditor approved by him, and for the purpose of the audit the liquidator shall furnish the auditor with such vouchers and information as he requires, and the auditor may at any time require the production of and inspect any books or accounts kept by the liquidator.
- (3) A copy of the accounts or, if audited, a copy of the audited accounts, shall be kept by the liquidator at his office and shall there be open to the inspection of any member or creditor or of any other person interested in accordance with section one hundred and ninety-three.
- (4) The liquidator shall, when he is next forwarding any report or notice to the creditors and members generally—
  - (a) give notice to every member and creditor that the accounts have been prepared; and
  - (b) in the notice inform members and creditors that the accounts may be inspected at his office and state the times during which inspection may be made.
- (5) The cost of an audit under this section shall be fixed by the official receiver and be part of the expenses of winding-up.
- (6) A liquidator other than the official receiver who fails to comply with this section shall be guilty of an offence, and shall be liable to a fine not exceeding five hundred monetary units.

### 339. Notification that a company is in liquidation

- (1) Where a company is being wound-up, every invoice, order of goods or business letter issued by or on behalf of the company or a liquidator of the company or a receiver of any property of the company, being a document on or in which the name of the company appears, shall have the words, "in liquidation" added after the name of the company where it first appears therein.
- (2) If the company fails to comply with subsection (1), the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units in respect of each document.

### 340. Books of company

- (1) Where a company is being wound-up, all books and papers of the company and of the liquidator that are relevant to the affairs of the company at or subsequent to the commencement of the winding-up of the company shall, as between the members and creditors of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.
- (2) Subject to this section, when a company has been wound-up, the liquidator shall retain the books and papers referred to in subsection (1) (other than vouchers) for a period of seven years from the date of dissolution of the company.
- (3) The books and papers referred to in subsection (1) may be destroyed within a period of seven years after dissolution of the company—
  - (a) in accordance with the directions of the court, in the case of a winding-up by the court;
  - (b) as the company by resolution directs, in the case of a members' voluntary winding-up; and
  - (c) as the committee of inspection, or, if there is no such committee, as the creditors of the company direct, in the case of a creditors' voluntary winding-up.



- (4) A liquidator who fails to comply with subsection (2) shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units.
- (5) No responsibility shall rest on the company or the liquidator by reason of any such book or paper not being forthcoming to any person claiming to be interested therein if the book or paper has been destroyed in accordance with this section.

### 341. Investment of surplus funds

- (1) Whenever the cash balance standing to the credit of a company in liquidation is in excess of the amount which, in the opinion of the committee of inspection, is required for the time being to answer demands on the company, the committee may authorise the liquidator, unless the court on application by any creditor directs otherwise, to invest the sum or any part thereof in securities issued by the Government of Zambia or place it on deposit at interest with any bank, and any interest received in respect thereof shall form part of the assets of the company.
- (2) Where there is no committee of inspection, the liquidator, may form the opinion for the purposes of subsection (1), and the authorisation of the committee referred to in that section shall be dispensed with.
- (3) Whenever any part of the money so invested is, in the opinion of the committee of inspection, required to answer any demands in respect of the company's estate, the committee of inspection may direct the sale or realisation of such part of the securities as is necessary.
- (4) If there is no committee of inspection, subsection (2) shall apply as if a reference to the committee were a reference to the liquidator.

### 342. Unclaimed assets

- (1) Where a liquidator has in his hands or under his control—
  - (a) any unclaimed dividend or other moneys which have remained unclaimed for more than six months from the date when the dividend or other moneys became payable; or
  - (b) any unclaimed or undistributed moneys arising from the property of the company after making final distribution;

he shall forthwith pay those moneys to the official receiver to be placed to the credit of the Companies Liquidation Account and shall be entitled to a certificate or receipt for the moneys so paid, which certificate shall be an effectual discharge to him in respect thereof.

- (2) The court may at any time—
  - (a) on the application of the official receiver, order any liquidator to submit to it accounts of any unclaimed or undistributed funds, dividends or other moneys in his hands or under his control, verified by affidavit;
  - (b) direct an audit thereof; and
  - (c) direct the liquidator to pay those moneys to the official receiver to be placed to the credit of the Companies Liquidation Account.
- (3) This section shall not deprive any person of any other right or remedy to which he is entitled against the liquidator or any other person.
- (4) If a claimant makes any demand for any moneys placed to the credit of the Companies Liquidation Account, the official receiver, upon being satisfied that the claimant is the owner of the money, shall authorise payment thereof to be made to him out of the Account.
- (5) A person dissatisfied with the decision of the official receiver in respect of a claim made in pursuance of subsection (5) may appeal to the court, which may confirm, disallow or vary the decision.

- (6) Where any unclaimed moneys paid to any claimant are afterwards claimed by any other person, that other person shall not be entitled to any payment out of the Account, but such a person may have recourse against the claimant to whom the unclaimed moneys have been paid.
- (7) Any unclaimed moneys paid to the credit of the Companies Liquidation Account, to the extent to which they have not been under this section paid out of the Account, shall, on the expiration of six years from the date of the payment of the moneys to the credit of the account, be paid into the General Revenues of the Republic.

### **343. Expenses of winding-up where assets insufficient**

- (1) Unless expressly directed to do so by the official receiver pursuant to subsection (2), a liquidator shall not incur any expense in relation to the winding-up of a company unless there are sufficient available assets.
- (2) The official receiver may, on the application of any creditor or member, direct a liquidator to incur a particular expense on condition that the creditor or member indemnify the liquidator in respect of the recovery of the amount expended and, if the official receiver so directs, gives such security to secure the amount of the indemnity as the official receiver thinks reasonable.

### **344. Meetings to ascertain wishes of members or creditors**

- (1) The court may, as to all matters relating to the winding-up of a company, have regard to the wishes of the members or creditors as proved to it by any sufficient evidence, and may if it thinks fit for the purpose of ascertaining those wishes, direct meetings of the members or creditors to be convened, held and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof 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 members, regard shall be had to the number of votes held by each member under this Act or the articles.

### **345. Proof of debts**

- (1) In every winding-up, subject to this section, debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made so far as possible of the value of such debts or claims as are subject to any contingency or sound only in damages or for some other reason do not bear a certain value.
- (2) Subject to section three hundred and forty-six, the same rules shall apply in the winding-up of an insolvent company with regard to the respective rights of secured and unsecured creditors and debts provable and the valuation of annuities and future and contingent liabilities as apply in relation to the estates of bankrupt persons under the law relating to bankruptcy.

### **346. Preferential debts**

- (1) Subject to this Act, in a winding-up there shall be paid in priority to all other unsecured debts—
  - (a) the costs and expenses of the winding-up including the taxed costs of a petitioner payable under section two hundred and seventy-four, the remuneration of the liquidator, and the costs of any audit carried out pursuant to section three hundred and thirty-eight;
  - (b) all amounts due—
    - (i) by way of wages or salary (whether or not earned wholly or in part by way of commission) accruing to any employee within the period of three months before the commencement of the winding-up;

- (ii) in respect of leave accruing to any employee within the period of two years before the commencement of the winding-up;
    - (iii) in respect of any paid absence (not being leave) accruing to any employee within the period of three months before the commencement of the winding-up;
    - (iv) by way of recruitment expenses or other amounts reimbursable under any contract of employment;
  - (c) an amount equal to three months' wages or salary, by way of severance pay, to each employee;
  - (d) all amounts due in respect of workers' compensation under any written law relating to workers' compensation accrued before the commencement of the winding-up;
  - (e) any tax, duty or rate payable by the company in respect of any period prior to the commencement of the winding-up, whether or not payment has become due after that date;
  - (f) all Government rents not more than five years in arrears at the commencement of the winding-up; and
  - (g) all rates from the company to a local authority having become due and payable within the period of three years before the date of commencement of the winding-up.
- (2) Debts having priority shall rank as follows—
- (a) firstly, the debts referred to in paragraph (a);
  - (b) secondly, the debts referred to in paragraphs (b), (c) and (d);
  - (c) thirdly, the debts referred to in paragraphs (e) and (f);
  - (d) fourthly, the debts referred to in paragraph (g);
- of subsection (1).
- (3) Debts having the same priority shall rank equally between themselves, and shall be paid in full, unless the property of the company is insufficient to meet them, in which case they shall abate in equal proportions between themselves.
- (4) Where a payment has been made to any employee of the company on account of wages or salary out of money advanced by a person for that purpose, the person by whom the money was advanced 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 the employee would have been entitled to priority in the winding-up has been diminished by reason of the payment, and shall have the same right of priority in respect of that amount as the employee would have had if the payment had not been made.
- (5) So far as the assets of the company available for payment of general creditors are insufficient to meet any preferential debts specified in subsection (1) and any amount payable in priority by virtue of subsection (3), those debts shall have priority over the claims of the holders of debentures under any floating charge created by the company, and shall be paid accordingly out of any property comprised in or subject to that charge.
- (6) Where the company is, under a contract of insurance entered into before the commencement of the winding-up, insured against liability to third parties, then if any such liability is incurred by the company (either before or after commencement of the winding-up) and an amount in respect of that liability is or has been received by the company or the liquidator from the insurer, the amount shall, after deducting any expenses of or incidental to getting the amount, be paid by the liquidator to the third party in respect of whom the liability was incurred to the extent necessary to discharge that liability or any part of that liability remaining undischarged in priority to all payments in respect of the debts referred to in subsection (1).

- (7) If the liability of the insurer to the company is less than the liability of the company to the third party nothing in subsection (5) shall limit the third party in respect of the balance.
- (8) Subsections (5) and (6) shall have effect notwithstanding any agreement to the contrary entered into after the commencement of this Act.
- (9) Notwithstanding anything in subsection (1)—
  - (a) paragraph (d) of that subsection shall not apply in relation to the winding-up of a company in any case where—
    - (i) the company has entered into a contract with an insurer in respect of any liability under any law relating to workmen's compensation;
    - (ii) the company is being wound-up voluntarily merely for the purpose of reconstruction or of amalgamation with another company; and
    - (iii) the right to the compensation has, on the reconstruction or amalgamation, been preserved to the person entitled thereto; and
  - (b) where a company has given security for the payment or repayment of any amount to which paragraph (e), (f) or (g) of that subsection relates, that paragraph shall apply only in relation to the balance of any such amount remaining due after deducting therefrom the net amount realised from the security.
- (10) Where, in any winding-up—
  - (a) assets have been recovered under an indemnity for costs of litigation given by certain creditors;
  - (b) assets have been protected or preserved by the payment of moneys or the giving of indemnity by creditors; or
  - (c) expenses in relation to which a creditor has indemnified a liquidator have been recovered;

the court may make such order as it thinks just with respect to the distribution of those assets and the amount of those expenses so recovered with a view to giving those creditors an advantage over others in consideration of the risk run by them in so doing.
- (11) Subject to this Act, all debts proved in the winding-up shall be paid *pari passu*.
- (12) An amount paid to an employee under paragraph (c) of subsection (1) shall be deducted from any amount payable as severance pay due to the employee under any law or agreement.
- (13) This section shall be deemed to have commenced on 1st November, 1994.

[As amended by [Act No. 6 of 1995](#)]

### **346A. Remuneration of liquidator**

- (1) A liquidator shall be entitled to the payment of a fee which shall be a percentage of the gross proceeds of the realisation of the liquidation of the company.
- (2) Notwithstanding the generality of subsection (1), the rates payable to a liquidator shall not exceed such amount as may be prescribed.
- (3) A liquidator who collects a fee in excess of the prescribed fees shall be personally liable to reimburse the amount of the excess fees so collected.

[section 346A inserted by section 29 of [Act 24 of 2011](#)]

**347. Avoidance of preference**

- (1) Any conveyance, transfer, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company which, had it been made or done by or against an individual, would in his bankruptcy under the law of bankruptcy be void or voidable, shall, if the company is wound-up, be void or voidable in the same way.
- (2) For the purposes of this section, the date which corresponds with the date of presentation of the bankruptcy petition in the case of an individual shall be the date upon which the winding-up commenced.
- (3) Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

**348. Avoidance of floating charge**

A floating charge on the undertaking or property of the company created within twelve months before 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, or subsequently, in consideration for the charge, together with interest on that amount at the rate fixed by the terms of the charge.

**349. Liquidator's right to recover in respect of certain sales to or by company**

- (1) Where any property, business or undertaking has been acquired by a company within the period of two years before the commencement of the winding-up of the company—
  - (a) from a person who was at the time of the acquisition a director of the company; or
  - (b) from a second company of which, at the time of the acquisition, a person was a director who was also a director of the first company;

the liquidator may recover from the person or company from which the property, business or undertaking was acquired any amount by which the value of the consideration given exceeded the value of the property, business or undertaking at the time of its acquisition.

- (2) Where any property, business or undertaking has been sold by a company within the period of two years before the commencement of the winding-up of the company—
  - (a) to a person who was at the time of the sale a director of the company; or
  - (b) to a second company of which at the time of the sale a person was a director who was also a director of the first company; the liquidator may recover from the person or company to which the property, business or undertaking was sold any amount by which the value of the property, business or undertaking at the time of the sale exceeded the value of the consideration received.
- (3) For the purposes of this section the value of the property, business or undertaking includes the value of any goodwill or profits which might have been made from the business or undertaking and any similar consideration.

**350. Disclaimer of onerous property**

- (1) Where any part of the property of a company consists of—
  - (a) any estate or interest in land which is burdened with onerous covenants;
  - (b) shares in any body corporate that are subject to restrictions on transfer;
  - (c) unprofitable contracts; or

- (d) any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money;

the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, may, with the leave of the court or the committee of inspection and subject to this section, by writing signed by him, disclaim the property at any time within twelve months after—

- (i) the commencement of the winding-up; or
- (ii) the property in question came to the knowledge of the liquidator, if it did not do so within one month after the commencement of the winding-up;

or within such extended period as is allowed by the court.

- (2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests 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, alter the rights or liabilities of any other person.
- (3) The court or committee of inspection, 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 orders in the matter, as the court or committee thinks just.
- (4) The liquidator shall not disclaim if an application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such further period as is allowed by the court, given notice to the applicant that he intends to apply to the court or the committee for leave to disclaim.
- (5) In the case of a contract, if the liquidator, after an application referred to in subsection (4), does not within that period or further period disclaim the contract, the liquidator shall be deemed to have adopted it.
- (6) The court may, on the application of a 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 that person may be proved by him as a debt in the winding-up.
- (7) The court may, on the application of a person who claims an interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to—
  - (a) any person entitled thereto;
  - (b) any person to whom it seems just that the property should be delivered by way of compensation for such liability; or
  - (c) a trustee for such a person;on such terms as the court thinks just.
- (8) On any such vesting order being made and a copy thereof being lodged with—
  - (a) the Registrar;
  - (b) the official receiver; and

- (c) the appropriate authority concerned with the recording or registration of dealings in the land, if the order relates to land;

the property shall vest accordingly without any further conveyance, transfer or assignment.

- (9) Notwithstanding anything in subsection (7), 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, 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, as if the lease had comprised only the property comprised in the vesting order.

- (10) A mortgagee or under-lessee who declines to accept a vesting order on the terms referred to in subsection (9) shall be excluded from all interests in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the court may vest the estate and interest of the company in the property in any person liable personally or in a representative capacity and 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 therein by the company.
- (11) 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.

### **351. Restriction of rights of creditor as to execution or attachment**

- (1) Where a creditor has issued execution against the goods or land of a company or has attached any debt due to the company and the company is subsequently wound-up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator unless he has completed the execution or attachment before—
  - (a) the date on which he had any notice of a meeting at which a resolution for voluntary winding-up was to be proposed; or
  - (b) the date of the commencement of the winding-up, if he had no such notice.
- (2) A person who purchases in good faith under a sale by the sheriff any goods of a company on which an execution has been levied shall, in all cases, acquire a good title to them against the liquidator.
- (3) The rights conferred by subsection (1) 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 just.
- (4) For the purposes of this section—
  - (a) an execution against goods is completed by seizure and sale;
  - (b) an attachment of a debt is completed by receipt of the debt; and
  - (c) an execution against land is completed by sale or, in the case of an equitable interest, by the appointment of a receiver.
- (5) For the purposes of this section, "goods" includes all chattels personal.



**352. Duties of sheriff as to goods taken in execution**

- (1) Subject to subsection (3), where any goods of a company are taken in execution and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that—
  - (a) a provisional liquidator has been appointed;
  - (b) a winding-up order has been made; or
  - (c) a resolution for voluntary winding-up has been passed;the sheriff shall, on being required, deliver to the liquidator the goods and any money seized or received in part satisfaction of the execution.
- (2) The costs of the execution shall be a first charge on the goods or moneys so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.
- (3) Subject to this section, where, under an execution in respect of a judgement for a sum exceeding fifty monetary units, the goods of a company are sold or money is paid in order to avoid sale, the sheriff shall deduct the costs of the execution from the proceeds of the sale or the money paid, and shall retain the balance for fourteen days.
- (4) If, within that period of fourteen days, notice is served on him of an application 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, the sheriff shall, when an order is made or a resolution is passed for the winding-up, pay the balance to the liquidator who shall be entitled to retain it as against the execution creditor.
- (5) 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.
- (6) For the purposes of this section, "goods" includes all chattels personal.

**353. Offences by officers of companies in liquidation**

- (1) A person who, being a past or present officer or a past or present member of a company which is being wound-up—
  - (a) does not to the best of his knowledge and belief fully and truly reveal 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—
    - (i) all the real and personal property of the company in his custody or under his control and which he is required by law to deliver up; or
    - (ii) all books and documents in his custody or under his control belonging to the company and which he is required by law to deliver up;
  - (c) within twelve months before the commencement of the winding-up or at any time thereafter—
    - (i) has concealed any part of the property of the company having a value of more than ten monetary units, or has concealed any debt due to or from the company;
    - (ii) has fraudulently removed any part of the property of the company having a value of more than ten monetary units;



- (iii) has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of, any book or document affecting or relating to the property or affairs of the company;
- (iv) has made or has been privy to the making of any false entry in any book or document affecting or relating to the property or affairs of the company;
- (v) has fraudulently parted with, altered or made any omission in, or has been privy to fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company;
- (vi) by any false representation or other fraud, has obtained any property for or on behalf of the company on credit which the company has not subsequently paid for;
- (vii) has obtained on credit, or for or on behalf of the company, under the false pretence that the company is carrying on business, any property which the company has not subsequently paid for; or
- (viii) has pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for, except where the pawning, pledging or disposing was in the ordinary way of the business of the company;
- (d) makes any material omission in any statement relating to the affairs of the company;
- (e) knowing or believing that a false debt has been proved by any person, fails for a period of one month to inform the liquidator thereof;
- (f) prevents the production of any book or paper affecting or relating to the property or affairs of the company;
- (g) within the period of twelve months before the commencement of the winding-up or at any time thereafter has attempted to account for any part of the property of the company by fictitious losses or expenses; or
- (h) within the period of twelve months before the commencement of the winding-up or at any time thereafter has made any false representation or committed any other fraud for the purpose of obtaining 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 shall be liable on conviction to a fine not exceeding two thousand monetary units or to imprisonment for a period not exceeding two years, or to both.

- (2) It shall be a defence to a charge under paragraph (a), (b) or (d) or subparagraph (i), (vii) or (viii) of paragraph (c) of subsection (1) if the accused proves that he had no intent to defraud, and to a charge under paragraph (f) or subparagraph (iii) or (iv) of paragraph (c) 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 a person pawns, pledges or disposes of any property in circumstances which amount to an offence under subparagraph (viii) of paragraph (c) of subsection (1), every person who takes in pawn or pledge or otherwise receives the property, knowing it to be pawned, pledged or disposed of in those circumstances shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units or to imprisonment for a period not exceeding six months, or to both.

### 354. Inducement to be appointed liquidator

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 the appointment of the person, or of any other person, as the company's liquidator shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred monetary units or to imprisonment for a period not exceeding six months, or to both.

**355. Penalty for falsification of books**

Every officer or member of any company being wound-up who destroys, mutilates, alters or falsifies any books, documents or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book or document belonging to the company with intent to defraud or deceive any person shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two thousand monetary units or to imprisonment for a period not exceeding two years, or to both.

**356. Liability where proper accounts not kept**

If, when a company is wound-up, it is shown that the company failed to keep accounting records in accordance with section one hundred and sixty-two for any period during the period of two years before the commencement of the winding-up, each officer in default, unless he acted honestly and shows that in the circumstances in which the business of the company was carried on the failure was excusable, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding one thousand monetary units or to imprisonment for a period not exceeding twelve months, or to both.

**357. Liability for contracting debt**

- (1) If an officer of a company who is knowingly a party to the contracting of a debt by the company has, at the time the debt is contracted, no reasonable or probable ground of expectation (after taking into consideration the other liabilities, if any, of the company at the time) of the company's being able to pay the debt, the officer shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two hundred and fifty monetary units or to imprisonment for a period not exceeding three months, or to both.
- (2) Where a person has been convicted of an offence against this section, the court, on the application of the liquidator or any creditor or member of the company, may make an order that the person shall be personally responsible, without any limitation of liability, for the debts or other liabilities of the company or for such of those debts or other liabilities as the court directs.
- (3) An order under this section may provide for measures to give effect to the liabilities of the person under the order, and in particular may provide that those liabilities shall be a charge on any debt or obligation due from the company to him, or on any interest in the company of which he has, directly or indirectly, the benefit.
- (4) The court may make such further orders as it thinks necessary to enforce any charge imposed under this section.

**358. Power of court to assess damages against delinquent officers**

- (1) If, in the course of winding-up, it appears that any person who has taken part in the formation or promotion of the company, or any past or present liquidator or officer—
  - (a) has misapplied or retained, or become liable or accountable for, any money or property of the company; or
  - (b) has been guilty of any misfeasance or breach of trust or duty in relation to the company;the court may, on the application of the liquidator or of any creditor or member, inquire into the conduct of that person, liquidator or officer and compel him to repay or restore the money or property, or any part thereof, with interest at such rate as the court thinks just, or to contribute such a sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust or duty as the court thinks just.
- (2) This section shall apply to and in respect of the receipt of any money or property by an officer of the company during the two years preceding the commencement of the winding-up, whether by way of salary or otherwise, that appears to the court to be unfair or unjust.

- (3) This section shall apply to the conduct of a person notwithstanding that the person is criminally liable for the conduct.

### **359. Prosecution of delinquent officer and members**

- (1) If it appears to the court, in the course of either a winding-up by the court or a voluntary winding-up, that any past or present officer, or any member, of the company has been guilty of an offence in relation to the company for which he is criminally liable, the court may, either on the application of any person interested in the winding-up or of its own motion, direct the liquidator to report the matter to the Director of Public Prosecutions.
- (2) If—
- (a) it appears to the liquidator, in the course of a voluntary winding-up, that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable; or
  - (b) the liquidator in any winding-up is given a direction under subsection (1);
- he shall forthwith report the matter to the Director of Public Prosecutions and shall, in respect of information or documents in his possession or under his control which relate to the matter in question, furnish the Director of Public Prosecutions with such information and give to him such access to and facilities for inspecting and taking copies of any documents as he may require.
- (3) Where the Director of Public Prosecutions receives a report under this section, he may refer the matter to the Registrar for further inquiry, and the Registrar shall thereupon investigate the matter, and may apply to the court for an order conferring on any person designated by the court 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 the Director of Public Prosecutions institutes proceedings in a matter reported to him under this section, the liquidator and every officer and agent of the company past and present, other than the defendant in the proceedings, shall give the Director of Public Prosecutions all assistance in connection with the prosecution which he is reasonably able to give.
- (5) For the purposes of subsection (4) "agent of the company" includes any banker or legal practitioner of the company and any person appointed by the company as auditor.
- (6) If any person fails to comply with subsection (4), the court may, on the application of the Director of Public Prosecutions, direct that person to comply with that subsection, and where any application is made under this subsection 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 so to do, direct that the costs of the application shall be borne by the liquidator personally.

### **360. Frauds by officers of companies which have gone into liquidation**

A person who, while an officer of a company which is subsequently ordered to be wound-up by the court or which subsequently passes a resolution for voluntary winding-up—

- (a) induced any person to give credit to the company by false pretences or by means of any other fraud;
- (b) with intent to defraud creditors of the company, made or caused to be made any gift or transfer of charges on, or caused or connived at the levying of any execution against, the property of the company; or

- (c) with intent to defraud creditors of the company, concealed or removed any part of the property of the company within two months before the date of any unsatisfied judgement or order for payment of money obtained against the company;

shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two thousand monetary units or to imprisonment for a period not exceeding two years, or to both.

### 13.8 – Dissolution of defunct companies

#### 361. Power of Registrar to strike defunct company off register

- (1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he may send to the company by registered post a letter to that effect and also stating that, if an answer showing cause to the contrary is not received within one month from the date of the letter, a notice will be published in the *Gazette* with a view to dissolving the company under this section.
- (2) If the Registrar, at the expiration of the period of one month after the sending of the letter, is not satisfied that the company is carrying on business or is in operation, he may at any time thereafter cause to be published in the *Gazette* and send to the company by registered post a notice that at the expiration of three months from the date of that notice, unless cause is shown to the contrary, the company will be dissolved.
- (3) Where a company is being wound-up and the Registrar has reasonable cause to believe that—
  - (a) no liquidator is acting;
  - (b) the affairs of the company are fully wound-up and for a period of six months the liquidator has been in default in lodging any return required to be made by him;
  - (c) the affairs of the company have been fully wound-up and there are no assets, or the assets available are not sufficient to pay the costs of obtaining an order of the court dissolving the company; or
  - (d) the affairs of the company have been fully wound-up and that it is not necessary in the circumstances of the case to obtain an order of the court dissolving the company;

he may cause to be published in the *Gazette* and send to the company or the liquidator, if any, a notice to the same effect as that referred to in subsection (2).

- (4) Where a company—
  - (a) by ordinary resolution requests the Registrar to strike it off the register; and
  - (b) lodges with the Registrar a copy of the resolution, summary of accounts, and a statutory declaration of two or more directors showing what disposition the company has made of its assets and that the company has no debts or liabilities;

the Registrar shall cause to be published in the *Gazette* a notice to the same effect as that referred to in subsection (2).

- (5) After the expiration of three months from the publication in the *Gazette* of a notice under this section, the Registrar shall, unless cause to the contrary is shown, strike the name of the company off the register, and shall cause notice thereof to be published in the *Gazette*.
- (6) On the publication in the *Gazette* of the notice that name of the company has been struck off the register, the company shall be dissolved, but—
  - (a) the liability, if any, of every 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 which has been dissolved under this section.
- (7) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business.
- (8) The fees of the Registrar in respect of the dissolution of a company under this section and the costs incurred by him in publishing notices in the *Gazette* shall be payable by the company and recoverable from it.
- (9) The Registrar may, not less than five years after striking a defunct company off the register, re-issue the name of the company where a person seeks to apply for the registration of a company with the name that was struck off the register, in accordance with this Act.

*[subsection (9) added by section 30 of [Act 24 of 2011](#)]*

### **362. Power of court to declare dissolution of company void**

- (1) Where a company has been dissolved under section two hundred and ninety-three, three hundred and twenty-four or three hundred and sixty-one, the court may at any time within two years after the date of dissolution, on application by the liquidator of the company or by any other person who appears to the court to be interested, make an order upon such terms as the court thinks fit declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved, except that, for the purposes of any period of limitation, time shall not be deemed to run during the period between the dissolution and the date of the order, or of such other date as the order specifies.
- (2) The court may by the 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 company had never been dissolved.
- (3) The person on whose application the order is made shall, within seven days after the making of the order or such further time as the court may allow, lodge with the Registrar and with the official receiver a copy of the order, and the Registrar shall thereupon cause notice thereof to be published in the *Gazette* or otherwise as the court may direct.
- (4) If the person fails to comply with subsection (3), he shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding three monetary units for each day that the failure continues.

### **363. Registrar to act as representative of defunct company in certain events**

- (1) Where, after a company has been dissolved, the Registrar is satisfied—
  - (a) that the company, if still existing, would be legally or equitably bound to carry out, complete or give effect to some dealing, transaction or matter; and
  - (b) that in order to carry out, complete or give effect thereto, some purely administrative and not discretionary act should have been done by or on behalf of the company, or should be done by or on behalf of the company if it were still existing;
 the Registrar may, as representing the company or its liquidator; do or cause to be done any such act.
- (2) The powers of the Registrar under subsection (1) shall include the powers to execute or sign any relevant instrument or document, and the Registrar shall, when so executing or signing an instrument or document, endorse thereon a note or memorandum to the effect that he has done so under this section, and such an execution or signature shall have the same force, validity and effect as if the company had been in existence and had executed the instrument or document.
- (3) Neither the Registrar nor the Government shall incur any liability to any person by reason of any act done or caused to be done by the Registrar under this section.

## 13.9 – Winding-up of other bodies corporate

### 364. Winding-up of other Zambian bodies corporate

- (1) Subject to this section, this Part shall apply, with the necessary modifications, to any body corporate incorporated in Zambia, not being a company.
- (2) This section shall not apply to a body corporate incorporated by or under any written law of Zambia if the law makes specific provisions for the winding-up of bodies corporate formed by or under it.
- (3) A winding-up by the court under this section may be made only on the petition of the body corporate.

### 365. Winding-up of other foreign bodies corporate

- (1) In this section, "external company" means a body corporate incorporated in a foreign country, not being a foreign company, that has assets or an undertaking in Zambia.
- (2) Subject to this section, this Part shall apply with the necessary modifications to the operations and business and assets in Zambia of an external company, as if it were a company incorporated in Zambia, carrying on the operations or business of the external company in Zambia, whose only assets are the assets of the external company in Zambia.
- (3) An external company may be wound-up under this section whether or not it has been dissolved or has otherwise ceased to exist according to the law of the country of its incorporation.
- (4) An external company may be wound-up under this section on the following grounds in addition to those referred to in section two hundred and seventy-two:
  - (a) if it is in the course of being wound-up, voluntarily or otherwise, in the country of its incorporation;
  - (b) if it is dissolved in the country of its incorporation or has ceased to carry on business in Zambia, or is carrying on business for the purposes only of winding-up its affairs;
  - (c) if the court is of the opinion that the company is being operated in Zambia for any unlawful purposes.
- (5) The court may, in the winding-up order or on subsequent application by the liquidator, direct that all transactions in Zambia by or with the external company shall be deemed to be, or have been, validly done notwithstanding that they occurred after the date when the body corporate was dissolved or otherwise ceased to exist according to the law of the country of its incorporation, and may make the order on such terms and conditions as it deems fit.

## Part XIV – Miscellaneous

### 14.1 – Administration of Act

#### 366. Administration of Act

This Act shall be administered by the Agency.

*[section 366 substituted by section 5 of [Act 12 of 2010](#)]*

**367. Registrar**

The Registrar shall exercise the powers and perform the duties assigned to the Registrar by this Act and the Patents and Companies Registration Agency Act, 2010.

*[Act No. 15 of 2010]*

*[section 367 substituted by section 6 of Act 12 of 2010]*

**368. Seal**

- (1) The seal of the Agency kept in terms of the Patents and Companies Registration Agency Act, 2010, shall be used for the purposes of this Act and the impression thereof made for such purposes shall be judicially noticed.
- (2) On the commencement of this Act, any impression of a seal made for the purposes of this Act before the commencement of this Act shall be deemed to be an impression of the seal of the Agency

*[Act No. 15 of 2010]*

*[section 368 substituted by section 7 of Act 12 of 2010]*

**369. Keeping of registers and lodged documents**

- (1) The Registrar shall maintain the registers required under this Act together with any other registers that he thinks necessary or convenient for the purposes of this Act.
- (2) Where a document is lodged under this Act, the Registrar shall keep the document, or a copy thereof, and register it.
- (3) The registers and other documents may be recorded or stored in written or printed form or by electronic or photographic process or otherwise.
- (4) The Registrar shall ensure that, as far as practicable—
  - (a) all the particulars in the registers; and
  - (b) all the documents, or the copies thereof, lodged with the Registrar,in respect of a particular company can be made available to a person who requests them within two hours after the making of the request.
- (5) For the purposes of this section—
  - (a) the information in any register kept under the former Act shall, if it is information that would have been required to be kept on a register had this Act been in force, be deemed to be information required to be kept on a register under this Act; and
  - (b) any document lodged for the purposes of the former Act shall be deemed to be a document lodged under this Act.

**370. Registration of documents**

- (1) Where this Act requires any document or particulars to be lodged with the Registrar, the Registrar shall register them in the manner prescribed or, if no manner is prescribed for the document or particulars, as determined by the Registrar.
- (2) For the purposes of this Act, a document or particulars shall be deemed not to have been lodged with the Registrar until any fee prescribed under section three hundred and seventy-seven has been paid to the Registrar.



- (3) Subject to this Act, where this Act requires a document or particulars to be lodged under this Act, each company concerned shall lodge a separate document or set of particulars.
- (4) All documents and particulars which are lodged with the Registrar shall be printed or typewritten on good quality paper to the satisfaction of the Registrar.
- (5) If the Registrar is of opinion that any document or particulars lodged with him—
  - (a) contain matter or matters contrary to law;
  - (b) by reason of any error, omission or misdescription have not been duly completed;
  - (c) are insufficiently legible;
  - (d) are written on paper insufficiently durable; or
  - (e) otherwise do not comply with the requirements of this Act;he may refuse to register the document or particulars in that state and direct that they be amended or completed in a specified manner and re-submitted.
- (6) If the Registrar gives a direction under subsection (5), the document or particulars shall be deemed not to have been lodged.
- (7) The Registrar may require that a document or a fact stated in a document lodged with him shall be verified by statutory declaration.
- (8) Where the Registrar is required or permitted under this Act to cause a copy or particulars of a document lodged with him to be published in the *Gazette*, he may require the lodgement with him of any such document in duplicate, or the provision of any such particulars, and may withhold registration of the document until the requirement has been complied with.
- (9) The Registrar may alter a document if so authorised by the person who lodged the document or his representative.

### 371. Extension of time for lodgement

- (1) Where under this Act a document is required to be lodged with the Registrar within a specified period, the period shall be extended by fourteen days in relation to a document executed or made in a place outside Zambia.
- (2) The Registrar may, before the end of any period fixed for the lodgement of a document or particulars, at the request of the person concerned, extend the period for lodgement by such a period, and on such terms, as he thinks reasonable in the circumstances.
- (3) Subject to this section, where any document or particulars are lodged with the Registrar after the end of the period fixed for its lodgement, the Registrar shall accept it for registration upon payment of such additional fee as may be prescribed.
- (4) The Registrar may reduce or waive any additional fee imposed under subsection (3) if he is satisfied that the failure to lodge the document or particulars was caused or continued solely through administrative oversight and that no person is likely to have suffered damage or to have been prejudiced as a result of the failure.

### 372. Documents to be in approved language

- (1) Subject to this Act, where this Act requires a document or register to be prepared, kept, maintained or lodged, the document shall be in English.
- (2) Where the Registrar approves the lodgement of a document all or part of which is in a language other than English, he may require a certified translation into English to be annexed to it.



**372A. Notice by Registrar**

- (1) The Registrar may issue such notices in connection with matters under this Act for which notice is required to be given in order to give effect to this Act.
- (2) The Registrar shall take reasonable steps to ensure that a notice under subsection (1) is issued using a method that will ensure the widest possible circulation to the persons to which the notice is directed.
- (3) Unless otherwise provided, a notice issued by the Registrar under subsection (1) may be effected by—
  - (a) serving the notice at the address of the person to be notified;
  - (b) publication in a daily newspaper of general circulation in Zambia;
  - (c) display in a prominent public place;
  - (d) publication on the website of the Agency or any other appropriate third party website; or
  - (e) publication in the *Gazette*.

[section 372A inserted by section 31 of *Act 24 of 2011*]

**373. Prescribed forms**

- (1) Where this Act provides that a document to be lodged shall be "in the prescribed form", the Registrar shall accept for lodgement and registration a document that contains all the information required and varies from the prescribed form in inessential respects only.
- (2) In the period of six months from the commencement of this Act, where this Act provides that a document to be lodged shall be "in the prescribed form" and no form has been prescribed by the regulations for the purposes of the provision, the document shall be in a form approved by the Registrar.

**374. Inspection copies and evidence**

- (1) A person may inspect any document registered by the Registrar upon payment of such fee as may be prescribed for each inspection of the documents relating to one company.
- (2) On the payment of the appropriate prescribed fee, the Registrar shall provide a person with—
  - (a) a certificate of incorporation of a company;
  - (b) a certificate of share capital of a company; or
  - (c) a copy of any other document, or any part of any other document, registered by the Registrar;certified under the hand of the Registrar.
- (3) A document kept by the Registrar shall not be required to be produced for the purpose of any proceedings except by an order of the court.

**375. Evidentiary provisions**

- (1) A copy of, or extract from, any document registered by the Registrar, being a copy or extract certified by the Registrar to be a true copy or extract, shall be admitted in any proceedings as of equal validity to the original document.
- (2) In any proceedings, a court shall take judicial notice of the office of the Registrar.

- (3) A document purporting—
- (a) to be—
    - (i) an order, certificate, licence or approval made or issued by the Registrar for the purposes of this Act; or
    - (ii) a revocation of such an order, certificate, licence or approval; and
  - (b) to be sealed with the seal of the Registrar or to be signed by him, or on his behalf by a Deputy Registrar or other authorised officer;
- shall be presumed to be such a document, or to be duly sealed or signed.
- (4) A certificate signed by the Registrar that an order made, certificate issued, or act done is the order, certificate, or act of the Registrar shall be conclusive evidence or the fact certified.

### 376. Enforcement of duty to make returns

- (1) For the purpose of ascertaining whether a company or an officer is complying with this Act or any regulations made under this Act, the Registrar may, on giving fourteen days written notice to the company, call for the production of or inspect any book required to be kept by the company.
- (2) If a body corporate or any officer, receiver or liquidator of a body corporate;
- (a) fails to comply with any provision of this Act which requires it, or him, to lodge or deliver any return, account, or other document, or to give notice of any matter;
  - (b) continues to fail to comply with the provision for the period of fourteen days after the service of a notice on it or him requiring him to do so;

the court may, on an application by the Registrar or by any member or creditor of the body corporate, or by any other person claiming an interest which the court thinks sufficient, make an order directing the body corporate and any officer thereof, or the receiver or liquidator, to comply with the provision within such time as may be specified in the order, and may provide that all costs of and incidental to the application shall be borne by the body corporate or by any officer, receiver or liquidator of the body corporate responsible for the failure.

### 377. Fees

- (1) The regulations may prescribe fees in respect of—
- (a) the performance by the Registrar of his functions under this Act, including the receipt by him of any notice or other document which under this Act is required to be lodged with him; and
  - (b) the inspection of documents kept by him under this Act.
- (2) Where the regulations provide that an additional fee is payable, by reason of the late lodgement of a document for registration or otherwise, the Registrar may in his discretion remit the whole or any part of the additional fee.
- (3) Where the regulations provide that an additional fee is payable, by reason of the late lodgement of a document for registration or otherwise, the additional fee shall be payable notwithstanding that the company or any other person may be criminally liable in respect of the same act or omission.
- (4) Where a provision in this Act refers to a prescribed fee and no fee has been prescribed for the purposes of the provision, the provision shall be read as if the reference were omitted.
- (5) The Minister may, by statutory instrument exempt the payment of any fees, prescribed by regulations pursuant to subsection (1) in respect of any person or company lodging documents for

registration under this Act if such person or company has entered into a Development Agreement under section nine of the Mines and Minerals Act.

[Cap. 213]

[subsection (5) added by section 4 of [Act 1 of 2000](#)]

**378. \*\*\***

[section 378 repealed by section 8 of [Act 12 of 2010](#)]

**379. Appeal against a decision of the Registrar**

Subject to this Act, a person aggrieved by a decision of the Registrar may within fourteen days after the date on which he is notified of the decision, appeal to the court against the decision, and the court may confirm, reverse or vary the decision or make such order or give such directions in the matter as it thinks fit.

**380. Collection of information and statistics from companies**

- (1) The Registrar may issue an order requiring companies generally, or any class of companies, to furnish, by the time specified in the order, specified information or statistics with regard to their constitutions or working, in relation to periods specified in the order.
- (2) The Registrar may issue an order requiring a person, being a company or a person who is, or has at any time been, an officer or employee of the company, to furnish, by the time specified in the order, specified information or statistics with regard to the company's constitution or working, in relation to periods specified in the order.
- (3) An order under this section shall not have the effect of requiring a person to furnish any information less than fourteen days after the date on which the person was notified of the order.
- (4) An order under subsection (1) shall be published in the *Gazette* and may, as the Registrar thinks fit, be published in a newspaper or newspapers circulating generally in Zambia or served on individual companies.
- (5) An order under subsection (2) shall be served on the person subject to the order.
- (6) A person shall be deemed to have been notified of an order on the earliest of the following dates:
  - (a) the date on which the order was served on the person;
  - (b) the date on which the order was published in the *Gazette*;
  - (c) the date on which the order was published in a newspaper circulating generally in Zambia.
- (7) For the purpose of satisfying himself that any information or statistics furnished in pursuance of an order under this section is correct and complete, the Registrar may require a person subject to the order—
  - (a) to produce specified records or documents in his possession or under his control for inspection, before a specified officer and at a specified time; or
  - (b) to furnish specified further information or statistics within a specified time.
- (8) The Registrar may, in writing, authorise a person to make an inquiry—
  - (a) for the purpose of obtaining any information or statistics which a company has failed to furnish as required of it by an order under subsection (1); or

(b) for the purpose of—

- (i) satisfying the Registrar that any information or statistics furnished by a company in pursuance of an order made under subsection (1) is correct and complete; and
- (ii) obtaining such information or statistics as may be necessary or make the information or statistics furnished correct and complete;

and the person authorised shall, for the purposes of such an inquiry, have such powers as may be prescribed.

- (9) If a company fails to comply with an order under this section to provide information and statistics about itself, or knowingly furnishes any information or statistics which is incorrect or incomplete in any material respect, the company, and each officer in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two hundred and fifty monetary units or to imprisonment for a period not exceeding three months, or to both.
- (10) A person who wilfully fails to comply with an order under this section shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two hundred and fifty monetary units or to imprisonment for a period not exceeding three months, or to both.
- (11) For the purposes of this section, where a body corporate incorporated outside Zambia carries on business in Zambia having established an office within Zambia, a reference to a company in this section includes a reference to the body corporate in relation, and only in relation, to that business.

## 14.2 – Penalties and liabilities

### 381. Penalty for false statements

- (1) A person who, in any return, report, certificate, account or other document required by or for the purposes of this Act makes a statement that he knows to be false in any material particular shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding two thousand monetary units or to imprisonment for a term not exceeding two years, or to both.
- (2) This section shall not affect the liability of a body corporate or other person under another section of this Act or any other written law, but the penalties imposed by this section shall be alternative, and not additional, to any penalties imposed by the other section or written law.

### 382. Penalty for improper use of "Incorporated" or "Limited"

- (1) A person who, not being a body corporate, trades or carries on business in Zambia under a name or title which includes the word "incorporated", "corporation" or any contraction or imitation thereof, or any equivalent in a language other than English shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that he trades or carries on business under that name or title.
- (2) A person who, not being a body corporate whose members have limited liability under the laws of the country of its incorporation, trades or carries on business in Zambia under a name or title the last word of which is "limited" or any contraction or imitation thereof, or any equivalent in a language other than English, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that he trades or carries on business under that name or title.

### 383. Civil liability for fraudulent trading

- (1) In the course of the winding-up of a company or any proceedings against a company, the court may, on the application of the liquidator or any creditor or member of the company, if it is satisfied that a person was knowingly a party to the carrying on of any business of the company for a fraudulent purpose, make an order that the person shall be personally responsible, without any limitation

of liability, for the debts or other liabilities of the company or for such of those debts or other liabilities as the court directs.

- (2) An order under this section may provide for measures to give effect to the liabilities of the person under the order, and in particular may provide that those liabilities shall be a charge on any debt or obligation due from the company to him or on any interest in the company of which he has, directly or indirectly, the benefit.
- (3) The court may make such further orders as it thinks necessary to enforce any charge imposed under this section.
- (4) This section shall apply whether or not the person concerned has been convicted of an offence against section three hundred and eighty-four or of any other offence in respect of the matters on the ground of which the order is made.

### **384. Offence of fraudulent trading**

A person who is knowingly a party to the carrying on of any business of the company for a fraudulent purpose shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding one thousand monetary units or to imprisonment for a period not exceeding twelve months, or to both.

### **385. Imprisonment for failure to pay fine**

Where a court issues a warrant under section three hundred and eleven of the Criminal Procedure Code for the commitment of a person to prison for a failure by him to pay a fine imposed on him for an offence under this Act, the period of imprisonment specified in the warrant shall not exceed one day for every three monetary units of the fine that remain unpaid.

*[Cap. 160]*

### **386. Costs in actions by limited companies**

Where a body corporate with limited liability is a plaintiff in any legal proceedings, the court may, if the court is satisfied that there is reason to believe that the body corporate will be unable to pay the costs of the defendant if the defendant is successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

### **387. Contributions between joint wrongdoers**

Where more than one person is liable (whether as an officer of a body corporate or otherwise) to pay any damages, costs, compensation, debt or monetary penalty to an aggrieved party under, or in respect of any breach of, any section of this Act—

- (a) the persons shall have a right of contribution amongst themselves; and
- (b) in any action to enforce liability or in an action to recover contribution, the court may—
  - (i) award contribution on such terms as it considers equitable in all the circumstances; and
  - (ii) exempt any person from liability to make contribution or direct that the contribution to be recovered from any other person shall amount to a complete indemnity.

### **388. Power to grant relief from civil liability**

- (1) If the court is satisfied that a member, officer, receiver, liquidator, auditor, or trustee for debentures of a company might be civilly liable under this Act in respect of some matter, but that he had acted honestly and reasonably in the matter and that, having regard to all the circumstances or the case, he ought fairly to be excused, the court may relieve him in whole or in part from his liability on such terms as the court thinks fit.

- (2) Relief of a person under this section may be granted—
  - (a) in proceedings against the person in relation to the matter, or
  - (b) on the application of the person, if he has reason to apprehend that such proceedings may be instituted.

### **389. Exemption from liability for acts or omissions of public officers**

No person shall be liable to any action in damages for anything done or omitted to be done by any person in the exercise or performance of any power or function conferred or imposed on him by or under this Act unless the act or omission was in bad faith or was due to a want of reasonable care of diligence.

## **14.3 – Transitional provisions**

### **390. Certificates and documents made or lodged under former Act**

- (1) Any certificate or document made, executed, or issued under the former Act and in force and operative at the commencement of this Act, shall so far as it could have been made, executed, or issued under this Act, have effect as if made, executed or issued under this Act.
- (2) Any document that, in accordance with the former Act, was duly lodged by it with the Registrar, or duly registered by the Registrar, shall be deemed to have been duly lodged or registered under this Act.

### **391. Articles of existing companies**

- (1) An existing company shall be deemed to have, on and from the commencement of this Act, articles consisting of—
  - (a) those provisions of the memorandum of association and articles of association of the company, within the meaning of the former Act, which regulate the operation of the company and are not inconsistent with the former Act; and
  - (b) any provisions of Table A of the former Act which, under the former Act, applied to the company;

whether or not the articles so deemed are consistent with this Act.

- (2) The articles of an existing company under subsection (1) shall be valid, and this Act shall not apply to the company to the extent of any inconsistency with them, until—
  - (a) the company adopts new articles in accordance with subsection (3); or
  - (b) the last day of the first financial year of the company to commence after the commencement of this Act;

whichever is earlier.

- (3) An existing company shall, not later than the last day of the first financial year of the company to commence after the commencement of this Act, in accordance with section eight, adopt articles expressed in terms of and consistent with this Act.
- (4) Where an existing company has lodged with the Registrar new articles for the purposes of subsection (3), the Registrar shall issue to the company—
  - (a) a replacement certificate of incorporation; and
  - (b) a replacement certificate of share capital, in the case of a company with share capital;worded to meet the circumstances of the case.

- (5) An existing company shall not amend its articles unless, after the amendment, the articles are expressed in terms of and consistent with this Act.
- (6) Until subsection (3) has been complied with, an existing company may satisfy the requirements of section twenty-nine in relation to the articles of the company and the certificate of share capital by supplying to a member a copy of its memorandum of association and articles of association within the meaning of the former Act.
- (7) If an existing company fails to comply with subsection (3), the company, and each officer of the company in default, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten monetary units for each day that the failure continues.

### **392. Minimum capital for existing companies**

- (1) Section fifteen shall not apply to an existing company that is a public company from the commencement of this Act until—
  - (a) the end of the period of six months after the commencement of this Act; or
  - (b) it receives a certificate under subsection (2) of section fifteen;whichever is earlier, but the provisions of the former Act relating to minimum capital shall continue to apply to it during that period while it remains a public company.
- (2) An existing company that, immediately before the commencement of this Act, satisfied the provisions of that Act applying to the company relating to minimum capital, shall be deemed to satisfy section eighteen.

### **393. Registers, accounts etc., of existing companies**

- (1) The register of members of an existing company kept for the purposes of the former Act shall be deemed to be part of the register of members for the purposes of this Act.
- (2) Where both a provision of the former Act and a corresponding provision of this Act require a fund or account to be kept or opened, such a fund or account kept or opened by an existing company to satisfy the provision of the former Act shall be deemed to satisfy the corresponding provision of this Act.

### **394. Registration of charges**

Where an existing company has, immediately before the commencement of this Act, property which is subject to a charge of any kind, the company shall, within three months after the commencement of this Act—

- (a) enter in the register referred to in section ninety-seven the particulars referred to in that section in relation to each such charge; and
- (b) lodge with the Registrar a statement containing the particulars referred to in section ninety-nine in relation to each such charge to which that section applies.

### **395. Director's reports for existing companies**

Sections one hundred and seventy-seven to one hundred and eighty-one shall not apply to a directors' report in respect of a financial year of an existing company that began before the commencement of this Act.

### **396. Related bodies corporate of existing companies**

Section forty-four shall not apply to an existing company until the date on which it is required to lodge its first annual return after the commencement of this Act.

**397. Directors of existing companies**

- (1) A corporation which holds office as a director of an existing company immediately before the commencement of this Act shall, on that commencement, cease to hold office and the vacancy may be filled as a casual vacancy in accordance with this Act and the articles.
- (2) Where an existing company has, immediately before the commencement of this Act, a single director, the company shall not be required to appoint a second director until—
  - (a) the director vacates his office; or
  - (b) three months after the end of the first financial year of the company to be completed after the commencement of this Act.

**398. Bodies corporate formed outside Zambia with existing business in Zambia**

For the purposes of section two hundred and forty-six, a body corporate incorporated outside Zambia, being a body corporate which was not registered as a foreign company under the former Act but which, immediately before the commencement of this Act, had an established place of business in Zambia, shall be deemed to have established that place of business on the date of commencement of this Act.

**14.4 – General****399. Companies subject to other legislation**

Nothing in this Act shall abrogate or affect any special legislation relating to companies carrying on the business of banking, insurance or any other business.

**400. Regulations**

- (1) The Minister may, by statutory instrument, make regulations for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act, other than a matter required or permitted to be prescribed by the Minister or any other person or body.
- (2) Without limiting the generality of subsection (1), such regulations may be made on the following matters;
  - (a) the conduct of the business of the office of the Registrar;
  - (b) the form and content of any application, notice, return, account, book, record, certificate, licence or other document required for the purposes of this Act;
  - (c) the payment of fees and charges in respect of any matter or anything done or supplied under this Act;
  - (d) the procedure to be followed in connection with any application or request to the Registrar or any proceeding before him;
  - (e) the provision of copies of any documents under this Act, and the certification of such copies;
  - (f) the making of inspections and searches under this Act, including the times when they may be made;
  - (g) the conduct of any winding-up or other proceeding or transaction under this Act;
  - (h) the service of notices and other documents under this Act;
  - (i) any matter necessary or convenient to be provided for in relation to the transition between the former Act and this Act.



- (3) The regulations may be made so as—
- (a) to make prescription vary depending on the circumstances;
  - (b) to be of general or specifically limited application; or
  - (c) to permit any matter to be determined from time to time by any person or body specified in the regulations.

#### 401. Rules of court

The Chief Justice may make Rules of Court governing the practice and procedure for the winding-up of companies in Zambia and with respect to the procedure in any application to the court under this Act, and enabling all or any of the powers and duties conferred and imposed on the court in respect of the winding-up of companies to be exercised or performed by the Registrar or by the official receiver, or by the liquidator as an officer of the court and subject to the control of the court.

#### 402. Repeal of former Act

The Companies Act is hereby repealed.

*[Cap. 686 of the former edition]*

### First Schedule (Section 2)

#### Standard Articles

#### *Regulations for management of a company limited by shares*

#### 1 - Interpretation

1. (1) In these regulations, unless the context otherwise requires:
- "**Act**" means the Companies Act, 1994;
  - "**prescribed rate of interest**" means the rate of interest prescribed in regulations made under the Act for the purposes of the Standard Articles;
  - "**seal**" means the common seal of the company and includes any official seal of the company;
  - "**resolution**" means an ordinary resolution of the company;
  - "**secretary**" means any person appointed to perform the duties of a secretary of the company.
- (2) Unless the context otherwise requires an expression, if used in a provision of these regulations that deals with a matter dealt with by a particular provision of the Act, has the same meaning as in that provisions of the Act.

#### 2 - Share capital and variation of rights

2. Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, but subject to the Act, shares in the company may be issued by the directors and any such share may be issued with such preferred deferred or other special rights or such restrictions, whether with regard to dividend, voting, return of capital or otherwise, as the director, subject to a resolution, determine.
3. The directors shall not issue any rights or options to shares in favour of any persons unless the issue has been authorised at a general meeting by a special resolution.

4. Subject to the Act, any preference shares may, with the sanction of a resolution, be issued on the terms that they are, or at the option of the company are liable to be redeemed.
5.
  - (1) 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, whether or not the company is being wound-up, be varied with the consent in writing of the holders of three-quarters of the issued shares of that class, or with the sanction of a special resolution passed at a separate meeting of the holders of the shares of the class.
  - (2) The provisions of the Act and these regulations relating to general meetings apply so far as they are capable of application and with the necessary modifications to every such class meeting except that —
    - (a) where a class has only one member-that member shall constitute a meeting;
    - (b) in any other case- a quorum shall be constituted by two persons who, between them, hold or represent by proxy one-third of the issued shares of the class; and
    - (c) any holder of shares of the class, present in person or by proxy, may demand a poll.
  - (3) The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall, unless otherwise expressly provided by the terms of issue of the shares of that class, be varied by the creation or issue of further shares ranking equally with the first-mentioned shares.
6.
  - (1) The Company may make payments by way of brokerage or commission on the issue of shares.
  - (2) Such payments shall not exceed the rate of 10 per cent of the price at which the shares are issued or an amount equal to 10 per cent of that price, as the case may be.
  - (3) Such payments may be made in cash, by the allotment of fully or partly paid shares or partly by the payment of cash and partly by the allotment of fully or partly paid shares.
7.
  - (1) Except as required by law, the company shall not recognise a person as holding a share upon any trust.
  - (2) The company shall not be bound by or compelled in any way to recognise (whether or not it has notice of the interest or rights concerned) any equitable, contingent, future or partial interest in any share or unit of a share or (except as otherwise provided by these regulations or by law) any other right in respect of a share except an absolute right of ownership in the registered holder.
8.
  - (1) A person whose name is entered as a member in the register of members shall be entitled without payment to receive a certificate in respect of the share under the seal of the company in accordance with the Act but, in respect of a share or shares held jointly by several persons, the company shall not be bound to issue more than one certificate.
  - (2) Delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.
  - (3) If a share certificate is defaced, lost or destroyed, it may be renewed on payment of the fee allowed by the Act, or such lesser sum, and on such terms (if any) as to evidence and the payment of costs to the company of investigating evidence as the directors decide.

### 3 - Calls on shares

9.
  - (1) The directors may make calls upon the members in respect of any money unpaid on the shares of the members (whether on account of the nominal value of the shares or by way of premium) and not by the terms of issue of those shares made payable at fixed times, except that no call shall exceed one-quarter of the sum of nominal values of the shares or be payable earlier than one month from the date fixed for the payment of the last preceding call.

- (2) Each member shall, upon receiving at least fourteen days notice specifying the time or times and place of payment, pay to the company, at the time or times and place so specified the amount called on his shares.
  - (3) The directors may revoke or postpone a call.
- 10. A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed and may be required to be paid by instalments.
  - 11. The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.
  - 12. If a sum called in respect of a share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment of the sum to the time of actual payment at such rate not exceeding the prescribed rate of interest as the directors determine, but the directors may waive payment of that interest wholly or in part.
  - 13. Any sum that, by the terms of issue of a share, becomes payable on allotment or at a fixed date, whether on account of the nominal value of the share or by way of premium, shall for the purposes of these regulations be deemed to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable, and, in case of non-payment, all the relevant provisions of these regulations as to payment of interest and expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.
  - 14. The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.
  - 15.
    - (1) The directors may accept from a member the whole or a part of the amount unpaid on a share although no part of that amount has been called up.
    - (2) The directors may authorise payment by the company of interest upon the whole or any part of an amount so accepted, until the amount becomes payable, at a rate agreed upon between the directors and the member paying the sum subject to subregulation (3).
    - (3) For the purposes of subregulation (2), the rate of interest shall not be greater than—
      - (a) if the company has, by resolution, fixed a rate-rate the so fixed; and
      - (b) in any other case the prescribed rate of interest.

#### 4 - Lien

- 16.
  - (1) The company has a first and paramount lien on every share (not being a fully paid share) for all money (whether presently payable or not) called or payable at a fixed time in respect of that share.
  - (2) The company also has a first and paramount lien on all shares (other than fully paid shares) registered in the name of a sole holder for all money presently payable by him or his estate to the company.
  - (3) The directors may at any time exempt a share wholly or in part from the provisions of this regulation.
  - (4) The company's lien (if any) on a share extends to all dividends payable in respect of the share.

#### 5 - Forfeiture of shares

- 17.
  - (1) If a member fails to pay a call or instalment of a call on the day appointed for payment of the call or instalment, the directors may, at any time thereafter during such time as any part of the 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 that has accrued.

- (2) The notice shall name a further day (not earlier than the expiration of fourteen days from the date of service of the notice) on or before which the payment required by the notice is to be made and shall state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.
- 18. (1) If the requirements of a notice served under regulation [17](#) 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.
- (2) Such a forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.
- 19. 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.
- 20. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall remain liable to pay to the company all money that, at the date of forfeiture, was payable by him to the company in respect of the shares (including interest at the prescribed rate of interest from the date of forfeiture on the money for the time being unpaid if the directors think fit to enforce payment of the interest), but his liability shall cease if and when the company receives payment in full of all the money (including interest) so payable in respect of the shares.
- 21. A statement in writing declaring that the person making the statement is a director or a secretary of the company, and that a share in the company has been duly forfeited on a date stated in the statement, shall be *prima facie* evidence of the facts stated in the statement as against all persons claiming to be entitled to the share.
- 22. (1) The company may receive the consideration (if any) given for a forfeited share on any sale or disposition of the share and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of.
- (2) Upon the execution of the transfer, the company shall register the transferee as the holder of the share.
- (3) The transferee shall not be bound to see to the application of any money paid as consideration.
- (4) The title of the transferee to the share shall not be affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the share.
- 23. The consideration referred in regulation [22](#) shall be applied by the company in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue (if any) shall (subject to any like lien for sums not presently payable that existed upon the shares before the sale) be paid to the person entitled to the shares immediately before the transfer.
- 24. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum that, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the shares or by way of premium, as if that sum had been payable by virtue of a call duly made and notified.

## 6 - Transfer of shares

- 25. (1) Subject to these regulations, a member may transfer all or any of his shares by instrument in writing in a form prescribed for the purposes of section fifty-seven of the Act or in any other form that the directors approve.
- (2) An instrument of transfer referred to in subregulation [\(1\)](#) shall be executed by or on behalf of both the transferor and the transferee.

26. The instrument of transfer shall be left for registration at the registered office of the company, together with such fee (if any) not exceeding two monetary units as the directors require, accompanied by the certificate of the shares to which it relates and such other information as the directors properly require to show the right of the transferor to make the transfer, and thereupon the company shall subject to the powers vested in the directors by these regulations, register the transferee as a shareholder.
27. The directors may decline to register a 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.
28. The directors may refuse to register any transfer that is not accompanied by the appropriate share certificate, unless the company has not yet issued the share certificate or is bound to issue a renewal or copy of the share certificate.
29. The registration of transfers may be suspended at such times and for such periods as the directors from time to time determine, provided that the periods do not exceed in the aggregate thirty days in any year.

## 7 - Transmission of shares

30. In the case of the death of a member, the survivor where the deceased was a joint holder, and the legal personal representatives of the deceased where he was a sole holder, shall be the only persons recognised by the company as having any title to his interest in the shares, but this regulation does not release the estate of a deceased joint holder from any liability in respect of a share that had been jointly held by him with other persons.
31.
  - (1) Subject to any written law relating to bankruptcy, a person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such information being produced as is properly required by the directors, elect either to be registered himself as holder of the share or to have some other person nominated by him registered as the transferee of the share.
  - (2) If the person becoming entitled elects to be registered himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects.
  - (3) If he elects to have another person registered, he shall execute a transfer of the share to that other person.
  - (4) All the limitations, restrictions and provisions of these regulations relating to the right to transfer, and the registration of the transfer of share are applicable to any such notice or transfer as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.
32.
  - (1) Where the registered holder of a share dies or becomes bankrupt, his personal representatives or the trustee of his estate, as the case may be, shall be upon the production of such information as is properly required by the directors, entitled to the same dividends and other advantages, and to the same rights (whether in relation to meetings of the company, or to voting or otherwise), as the registered holder would have been entitled to if he had not died or become bankrupt.
  - (2) Where two or more persons are jointly entitled to any share in consequence of the death of the registered holder, they shall, for the purposes of these regulations, be deemed to be joint holders of the shares.

## 8 - Conversion of shares into stock

33. The company may, by resolution, convert all or any of its paid up shares into stock and reconvert any stock into paid up shares of any nominal value.

34. (1) Subject to subregulation (2), where shares have been converted into stock, the provisions of these rules relating to the transfer of shares apply, so far as they are capable of application, to the transfer of the stock or of any part of the stock.
- (2) The directors may 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 aggregate of the nominal values of the shares from which the stock arose.
35. (1) The holders of stock shall have, according to the amount of the stock held by them, the same rights, privileges and advantages as regards dividends, voting at meetings of the company and other matters as they would have if they held the shares from which the stock arose.
- (2) No privilege or advantage shall be conferred by any amount of stock that would not, if existing in shares, have conferred that privilege or advantage.
36. The provisions of these regulations that are applicable to paid up shares shall apply to stock, and references in those provisions to share and shareholder shall be read as including references to stock and stockholder, respectively.

## 9 - Alteration of capital

37. The company may by resolution—
- (a) increase its authorised share capital by the creation of new shares of such amount as is specified in the resolution;
- (b) consolidate and divide all or any of its authorised share capital into shares of larger amount than its existing shares;
- (c) subdivide all or any of its shares into shares of smaller amount than is fixed by the certificate of share capital, but so that in the subdivision the proportion between the amount paid and the amount (if any) unpaid on each such share of a smaller amount is the same as it was in the case of the share from which the share of a smaller amount is derived; and
- (d) cancel shares that, at the date of passing of the resolution, have not been taken or agreed to be taken by any person or have been forfeited, and reduce its authorised share capital by the amount of the shares so cancelled.
38. (1) Subject to any resolution to the contrary, all unissued 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 allow, to the sum of the nominal values of the shares already held by them.
- (2) The offer shall be made by notice specifying the number of shares offered and delimiting a period within which the offer, if not accepted, will be deemed to be declined.
- (3) After the expiration of that period or on being notified by the person to whom the offer is made that he declines to accept the shares offered, the directors may issue those shares in such manner as they think most beneficial to the company.
- (4) Where, by reason of the proportion that shares proposed to be issued bear to shares already held, some of the first-mentioned shares cannot be offered in accordance with sub-regulation (1), the directors may issue the shares that cannot be so offered in such manner as they think most beneficial to the company.
39. Subject to the Act, the company may, by special resolution, reduce its share capital, any capital redemption reserve fund or any share premium account.

## 10 - General meetings

40. (1) A director may, whenever he thinks, fit, convene a general meeting.
- (2) If no director is present within Zambia, any two members may convene a general meeting in the same manner, or as nearly as possible, as that in which such meetings may be convened by a director.
- (3) A general meeting shall be held in Zambia unless all the members entitled to vote at that meeting agree in writing to a meeting at a place outside Zambia.
41. (1) A notice of a general meeting shall specify the place, the day and the hour of meeting and, except as provided by subregulation (2), shall state the general nature of the business to be transacted at the meeting.
- (2) It shall not be necessary for a notice of an annual general meeting to state that the business to be transacted at the meeting includes the declaring of a dividend, the consideration of annual accounts and the reports of the directors and auditors, the election of directors in the place of those retiring or the appointment and fixing of the remuneration of the auditors.

## 11 - Proceedings at general meetings

42. (1) 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.
- (2) For the purpose of determining whether a quorum is present, a person attending as a proxy, or as representing a body corporate or association that is a member, shall be deemed to be a member.
43. If a quorum is not present within half an hour after the time appointed for the meeting—
- (a) where the meeting was convened upon the requisition of members—the meeting shall be dissolved; or
- (b) in any other case—
- (i) the meeting shall stand adjourned to such day, and at such time and place, as the directors determine or, if no determination is made by the directors, to the same day in the next week at the same time and place; and
- (ii) if a quorum is not present at the adjourned meeting within half an hour after the time appointed for the meeting—
- (a) two members shall constitute a quorum; or
- (b) the meeting shall be dissolved, if two members are not present.
44. (1) If the directors have elected one of their number as chairman of their meetings, he shall preside as chairman at every general meeting.
- (2) Where a general meeting is held and—
- (a) a chairman has not been elected as provided by sub-regulation (1); or
- (b) the chairman is not present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act;
- the member present shall elect one of their number to be chairman of the meeting.
45. (1) 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 the meeting from which the adjournment took place.

- (2) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
  - (3) Except as provided by subregulation (2), it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
46. (1) 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—
- (a) by the chairman;
  - (b) by at least three members present in person or by proxy;
  - (c) by a member or members present in person or by proxy and representing not less than one tenth of the total voting rights of all the members having the right to vote at the meeting; or
  - (d) by a member or members holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.
- (2) The demand for a poll may be withdrawn.
47. (1) If a poll is duly demanded, it shall be taken in such manner and (subject to sub-regulation (2)) either at once or after an interval or adjournment or otherwise as the chairman directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded.
- (2) A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith.
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, in addition to his deliberative vote (if any), shall have a casting vote.
49. (1) Subject to any rights or restrictions for the time being attached to any class or classes of shares at meetings of members or classes of members—
- (a) each—
    - (i) registered member, or registered member of that class;

\_\_\_\_\_  
(name of Company)

I/we \_\_\_\_\_, of \_\_\_\_\_ being a member/members of the above named company, hereby \_\_\_\_\_ of \_\_\_\_\_ or, in his absence.

\_\_\_\_\_ of \_\_\_\_\_ as my/our proxy to vote for me/us on my/our behalf at the annual/extraordinary general meeting of the company to be held on the \_\_\_\_\_ day of 19 \_\_\_\_\_ and at any adjournment of that meeting:

*in favour of/against	resolution No. _____
*in favour of/against	resolution No. _____



*in favour of/against	resolution No. _____
-----------------------	----------------------

Unless otherwise instructed, the proxy will vote as he thinks fit.

Signed \_\_\_\_\_

Date \_\_\_\_\_

\*Strike out whichever is not desired

55. An instrument appointing a proxy shall not be treated as valid unless the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a notarially certified copy of that power or authority, is or are deposited, not less than forty-eight hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than twenty-four hours before the time appointed for the taking of the poll, at the registered office of the company or at such other place in Zambia as is specified for that purpose in the notice convening the meeting.
56. A vote given in accordance with the terms of an instrument of proxy or of a power of attorney shall be valid notwithstanding the previous death of unsoundness of mind of the principal, the revocation of the instrument (or of the authority under which the instrument was executed) or of the power, or the transfer of the share in respect of which the instrument or power is given, unless notice in writing of the death, unsoundness of mind, revocation or transfer has been received by the company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

## 12 - Directors

57. The company may by ordinary resolution fix a share qualification for directors, but unless and until a qualification is so fixed, there shall be no share qualification.
58. In addition to the circumstances in which the office of a director becomes vacant by virtue of the Act, the office of a director shall become vacant if the director makes any arrangement or composition with his creditors generally.

## 13 - Borrowing powers

59. (1) Subject to subregulation (2), the directors may exercise the powers of the company to borrow money, to charge any property or business of the company or all, or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the company or of any other person.
- (2) The amount of any borrowings outstanding at any time shall not exceed the amount of issued share capital of the company at the time.

## 14 - Proceedings of directors

60. The provisions of subsection (7) of section two hundred and eighteen of the Act (providing that a director who is materially interested in a contract or arrangement to be considered at a meeting of the company or of the directors should not be counted in the quorum or vote on the matter) may be suspended or relaxed, whether generally or in respect of a particular transaction, by a resolution of the company.
61. (1) A director may, if the other directors approve, appoint a person as an alternate director in accordance with the Act.

- (2) An alternate director shall be entitled to notice of meetings of the directors.
  - (3) An alternate director may, subject to the instrument of appointment, exercise any powers that the appointer may exercise.
62. At a meeting of directors, the quorum shall be two, or such larger number as is determined by resolution of the company.
63. In the event of a vacancy or vacancies in the office of a director or offices of directors, the remaining directors may act but, if the number of remaining directors is not sufficient to constitute a quorum at a meeting of directors, they may act only for the purpose of increasing the number of directors to a number sufficient to constitute such a quorum or of convening a general meeting of the company.
64. (1) The directors shall elect one of their number as chairman of their meetings and may determine the period for which he shall hold office.
- (2) Where meeting of directors is held and—
- (a) a chairman has not been elected as provided by subregulation (1); or
  - (b) the chairman is not present within ten minutes after the time appointed for the holding of the meeting or is unwilling to act;

the directors present shall elect one of their number to be a chairman of the meeting.

65. (1) The directors may delegate any of their powers to a committee or committees consisting of such of their number as they think fit.
- (2) A committee to which any powers have been so delegated shall exercise the powers delegated in accordance with any directions of the directors and a power so exercised shall be deemed to have been exercised by the directors.
- (3) The members of such a committee may elect one of their number as chairman of their meetings.
- (4) Where such a meeting is held and—
- (a) a chairman has not been elected as provided by subregulation (3); or
  - (b) the chairman is not present within ten minutes after the time appointed for the holding of the meeting or is unwilling to act;

the members present may elect one of their number to be chairman of the meeting.

- (5) A committee may meet and adjourn as it thinks proper.
- (6) Questions arising at a meeting of a committee shall be determined by a majority of votes of the members present and voting.
- (7) In the case of an equality of votes, the chairman, in addition to his deliberative vote (if any), has a casting vote.

## 15 - Managing director

66. (1) The directors may, upon such terms and conditions and with such restrictions as they think fit, appoint a managing director in accordance with the Act and confer upon him any of the powers exercisable by them.
- (2) Any powers so conferred may be concurrent with, or be to the exclusion of the powers of the directors.
- (3) The directors may at any time withdraw or vary any of the powers so conferred on a managing director.

## 16 - Associate directors

67. (1) The directors may from time to time appoint any person to be an associate director and may from time to time terminate any such appointment.
- (2) The directors may from time to time determine the powers, duties and remuneration of any person so appointed.
- (3) A person so appointed shall not be required to hold any shares to qualify him for appointment but, except by the invitation and with the consent of the directors, shall not have any right to attend or vote at any meeting of directors.

## 17 - Secretary

68. A secretary of the company shall hold office on such terms and conditions, as to remuneration and otherwise, as the directors determine.

## 18 - Seal

69. (1) The directors shall provide for the safe custody of the seal.
- (2) The seal shall be used only by the authority of the directors, or of a committee of the directors authorised by the directors to authorise the use of the seal, and every document to which the seal is affixed shall be signed by a director and be countersigned by another director, a secretary or another person appointed by the directors to countersign that document or a class of documents in which that document is included.

## 19 - Inspection of records

70. Subject to the Act, the directors shall determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the company or any of them will be open to the inspection of members other than directors, and a member other than a director shall not have the right to inspect any document of the company except as provided by law or authorised by the directors or by a resolution of the company.

## 20 - Dividends and reserves

71. (1) The company by resolution may declare a dividend if, and only if, the directors have recommended a dividend.
- (2) A dividend shall not exceed the amount recommended by the directors.
72. The directors may authorise the payment by the company to the members of such interim dividends as appear to the directors to be justified by the profits of the company.
73. Interests shall not be payable by the company in respect of any dividend.
74. A dividend shall not be paid except out of profits of the company.
75. (1) The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as reserves, to be applied, at the discretion of the directors, for any purpose for which the profits of the company may be properly applied.

- (2) Pending any such application, the reserves may, at the discretion of the directors, be used in the business of the company or be invested in such investments as the directors think fit.
  - (3) The directors may carry forward so much of the profits remaining as they consider ought not to be distributed as dividends without transferring those profits to a reserve.
76. (1) Subject to the rights of persons (if any) entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect of which the dividend is paid.
- (2) All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid, but, if any share is issued on terms providing that it will rank for dividend as from a particular date, that share shall rank for dividend accordingly.
- (3) An amount paid or credited as paid on a share in advance of a call shall not be taken for the purposes of this regulation to be paid or credited as paid on the share.
77. The directors may deduct from any dividend payable to a member all sums of money (if any) presently payable by him to the company on account of calls or otherwise in relation to shares in the company.
78. (1) If the company declares a dividend it may by resolution direct the directors to pay the dividend wholly or partly by the distribution of specific assets, including paid up shares in, or debentures of, any other corporation.
- (2) Where a difficulty arises in regard to such a distribution, the directors may settle the matter as they consider expedient and in particular may issue fractional certificates and fix the value for distribution of the specific assets or any part of those assets, and may determine that cash payments will be made to any members on the basis of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as the directors consider expedient.
79. (1) Any dividend, interest or other money payable in cash in respect of shares may be paid by cheque sent through the post directed to—
- (a) the registered address of the holder or, in the case of joint holders, to the registered address of the joint holder named first in the register of members; or
  - (b) to such other address as the holder or joint holders in writing directs or direct.
- (2) Any one of two or more joint holders may give effectual receipts for any dividends, interests or other money payable in respect of the shares held by them as joint holders.

## 21 - Capitalisation of profits

80. (1) Subject to subregulation (2), the company may resolve—
- (a) to capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to members; and
  - (b) to apply the sum, in any of the ways mentioned in subregulation (3), for the benefit of members in the proportions to which those members would have been entitled in a distribution of that sum by way of dividend.
- (2) The company shall not pass a resolution under subregulation (1) unless it has been recommended by the directors.

- (3) The ways in which a sum may be applied for the benefit of members under subregulation (1) shall be—
- (a) in paying up any amounts unpaid on shares held by members;
  - (b) in paying up in full unissued shares or debentures to be issued to members as fully paid; or
  - (c) partly under paragraph (a) and partly under paragraph (b).
- (4) The directors shall do all things necessary to give effect to the resolution and, in particular, to the extent necessary to adjust the rights of the members among themselves, may—
- (a) issue fractional certificates or make cash payments in cases where shares or debentures become issuable in fractions; and
  - (b) authorise any person to make, on behalf of all the members entitled to any further shares or debentures upon the capitalisation, an agreement with the company providing for the issue to them, credited as fully paid up, of any such further shares or debentures or for the paying up by the company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised;

and any agreement made under an authority referred to in paragraph (b) shall be effective and binding on all the members concerned.

## 22 - Winding up

81. (1) If the company is wound up, the liquidator may, with the sanction of a special resolution, divide among the members in kind the whole or any part of the property of the company and may for that purpose set such value as he considers fair upon any property to be so divided and may determine how the division is to be carried out as between the members or different classes of members.
- (2) The liquidator may, with the sanction of a special resolution, vest the whole or any part of any such property in trustees upon such trusts for the benefit of the contributories as the liquidator thinks fit, but so that no member is compelled to accept any shares or other securities in respect of which there is any liability.

## 23 - Indemnity

82. Every officer, auditor or agent of the company shall be indemnified out of the property of the company against any liability incurred by him in his capacity as officer, auditor or agent in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application in relation to any such proceedings in which relief is under the Act granted to him by the court.

## Second Schedule (Section 164)

### Annual accounts

#### Preliminary

1. The annual accounts of a company shall give a true and fair view of the state of affairs and the operation and results thereof of the company, together with any material matters not specifically described by the Act or this Schedule which have affected or are likely to affect the business of the company.

2. The view shall be given both by way of figures, and by narrative report complementing and explaining, where necessary, figures in financial statements.
3. A company may, in addition to matter expressly permitted by this Schedule to be given in notes, give any information required by this Schedule to be stated in a balance sheet or profit and loss account in the form of a note or annexure thereto if such presentation would be more effective or convenient.
4. Nothing in this Schedule shall require disclosure of items that are not material.

## Interpretation

5. (1) In this Schedule, unless the context otherwise requires:

**"distributable reserve"** means, subject to subclause (2), any amount which has been carried to reserves and which may, in accordance with generally acceptable accounting practice and legal principles, be treated as income and distributed by way of dividend, and does not include any amount retained by way of providing for any known liability and "non distributable reserve" shall be construed accordingly;

**"listed investment"** means an investment in regard to which permission has been granted to deal therein on any stock exchange of repute: and "unlisted investment" shall be construed accordingly;

**"material"**, in relation to an amount or a fact in respect of a company's accounts, means material from the point of view of the interests of the members of the company;

**"provision"** means, subject to subclause (2), any amount—

- (a) written off or retained by way of providing for depreciation, renewals or diminution in the value of assets; or
- (b) retained by way of providing for any known liability, including the liability for income or any other tax;

where the amount cannot be determined with substantial accuracy.

- (2) If the directors are of the opinion that—

- (a) any amount written off or retained by way of provision for depreciation, renewal or diminution in value of assets; or
- (b) any amount retained by way of provision for any known liability;

is in excess of that which in the opinion of the directors and the auditor is reasonably necessary for the purpose, the excess shall be treated for the purposes of this Schedule as a reserve and not as a provision, but, if the auditor disagrees with the directors on the point, he shall report specifically on the subject in the auditor's report.

## Part A – Balance sheet

### Share capital and shares

6. The balance sheet shall state—
  - (a) the authorised and issued share capital;
  - (b) the classes of shares into which the authorised share capital is divided and their respective numbers and nominal values;
  - (c) the number of the issued shares and the amount of the issued shares capital in respect of each class of shares;

- (d) in respect of redeemable preference shares—
    - (i) the earliest and latest dates on which the company has power to redeem them;
    - (ii) whether they must be redeemed in any event or are liable to be redeemed at the option of the company; and
    - (iii) the premium, if any, payable on redemption; and
  - (e) in respect of preference shares or other shares or liabilities convertible into ordinary shares—
    - (i) the conditions of conversion; and
    - (ii) rights of conversion;
- or a place where these conditions may be inspected.

### **Reserves and provisions**

7. The balance sheet shall state the respective aggregate amounts, if material, of reserves and provisions (other than provisions for depreciation, or diminution in value of assets) under separate headings and subheadings indicating the types of reserves and provisions.
8. The balance sheet shall state, in respect of the financial year concerned—
  - (a) the source of and the amount of any transfers to reserves and aforesaid provisions; and
  - (b) the amount and the application of any transfer from reserves and aforesaid provisions.

unless it is shown in the profit and loss account or a statement or report annexed thereto, or the amount involved is not material.

### **Liabilities**

#### **General**

9. (1) The liabilities shall be summarised with such particulars as are necessary to disclose their general nature and shall be classified under headings and subheadings appropriate to the company's business (including a statement of current liabilities).
- (2) Where the amount of any class of liability is not material, it may be included under the same heading as some other class.

### **Debentures**

10. The balance sheet shall state—
  - (a) the amount and classes of debentures issued and, if convertible into shares, the conditions of conversion and the dates on which debentures may, or shall, be redeemed, or the place where these conditions may be inspected;
  - (b) the nominal amount of any debentures held by a nominee and the amount at which they are stated in the books of the company; and
  - (c) particulars of any redeemed debentures which the company has power to reissue.

### **Overdrafts, loans and dividends**

11. There shall be shown under separate headings—
- (a) the aggregate amount of bank borrowings and overdrafts;
  - (b) in relation to each loan made to the company—
    - (i) the amount;
    - (ii) whether the date of repayment of the loan is more than one year after the accounting date;
    - (iii) the dates of repayment and, if repayable in instalments, the amounts thereof; and
  - (c) the aggregate amount which has been declared or is recommended for distribution by way of dividend.
- (2) The matters referred to in paragraph (b) of subclause (1) may be set out in a note.

### **Secured liabilities**

12. Where any liability of the company is secured over any assets of the company, otherwise than by operation of law, that fact shall be stated, specifying the liability and the assets over which it is secured, and the amount at which such assets are shown in the balance sheet.

### **Indebtedness to related bodies corporate**

13. There shall be shown under separate headings—
- (a) the amount of indebtedness (whether by way of loan or otherwise) to each of the company's subsidiaries; and
  - (b) the amount of the company's indebtedness to every other related body corporate, distinguishing between indebtedness in respect of debentures and otherwise.

### **Assets**

#### **General**

14. (1) The assets shall be summarised with such particulars as are necessary to disclose their general nature and shall be classified under headings and subheadings appropriate to the company's business.
- (2) Where the amount of any class of assets is not material, it may be included under the same heading as some other class.
15. Fixed assets, current assets and assets that are neither fixed nor current shall be separately identified.
16. The method or methods used to arrive at the amount of the fixed assets and the assets which are neither fixed nor current, under each heading, shall be stated.



### Fixed assets

17. (1) The method of arriving at the amount of any fixed asset (and asset neither fixed nor current) shall be, subject to subclause (2), to take the difference between—
- (a) its cost, or if it stands at the company's books at a valuation, the amount of the valuation; and
  - (b) the aggregate amount provided or written off since the date of acquisition or valuation, as the case may be, by way of depreciation or diminution of value.
- (2) Subclause (1) shall not apply—
- (a) to any listed and unlisted investments;
  - (b) to interests of the company in its subsidiaries; or
  - (c) to goodwill or intellectual property.
- (3) In respect of the assets under each heading whose amount is arrived at in accordance with subclause (1), there shall be stated—
- (a) the aggregate of the amounts referred to in paragraph (1) (a); and
  - (b) the aggregate of the amounts referred to in paragraph (1) (b).
- (4) As regards any land and buildings which are fixed assets, there shall also be stated—
- (a) a description of the land and buildings and the situation thereof, distinguishing between land owned absolutely and land owned for a term of years or other period;
  - (b) the date of their acquisition by the company;
  - (c) their purchase price; and
  - (d) the costs of additions or improvements since the date of acquisition or valuation, which costs shall be analysed to indicate the years in which the additions and improvements to buildings were carried out.
- (5) The information required under subclause (4) may be provided in a schedule or register, in which case the balance sheet shall state that the schedule or register shall be open for inspection by members or their duly authorised agents at the registered records office of the company in accordance with section one hundred and ninety-three of the Act. Such a schedule or register shall be part of the company's accounting records.
- (6) As regards any fixed asset referred to in subclause (4), the amount of which is arrived at by reference to a valuation, the provisions of paragraphs (4) (b) and (c) shall not apply, but there shall be stated the years in which the assets were severally valued and the several values and, in the case of assets that have been valued during the financial year concerned, the names and qualifications of the persons who valued them and the basis of valuation used by them.
- (7) Where there are more than five different items of land and buildings which have over the years been severally valued for the purposes of subclause (6), a company may, if it considers that compliance with that subclause would be inconvenient or cumbersome, include the information in a schedule or register, in which case the balance sheet shall state that the schedule or register shall be open for inspection by members or their duly authorised agents at the registered records office of the company in accordance with section one hundred and ninety-three of this Act.

### **Interests in subsidiaries**

18. If the company has subsidiaries, the amount of interests of the company consisting of shares of its subsidiaries or amounts owed to it (whether by way of loan or otherwise) by its subsidiaries, distinguishing shares from indebtedness, shall be set out in the balance sheet separately from the other assets of the company.

### **Indebtedness of related bodies corporate**

19. The amount of the indebtedness to the company of all related bodies corporate, shall be set out, distinguishing between indebtedness in respect of debentures and otherwise.

### **Loans to employees and other persons**

20. The aggregate amounts of any outstanding loans under sections eighty-three and one hundred and sixty-eight of this Act shall be shown under separate headings. The amount outstanding of loans to each person who is, or at any time during the currency of the loan has been, a director shall be shown separately.

### **Goodwill and intellectual property**

21. (1) If the amount of the goodwill and of any intellectual property, or part of that amount, is shown as a separate item in, or is otherwise ascertainable from, the accounting records, from any contract for the sale or purchase of any property to be acquired by the company, or from any documents in the possession of the company, the amount so shown or ascertainable, so far as it is not written off, shall be stated as a separate item.
- (2) Nothing in this clause shall require the amount of the goodwill and intellectual property to be stated otherwise than as a single item.

### **Investments**

22. (1) There shall be shown under separate headings the aggregate amounts respectively of the company's listed and unlisted investments, other than interests in those subsidiaries of the company covered by group accounts (if any).
- (2) There shall be shown—
- (a) in respect of the company's listed investments, the aggregate market value where it differs from the amount of the investments as stated; and
  - (b) in respect of the company's unlisted investments and unless they are dealt with under subclause (3), the aggregate of the directors' valuation of the investments.
- (3) Where no directors' valuation is shown for the purposes of subclause (2), the following information shall be stated in a note to be annexed to the balance sheet:
- (a) the aggregate amount of the company's income for the financial year concerned that is ascribable to the investments;
  - (b) the amounts of the company's share, before and after taxation, of the net aggregate profits or losses of the companies of which shares are held (and the extent by which such profits have been affected by abnormal items), being profits for the several financial years in respect of which they have issued accounts during the company's financial year concerned, after deducting those companies' losses for those periods;

- (c) the amount of the company's share of the aggregate of the share capital, distributable and non-distributable reserves and undistributed profits accumulated by the companies of which shares are held since the dates when the investments were acquired, after deducting the losses accumulated by them since that time; and
  - (d) the manner in which any losses have been dealt with in the company's accounts.
- 23. (1) There shall be shown in the balance sheet or in an annexure thereto, unless the aggregate amount of the interest of the company consisting of shares in other bodies corporate and amounts owing to it (whether by way of loan or otherwise) by other bodies corporate is not material, the names of all bodies corporate of which the company beneficially owns shares and, in each case, either the number of shares so held or the percentage of the amount of such shares in the aggregate amount of the listed or unlisted investments.
- (2) Where a percentage is so given there shall be a statement as to whether this is a percentage of the aggregate book value, market value or directors' valuation, as the case may be.
  - (3) For the purposes of this clause, a company shall not be regarded as beneficially owning shares in a body corporate by reason only that it owns shares in a holding company of the body corporate.
- 24. (1) Where the proceeds or any part of the profit made on the realisation of any investments is applied to write down the amount of the remaining investments, that fact and the amount so applied shall be stated in the balance sheet.
- (2) This clause shall not apply in respect of the proceeds or profits on the realisation of investments dealt with under paragraph 36 (1) (a).

### **Current assets**

- 25. (1) For the purposes of this clause, "stock" includes any property, whether corporeal or incorporeal, which the company, in the ordinary course of its business, buys, manufactures, processes, develops for sale or sells.
- (2) The amount of stock shall be shown as a separate item and, where the amount of stock and work in progress is material in relation to either the trading results or the financial position, it shall be classified under appropriate subheadings which shall include, where applicable—
    - (a) raw materials (including component parts);
    - (b) finished goods;
    - (c) merchandise, including any form of stock not mentioned in subclause (1) and which may itself be shown under appropriate subheadings;
    - (d) consumable stores (including maintenance spares);
    - (e) work in progress (including standing crops); and
    - (f) contracts in progress.
  - (3) Where directors are of the opinion that classification into some or all of the categories referred to in subclause (2) would result in a failure to present a fair view, the classification should be reduced to those categories where a fair view would be obtained, and the reasons given for not indicating all categories.
  - (4) In regard to the method of determining the value of stock, there shall be stated—
    - (a) whether it is consistent with the method of the previous financial year;
    - (b) whether it is the lower of cost or net realisable or replacement value or some other expressly specified value or values;

- (c) the accounting basis which has been used in determining the value of stock to have been used or, if the directors are of the opinion that a statement of all the bases used would be the little value to the shareholders, an intelligible summary of the bases used;
  - (d) whether the value includes both direct costs and overheads; and
  - (e) in the case of spares held for maintenance purposes, the method employed in providing for obsolescence.
- (5) There shall be stated any additional information required fairly to present the value of the stock including, in the case of contracts in progress, whether profits or losses have been taken into account and, if so, to what extent.
- (6) If the directors are of the opinion that any of the current assets do not have a value on realisation in the ordinary course of the company's business at least equal to the amount at which they are stated, the fact that the directors are of that opinion and the extent of the estimated shortfall shall be stated.

### **Preliminary expenses, commission and discounts**

26. There shall be stated under separate subheadings so far as they are not written off—
- (a) the preliminary expenses incurred in incorporation;
  - (b) any expenses incurred in connection with any issue of shares or debentures;
  - (c) any sums paid by way of commission in respect of any shares or debentures; and
  - (d) any sums allowed by way of discount in respect of any debentures.

### **Corresponding amounts of preceding year**

27. Except in the case of the first balance sheet, the corresponding amounts at the end of the immediately preceding financial year in respect of all items shown in the balance sheet shall be stated.

### **Notes to balance sheet**

28. The matters stated in clause 29 to 35 may be stated by way of a note or in a statement or report annexed to the balance sheet.

### **Shares or debentures held by subsidiary or nominee**

29. There shall be stated the number, description and amounts of the shares and debentures of the company held by its subsidiaries or their nominees, but excluding any such shares or debentures which a subsidiary holds in a representative capacity or as a trustee under a trust in which neither the company nor any subsidiary is beneficially interested otherwise than by way of security for the purposes of a transaction entered into by it in the ordinary course of business which includes the lending of money.

### **Options and preferential rights to shares**

30. The number, description and amount of any shares of the company which any person has an option to subscribe for or in respect of which any person has any preferential right of subscription, shall be stated together with the following particulars—
- (a) the period during which the option or right is exercisable; and

- (b) the price, or the formula for fixing the price, to be paid for shares subscribed for under it.

### **Directors' authority to issue shares**

31. The amount of any share capital or the number of shares which the directors are authorised to issue by resolution of the shareholders, the terms of such authority and the period for which it was granted, shall be stated.

### **Arrear dividends**

32. The amount of any arrears of fixed cumulative dividends on each class of the company's shares and the period for which the dividends are in arrears, shall be stated.

### **Contingent liabilities**

33. (1) Particulars of any encumbrance on the assets of the company to secure the liabilities of any other person, including, where practicable, the amount secured, shall be stated.
- (2) The general nature of any other contingent liabilities not provided for and, where practicable, the aggregate or estimated amount of those liabilities if it is material, shall be stated.

### **Contracts for capital expenditure**

34. Where practicable, the aggregate amount or estimated amount, if it is material, of contracts for capital expenditure, not otherwise provided for and the aggregate amount or estimated amount, if it is material, of capital expenditure authorised by the directors which has not been contracted for, shall be stated. There shall also be stated the source from which funds to meet such expenditure will be provided.

### **Basis for currency conversion**

35. The basis on which foreign currencies have been converted into Zambian currency, where the amount of the assets or liabilities affected is material, shall be stated.

## **Part B – Profit and loss account**

36. (1) The profit and loss account shall show separately—
- (a) profits or losses on share transactions, showing the application of profits or part thereof to write down the amount of the remaining investment, if not already dealt with under clause 24;
  - (b) the amount of income from investment, distinguishing between listed and unlisted investment;
  - (c) the aggregate amount of income from related bodies corporate, stating whether dividends, interest, fees or other specified income;
  - (d) the aggregate amount of the dividends paid and proposed, and if such dividends are provided partly or wholly from capital profits, a statement to that effect;
  - (e) the aggregate amount of profits and losses on the realisation, scrapping or other disposal of non-trading, fixed and other non-current assets;

- (f) the amount charged to revenue by way of provisions (other than provisions for diminution in values of current assets, unless material to the understanding of the accounts) specifying the nature of each provision or the amount withdrawn from such provisions and not applied for the purpose thereof;
  - (g) the amount provided for taxation (specifying, where material, the origin and different classes of taxes) in respect of the financial year concerned and the amount, if any, so provided in respect of any other financial year;
  - (h) the amounts respectively set aside for redemption of shares and of loans;
  - (i) the amount set aside or proposed to be set aside to, or withdrawn from, reserves;
  - (j) the amount of any credit or charge arising in consequence of an event in a preceding financial year;
  - (k) the amount of interest (or other consideration) on any loans made to the company, including debentures and bank overdrafts;
  - (l) the amount paid by way of leasing charges for the use of any asset, other than immovable property, which would have been subject to a charge for depreciation if owned by the company;
  - (m) the respective amounts paid as remuneration for managerial, technical, administrative or secretarial services, however described, other than to the *bona fide* employees of the company;
  - (n) the amount of the remuneration of the auditor, distinguishing between the fee for the audit, the fee for other services and his expenses; and
  - (o) the total amount of any gifts or donations made by the company.
- (2) Nothing in this clause shall require the separate listing of any item that is not material.
37. (1) There shall be shown separately the information required by section one hundred and sixty-seven of this Act in relation to directors' emoluments.
- (2) The amounts to be shown for any financial year shall be the sums receivable in respect of that year whenever paid or, in the case of sums not receivable in respect of a period, the sums paid during that year, except that any sums paid in advance of the financial year to which they are expressed to relate shall be shown in the accounts for the financial year in which they are paid.
- (3) Where it is necessary so to do for the purpose of making any distinction required by this clause, the directors may apportion any payments in such manner as they think appropriate between the matter in respect of which they have been paid or are receivable.
38. (1) There shall be shown—
- (a) the aggregate amount of the turnover for the financial year concerned; or
  - (b) the increase or decrease of the aggregate turnover for the financial year concerned expressed as a percentage of the aggregate turnover for the preceding financial year.
- (2) If the nature of the business is such that there could be any doubt as to what is meant by turnover, there shall be indicated (by way of note) the basis upon which turnover has been determined.
- (3) The method employed to determine the amount of turnover shall be stated and, if a method different to that employed in the preceding financial year is used, that fact shall be stated.
39. Except in the case of the first profit and loss account, the corresponding amount for the immediately preceding financial year for all items shown in the profit and loss account shall be stated.

### Notes to the profit and loss account

40. The matters referred to in clauses 41 and 42 shall be stated by way of a note, or in a statement or report annexed to the balance sheet.
41. (1) If provision for depreciation, replacement or the diminution in value of fixed assets is made by some method other than a depreciation charge, or provision for renewals or diminution in value or is not provided for, the method by which it is provided for, or the fact that it is not provided for, shall be stated.
- (2) If any of the items are shown net of income or any other tax, that fact shall be stated.
42. There shall be stated any material respects in which any items included in the profit and loss account (stating in each case the amount involved) are affected by—
- (a) transactions of a sort not usually undertaken by the company or otherwise by circumstances of an exceptional or non recurrent nature;
  - (b) any change in the basis of accounting; or
  - (c) any change in the methods for the determination of the amount of any assets.

### Part C – Statement of source and application of funds

43. There shall be annexed to the balance sheet or separately contained therein a statement showing the source and the application of any funds received and applied during the financial year specifying—
- (a) funds derived from—
    - (i) net income (before deduction of taxes, dividends paid and proposed, and internal provisions and retentions);
    - (ii) the disposal of specified fixed and other non-current assets;
    - (iii) the proceeds of loans raised and debentures issued;
    - (iv) the proceeds of shares issued;
    - (v) repayments received on loans and advances made; and
    - (vi) any reduction in net working capital (being current assets less current liabilities); and
  - (b) funds applied to—
    - (i) meeting any loss;
    - (ii) the acquisition of specified fixed and other non-current assets;
    - (iii) the redemption of any loans and debentures;
    - (iv) loans and advances made and the purposes for which they were made;
    - (v) liability for taxes;
    - (vi) dividends paid and proposed; and
    - (vii) any increase in net working capital (being current assets less current liabilities).

## Part D – Group accounts

### Preliminary

44. Clauses 45 to 48 shall apply to all forms of group accounts and shall also apply in respect of the requirements of clauses 54 to 57 in relation to subsidiaries not dealt with in group accounts.
45. Any material profit or loss arising from transactions within the group of companies (other than *bona fide* arm's-length transactions), insofar as those profits or losses were realised or incurred in respect of a transaction with a person outside the group, shall be excluded in determining the total group profit or loss, or the interest of the holding company in the profit or loss of any subsidiary.
46. Inter-group balances, were shown, shall be excluded in determining the total assets and liabilities of the group.
47. (1) Dividends declared by a subsidiary out of profits accrued prior to the date on which it became a subsidiary of the holding company, being pre-acquisition profits so far as they are material and reasonably ascertainable, shall not, in the hands of that holding company, form part of its profits available for distribution by way of dividends unless—
  - (a) the holding company is itself the subsidiary of another body corporate incorporated or registered in Zambia;
  - (b) the shares in the subsidiary were acquired by the holding company from the other body corporate;
  - (c) the subsidiary was, before the acquisition, a subsidiary of the other body corporate; and
  - (d) the profits out of which the dividend is declared accrued after the subsidiary had become a subsidiary of the other body corporate.(2) For the purposes of establishing whether any profit accrued prior to the acquisition of the shares of the subsidiary, the profit or loss for any financial year of the subsidiary may, if it is not practicable to apportion it with reference to the facts, be treated as if it had accrued from day to day during that financial year and be apportioned accordingly.
48. There shall be stated any qualifications contained in the reports of the auditors of the subsidiaries on their financial statements and any note or saving contained in those financial statements to call attention to the matter which, apart from the note or saving, would properly have been referred to in such a qualification, insofar as the matter which is the subject of the qualification is not covered by the holding company's own accounts of the group accounts and is material from the point of view of its members.

### Group accounts in the form of consolidated accounts

49. Subject to clauses 50 to 52, the consolidated balance sheet and the consolidated profit and loss account shall combine the information contained in the separate balance sheets and profit and loss accounts of the holding company and of the subsidiaries dealt with in the consolidated accounts, with such adjustment as may be appropriate and necessary to give a true and fair view of the state of affairs of the group of companies as at the end of the financial year and the results of the operations of the group of companies during the financial year.
50. Subject to clauses 51 and 52 the consolidated accounts shall, in giving the information, comply as far as is practicable with the requirements of this Act and this Schedule as if they were the accounts of a single company.
51. Section one hundred and sixty-seven of this Act shall not require the disclosure in consolidated accounts of the remuneration of directors of the subsidiaries of the holding company.



52. In relation to any subsidiaries of the holding company not dealt with in the consolidated accounts—
- (a) clause 13 (concerning indebtedness to bodies corporate in the group), clause 18 (concerning interests in subsidiaries) and clause 29 (concerning shares or debentures held by subsidiaries), shall apply for the purposes of such consolidated accounts as if those accounts were the accounts of a single company of which they were the subsidiaries; and
  - (b) there shall be annexed the information required by clauses 54 to 57 in respect of subsidiaries not dealt with in group accounts but as if reference therein to a holding company's accounts were a reference to the consolidated accounts.
53. (1) Where group accounts are prepared in a form other than consolidated accounts, they shall, as far as practicable, present the same or equivalent information concerning the state of affairs and the results of the operations of the group as would be contained in the consolidated accounts, including the aggregate amounts of—
- (a) the excess (if any) of the cost of the shares of the subsidiaries in the group over the net asset value of the shares at the date of acquisition and the non-distributable reserve (if any) arising in consequence of the excess of the net value of the assets at the date of acquisition over the cost of shares of the subsidiaries;
  - (b) the holding company's shares of the non-distributable reserves of subsidiaries;
  - (c) the interest of outside shareholders, being shareholders other than the holding company and its subsidiaries or their nominees, in subsidiaries of the group; and
  - (d) the interest of the holding company, insofar as it has been disclosed in the group accounts in —
    - (i) the accumulated revenue profits or losses and accumulated distributable reserves of subsidiaries for the period after the dates on which they respectively became subsidiaries to the end of the preceding financial year; and
    - (ii) the revenue profits or losses of subsidiaries for the financial year.
- (2) For the purposes of paragraph (1) (a), non-distributable reserves arising from the acquisition of shares in a subsidiary may be set off against of shares of other subsidiaries over the net asset

### **Requirements in respect of subsidiaries not dealt with in group accounts**

54. Where a subsidiary is not dealt with in group accounts under subsection (3) of section one hundred and sixty-five of this Act and the interest in the subsidiary is material in relation to the financial position or the results of the holding company, there shall be included in the accounts of the holding company the information required to be stated under clauses 55 to 57 or, if any such information is not obtainable, the reasons why it is not obtainable.
55. The reasons shall be stated why the subsidiaries or any of them are not dealt with in the group accounts.
56. (1) In regard to the shareholders' equity, liabilities and assets of the subsidiaries not dealt with in group accounts, there shall be stated the aggregate amounts of—
- (a) the cost of the holding company's investment in shares of the subsidiaries;
  - (b) the excess (if any) of the cost of the shares of the subsidiaries over the net asset value of the shares at the date of acquisition, and the non-distributable reserve (if any) arising in consequence of the excess of the net value of the assets at the date of acquisition over the cost of the shares of subsidiaries;
  - (c) the holding company's shares of the non-distributable reserves of subsidiaries;

- (d) the interest of outside shareholders, being shareholders other than the holding company and its subsidiaries or their nominees, in the subsidiaries;
  - (e) long-term loans owing to the subsidiaries by the bodies corporate in the group;
  - (f) fixed assets;
  - (g) net current assets;
  - (h) goodwill (if any) shown in the books of the subsidiaries insofar as it has not already been absorbed in the calculation referred to in paragraph (b); and
  - (i) separately stated assets not included in paragraphs (f), (g) and (h).
- (2) For the purposes of paragraph (1)(b), non-distributable reserves arising on the acquisition of shares in a subsidiary may be set off against any excess of the cost of shares of other subsidiaries over the net value of such shares.
57. In regard to revenue profits or losses and distributable reserves not dealt with in group accounts, there shall be stated the aggregate interest of the holding company in—
- (a) the accumulated revenue profits or losses and accumulated distributable reserves of the subsidiaries for the period from the dates on which they respectively became subsidiaries to the end of the preceding financial year;
  - (b) the revenue profits or losses and distributable reserves attributable to any shares of the subsidiaries disposed of during the financial year;
  - (c) the revenue profits or losses of the subsidiaries for the financial year;
  - (d) dividends paid or declared by the subsidiaries during the financial year; and
  - (e) the revenue profits or losses and distributable reserves at the end of the financial year not dealt within the accounts of the holding company.

### Third Schedule (Section 185)

#### Annual return

In this Schedule, a reference to the date of a return is a reference to the date as at which the return states the position of the company in accordance with section one hundred and eighty-four of this Act.

An annual return shall contain the information specified below.

1. The name of the company.
2. The nature of the business of the company or, if the company is not carrying on a business, the nature of its objects.
3. The address of the registered office and the registered postal address of the company.
4. The address of the registered records office of the company.
5. The address of the company's principal place of business in Zambia.
6. All such particulars with respect of the persons who at the date of the return are the directors and secretary of the company as are required by section two hundred and twenty-four of this Act to be contained in the register of directors and secretary.
7. Particulars of the total amount of the indebtedness of the company in respect of all charges to which section ninety-nine of this Act applies.

8. The names, countries of incorporation, and nature of the business of—
  - (a) all bodies corporate related to the company; and
  - (b) all bodies corporate in which the company is beneficially entitled to equity shares conferring the right to exercise more than 25 per cent of the votes exercisable at a general meeting of the body corporate.
9. If the company has share capital—
  - (a) the amount of the share capital of the company and the number of shares into which it is divided;
  - (b) the number of its authorised shares of each class;
  - (c) the number of its issued shares of each class;
  - (d) the total amount of any unpaid instalments or calls which are due and payable and the number and class of shares concerned;
  - (e) the total amount of any unpaid liability, on shares of each class, which is not yet due for payment;
  - (f) the total number of shares forfeited; and
  - (g) the total amount of share capital for which share warrants are outstanding at the date of the return and of share warrants issued and surrendered respectively since the date of the last return, and the number of shares comprised in each warrant.
10. A list—
  - (a) containing the names and addresses of all persons who are registered members of the company and of persons who have ceased to be members since the date of the last return or, in the case of the first return, since the incorporation of the company;
  - (b) stating the number of shares held by each registered member, at the date of the return, specifying shares transferred since the date of the last return (or, in the case of the first return, since the incorporation of the company) by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers; and
  - (c) having annexed thereto an index sufficient to enable the name of any person therein to be easily found, if the names are not arranged in alphabetical order.

#### **Fourth Schedule (Sections 124, 126, 127, 131 and 135)**

##### **Contents of prospectus**

1. In this Schedule, unless the context otherwise requires—

"company" includes a company proposed to be formed;

"proposed subsidiary", in relation to a company, means a body corporate in which the company proposes to acquire securities and which, by reason of the acquisition or anything to be done in consequence thereof or in connection therewith, will become a subsidiary of the company.
2. The prospectus shall state at its head:

"A copy of this prospectus has been delivered to the Registrar of Companies for registration. The Registrar has not checked and will not check the accuracy of the statements made and accepts no responsibility therefor or for the financial soundness of the company or the value of the securities concerned."
3. The reports set out in a prospectus for purposes of Part B shall be made by a person or persons duly qualified under Part VIII of this Act to be appointed as auditors of the company.

4. Where reports prepared for the purposes of Part B would not otherwise give a true and fair view of the matters required to be covered by the reports, the persons charged with the preparation of the reports shall add such information and explanations as will give a true and fair view of those matters.
5. If any of the information required for the purposes of reports for the purposes of Part B is for reasons beyond the power of the company not available, that fact and the reasons therefor shall be stated.

### **Part A – Matters to be specified in prospectus**

6. The full name of the company.
7. (1) A full description of the securities which the public are being invited to acquire, and of the terms on which they are being invited to acquire them, including—
  - (a) the date prior to the expiration of which applications will not be accepted or treated as binding;
  - (b) the total amount payable for each share or debenture and the amount thereof payable on application and allotment, if securities are being offered for subscription or purchase; and
  - (c) the policy which will be adopted if applications exceed the shares or debentures on offer.(2) Where the securities are unsecured debentures they shall be described as "unsecured".
8. Whether or not an application has been or is being made to a stock exchange for permission to deal in the securities concerned, and—
  - (a) if so, the name of the stock exchange; or
  - (b) if not, a statement that there will not be a market for the securities and that any holder wishing to dispose of his securities may be unable to do so.
9. The full name (including any former or other names), residential and postal addresses and business occupation of each person making the invitation, other than the company.
10. The situation of the company's registered office, and its postal address.
11. The full name (including any former or other names), residential and postal addresses and business occupation of every director or proposed director and of the secretary or proposed secretary of the company, and particulars of all other directorships held by each director or proposed director.
12. Other than for a proposed company, the names, addresses and professional qualifications of the company's auditors.
13. The name and address of any underwriter of the invitation.
14. The names and addresses of the company's bankers, stockbrokers and legal practitioners.
15. If the invitation relates to debentures, the names and addresses of any trustees for debentureholders, the date of the resolutions creating the debentures, and short particulars of the security therefor or, if the debentures are unsecured, a statement to that effect.
16. The nature of the business or businesses of the company or, if the company has no business, its principal objects.
17. The restrictions, if any, upon the business of the company contained in the articles.
18. A brief summary of the history of the company.
19. The names, countries of incorporation, and nature of the businesses of all subsidiaries of the company and of all bodies corporate in which the company is beneficially entitled to equity shares conferring the right to exercise more than 25 per cent of the votes exercisable at a general meeting of the body corporate.

20. If the company is a subsidiary, the name, country of incorporation and nature of the business of each holding company and, in the case of a holding company that is a member of the company, the number of shares in each class of the company held by the holding company.
21. The name, country of incorporation, and nature of the business of any proposed subsidiary of the company.
22. Where the company is proposing to acquire a business, a full description, of the nature of that business.
23. The situation, area and tenure (including, where appropriate, the rent and unexpired term of any lease or concession) of the main places of business of the company and its subsidiaries and proposed subsidiaries.
24. A statement as to—
  - (a) the financial and trading prospects of the company together with any material information which may be relevant thereto; and
  - (b) any material changes in the financial or trading position of the company which may have occurred since the end of the last completed financial year of the company.
25. A statement by the directors of the company that in their opinion the company's working capital is sufficient or, if not, how it is proposed to provide the additional working capital thought by the directors to be necessary.
26. The amount or estimated amount of the expenses incidental and preliminary to the invitation (including the expenses of any application to a stock exchange for permission to deal in the securities

### **Part B – Reports to be set out in prospectus**

51. A report with respect to—
  - (a) the profits or losses of the company in respect of—
    - (i) each of the ten completed financial years immediately proceeding the publication of the prospectus, (or since the incorporation of the company if less than ten years); and
    - (ii) the period from the end of the last financial year to the latest practicable date being a date less than three months before the date of the publication of the prospectus, if the last financial year of the company ended three months or more before the date of the publication of the prospectus; or
  - (b) if the company has subsidiaries—a report as required by paragraph (a) with respect to the profits or losses of the company and of its subsidiaries, so far as such profits or losses can properly be regarded as attributable to the interests of the company.
52. A report with respect to—
  - (a) the assets and liabilities of the company as at the end of its last financial year or, if the financial year ended three months or more before the date of publication of the prospectus, as at the latest practicable date, being a date less than three months before the date of publication of the prospectus; or
  - (b) if the company has subsidiaries—a report of the kind required by paragraph (a) with respect to the assets and liabilities of the company, and of its subsidiaries so far as such assets can properly be regarded as attributable to the interests of the company.
53. A report with respect to the aggregate emoluments paid by the company to the directors of the company or any related body corporate during the last period for which the accounts have been made up and the amount, if any, by which such emoluments would differ from the amounts payable under any arrangement in force at the date of publication of the prospectus.

## 54. (1) A report with respect to profits or losses of—

- (a) each proposed subsidiary of the company;
- (b) each business acquired by the company within ten years before the date of publication of the prospectus; and
- (c) each body corporate that became a subsidiary of the company within ten years before the date of publication of the prospectus;

in respect of—

- (i) each of the ten financial years immediately preceding the publication of the prospectus, (or each financial year since the commencement of that business or the incorporation of that subsidiary or proposed subsidiary, if less than ten years); and
  - (ii) if the last financial year of that business, subsidiary or proposed subsidiary ended three months or more before the date of the publication of the prospectus—the period from the end of the last financial year to the latest practicable date, being a date less than three months before the date of the publication of the prospectus.
- (2) The report shall deal with such of the profits or losses of a subsidiary or proposed subsidiary as can properly be regarded as attributable to the interests of the company.
  - (3) Where the report relates to any financial year before the subsidiary became a subsidiary of the company or relates to a proposed subsidiary, only such of its profits or losses shall be regarded as attributable to the interests of the company as would have been properly so attributable if the company had held the securities in the subsidiary or proposed subsidiary which it holds at the date of publication of the prospectus or proposes to acquire.
  - (4) Where any such subsidiary or proposed subsidiary itself has subsidiaries, the report shall extend to the profits or losses of its subsidiaries so far as the same can properly be regarded as attributable to the interests of the company.
  - (5) The report need not extend to any period in respect of which the profits or losses of that business or the appropriate part of the profits or losses of that subsidiary are dealt with in the report required under clause 51.

## 55.

- (1) A report with respect to the assets and liabilities of each proposed subsidiary of the company and each business or subsidiary acquired since the latest date up to which the accounts of the company have been made, as at the end of the last financial year of the business, subsidiary or proposed subsidiary, or, if the financial year ended three months or more before the date of publication of the prospectus, as at the latest practicable date not being more than three months before the date of publication of the prospectus.