

COMPANIES ACT, 2009

*Date of commencement: 1st April, 2010.*

*Arrangement of Sections*

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*An Act to provide for the constitution, incorporation, registration, management, administration and winding up of companies and other associations.*

## PRELIMINARY

*Short title and commencement.*

1. This Act may be cited as the Companies Act, 2009, and shall come into force on such date as the Minister may, by Notice in the *Gazette*, appoint.

## CHAPTER 1

### INTERPRETATION AND GENERAL APPLICATION

*Interpretation.*

2. (1) In this Act, unless the context otherwise provides—

“accounting records”, in relation to a company, includes accounts, deeds, writings or other relevant documents;

“annual return” means the returns referred to in section 151;

“articles”, in relation to a company means the articles of association of that company and includes any provision, in so far as it applies in respect of that company, set out in Table A, B or D in Schedule 1 and the definition of accounting records;

“certified” means certified in the manner prescribed by the Minister to be a true copy;

“company” means a company incorporated in terms of this Act and includes any company which immediately prior to the commencement of this Act was a company in terms of the repealed Act;

“court” means the High Court, and in relation to any offence under this Act, includes a magistrate’s court having jurisdiction in respect of that offence;

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

“deregistration” means the cancellation by the Registrar of the registration of the memorandum and articles of the company, and in relation to a foreign company, the cancellation by the Registrar of the registration including the charter, statute, memorandum of association and articles or other instrument defining the constitution of that company;

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

“equity share capital” and “equity shares” mean a company’s issued share capital and shares 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;

“foreign company” means a body corporate incorporated under the laws of a foreign country;

“judicial manager” means the judicial manager referred in section 365 and includes a provisional judicial manager;

“Kingdom” means the Kingdom of Swaziland;

“limited company” means a company having the liability of its members limited by the memorandum of association to the amount (if any) of unpaid on the shares held by them;

“liquidator” means the person appointed under Chapter XIV as liquidator of such company, and includes any co-liquidator and any provisional liquidator so appointed;

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

“Master” means the Master of the High Court;

“member” means a person defined under section 97;

“memorandum” means the memorandum of association of a company and in relation to a foreign company, includes the charter, statutes, memorandum of association and articles, or other instrument constituting or defining the constitution of company;

“Minister”, in relation to any matter to be dealt with in the office of the Master in connection with the winding up or judicial management of companies, means the Minister of Justice and, in relation to any other matter, means the Minister responsible for companies;

“officer” includes any managing director, manager or secretary of a company;

“place of business” means any place where the company transacts or holds itself out as transacting business and includes a share transfer or share registration office;

“prescribed” means prescribed by or under this Act or Regulations;

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

“provisional judicial manager” means a provisional judicial manager appointed by the Master under section 367;



“Registrar” means the Registrar of Companies appointed under section 4 and includes the Deputy Registrar or any other officer delegated by the Registrar to exercise powers conferred on him under this Act;

“Regulations” means the Regulations made under this Act;

“secretary” includes any official of a company by whatever name the secretary may be designated, including a body corporate, who or which is performing the duties normally performed by a secretary of a company;

“share” means a share in the share capital of a company and in relation to an offer of shares for subscription or sale, includes a share and a debenture of a company, whether a company within the meaning of this Act or not, and any rights or interests, by whatever name may be called in a company or in or to any such share or debenture;

“special resolution” means a resolution passed at a general meeting of that company, in the manner provided for by section 163;

“repealed Act” means the Companies Act No. 7 of 1912;

“winding-up order” means any order of court whereby a company is wound up and includes any order of court whereby a company is placed under provisional winding-up for so long as such order is in force.

(2) A person shall not be deemed to be, within the meaning of any provision of this Act, 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.

(3) (a) For the purposes of this Act, a company shall, be deemed to be a subsidiary of another company if—

(i) that other company is a member of it, and—

(aa) holds majority share capital in it;

(bb) holds a majority of the voting rights in it;

(cc) has the right to appoint or remove directors holding a majority of the voting rights at meetings of the board;

(dd) has the sole control of a majority of the voting rights in it, whether pursuant to agreement with other members or otherwise; or

(ii) it is a subsidiary of any company which is a subsidiary of that other company; or

(iii) subsidiaries of that other company or that other company and its subsidiaries together hold the rights referred to in subparagraph (i)(aa), (bb) or (cc).

(b) In determining whether a company holds the majority of the voting rights as contemplated in paragraph (a)(i) or (aa)—

(i) voting rights which are exercisable only in certain circumstances shall be taken into account only—

- (aa) when those circumstances have arisen, and or so long as they continue; or
  - (bb) when those circumstances are under the control of the person holding the voting rights;
  - (iii) voting rights held by a person in a fiduciary capacity shall be treated as not held by him but by the beneficiary of such voting rights;
  - (iv) voting rights held by a person as nominee for another person shall be treated as not held by him but by that other person, and voting rights shall be deemed held by a nominee for another person if they are exercisable only on the instructions or with the consent or concurrence of that other person.
- (c) A body corporate or other undertaking which would have been a subsidiary of a company had the body corporate or the undertaking been a company shall be deemed to be a subsidiary of that company.

(4) For purposes of this Act, a subsidiary shall be deemed to be a wholly owned subsidiary of another company if it has no members except that other company and a wholly owned subsidiary of that other company and its or their nominees.

*General application of Act and preservation of rights of existing companies.*

3. (1) This Act shall apply to a company incorporated under this Act, foreign company and, save as is otherwise provided herein, to an existing company incorporated under the repealed Act.

(2) Any reference in this Act, express or implied, to the date of incorporation of an existing company, shall be construed as a reference to the date on which such company was originally incorporated.

(3) Nothing contained in this Act shall affect any right or privilege acquired or liability incurred by any existing company or foreign company, whether by agreement or otherwise, before the commencement of this Act, or affect the validity of the memorandum and articles of any such existing company or the memorandum of an external company in force, or deemed to be in force at such commencement and not in conflict with the provisions of this Act.

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

(5) This Act shall not apply—

- (a) with reference to any company the formation, registration and management of which are governed by the provisions of any law relating to building societies, insurance companies, trade unions and employers' organisations, or co-operative societies or companies, save in so far as may be otherwise provided in any such law; or
- (b) with reference to any company or foreign company or society which is subject to the provisions of any law relating to banks or insurance companies or societies in so far as those provisions are inconsistent with this Act.

(6) Any existing company which has issued any shares which are at the commencement of this Act not fully paid-up, shall remain, subject to the provisions of the repealed Act in respect of such shares only, as if this Act had not been passed.

## CHAPTER 2

### PART I

#### OFFICE OF REGISTRAR

##### *Office of Registrar.*

4. (1) There shall be an office of the Registrar consisting of the Registrar, Deputy Registrar and such other officers who shall be responsible for the administration of this Act and who shall perform such functions and exercise such powers as may be conferred on them by this Act or any other enactment.

(2) The Registrar shall hold at least an LLB qualification and his staff shall be appointed in accordance with the Civil Service Order, 1973, or its successor thereto.

(3) Deputy Registrar shall hold an LLB qualification.

(4) The Registrar and his staff shall be appointed by the Civil Service Commission.

##### *Functions of Registrar.*

5. The Registrar is responsible for—

- (a) taking charge of and be responsible for the safe custody of all documents lodged with him under this Act;
- (b) examining and registering all returns and other documents lodged with him;
- (c) registering any alteration in the share capital of a company provided that such alteration is in accordance with this Act;
- (d) registering amendments to the memorandum and articles of association of any company;
- (e) registering the changes in the name of any company;
- (f) registering all transfer of shares in respect of any company registered in Swaziland;
- (g) exercising any other powers which the Minister may, by regulations, prescribe; and
- (h) performing such other things that are incidental or related to the exercise of his functions.

##### *Seal of Office.*

6. (1) The Registrar shall have a seal of office which shall be affixed to every memorandum and articles of association and certificates of incorporation lodged with or registered by him, and to any copy of a document issued by him in lieu of the original documents.

(2) The seal and the impression shall be judicially noticed in evidence.

*Exemptions from civil liability.*

7. No act or omission by the Registrar or any officer or other person in the employment of the Government, having duties to perform under this Act, shall subject the Government or the Registrar, or any such officer or person to any liability for any loss or damage sustained by any person in consequence of any such act or omission unless such act or omission was *mala fide* or was due to want of reasonable care or diligence.

*Inspection and copies of documents in the office of the Registrar and by foreign governments and institutions of higher learning.*

8. (1) Subject to subsection (2), any person may, on payment of the prescribed fee—
- (a) inspect any document which is open to inspection kept under this Act by the Registrar in respect of any company; or
  - (b) obtain a certificate from the Registrar as to the contents or part of the contents of any document kept by him under this Act in respect of any company; or
  - (c) obtain a copy of or extract from any such document.
- (2) No fee referred to in subsection (1) shall be payable if the Registrar is satisfied—
- (a) that an inspection, certificates, copy or extract is required on behalf of a foreign government accredited to the Kingdom of Swaziland and no fees are payable in the foreign country concerned in respect of similar inspections, certificates, copy or extract required by the government of Swaziland;
  - (b) that any inspection certificate, copy or extract is required for the purposes of research by or under the control of an institution of higher education.

*Manner of payment of fees to the office of the Registrar.*

9. (1) The payment of all fees payable to the Registrar, as required by this Act shall be effected by affixing revenue stamps to any document.
- (2) No document, form, return or notice in respect of which any fee or payment required under this Act, shall be complete unless proof of payment of the prescribed fee, additional fees (if any) or other moneys has been delivered to the Registrar.
- (3) Fees payable under this Act to the Registrar shall be debts due to the Government recoverable in any competent court.

*Annual report by Registrar.*

10. The Registrar shall, at the end of each calendar year, submit to the Minister a report on the activities of his office.

*Decisions of Registrar reviewable by court.*

11. Any person, including any company or other body corporate, aggrieved by any decision, ruling or order of the Registrar may bring the same under review by the High Court.

*Security for costs in legal proceedings by companies and bodies corporate.*

12. Where a company or other body corporate is plaintiff or applicant in any legal proceedings, the court may at any stage, if it appears by credible testimony that there is reason to believe that the company or body corporate or, if it is being wound up, the liquidator thereof, will be unable to pay the costs of the defendant or respondent if successful in his defence, require sufficient security to be given for those costs and may stay all proceedings until the security is given.

*Copies of court orders to be transmitted to Registrar and Master.*

13. Where any court makes any order under this Act in relation to any company, the Registrar of the court shall without delay transmit a copy of the order to the Registrar and if such order relates to the winding-up or judicial management of any company, also a copy thereof to the Master.

## PART II

### STANDING ADVISORY COMMITTEE

*Standing Advisory Committee.*

14. (1) (a) The Minister shall appoint a Standing Advisory Committee on company law consisting of a chairman and such *ex officio* and other members as he may, from time to time, determine.

(b) A member of the Standing Advisory Committee shall hold office for a period not exceeding three (3) years and shall be eligible for re-appointment upon the expiration of the period of his office.

(2) The Standing Advisory Committee may, from time to time, make recommendations to the Minister in regard to any amendments to this Act and shall advise the Minister on any matter referred to it by the Minister.

(3) The Standing Advisory Committee may call to its assistance such person or persons as it may deem necessary to assist it or to investigate matters relating to company law.

(4) The Chairman shall be responsible for the administration of the Standing Advisory Committee.

(5) The Chairman of the Standing Advisory Committee shall be a person who has the qualifications of being appointed a Judge of the High Court.

(6) The other members other than the *ex officio* members must be persons who have experience in commerce, industry, labour and other relevant occupations.

(7) The Minister shall, from time to time, determine the remuneration of the Chairman and of the members of the Standing Advisory Committee.

## CHAPTER III

### TYPES AND FORMS OF COMPANIES, CONVERSIONS AND LIMITATIONS ON PARTNERSHIPS AND ASSOCIATIONS

*Types and forms of companies.*

15. (1) A company incorporated under this Act may either be—
- (a) a company having the liability of its members limited by the memorandum to the amount of unpaid shares respectively held by them and in this Act referred to as a company limited by shares; or
  - (b) a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up and in this Act referred to as a company limited by guarantee; or
  - (c) a company not having any limit on the liability of its members and in this Act referred to as an unlimited company.
- (2) A company referred to in subsection (1) may either be a private company or a public company.
- (3) A company is deemed to be a local company if that company—
- (a) has Swazi citizens who hold more than one half of its issued share capital;
  - (b) has Swazi citizens forming the majority of its shareholders who have control over the placement of the Board of Directors; and
  - (c) has Swazi citizens forming the majority of its Board of Directors.

*Meaning of “private company” and cessation of its privileges.*

16. (1) In this Act “private company” means a company having a share capital and which by its articles—
- (a) restricts the right to transfer its shares; and
  - (b) prohibits any offer to the public for the subscription of any shares or debentures of the company.
- (2) Where two or more persons hold one or more shares of a company jointly they shall, for the purposes of this section, be treated as a single member.
- (3) No private company shall alter its articles in such manner that they no longer include all of the provisions referred to in subsection (1) unless it is at the same time converted into a public company.
- (4) Subject to subsection (5), if a private company fails to comply with the provisions of its articles referred to in subsection (1), while they are included in the articles, it shall forthwith become subject to the provisions of section 263, as if it were a public company.
- (5) Subsection (4) shall not apply where the court, on being satisfied that the failure to comply with the provisions was unintentional or due to some other sufficient cause or that on other grounds it deems just and equitable to grant relief.

*Incorporation of associations not for gain.*

17. (1) Any association—
- (a) formed or to be formed for any lawful purpose;
  - (b) having the main object of promoting religion, arts, sciences, education, charity, recreation, or any other cultural or social activity or communal or

group interests, including all game sanctuaries and other similar institutions concerned with the protection of wildlife or flora in Swaziland;

- (c) which intends to apply its profits or other income in promoting its said main object;
- (d) which prohibits the payment of any dividend to its members; and
- (e) which complies with the requirements of this section in respect of its formation and registration,

may be incorporated as a company limited by guarantee.

(2) The memorandum of such association shall comply with the requirements of this Act and shall, in addition, contain the following provisions—

- (a) the income and property of the association wheresoever derived shall be applied solely towards the promotion of its main object, and no portion thereof shall be paid or transferred, directly or indirectly by way of dividend, bonus, or otherwise, to the members of the association:

Provided that nothing shall prevent the payment in good faith of reasonable remuneration to any officer or servant of the association or to any member thereof in return for any services actually rendered to the association;

- (b) upon its winding-up, deregistration or dissolution the assets of the association remaining after the satisfaction of all its liabilities shall be given or transferred to some other association or institution having objects similar to its main object, to be determined by the members of the association at or before the time of its dissolution or, failing such determination, by the court.

(3) Existing associations incorporated under section 21 of the repealed Act shall be deemed to have been formed and incorporated under this section.

*Incorporation of certain branches of foreign companies and associations not for gain.*

18. (1) Notwithstanding anything to the contrary in this Act contained, a branch, established in the Kingdom of—

- (a) a company or other association of persons, incorporated outside the Kingdom; or
- (b) an association of persons which is not incorporated and has its head office in a foreign country, may be incorporated under this Act if—
  - (i) the main object in the Kingdom of that branch corresponds with the main object of the company or association concerned;
  - (ii) the said branch complies with the requirements of section 17; and
  - (iii) the whole of the business and all the property, rights and obligations in the company or association concerned will, on incorporation under section 17 of the said branch, be transferred in due form to, vest in and be binding upon the company so incorporated.

(2) Notwithstanding anything to the contrary contained in any law—

- (a) no transfer or stamp duty shall be payable in respect of the transfer of property contemplated in subsection (1)(iii); and

(b) any licence, exemption, permit, certificate or authority held in terms of any law by the company or association concerned in respect of its business or property in the Kingdom, shall with effect from the date of incorporation of the branch concerned as a company by virtue of the provisions of subsection (1), for the purposes of any such law, be deemed to be held by the company so incorporated in respect of that business or property.

(3) This Act, with regard to external companies, shall not apply in the case of an external company a branch of which has been incorporated as a company by virtue of subsection (1).

*Conversion of a public company into a private company and vice versa.*

19. (1) With the sanction of a special resolution and upon compliance with the requirements of sections 17 and 21 and other requirements of this Act in respect of private companies, a public company may convert itself into a private company.

(2) With the sanction of a special resolution and upon compliance with the other requirements of this Act in respect of public companies, a private company may convert itself into a public company.

*Conversion of unlimited company.*

20. An unlimited company may, with the sanction of a special resolution and upon compliance with the requirements of section 21 and the other requirements of this Act, convert itself into a limited company, but such conversion shall not affect the liability of its members in respect of any debts, liabilities or obligations incurred or contracts entered into by, with or on behalf of the company before the conversion.

*Notice of intended conversion of a company.*

21. (1) Any company intending to convert itself into another type or form of company shall not less than three weeks before the date of the meeting convened for the purpose of passing the required special resolution, give notice in the *Gazette* of such intention, specifying the particulars of the proposed conversion and the date and place of the meeting. This subsection shall not apply to any private company intending to convert itself into a public company.

(2) If any company intending to convert itself into another type or form of company is a public company, it shall, in addition, send a notice referred to in subsection (1) to every creditor of the company by registered post not less than three weeks before the date of the meeting.

*Contents and form of articles on conversion.*

22. When the articles of any company are to be altered for the purpose of converting the company into another type or form of company under section 19 or 20, the provisions of sections 48(2) and 49(1) as to the contents and form of articles shall apply, *mutatis mutandis*, to the articles of the said company.



*Amendment of certificate of incorporation of converted company and when conversion effective.*

23. (1) The Registrar shall, on the registration of the special resolution, upon payment of the prescribed fee and upon being satisfied that the requirements of the Act have been complied with, register any conversion in the register of companies and shall issue an amended certificate of incorporation, stating the date of the first registration of the company, its former name, the name as altered and the nature of the conversion.

(2) Any such conversion, shall take effect, as from the date of the amended certificate of incorporation issued under subsection (1).

(3) The Registrar shall give notice in the *Gazette* of the conversion of a company into another type or form of company.

*Effect of conversion and alteration of other registers.*

24. (1) The conversion of a company into another type or form of company under this Act shall not affect the corporate existence of the company as from the date of its first registration, nor any of its rights, debts, liabilities, obligations incurred or contracts entered into by, with, or on its behalf at any time or render defective any legal proceedings by or against the company, and legal proceedings that could have continued or commenced, may notwithstanding such conversion, be continued or commenced against the company as converted.

(2) If as a result of the conversion of the company into another type or form of company, any alteration in its name pursuant to the requirements of this Act is necessary, the alteration shall not be deemed to be a change of name for the purposes of section 38.

(3) Upon the production by a company of an amended certificate of incorporation or a certified copy thereof to any registrar or other officer charged with the maintenance of a register under any Act, and on compliance with the requirements of such register or officer as to the form of application, if any, and the payment of any prescribed fee, such registrar or other officer shall make in his register all such alterations as are necessary by reason of the conversion of the company into another type or form of company.

*Prohibition of association or partnership exceeding twenty members, and exemption.*

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

(2) Subsection (1) shall not apply with reference to the formation by persons qualified to carry on any organised professions which are designated by the Minister by notice in the *Gazette*, or any associations, syndicate or partnership for the purpose of carrying and/or any combinations of such professions.

(3) The Minister may, by notice in the *Gazette*, grant the exemption of an association, syndicate or partnership from requirement of that section 25(1) where he is satisfied that the principal purpose of the association, syndicate or partnership is not the direct acquisition or gain by it or its individual members but the furtherance of their collective interests.

*Unregistered associations carrying on business for gain not to be corporate bodies.*

26. No association of persons formed for the purpose of carrying on any business that has for its objects the acquisition of gain by the association or by the individual members thereof, shall be a body corporate, unless it is registered as a company under this Act or is formed in pursuance of some other law.

#### CHAPTER IV

### FORMATION, OBJECTS, CAPACITY, POWERS, NAMES, REGISTRATION AND INCORPORATION OF COMPANIES, MATTERS INCIDENTAL THERETO AND DEREGISTRATION

#### FORMATION, OBJECTS AND POWERS

*Mode of forming company.*

27. Any two or more persons associated for a lawful purpose or, where the company to be formed is to be a private company with a single member, any one person for a lawful purpose, may form an incorporated company by complying with this Act in respect of registration.

*Capacity of companies.*

28. Where the company's memorandum states that the object of the company is to carry on business as general commercial company the company shall have power to do all such things as are incidental or conducive to the [carrying] on of any trade or business by it.

*A company's capacity not limited by its memorandum.*

29. (1) The validity of an act done by a company shall not be called into question on the ground of lack of capacity by reason of any provision in the company's memorandum of association.

(2) A member of a company may bring proceedings to restrain the doing of an act which, but for subsection (1), would be beyond the company's capacity and no such proceedings shall lie in respect of an act to be done in the fulfilment of a legal obligation arising from a previous act of the company.

(3) (a) The directors shall observe any limitations on their powers in the memorandum and articles of association and any action by the directors which, but for subsection (1), would be beyond the company's capacity may only be ratified by the company by special resolution.

(b) A resolution ratifying the action referred to in paragraph (a) shall not affect any liability incurred by the directors or any other person and relief from any such liability shall be agreed to separately by special resolution.

*Power of directors to bind the company.*

30. (1) Where a person is dealing with a company in good faith, the power of the board of directors to bind the company, or authorise others to do so, shall be deemed to be free from any limitations under the company's memorandum and articles of association.

(2) For the purposes of this section—

- (a) a person deals with a company if he is a party to transaction or other act to which the company is a party;
- (b) a person shall not be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the directors under the company's memorandum or articles of association; and
- (c) a person shall be presumed to have acted in good faith unless the contrary is proved.

(3) Subsection (1) shall not affect any right of a member of the company to bring proceedings to restrain the doing of an act which is beyond the powers of directors and no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.

(4) Subsection (1) shall not affect any liability incurred by the directors, or any other person, by reason of the directors exceeding their powers.

*No duty to enquire as to capacity of company or authority of directors.*

31. A party to a transaction with a company is not bound to enquire as to whether it is permitted by the company's memorandum or as to any limitation on the powers of the board of directors to bind the company or authorise others to do so.

*Abolition of the doctrine of constructive notice.*

32. (1) A person shall not be taken to have notice of any matter merely because of its being disclosed in any document kept by the Registrar of Companies (and thus available for inspection) or made available by the company for inspection.

(2) Subsection (1) shall not affect the question whether a person is affected by notice of any matter by reason of a failure to make such enquiries as ought reasonably to be made.

(3) In this section, "document" includes any material which contains information.

*Invalidity of certain transactions involving directors.*

33. (1) Where a company enters into a transaction to which the parties include a director of the company or of its holding company, or a person connected with such a director or a company with whom such a director is associated, and the board of directors, in connection with that transaction, exceed any limitation on their powers under the company's memorandum or articles, the transaction is voidable at the option of the company.

(2) Whether or not the transaction referred to in subsection (1) is avoided, any party to such transaction, and any director of the company who authorised the transaction is liable to—

- (a) account to the company for any gain which he has made directly or indirectly by the transaction; and
- (b) indemnify the company for any loss or damage resulting from the transaction.

(3) Nothing in subsection (1) or (2) shall be construed as excluding the operation of any other enactment or rule of law by virtue of which the transaction may be called in question or any liability to the company that may arise.

(4) The transaction ceases to be voidable if—

- (a) restitution of any money or other asset which was the subject matter of the transaction is no longer possible; or
- (b) the company is indemnified for any loss or damage resulting from the transaction; or
- (c) rights acquired *bona fide* for value and without actual notice of the directors exceeding their powers by a person who is not party to the transaction would be affected by the avoidance; or
- (d) the transaction is ratified by the company in general meeting ordinary or special resolution or otherwise as the case may require.

(5) A person other than a director of the company is not liable under subsection (2) if he shows that at the time the transaction was entered into he did not know the directors were exceeding their powers.

(6) This section does not affect the operation of section 30 in relation to any party to the transaction not within subsection (2)(a) or (b), and where a transaction is voidable by virtue of this section and valid by virtue of section 30 in favour of such a person, the court may, on the application of that person or of the company, make such order affirming, reversing or setting aside the transaction, on such terms, as may appear to the court to be just.

*Pre-incorporation contracts.*

34. Any contract made in writing by a person professing to act as an agent or trustee for a company not yet formed, incorporated or registered shall be capable of being ratified or adopted by or otherwise made binding upon and enforceable by such company after it has been registered as if it had been duly formed, incorporated and registered at the time when the contract was made, if—

- (a) the memorandum contains as one of the objects the adoption or ratification of such contract; and
- (b) the contract or a certified copy thereof is delivered to the Registrar simultaneously with the delivery of the memorandum and articles of association in terms of section 52.

*Subsidiary not to lend money to holding company.*

35. (1) Subject to subsection (3), no part of the funds of a company shall be employed directly or indirectly in loans by any other means to any company which is its holding company or which is a subsidiary of the holding company but not a subsidiary of itself unless such loan is authorised by special resolution of the company.

(2) Subsection (1) shall not be construed as prohibiting the lending of money in the ordinary course of business by a company actually carrying on a business which includes the lending of money.

(3) No company shall directly or indirectly (whether through the instrumentality of its subsidiary or otherwise) provide any security to another person in connection with an obligation of any company which is its holding company or which is a subsidiary of that holding company but not a subsidiary itself.

(4) Where any part of the funds of a company is employed in contravention of subsection (1), the company, the holding company concerned, and every director or officer of either company who authorises or knowingly is a party to the contravention, commits an offence.

*Company not to be a member of its holding company.*

36. (1) Save as is provided in this section, no company shall be a member of a company which is its holding company, and any allotment, issue or transfer of shares of a company to its subsidiary shall be void.

(2) Subsection (1) shall not apply in relation to a subsidiary acting in a representative capacity or as a trustee, unless the holding company or a subsidiary thereof is beneficially interested under the trust and is not so interested only by way of security for the purpose of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

(3) Nothing in this section may be construed as preventing—

(a) a subsidiary which, at the commencement of this section is, or before it became a subsidiary was, lawfully a member of its holding company, from continuing to be a member, but no such subsidiary shall have the right to vote at meetings of the holding company or any class of members thereof; or

(b) the allotment or issue of capitalisation shares by the holding company to its subsidiary.

(4) Subsections (1) and (3) shall, subject to subsection (2), apply to a nominee of a company which is a subsidiary as if reference in the said subsections to such a company included references to such a nominee.

*Name of a company.*

37. (1) The Registrar may, on written application on the prescribed form and on payment of the prescribed fee, reserve a name pending registration of a company or a change of name by an existing company; and such reservation shall be for a period of sixty (60) days or much longer period, not exceeding in all ninety (90) days, as the Registrar may, for special reasons, allow.

(2) No name shall be reserved and no company shall be registered by a name which is identical with that for which a reservation is current or with that of a registered company or a registered foreign company, which so nearly resembles any such name as to be calculated to deceive unless the registered company or registered foreign company is in liquidation and signified its consent to the registration in such manner as the Registrar may require.

(3) Unless otherwise ordered by the Minister, the Registrar shall not register a company by a name which in his opinion is calculated to mislead the public or to cause annoyance or an offence to any person or class of person or is suggestive of blasphemy or indecency, or a name representing an occupation for which personal qualifications are required.

(4) Without the consent of the Minister, no company shall be registered by a name which include the words “Commonwealth”, “Crown”, “Government”, “Royal”, “Prime Minister”, “State” or the combined words “United Nations” or any other word or words, abbreviation or initial which import or suggest that it enjoys or will enjoy the patronage of the

King or Ngwenyama, or of the Government of any other country or of any department of any such Government or of the General Assembly of the United Nations.

(5) Where a company through inadvertence or otherwise is registered, whether originally or by reason of a change of name, by a name which would not, under the provisions of this section, be permitted to be used for the registration of a company, the Registrar within five years of the registration, may, in writing, order the company to change its name and the company shall thereupon do so within a period of six weeks from the date of the written order or such longer period as the Registrar may allow.

*Change of name.*

38. (1) A company may, by special resolution change its name.

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

(3) The change of name shall, at the expense of the company concerned, be advertised by the Registrar in the *Gazette* and in the newspaper published and circulating in Swaziland.

(4) A change of name of a company shall not affect any rights, debts, liabilities or obligations of the company, nor render defective any legal proceedings by or against the company, and any legal proceedings that could have been continued or commenced by or against it prior to such change of name, may, notwithstanding such change of name, be continued or commenced by or against the company under its new name.

(5) Upon the production by the company of an amended certificate of incorporation or a certificate of the change of the name of such company or a certified copy thereof to any registrar or other officer charged with the maintenance of a register under any Act, and on compliance with the requirements of such registrar or officer as to the form of application, if any, and the payment of any prescribed fee, such registrar or other officer shall make in his register all such alterations as are necessary by reason of the change of the name of the company.

(6) A company shall not be registered with a name similar to or identical with the previous name of a company that has changed its name for a period of three years from such change.

*Recourse to court in matters as to names.*

39. Any company or person aggrieved by any decision of the Registrar under section 37 or 38 may, within one month after such decision or order, apply to the court for relief, and the court shall have power to consider the merits of any such matter, to receive further evidence and to make any order it deems fit.

*Formal requirements as to names of companies.*

40. (1) Subject to this section—

(a) the name of a public company shall include, as its last word, the word "Limited";

(b) the name of a private company shall include as its last two words, “(Proprietary) Limited”.

(2) There shall be included in the name of any foreign company the memorandum of which has been registered under this Act, the statements “Incorporated in ... (stating the name of the foreign country concerned)” subjoined to such name.

(3) There shall be included in the name of any association not for gain incorporated under this Act, the statement Incorporated under section 17 subjoined to such name.

(4) If a company is being wound up by the court, voluntarily or is under judicial management, the statement “In Liquidation”, “In Voluntary Liquidation” or “Under Judicial Management” as the case may be, shall be included in and be subjoined to the name of the company concerned and if the winding-up order or judicial management order is discharged, or the voluntary winding-up ceases, such statement shall be omitted from the name of such company.

(5) The addition to or omission from the name of any company of the words or statements prescribed by this section as a result of the conversion of a company into another type of company, or the discharge of a winding-up order or judicial management order or the cessation of voluntary winding-up shall not be deemed to be a change of name for the purposes of section 38(1):

Provided that section 38(2), (3) and (4) shall apply in the case of such addition or omission as if it were a change of name.

(6) If under subsection (4) a statement is to be added to or is to be omitted from the name of a company, the liquidator or judicial manager, as the case may be, shall within seven days after his appointment or his discharge, as the case may be, apply to the Registrar on the prescribed form and on payment of the prescribed fee for such statement to be added to or omitted from the name of the company, and the Registrar shall issue a certificate of change of name.

(7) If a company fails to comply with subsection (1), (2), (3), (4) or (5) or in any way uses a name in contravention of such provision, it shall be guilty of an offence.

(8) If a liquidator or judicial manager fails to comply with subsection (6), he shall be guilty of an offence.

*Use and publication of name of company.*

41. (1) Every company shall—

- (a) display its name on the outside of its registered office and every office or place in which its business is carried on, in a conspicuous position and in characters easily legible;
- (b) have its name engraved in legible characters on its seal (if any);
- (c) have its name and number of its Certificate of Incorporation mentioned in legible characters in all notices and other official publications of the company and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company and in all letters, delivery notes, invoices, receipts, and letters of credit of the company:

Provided that for the purpose of this subsection the abbreviations “Ltd.”, “(Pty)”, “Co.” and “&” may be used for the words “Limited”, “(Proprietary)”, “Company” and “and”, respectively in a company’s name.

(2) Any director or officer of a company or any person acting on its behalf commits an offence if he—

- (a) uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraved as aforesaid;
- (b) issues or authorises the issue of any notice or other official publication of the company, or signs or authorises to be signed on behalf of the company any bill or exchange, promissory note, endorsement, cheque or order for money or goods, wherein its name is not mentioned in manner aforesaid; or
- (c) issues or authorises the issue of any letter, delivery note, invoice, receipt of letter of credit or the company wherein its name is not mentioned in manner aforesaid.

(3) A person convicted of a contravention of subsection (2) shall, in addition, be liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods for the amount thereof unless it is duly paid by the company.

(4) If any company fails to comply with the requirements of subsection (1), it shall be guilty of an offence.

*Improper use of word “Limited” or “Incorporated” an offence.*

42. Any individual trading or carrying on business under a name or title of which the word “Limited” or “Incorporated” is the last word, unless duly incorporated under this Act or any other law, commits an offence.

#### MEMORANDUM OF ASSOCIATION

*Requirements for memorandum of association.*

43. (1) The memorandum of the company shall reflect the following—

- (a) the name of the company;
- (b) the objects of the company;
- (c) that the liability of the members is limited;
- (d) in the case of a company limited by shares the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount;
- (e) in the case of a company limited by guarantee—
  - (i) that the liability of the members is limited as stated in subparagraph (ii);
  - (ii) that each member undertakes to contribute to the assets of the company in the event of the company being wound up while he is a member or within one year of its winding-up, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of the winding-up, and for adjustment of the rights of the contributions among the



members, such amount as may be required, not exceeding a specified amount but not less than one lilangeni.

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

(3) Each subscriber to the memorandum of a company limited by shares must write in words opposite his name the number of shares he takes.

*Memorandum may contain special conditions.*

44. The memorandum of a company may, in addition to the requirements of section 43, contain any special conditions which shall apply to the company, and the requirements, if any, additional to those prescribed in this Act for the alteration of such conditions.

*Form and signing of memorandum.*

45. (1) The memorandum shall be in the prescribed form.

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

*Alteration of memorandum as to objects.*

46. (1) A company may, by special resolution, alter the provisions of its memorandum with respect to the statement of the company's objects.

(2) If any application is made to the court by the holders of not less in the aggregate than fifteen (15) per cent in nominal value of the company's issued share capital or of any class thereof or, if the company is one limited by guarantee, not less than fifteen (15) per cent of the company's members, for any alteration in terms of subsection (1) to be cancelled, the alteration shall not have effect except in so far as it is confirmed by the court:

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

(3) An application under subsection (2) shall be made within twenty-one (21) days after the date on which the resolution altering the condition contained in the memorandum of the company's objects was passed, and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(4) On such application, the court may make an order confirming the alteration either wholly or in part and on such terms and conditions as it thinks fit, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient member, and may give such directions and make such order as it may think expedient for facilitating or carrying into effect any such arrangement:

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

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

- (a) if no application is made with respect thereto under this section, it shall within 15 days from the end of the period for making such application, deliver to the Registrar a copy of its memorandum as altered; and
- (b) if such an application is made it shall—
  - (i) forthwith give notice of that fact to the Registrar, and
  - (ii) within 15 days from the date of any order cancelling or confirming the alteration, deliver to the Registrar a certified copy of its memorandum as altered.

(6) The court may at any time extend the time for the delivery of documents to the Registrar under subsection (5)(b) for such period as the court may think proper.

(7) If a company makes default in giving notice or delivering any documents to the Registrar as required by subsection (5), the company shall be guilty of an offence and liable to a fine.

(8) The validity of an alteration of the provisions of a company's memorandum with respect to the object of the company shall not be questioned on the ground that it was not authorised in terms of subsection (1) except in proceedings taken for the purpose (whether under this section or otherwise) before the expiration of twenty-one (21) days after the date of resolution in that behalf; and where any such proceedings are taken otherwise than under this section, subsections (5), (6) and (7) shall apply in relation thereto as if they had been taken under this section and as if an order declaring the alteration invalid were an order cancelling it and as if an order dismissing the proceeding were an order confirming the alteration.

*Alteration of memorandum as to special conditions and other provisions.*

47. (1) Subject to subsection (3) and unless prohibited by the condition itself, a special condition contained in the memorandum may be altered by special resolution or in the manner prescribed in such special condition.

(2) Any private company may at any time by special resolution and with the written consent of each person being then a director of the company, incorporate in its memorandum the provision referred to in section 44.

(3) A private company may, by special resolution, alter or remove the provision referred to in section 44 and contained in its memorandum:

Provided that the alteration or removal is confirmed by the court if it is satisfied that such alteration or removal would be just and equitable.

(4) Any other provision of the memorandum of a company may be altered by special resolution.

(5) Nothing in this section shall authorise any alteration of a memorandum constituting a variation or abrogation of the special rights of any class of members save and except that such rights may be altered or abrogated in the manner prescribed in the memorandum for such variation or abrogation.

ARTICLES OF ASSOCIATION

*Companies to have articles of association.*

48. (1) There shall be registered with the memorandum of a company, articles of association, prescribing articles of the company.

(2) The articles of a company incorporated after the commencement of this Act shall—

- (a) in the case of a public company limited by shares, consist of the articles contained in Table A of Schedule 1;
- (b) in the case of a private company limited by shares, consist of the articles contained in Table B of Schedule 1; and
- (c) in the case of a company limited by guarantee, consist of the articles contained in Table C of Schedule 1,

subject to such additions, omissions and modifications as are stated in the articles, and the articles contained in the said Schedule shall, so far as applicable and not excluded or modified, apply to that company.

(3) After the commencement of this Act, no condition contained in the articles of a company for compulsory loans to be made by members of the company to the company shall be of any force or effect.

*Contents and forms of articles of association.*

49. (1) The articles shall be in the form prescribed in section 48.

(2) The articles shall be signed and dated by each subscriber to the memorandum in the presence of at least one attesting witness and there shall be written in legible characters, his full name, occupation and full residential or business address.

*Consolidation of articles.*

50. A company may at any time after the registration of its articles, submit to the Registrar a document in the prescribed form, containing a consolidated and full statement of all the articles applying to the company together with a certificate by a notary public to the effect that the articles of the company have been truly stated and, on payment of the prescribed fee, the Registrar shall endorse on that document a certificate to the effect that the articles stated therein constitute the articles of the company as at the date of the certificate.

*Alteration of articles.*

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

## REGISTRATION AND INCORPORATION

*Registration of memorandum and articles.*

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

(2) Upon payment of the prescribed fees the Registrar shall, if the memorandum and articles are in accordance with the provisions of this Act, register the same, and shall return to the company a duplicate, original or one notarial copy of the memorandum and of the articles with the date of registration endorsed thereon.

(3) Upon the registration of the memorandum and articles of a company, the Registrar shall allocate a registration number to the company concerned.

*Certificate of incorporation and its value as evidence.*

53. (1) Upon the registration of the memorandum and articles of a company, the Registrar shall certify under his hand that the company is incorporated and the date of such incorporation.

(2) A certificate of incorporation issued by the Registrar in respect of any company shall upon its mere production, in the absence of proof of fraud, be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto, have been complied with, and that the company is a company duly incorporated under this Act.

(3) A solemn declaration by an attorney of the High Court of Swaziland, engaged in the formation of a company, or by a person named in the articles as a director or secretary of the company, of compliance with all or any of the said requirements shall be produced to the Registrar, and the Registrar may accept such a declaration as sufficient evidence of compliance.

*Effect of incorporation on company and members.*

54. (1) From the date of incorporation stated in the certificate of incorporation, the subscribers of the memorandum together with such other persons as may from time to time become members of the company, shall be a body corporate with the name stated in the memorandum, capable of exercising all the functions of an incorporated company, and having perpetual succession, but with liability (if any) on the part of the members to contribute to the assets of the company in the event of its being wound up as provided by this Act.

(2) The memorandum and articles shall bind the company and the members thereof to the same extent as if they respectively had been signed by each member, to observe all the provisions of the memorandum and of the articles, subject to the provisions of this Act.

*Members may become liable where membership reduced below minimum.*

55. Where at any time the number of members of a public company is reduced below two and it carries on business for more than six (6) months while the number is so reduced, every person who is a member of the company during that time that it so carried on business after six (6) months and is cognisant of the fact that it is carrying on business with fewer than two (2) members, shall severally be liable for the payment of the debts of the company contracted during that time and may be severally sued therefor.

*Members' rights to copies of memorandum and articles.*

56. (1) A company shall send to every member at his request and on payment of such amount as the company may determine, a copy of its memorandum and of its articles, or shall, if so requested, afford to a member or his duly authorised agent adequate facilities for making a copy of such memorandum and articles.

(2) Any company which fails to comply with any request under subsection (1), shall be guilty of an offence.

#### INCIDENTAL MATTERS

##### *Issued copies of memorandum or articles to embody alterations.*

57. (1) Every copy of the memorandum or articles of a company issued after the date on which any alteration has been made thereto, shall include the alteration.

(2) A company which at any time after the date of any such alteration issues a copy of its memorandum or articles which does not include the alteration, shall be guilty of an offence.

##### *Contracts by companies.*

58. (1) Contracts on behalf of a company may be entered into in the following manner—

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

(b) any contract entered into by a person, institution or body which is duly authorised by the company must be in writing and signed by such person, or institution or body.

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

##### *Promissory notes and bills of exchange.*

59. 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.

##### *Service of documents upon companies.*

60. Any notice, order or other document which by this Act may be or is required to be served upon any company, including a foreign company, may be served by delivering it at the registered office or sending it by registered post to the postal address of the company.

##### *Arbitration between companies and others.*

61. (1) A company may agree to refer and may refer to arbitration any existing or future difference between itself and any other company or person.

(2) A Company or person which is a party to the arbitration may delegate to the arbitrator power to settle or determine any matter capable of being lawfully settled or determined by the company itself or by their directors or other managing body.

#### DEREGISTRATION

*Cancellation of registration of memorandum and articles.*

62. (1) If the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he shall, in accordance with subsection (7), send to the company by registered post a letter enquiring whether it is carrying on business or is in operation.

(2) If the Registrar does not within one month after sending the letter receive any answer thereto or receives an answer to the effect that the company is not carrying on business or is not in operation, he shall publish in the *Gazette* and send to the company by registered post a notice that at the expiration of two months from the date of that notice the company mentioned therein will, unless good cause is shown to the contrary, be deregistered.

(3) If a company fails for a period of more than two years to lodge with the Registrar the annual return required by section 151 and he has reason to believe that the company is not carrying on business or is not in operation, the Registrar shall publish in the *Gazette* and send to the company by post such notice as is referred to in subsection (2).

(4) At the expiration of the period mentioned in any notice referred to in subsection (2) or (3) or upon receipt from any company of a written statement signed by every director thereof to the effect that the company has ceased to carry on business and has no assets or liabilities, the Registrar shall, unless good cause to the contrary is shown by the company, a creditor or any interested person, deregister the company and shall give notice to that effect in the *Gazette*, and the date of the publication of such notice in the *Gazette* shall be deemed to be the date of deregistration:

Provided that the liability of every director, officer and member of the company shall continue and may be enforced as if the company had not been deregistered.

(5) (a) When any company has been deregistered the books and papers of the company may be disposed of in such way as the Registrar may direct.

(b) After five (5) years from the deregistration of a company, no responsibility shall rest on any person to whom the custody of the books and papers has been committed, by reason of the same not being forthcoming to a person claiming to be interested therein.

(6) (a) The court may, on application by any interested person or the Registrar, if it is satisfied that the company was at the time of its deregistration carrying on business or was in operation, or otherwise that it is just that the said registration be restored, make an order that such company's registration be restored accordingly, and thereupon the company shall be deemed to have continued in existence as if it had not been deregistered.

(b) Any such order may contain such directions and make such provision as the court deems just for placing the company and all other persons in the position, as nearly as may be, as if the company had not been deregistered.

(7) Any letter or notice under this section shall be addressed to the company at its postal address, its registered office and to the care of any directors or officers or auditors of the company whose names and addresses are known to the Registrar.

CHAPTER V

SHARE CAPITAL, REDUCTION OF CAPITAL, DEALING BY A COMPANY IN OWN SHARES, ALLOTMENT AND ISSUE OF SHARES, CORPORATE DISTRIBUTIONS,

MEMBERS AND REGISTER OF MEMBERS, DEBENTURES, TRANSFERS, AND  
RESTRICTIONS ON OFFERING SHARES FOR SALE

SHARE CAPITAL

*Share capital shall be divided into par value shares.*

63. The share capital of a company shall be divided into shares having a par value.

*Company may alter share capital and shares.*

64. (1) Subject to sections 47 and 94, a company limited by shares if so authorised by its articles, may by special resolution—

- (a) increase its share capital by new shares of such amount as it thinks expedient;
- (b) consolidate and divide all or any part of its share capital into shares of larger amount than its existing shares;
- (c) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum;
- (d) cancel shares which at the time of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person and diminish the amount of its authorised share capital by the amount of the shares so cancelled;
- (e) convert any of its shares, whether issued or not, into shares of another class.

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

*Premiums received on issue of shares to be share capital and limitation on application thereof.*

65. (1) Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premium on those shares shall be transferred to an account to be called the “share premium account”, and this Act relating to the reduction of the 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) Where assets are acquired by the issue of shares of a company, such assets shall be valued and such value shall be properly recorded in the books of the company and if such value of the assets is more than the par value of such shares, the difference between the par value of the shares and the value of the assets so acquired shall be transferred to the share premium account.

(3) The share premium account may, notwithstanding subsection (1), be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully paid capitalisation shares or in writing off—

- (a) the preliminary expenses of the company; or
- (b) the expenses of, or the commission paid or discount allowed on, the creation or issue of any shares or debentures of the company,

or in providing for the premium payable on redemption of any redeemable preference shares or of any debentures of the company.

(4) This section shall as from six (6) months after the date of its commencement, apply to any company in respect of any balance of share premium as at the date of commencement of this Act.

*Payment of interest out of capital in certain cases.*

66. (1) Where any shares of the company are issued for the purpose of raising money to defray the expenses of the construction of works or buildings or for the provision of plant, which cannot be made profitable for a lengthy period, the company may pay interest on the share capital for the period and subject to the conditions and restrictions in this section mentioned, and may charge the same to capital as part of the cost of construction of the works or buildings or the provision of plant.

(2) No such payment shall be made under subsection (1) unless it is authorised by the articles or by special resolution of the company, and the sanction of the court has first been had and obtained.

(3) The court may, on application for an order sanctioning such payment at the expense of the company—

(a) appoint an expert to enquire into and report to it on the circumstances of the case and may before making such appointment require the company to give sufficient security for the payment of the costs of the enquiry; and

(b) having regard to all the circumstances of the case, make an order on such terms and conditions as it thinks fit.

(4) Any such payment shall be made only for such period as may be determined by the court and such period shall in no case extend beyond the close of the half-year next after the half-year during which the works or buildings have been actually completed or the plant provided.

(5) The rate of interest shall in no case exceed twelve (12) per cent per annum or such lower rate as may for the time being be determined by the court.

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

(7) For the purposes of subsection (4), the expression 'half-year' in relation to a company, means the period of six months commencing on the first or ending on the last day of the financial year of that company.

*Restriction of power to pay commission and discounts; return to Registrar.*

67. (1) A company may pay commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or of his procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares of the company if—

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

(b) the commission paid or agreed to be paid does not exceed ten (10) per cent of the price at which shares are issued or any lesser rate fixed by the articles; and

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

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



- (ii) in the case of shares not offered to the public, disclosed in a statement in the prescribed form and where any circular or notice, not being a prospectus, inviting subscription for shares is issued, also disclosed in that circular or notice; and

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

(2) The statement referred to in subsection (1)(c)(ii) shall be lodged with the Registrar for registration before the payment of the commission to which the statement relates.

(3) Save as provided for in this section and subject to section 68, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or of his procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares of the company, whether the shares or money be so applied by being added to the purchase price of any property acquired by the company or to the contract price of any work to be executed for the company or the money be paid out of the nominal purchase price or contract price, or otherwise.

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

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

(6) If default is made in complying with the requirements of subsection (2) relating to the lodging of the statement referred to therein with the Registrar, the company and every director and officer of the company who knowingly is a party to the default, shall be guilty of an offence.

#### *Issue of shares at a discount.*

68. (1) A company may issue at a discount shares of the company of a class already issued if the following conditions have been complied with—

- (a) such issue has been authorised by special resolution of the company specifying the maximum rate of discount at which the shares are to be issued;
- (b) not less than one (1) year must at the date of issue have elapsed since the date of which the company became entitled to commence business or the date of the first issue of the class of shares; and
- (c) such issue has been sanctioned by the court.

(2) The shares to be issued at a discount must be issued within one month after the date on which the issue is sanctioned by the court or within such extended time as the court may allow.

(3) The court may on application for an order sanctioning any such issue, having regard to all the circumstances of the case, make an order on such terms and conditions as it thinks fit.

(4) Every prospectus relating to the issue of shares by the company after the issue of the shares at a discount under this section shall contain particulars of the discount allowed on the issue of those shares and of so much of that discount as has not been written off at the date of the issue of the prospectus.

(5) If default is made in complying with the requirements of subsection (4), the company, and every director and officer of the company who knowingly is a party to the default, shall be guilty of an offence.

*Reduction of capital by special resolution.*

69. (1) A company limited by shares may by special resolution reduce its share capital in any way other than paying off capital in installments or in future payments, if—

- (a) it is so authorised by its articles;
- (b) it has no creditors or all its creditors have consented to the reduction of capital; and
- (c) the reduction of capital affects all its shares or any class of shares proportionally.

(2) An affidavit, in the form prescribed and accompanied by the prescribed fee, by a director or officer of the company to the effect that the company as at the date of the special resolution has no creditors or that all the creditors have consented to the proposed reduction of capital and that all its shares or all the shares of the class concerned are affected proportionally by it, shall be annexed to the copy of the special resolution lodged with the Registrar for registration together with the written consents of creditor.

(3) In this section, “creditor”, in relation to a company, means every creditor of the company who at the date of the special resolution referred to in subsection (1) is entitled to any claim which, if such that date were the commencement of the winding-up of the company, would be admissible in proof against the company.

*Reduction of capital confirmed by court.*

70. (1) Where for any reason a reduction of share capital of a company having a share capital cannot be effected under section 69, the company may, if so authorised by its articles, by special resolution and subject to confirmation by the court, reduce its share capital in any way, and in particular (without prejudice to the generality of the power hereby conferred) may—

- (a) cancel any paid-up share capital which is lost or not represented by available assets; or
- (b) pay off any paid-up share capital which is in excess of the wants of the company.

(2) Where a company has passed a special resolution for reducing share capital, it shall within sixty (60) days apply to the court for an order under this section confirming the reduction.

*Creditors and objections to reduction of capital.*

71. (1) Where the proposed reduction of share capital under section 69 involves the payment to any shareholder of any paid-up share capital, and in any other case if the court so

directs, every creditor of the company who at the date fixed by the court is entitled to any claim which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction.

(2) The court shall, unless it otherwise decides, or only to the extent that it may decide, having regard to any special circumstances, 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 claims, and may order the publication of a notice fixing a period or periods within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction.

(3) Where a creditor entered on the list and whose claim is not discharged or determined, does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor on the company securing the payment of his claim by appropriating, as the court may direct, an amount therefore as follows—

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

*Power of court as to order confirming reduction of capital.*

72. (1) On an application under section 69 the court may make an order, on such terms and conditions as it thinks fit, confirming the reduction or may grant a rule *nisi* calling on all persons concerned to show cause why such an order shall not be granted, and where the proposed reduction of share capital involves the payment to any shareholder of any paid-up share capital, the court shall grant such a rule *nisi*.

(2) The court shall not make an order confirming the reduction or confirming a rule *nisi* referred to in subsection (1) unless it is satisfied that every creditor of the company who under section 71 is entitled to object to the reduction, has consented to the reduction or that his debt or claim has been discharged or has determined or has been secured.

(3) The court making any order confirming a reduction capital by a company may make an order requiring the company to publish as the court directs the reasons for reduction or such other information in regard thereto as the court may think expedient with a view to giving proper information to the public and, if the court thinks fit, the causes which led to the reduction.

(4) The court making an order confirming a reduction of capital by a company involving the payment to any shareholder of any paid-up share capital in installments or future payments may make an order to the effect that—

- (a) no proposed instalment or future payment shall be paid out unless it has been on each occasion authorised by the Registrar in writing;
- (b) the Registrar shall issue such written authority only after the company has on each occasion lodged with him an affidavit, in the form prescribed (and accompanied by the prescribed fee) by a director or officer of the company to the effect that as at the date of the lodging of the affidavit the company has no

creditors or that all the creditors have consented to the payment of the proposed instalment or future payment, the written consents of creditors, if any, to be annexed to the said affidavit; and

- (c) if the company is not able to furnish such affidavit, it may apply to the court for an order sanctioning the payment of the proposed instalment or future payment.

(5) In an application for an order under subsection (4)(c), the court may grant an order on such terms and conditions as it thinks fit and may exercise all the powers provided by this section as if it were an application for confirmation of a reduction of capital.

*Special provisions as to special resolutions for the reduction of capital.*

73. (1) Every special resolution for the reduction of the share capital of a company shall be in the prescribed form and shall set out the existing share capital, the particulars of the proposed reduction of capital and the resultant state of the share capital of the company.

(2) Every such special resolution shall be taken to be a special resolution for the alteration of the memorandum of a company.

(3) The Registrar shall register, on payment of the prescribed fee, any special resolution for the reduction of the share capital of a company under section 70 upon the lodging with him of the order of the court confirming the reduction of capital or a certified copy of such order.

*When reduction of capital effective.*

74. No company shall act upon any special resolution for the reduction of capital before the date on which it is registered by the Registrar but such resolution may specify a date, not earlier than the date of its passing, as from which the reduction of capital will have retrospective effect.

*Publication of reduction of capital.*

75. A company shall cause to be published in the *Gazette* a notice of reduction of its capital in respect of every special resolution for the reduction of capital registered by the Registrar within two months after the date of such registration.

*Offences as to reduction of capital.*

76. Any director or officer commits an offence if he—

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

*Acquisition by company of own shares*

77. (1) Subject to the provisions of this section and any other applicable law, a company may by special resolution of the company approve the acquisition of shares issued by the company.

(2) The approval by special resolution may be general approval or a specific approval for a particular acquisition.

(3) If the approval is general approval, it shall be valid only until the next annual general meeting of the company, but it may be varied or revoked by special resolution by any general meeting of the company at any time prior to such annual general meeting.

(4) A company shall not make any payment in whatever form to acquire any share issued by the company if there are reasonable grounds for believing that—

(a) the company is, or would after the payment be unable to pay its debts as they become due in the ordinary course of business; or

(b) the consolidated assets of the company fairly valued would after the payment be less than the consolidated liabilities of the company.

(5) In the case of acquisition of par value shares issued by the company, the issued capital shall be decreased by an amount equal to the par value of the shares so acquired.

(6) If par value shares are acquired at a premium over the par value, the premium may be paid out from reserves, including statutory non-contributable reserves.

(7) Shares issued by a company and acquired under this section shall be cancelled as issued shares and restored to the status of authorised shares forthwith.

(8) Shares in the capital of a company may not be acquired under this section if, as a result of such acquisition, there would no longer be any shares in issue other than convertible or redeemable shares.

*Financial assistance by a company for acquisition of its own shares or of holding company.*

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

(2) If a company acts in contravention of this section every officer of it who is in default is guilty of an offence and is liable to imprisonment or a fine or both.

(3) It shall be a defence in any proceedings under this section against any director or officer of a company if it is proved that the accused was not a party to the contravention.

*Meaning of “financial assistance”.*

79. In this chapter financial assistance means—

(i) financial assistance given by way of gift;

(ii) 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;

(iii) financial assistance given by way of a loan or any other agreement under which any of the obligations of the person giving the assistance are to be fulfilled at a time where agreement or any obligation of another party to the agreement remains unfulfilled, or by way of the novation of, or the assignment of rights arising under a loan or such other agreement; or

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

*Transactions exempt from the provision of section 78.*

80. Nothing in section 78 shall be deemed to prohibit any of the following transactions—
- (a) the provision of financial assistance for the acquisition of shares in a company by the company or its subsidiary in accordance with the provisions of section 77 for the acquisition of such shares;
  - (b) in the interests of empowerment, the making by a company of loans to *bona fide* Swazi citizens other than directors, with a view to enabling the *bona fide* Swazi citizens to purchase or subscribe for shares of the company, or its holding company, to be held by themselves beneficially and not as nominees of the company or any other person.
  - (c) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase or subscription of shares of the company or its holding company to be held for the benefit of persons *bona fide* in the employment of the company, including any director holding a salaried employment in the company;
  - (d) the making by a company of loans to persons, other than directors, *bona fide* in the employment of the company with a view to enabling the persons to purchase or subscribe for shares of the company or its holding company to be held by themselves beneficially and not as nominees of the company by any other person;
  - (e) the payment by a company of a lawful dividend on its shares notwithstanding that the dividend received by a shareholder is used to discharge any liability on his shares or to repay money borrowed for the purpose of subscribing or purchasing shares;
  - (f) the allotment of bonus shares;
  - (g) a reduction of capital in accordance with the provisions of this Act;
  - (h) a redemption or purchase of shares made in accordance with the provisions of this Act;
  - (i) anything done in pursuance of an order of the court under section 265.

*Power of company to give financial assistance.*

81. (1) A company may give financial assistance in the acquisition of its shares or those of its holding company in accordance with this section.
- (2) A company shall not give financial assistance if there are reasonable grounds for believing that—
- (a) the company is or, after the giving of the financial assistance, would be unable to pay its liabilities as they become due; or
  - (b) the realisable value of the company's assistance, after giving the financial assistance, would be less than the aggregate of the company's liabilities and stated capital of all classes.

(3) Unless the company proposing to give the financial assistance is a wholly-owned subsidiary, the giving of assistance under this section shall be approved by special resolution of the company in general meeting.

(4) Where such a resolution has been passed, an application may be made to the court for the cancellation of the resolution by the holders of not less in the aggregate than ten (10) per cent in nominal value of the company's issued share capital or any class of it:

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

*Redemption generally.*

82. (1) Subject to the provisions of this Act, a company limited by shares may, if authorised to do so by its articles, issue shares which are to be redeemed or are liable to be redeemed at the option of 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 may not be redeemed unless they are fully paid, and the terms of redemption shall provide for payment on redemption.

(4) Redeemable shares may only be redeemed out of profits of the company which would otherwise be available for dividends or out of the proceeds of a fresh issue of shares made for the purposes of redemption.

(5) Any premium payable on redemption must be paid out of the distributable profits of the company or the company's share premium account.

(6) If any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise have been available for dividends, be transferred to a reserve fund, to be called the "capital redemption reserve fund", a sum equal to the nominal amount of the shares redeemed, and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were share capital of the company.

(7) Subject to subsection (8), redemption of shares may be effected on such terms and in such manner as may be provided by the company's articles.

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

(9) Without prejudice to subsection (8), where a company is about to redeem shares, it has power to issue shares up to the nominal value of the shares to be redeemed as if those shares had never been issued.

(10) The capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully paid-up shares.

(11) If a company has redeemed any redeemable shares, it shall within thirty days thereafter give notice thereof in the prescribed form to the Registrar specifying the shares so redeemed.

(12) If default is made in complying with subsection (5), the company shall be guilty of an offence.

*Conversion of preference shares into redeemable preference shares.*

83. If a company converts any of its shares into shares which are or at the option of the company, are liable to be redeemed, section 82 shall apply to such shares.

*Power of company to purchase shares.*

84. (1) Subject to the following provisions of this section, a company may, if authorised to do so by its articles, purchase its own shares (including any redeemable shares).

(2) A company may not under this section purchase its own shares if as a result of the purchase there would no longer be any member of the company holding shares other than redeemable shares.

(3) A company shall not purchase its own shares unless the purchase has first been authorised by special resolution of the company in general meeting.

(4) Payment for the acquired shares by the company shall be made out of the company's distributable profits.

*Disclosure by company of purchase of own shares.*

85. (1) Within the period of thirty (30) days beginning with the date on which any shares purchased by a company under this Act are delivered to it, the company shall deliver to the Registrar for registration a return in the prescribed form stating with respect to shares of each class purchased the number and nominal value of those shares and the date on which they were delivered to the company.

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

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

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

(3) Where a company enters into a contract for the purchase of its own shares, the company shall keep at its registered office—

(a) if the contract is in writing, a copy of it; and

(b) if the contract is not writing, a memorandum of its terms.

(4) Every copy and memorandum so required to be kept shall, during business hours (subject to such reasonable restrictions as the company may in general meeting impose, provided that not less than two (2) hours in each day are allowed for inspection) be open to inspection without charge—

(a) by any member of the company; and

(b) if it is a public company, by any other person.

(5) Where default is made in delivering to the Registrar any return required by this section, every officer of the company who is in default shall be guilty of an offence and liable to a fine.



(6) Where default is made in complying with subsection (3), or where an inspection under subsection (4) is refused, every officer who is in default shall be guilty of an offence and liable to a fine.

(7) In case of a refusal of an inspection required under subsection (4), the court may by order compel and immediate inspection.

*The capital redemption reserve.*

86. (1) Where under this Act shares of a company are redeemed or purchased wholly out of the company's profits, the amount by which the company's issued share capital is diminished in accordance with section 82 on cancellation of the shares redeemed or purchased shall be transferred to the "the capital redemption reserve".

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

(3) The provisions of this Act relating to the reduction of a company's share capital apply as if the capital redemption reserve were paid-up share capital of the company, except that the reserve may be applied by the company in paying up unissued shares to be allocated to members of the company as fully paid bonus shares.

*Nature of shares.*

87. The shares or other interest which any member has in a company shall be movable property, transferable in the manner provided by this Act and the articles of the company.

*Shares not to be allotted or issued unless fully paid-up.*

88. (1) No company shall allot or issue any shares unless the full issue price of, or other consideration for, such shares has been paid to and received by the company.

(2) Notwithstanding subsection (1), a company may allot shares not fully paid-up for the purpose of their being offered for sale to the public as fully paid-up shares:

Provided that—

- (a) if such offer is not made within one (1) month from the date of such allotment or agreement, such allotment or agreement shall be void; or
- (b) if such offer to the public is made but not accepted in full within two (2) months from the date of such allotment or agreement to allot, the allotment of, or the agreement to allot, such shares in respect of which the full issue price is not paid within the said period, shall be void.

*Register and return as to allotments.*

89. (1) Every company having a share capital shall keep at its registered office or at the office where it is made up, a register of allotments of shares.

(2) Every company shall forthwith after the allotment of any shares enter in the register of allotments the names and addresses of the allottees, the number of shares allotted to each of them, the amount paid for such shares and in the case of shares allotted and fully paid-

up otherwise than for cash, full particulars of the consideration in respect of which the allotment was made and of the transaction or contract concerned.

(3) If a company makes any allotment of its shares, the company shall within one (1) month thereafter lodge with the Registrar—

(a) a return in the form prescribed stating full particulars of the nominal and previously issued share capital and the number and description of the shares comprised in the allotment;

(b) in the case of shares allotted otherwise than for cash, a copy of the contract in writing constituting the title of the allottee to the allotment, together with any contract of sale, or for service or other consideration in respect of which that allotment was made (or if such contract is not in writing, a memorandum containing full particulars of such contract), and a return in the prescribed form stating the number and description of the shares so allotted, the name and address of such allottee and the consideration for which they have been allotted.

(4) If any allotment of shares becomes void as a result of any provision of this Act, the company shall within one (1) month after the date on which such allotment becomes void, lodge a notice in the prescribed form to that effect with the Registrar.

(5) If default is made in complying with any of the requirements of this section, the company, and every director or officer of the company who knowingly is a party to the default, shall be guilty of an offence.

(6) The provisions of section 107 shall apply to the inspection of the furnishing of copies of or of extracts from such register of allotments.

#### *Certificate of shares or stock.*

90. (1) A certificate signed by at least one director specifying any shares or stock of that company held by any member, shall be *prima facie* evidence of the title of the member to such shares or stock.

(2) Any such signatures may be affixed to the certificate by autographic or mechanical means.

#### *Numbering of shares and share certificates.*

91. (1) The shares of a company having a share capital shall, except in the case of shares or any particular class of shares which rank equally for all purposes, be distinguished by appropriate numbers.

(2) No provision in the articles of a company registered before the commencement of this Act, requiring shares of that company to be numbered, shall apply in respect of shares which in terms of subsection (1) are not required to have distinguishing numbers.

(3) Where shares are not distinguished by appropriate numbers, the certificates of such shares shall be so distinguished, and upon the registration of transfer of any such shares the certificate relating thereto, shall in addition to the distinguishing number, bear on its face such an endorsement, in the form of a reference number or otherwise, as will enable the immediately preceding holder of the shares to be identified.

*Limitation of time for issue of certificates.*

92. (1) Every company shall within two (2) months or within such extended time, not exceeding one (1) month, as the Registrar on good grounds shown and on payment of the prescribed fee, may grant, after the allotment of any of its shares, debentures or debenture stock, complete and have ready for delivery the certificates of all shares, the debentures or the certificates of all debenture stock allotted.

(2) If default is made in complying with the requirements of subsection (1), any person entitled to the certificates of shares or debentures in question may, by notice in writing, call upon the company to make good of default, and if the company fails to comply with the notice within ten days after service thereof, the court may, on the application of such person, direct the company to make good the default within such time as it may specify and may direct that any costs of or incidental to the application shall be borne by the company or by any director or officer of the company responsible for the default.

*Validation of irregular creation, allotment or issue of shares.*

93. (1) Where a company has purported to create, allot or issue shares and the creation, allotment or issue of such shares was invalid by virtue of any provision of this Act or any other law or of the memorandum or articles of the company or otherwise, or the terms of the creation, allotment or issue were inconsistent with or not authorised by any such provision, the court may, upon application made by the company or by any interested person and upon being satisfied that in all the circumstances it is just and equitable to do so, make an order validating the creation, allotment or issue of such shares or confirming the terms of the creation, allotment or issue thereof, subject to such conditions as the court may impose.

(2) The court shall, when making an order under subsection (1), direct that a copy thereof be lodged with the Registrar.

(3) Upon the registration of the copy of such order by the Registrar and after the payment of all prescribed fees, such shares shall be deemed to have been validly created, allotted or issued upon the terms of the creation, allotment or issue thereof and subject to the conditions imposed by the court.

*Variation of rights attaching to shares.*

94. (1) If, in the case of a company the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorising the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provisions the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than fifteen (15) per cent of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the court to have the variation cancelled, and, where such application is made, the variation shall not have effect unless it is confirmed by the court.

(2) An application under this section shall be made within thirty (30) days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the members entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

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

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

(5) The company shall within fifteen (15) days after the making of an order by the court on any such application forward a copy of the order to the Registrar, and if default is made in complying with this provision, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine for every day during which the offence continues.

(6) The expression “variation” in this section includes abrogating and the expression “varied” shall be construed accordingly.

#### CORPORATE DISTRIBUTIONS

##### *Dividends generally.*

95. (1) A company shall not declare or pay a dividend if—

(a) the company is, or would after the payment be, unable to pay its liabilities as they become due; or

(b) the realisable value of the company’s assets would be less than the aggregate of its liabilities and stated capital of all classes.

(2) Where a dividend is paid in contravention of this section—

(a) every director of the company who is in default shall be jointly and severally liable to restore to the company the total amount by which the payment contravenes this section, with interest on such amount at the prevailing legal rate;

(b) unless, within twelve months of the payment, the total amount with interest thereon shall be restored to the company by the directors in accordance with paragraph (a) of this subsection, every shareholder shall be liable to restore to the company the amount received by him in contravention of this section;

(c) if the directors of the company make restoration to the company in accordance with paragraph (a) of this subsection they shall have the right to be indemnified by any shareholder who has received any amount knowing that it contravenes this section to the extent of the amount received by him with interest thereon at the prevailing legal rate.

(3) Any shareholder, officer or creditor of the company may apply to the court for an interdict restraining a company from paying a dividend in contravention of this section.

(4) Any application by a shareholder or creditor shall be made in a representative capacity on behalf of himself and all other shareholders or creditors as the case may be, of the company and the provisions of section 228 of this Act shall apply.

(5) Subject to the foregoing subsections (1) to (4), a company may by ordinary resolution declare dividends in respect of any year or other specified period, but no dividend shall exceed the amount recommended by the directors.

*Meaning of stated capital.*

96. (1) The stated capital of a company limited by shares shall consist of the sum of the following items—

- (a) the total proceeds of every issue of shares for cash, including any amounts paid on calls made on partly-paid shares, without any deductions for expenses or commissions;
- (b) the total value of the consideration, as stated in the agreement received for every issue of shares otherwise than for cash;
- (c) the total amount on the share premium account and the capital redemption reserve fund; and
- (d) the total amount which the company by special resolution shall have resolved to transfer to stated capital.

(2) The surplus of a company limited by shares shall be the amount by which its assets exceed its stated capital.

MEMBERS AND REGISTER OF MEMBERS

*Who are members of a company.*

97. (1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company upon its incorporation, and shall forthwith be entered as members in its register of members.

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

(3) A company shall, subject to its articles, enter in the register as a member, *nomine officii* of the company, the name of any person who submits proof of his appointment as the executor, administrator, trustee, curator or guardian in respect of the estate of a deceased member of the company or of a member whose estate has been sequestrated or of a member who is otherwise under disability or as the liquidator of any body corporate in the course of being wound up which is a member of the company, and any person whose name has been so entered in the register shall for the purposes of this Act be deemed to be a member of the company.

*Trusts in respect of shares.*

98. A company shall not be bound to see to the execution of any trust, whether express, implied or constructive, in respect of any share.

*Register of members.*

99. (1) A company shall keep a register of its member, and shall forthwith enter therein—

- (a) the names and addresses of the members and, in the case of a company limited by shares, a record of the shares issued to each member, distinguishing each share by its number, if any, and by its class or kind, and of the amount paid or agreed to be considered as paid on the share of each member; and
- (b) in respect of each member—

- (i) the date on which his name was entered in the register as a member, and
- (ii) the date on which he ceased to be a member.

(2) The register of members shall be kept by recording the particulars required in any manner which forms a durable medium for accurately recording and reproducing such particulars; and adequate precautions shall be taken for their preservation and to guard against falsification.

*Index to register of members.*

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

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

*Branch registers in foreign countries.*

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

(2) The company shall give the Registrar notice in the prescribed form of the situation of the office where any branch register is kept, and of any change in that situation, and of the discontinuance of the office in the event of its being discontinued.

*Provisions as to branch register.*

102. (1) A branch register shall be deemed to be part of the company's register of members (in this Act called the "principal register").

(2) A branch register shall be kept in the same manner in which the principal register is by this Act required to be kept except that the notice referred to in section 108 shall, for a reasonable time before the closing of the branch register, also be inserted in a newspaper circulating in the district of the country wherein the branch register is kept.

(3) The company shall transmit to its registered office a copy of every entry in its branch register as soon as may be after the entry is made and shall cause to be kept at its registered office, duly entered up from time to time, a duplicate of its branch register, and the duplicate shall for the purposes of this Act be deemed to be part of the principal register.

(4) The company may discontinue to keep any branch register, and shall thereupon transfer all entries in that register to some other branch register kept by the company or to the principal register.

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

*Register of members to be evidence.*

103. The Register of members of a company shall be *prima facie* evidence of any matters directed or authorised by this Act to be entered therein.

*Where register of members to be kept.*

104. (1) The register of members of a company shall be kept at its registered office.

(2) A company's register of members may be kept at any office of the company in Swaziland where the work of making it up is done, instead of at the company's registered office, and if a company has arranged with some other person (in this section referred to as "the agent") for the making up of its register of members to be undertaken on behalf of the company by the agent, the register may be kept at the office of the agent in Swaziland at which the work is done instead of at an office of the company.

(3) Any index of the names of the members of a company to be kept in terms of section 100 shall at all times be kept at the same place where the register of members is kept, and if the company keeps a branch register under section 102 the duplicate of the branch register required by section 102(3) to be kept at the company's registered office shall, notwithstanding anything in such subsection, at all times be kept at the same place where the company's principal register is kept.

(4) Any company the register of members of which is not kept at its registered office shall notify the Registrar in the prescribed form of the place where such register is kept and of any change of the place.

(5) The provisions of this section relating to the register of members of a company and the provisions of this Act relating to the inspection or production of any such register or to the furnishing of copies of any such register or part thereof, shall apply to any agent by whom any such register is kept on behalf of a company in the same manner as they apply to the company.

*Disposal of closed accounts in register.*

105. The parts of the register of members of a company pertaining to persons who have ceased to be members, in whatever manner kept under section 99, may be disposed of after the expiry of a period of fifteen (15) years after such persons have ceased to be members.

*Offences in respect of register of members.*

106. Any company which or an agent referred to in section 104 who fails to comply with any provision of section 99, 100, 105, 102, 106 or 104 shall be guilty of an offence and shall be liable to fine.

*Inspection of register of members.*

107. (1) The register of members of a company shall, except when closed under the provisions of this Act, during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to inspection by any member or his duly authorised agent free of charge and by any other person upon payment for each inspection of an amount of twenty emalangeneni or such other amount as the company may determine from time to time, provided

that such amount shall not exceed ten (10) per cent of the minimum fee payable by companies in Swaziland.

(2) In the case of any such refusal or default the court may, on application, by order compel an immediate inspection of the register and index or direct that the copy or extract required shall be sent to the applicant requiring it and may direct that any costs of or incidental to the application shall be borne by the company or by any director or officer of the company responsible for the refusal or default.

*Power to close register of members.*

108. A public company may, after giving notice of its intention to do so in the *Gazette* and in a newspaper circulating in Swaziland, close its register of members, or any part thereof relating to holders of any class of shares, for a period or periods not exceeding in the aggregate sixty (60) days in any year.

*Rectification of register of members.*

109. (1) Any person concerned or the company or any member of the company, may apply to the court for rectification of the register if—

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

(2) The application may be made in accordance with the rules of the court or in such other manner as the court may direct, and the court may either refuse it or may order rectification of the register.

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

## DEBENTURES

*Creation and issue of debentures.*

110. A company, if so authorised by its memorandum or by its articles, may create and issue secured or unsecured debentures.

*Security for debentures.*

111. (1) The binding of movable property as security for any debenture or debentures may be effected by—

- (a) a deed of pledge and the delivery of the movable property concerned to one or more debenture-holders or to a trustee for debenture-holders;



(b) a notarial bond, collateral notarial bond or notarial surety bond executed in favour of one or more debenture-holders or of a trustee for debenture-holders; or

(c) the pledging of incorporeal rights by means of cession of such rights, whether present or future, in due and property form.

(2) The binding of immovable property may be effected by a mortgage bond or surety bond executed in favour of one or more debenture-holders or of a trustee for debenture holders.

(3) A wholly owned subsidiary shall be deemed to have the power to mortgage any of its property as collateral security for the issue of debentures by its holding company.

*Bonds to be registered in deeds registry; copies of documents to be annexed to bonds and deeds of pledge.*

112. (1) A mortgage bond or notarial bond in pursuance of section 111 and subsequent transactions relating thereto shall, subject to the laws governing the registration of mortgage bonds and notarial bonds, be registered in a deeds registry.

(2) If any such bond is in favour of one or more debenture-holders, a certified copy of the debenture concerned shall be annexed to the said bond.

(3) If any such bond is in favour of one or more debenture-holders, a certified copy of the debenture concerned and of the trust deed by which the trustee is appointed and in which his rights and duties are defined, shall be annexed to the said bond.

(4) Certified copies of the debenture concerned and of any such trust deed, if any, shall be annexed to any deed of pledge where the debentures are secured by a pledge of movable property.

*Debenture itself may be registered.*

113. If any debenture is executed before a notary public, it may, subject to section 112(1), be registered in a deeds registry in like manner as if it were a notarial bond.

*Issue of debentures at different dates and ranking of preference.*

114. In any bond or deed of pledge executed in favour of a trustee for debenture-holders generally, provision may be made that the debentures thereby secured or to be secured may be issued from time to time and at different dates, as the company may determine, but all such debentures, whether issued, shall rank in preference concurrently with one another as from the date on which the pledge was constituted or the bond was registered.

*Rights of debenture-holders.*

115. (1) A holder of a debenture secured by a pledge or a bond executed in favour of a trustee and copy of the debenture annexed thereto, shall be entitled to enforce his rights under such debenture as soon as it has been issued to him in the same manner as if he were himself the pledge or the holder of such bond.

(2) A notice of the cession of any such debenture shall not be necessary in order to confer upon any cessionary the rights of the cedent.

*Director or officer not to be trustee for debenture-holders.*

116. A director or officer of a company shall not be capable of being a trustee for the holders of debentures of that company.

*Liability of trustee for debenture-holders.*

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

(2) Subsection (1) shall not have the effect of invalidating any release otherwise validly given in respect of anything done or any provision enabling such a release to be given—

- (a) with the consent of a majority of not less than three-fourths in value of the debenture holders present and voting in person or by proxy at a meeting summoned for the purpose; and
- (b) with respect to specific acts or omissions or on the trustee dying or ceasing to act.

*Power to re-issue redeemed debentures in certain cases.*

118. (1) Where a company has redeemed any debentures previously issued, not being debentures convertible into shares of the company, it shall, unless its articles or the conditions of issue of such debentures expressly otherwise provide or the debentures have been redeemed in pursuance of any obligation on the part of the company to redeem them (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his successors in titled) have and be deemed at all times to have had power to keep the debentures alive for the purpose of re-issue, and, where a company has purported to exercise such a power, it shall have and be deemed at all times to have had power to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place, and upon such a re-issue the person entitled to the debentures shall have and shall be deemed at all times to have had the same rights and priorities as if the debentures had not previously been issued.

(2) Where with the object of keeping debentures alive for the purpose of re-issue, they have been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section.

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

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

*Debenture to be described as secured or unsecured.*

119. No debenture, debenture certificate or prospectus relating to debentures shall be issued by a company unless the term “debenture” or such term denoting a debenture used therein is qualified by the word “secured” or “unsecured”, as the case may be.

*Form of debentures or debenture certificate.*

120. (1) No debenture or debenture certificate shall be issued by a company unless the conditions of the debenture concerned are stated on the debenture or on the debenture certificate.

(2) Any debenture or debenture certificate shall be signed by one director of the company and an officer of the company duly authorised thereto by the directors shall, in the case where the debenture concerned is not a bearer debenture and in the case of a debenture certificate specify the debentures, other than bearer debentures, of that company held by the person named therein.

(3) Any signature referred to in subsection (2) may be affixed to a debenture or debenture certificate by autographic or mechanical means.

(4) Any debenture or debenture certificate issued in terms of this section shall be *prima facie* evidence of the title thereto of the person named therein or, in the case of a bearer debenture, of the bearer thereof.

*Register of pledges, cessions and bonds.*

121. Subject to the provisions of section 123, every company shall keep at its registered office a register of pledges, cessions, notarial bonds, mortgage bonds, and notarial debentures and enter therein all pledges, cessions, notarial bonds, mortgage bonds and notarial debentures affecting property of the company, giving in each case a short description of the property pledged, ceded or bound, the amount of the pledge, cession or bond and the names and addresses of the persons in whose favour any pledge cession, bond or debenture was executed or to whom any pledge has been delivered.

*Register of debenture-holders.*

122. Subject to the provisions of section 123, every company shall keep at its registered office a register of debenture-holders showing the number of debenture issued and outstanding and whether or not they are payable to bearer and specifying the names and addresses of the holders, other than bearers, thereof.

*Registers may be kept where made up.*

123. The provisions of section 104(2) and (4) relating to the register of members shall apply, *mutatis mutandis*, to the registers required to be kept under sections 121 and 122.

*Inspection of registers and copies and extracts.*

124. (1) The provisions of section 97 relating to the inspection of the register of members shall apply, *mutatis mutandis*, to the registers to be kept under sections 121 and 122.

(2) A copy of any trust deed for securing any issue of debentures shall be transmitted to every holder of such debentures at his request on payment, in the case of a printed trust

deed, of an amount of One Lilangeni or such lesser amounts as may be determined by the company, or when the trust deed has not been printed, or payment of an amount of one Lilangeni or such lesser amount as may be determined by the company for every page of the required copy.

*Default in keeping of registers.*

125. A company which or an agent referred to in section 104(2) as applied by section 123 who fails to comply with any provision of section 121, 122 or 123 shall be guilty of an offence.

#### FORGERY OF CERTIFICATES AS TO SHARES, DEBENTURES AND OTHER SECURITIES

*Forgery, personation and unlawful engravings.*

126. Any person shall be guilty of an offence if he—

- (a) with intent to defraud, forges, alters, offers, utters or disposes of, knowing it to be forged or altered, any certificate as to shares, debentures or other securities any broker's transfer form, certified broker's form, share warrant or coupon issued in pursuance of this Act (or any document purporting to be such share warrant or coupon); or
- (b) by means of any such forged or altered certificate, form, share warrant, coupon or document, which he knows to be forged or altered, obtains or receives or endeavors to obtain or to receive any interest in any company or obtains or receives or endeavours to obtain or to receive any benefits, dividend or money payable in respect thereof; or
- (c) by impersonating any owner of any interest in any company, including any share warrant or coupon issued in pursuance of this Act, obtains or endeavours to obtain any such interest or share warrant or coupon or received or endeavours to receive any benefit or money due to any such owner, as if he were the true and lawful owner; or
- (d) without lawful authority or excuse—
  - (i) engraves or makes up on any plate, wood, stone or other material any certificate as to any interest in a company or any share warrant or coupon or document purporting to be such interest, share warrant or coupon issued or made by any particular company in pursuance of this Act or to be a blank certificate, share warrant or coupon so issued or made or to be a part of such a certificate, share warrant or coupon; or
  - (ii) uses any such plate, wood, stone or other material for the making or printing of any such certificate, share warrant or coupon or document or of any such blank certificate, share warrant or coupon or any part thereof; or
  - (iii) knowingly has in his custody or possession any such plate, wood, stone or other material.

## TRANSFER OF SHARES AND DEBENTURES

### *Registration of transfer of shares or debentures.*

127. (1) Any transfer of shares or debentures in a company shall be registered by the company by entering in its register of members or debenture holders as the case may be the name and address of the transferee, the description of the shares or debentures transferred and the date of the registration of such transfer.

(2) Notwithstanding anything in the articles, no company shall register a transfer of shares or debentures in the company unless a proper instrument of transfer in the form prescribed or any substantially similar form which is recognised by the laws of the country in which the relevant transfer is registered has been delivered to the company:

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

(3) Nothing in this section shall be construed as—

- (a) preventing the transfer of a share or debenture by means of any form in use immediately prior to the commencement of this Act or any form prescribed at any time under this Act;
- (b) affecting the provisions of any law or of any memorandum or articles of any company or other body corporate or of any contract which deals with the manner in which any document shall be signed or sealed by or on behalf of any company or other body corporate; or
- (c) affecting the liability for the payment of any duty payable in respect of the registration of the transfer of any security.

### *Duty of company with reference to person under contractual disability.*

128. Where a company records in its registers the transfer of any share or debenture, it shall not be under any duty to satisfy itself that such transfer is within the contractual power of the transferor or transferee or that any legal requisite which obtains with reference to the ability of the transferor or transferee to transfer or to take transfer has been complied with or that any person signing any document relevant to the transfer on behalf of any person or company has been duly authorised to sign that document:

Provided that this section shall not absolve any company from liability arising from any fraudulent act to which it is knowingly a party.

### *Warranty and indemnity by persons lodging documents of transfer.*

129. Any person (whether as a principal or agent), for the purposes of the transfer of any share or debenture of any company, as principal or agent, lodges with such company any document relating to such transfer, shall be deemed thereby to warrant that such document is genuine and that he, or when he is acting as agent, his principal jointly and severally with him, indemnifies the company against any claim made upon it and against any loss or damage suffered by it arising out of a transfer registered by the company of the share or debenture referred to in such document.

*Notice of refusal to register transfer.*

130. If a company refuses to register a transfer of any shares or debentures, it shall, within thirty (30) days after the date on which the instrument of transfer was lodged with it, send to the transferor and the transferee notice of the refusal.

*Limitation of time for issue of certificates on transfer.*

131. Unless a company is entitled for any reason to refuse to register a transfer and does not register it, the provisions of section 92 shall apply, *mutatis mutandis*.

## CHAPTER VI

### PROSPECTUS AND OFFERING OF SHARES

*Interpretation*

132. In this Chapter, unless the context otherwise provides—

“company” includes a “foreign company”;

“expert” means any person holding himself out to be such and any other person who professes to have extensive knowledge or experience or to exercise special skill which gives or implies authority to a statement made by him;

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

“letter for allocation” means any document conferring a right to subscribe for shares in terms of a rights offer;

“offer”, in relation to shares, means an offer made in any way, including by provisional allotment, for the subscription for or sale of any shares and includes an invitation to subscribe for or purchase any shares;

“offer to the public” and any reference to offering shares to the public means any offer to the public and includes an offer of shares to any section of the public, whether selected as members or debenture-holders of the company concerned or as clients of the person issuing the prospectus concerned or clients of the person issuing the prospectus concerned or in any other manner;

“promoter”, in relation to civil and criminal liability in respect of an untrue statement in a prospectus or of the portion thereof containing the untrue statement in a prospectus, means a person who was a party to the preparation of the prospectus or of the portion thereof containing the untrue statement but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company or preparing the said prospectus;

“rights offer” means an offer for subscription, with a right to renounce in favour of other persons, to the members or debenture holders of a company, for shares (as defined in relation to an offer of shares for subscription or sale in section 1(1)) of that company or any other company, where a stock exchange

has granted or has agreed to grant a listing for the shares which are the subject of the offer;

“stock market” means the Swaziland stock market or any other stock market stock exchange recognised by the Minister for the purposes of this definition by notice in the *Government Gazette*;

“untrue statement”, in relation to a prospectus or portion thereof, includes—

- (a) a statement which is misleading in the form and context in which it is included therein and a statement shall be deemed to be included in a prospectus if it is contained in any report or memorandum which appears on the face of the prospectus or which is by reference incorporated therein or is attached to or accompanies the prospectus on registration; and
- (b) an omission from a prospectus of any matter whether such matter is required to be included therein by this Act or not, if such omission is calculated to mislead, and such prospectus shall be deemed in respect of such omission to be a prospectus in which an untrue statement is included.

#### OFFERS TO THE PUBLIC

##### *Restrictions as to offers and issues.*

133. (1) Other than in respect of the minimum number of shares required for incorporation, a public company shall not—

- (a) allot or issue any shares in or debentures of that company;
- (b) offer any shares in or debentures of that company; or
- (c) invite any person to subscribe for any shares in or debentures of that company

unless the said allotment, issue, offer or invitation is in writing and is accompanied by a prospectus issued by that company.

(2) Subject to subsection (3), a public company shall not accept any offer for shares in or debentures of that company unless such offer results from an invitation made by the company in accordance with subsection (1).

(3) An allotment or issue of such share in or debentures of that company resulting from any offer or invitation accompanied by a prospectus made in accordance with this section shall not be required to be accompanied by a further prospectus.

#### PROSPECTUS

##### *Matters to be stated in prospectus.*

134. A prospectus issued in terms of this Act shall contain a fair presentation of the state of affairs of the company, the shares or debentures of which are being offered and shall state at least the matters specified in, and set out the reports referred to, in Schedule 2.

##### *Consent by experts and others.*

135. A prospectus which includes any statement or reference to any statement purporting to be made by an expert, shall not be registered by the Registrar unless—

- (a) the expert has given, and has not before the lodging of a copy of the prospectus for registration, withdrawn his written consent to the issue thereof

with the statement or reference included in the form and context in which it is included;

- (b) a statement that the expert has given and has not withdrawn his consent, appears in the prospectus; and
- (c) such written consent is endorsed on or attached to the prospectus lodged with the Registrar.

*Contracts and translations thereof to be attached to prospectus.*

136. (1) A prospectus shall not be lodged unless there is attached to it a copy of every contract required by Schedule 2 to be stated in a prospectus or, in the case of a contract not reduced to writing, a memorandum giving full particulars thereof.

(2) The contract referred to in subsection (1) shall, if it is—

- (a) in a foreign language, be lodged with a certified translation thereof; or
- (b) partly in a foreign language, a copy thereof embodying such certified translation of so much thereof as is in a foreign language.

*Where the issue is underwritten.*

137. (1) A prospectus containing a statement to the effect that the whole or any portion of the issue of the shares or debentures offered to the public, has been or is being underwritten shall not be lodged unless a copy of the underwriting contract and a sworn declaration by the person named as underwriter is lodged simultaneously, or, if such person is a company, by a director of such company, that to the best of the deponent's knowledge and belief the underwriter is and will be in a position to carry out his obligations even if no shares are applied for.

(2) If an offer for shares is made in respect of which no prospectus is required by this Act, the copy of the contract and sworn declaration referred to in subsection (1) shall be lodged with the Registrar not later than the date of the proposed offer for shares.

(3) A company, and any person (including a body corporate) and every director or officer of the company (or body corporate) who knowingly and is a party to the contravention of subsection (2) commits an offence.

(4) In the event of any underwriter being unable, when duly called upon, to carry out his obligations under the underwriting contract, any person who has in connection with such contract made a sworn declaration as required by subsection (1) shall, unless he proves that when he made the declaration he believed and has reasonable grounds for believing that the underwriter was or would be able to carry out such obligations, be guilty of an offence.

*Signing, date and date of issue of prospectus.*

138. Every prospectus shall be signed by every person named therein as a director of the company or by his agent authorised by him in writing to sign on his behalf and such signatures shall be dated and such signature shall be deemed to constitute his consent to the issue of such prospectus.



*Registration of prospectus.*

139. A prospectus shall be registered by the Registrar together with such documents as may have been lodged, within fourteen days of the date of lodgement of such prospectus.

*Time limit for issue of prospectus.*

140. A prospectus shall not be issued more than ninety days after the date of its lodgement, and if a prospectus is so issued, it shall be deemed to be a prospectus which has not been lodged.

*Waiver of requirements of this chapter void.*

141. Any condition requiring any applicant for shares or debentures to waive compliance with any requirements of this chapter or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

*Liability for untrue statements in prospectus.*

142. (1) Where shares are offered to the public for subscription in pursuance of a prospectus, every person who—

- (a) is, at the time of the issue of the prospectus, a director of the company;
- (b) becomes a director at any time between the issue of the prospectus and the holding of the first general meeting of the company at which directors are elected or appointed;
- (c) with his authority is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;
- (d) is a promoter of the company; or
- (e) has authorised the issue of the prospectus,

shall be liable to pay compensation to all persons who have acquired any shares on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof or issued therewith, or by reference incorporated therein.

(2) Where shares are offered to the public for sale in pursuance of a prospectus, every person who—

- (a) has made the said offer;
- (b) under section 138 is deemed to have authorised the issue of such prospectus; or
- (c) is, in relation to the company the shares of which are so offered, a person referred to in subsection (1)(a), (b), (c), (d) or (e), shall be liable to pay compensation to all persons who have acquired any shares on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof or issued therewith, or by reference incorporated therein.

(3) A person shall not be liable in terms of subsection (1) or (2) if it is proved—

- (a) with respect to every such untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares or the acceptance of the offer, as the case may be, believe that the statement was true;
- (b) with respect to every such untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from the report or valuation of an expert, that it fairly represented that the statement was a correct and fair copy of or extract from the report or valuation and that the defendant had reasonable ground to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it, and that the said person had given the consent required by this Act to the issue of the prospectus or the making of the offer and has not withdrawn that consent before lodgement of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder or before the acceptance of the offer;
- (c) with respect to every such untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy or extract from a public official statement, that it was a correct and fair representation of the statement or copy of or extract from the document or—
  - (i) that having consented to become a director of the company, he withdrew his consent before the issue of the prospectus and that it was issued without his authority or consent;
  - (ii) that the prospectus was issued without his knowledge or consent and that on becoming aware of its issue, he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or
  - (iii) that after the issue of the prospectus and before allotment or acceptance thereunder he, on becoming aware of any untrue statement therein, withdrew his consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor.

(4) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus and has not authorised or consented to the issue thereof, the directors of the company (except any without whose knowledge or consent the prospectus was issued) and any other person who issued it or authorised the issue thereof, shall be liable to indemnify such person, against all damages, costs and expenses for which he may be liable by reason of his name having been so stated in the prospectus or in defending himself against any action or legal proceedings brought against him in respect thereof.

(5) Every person who by reason of his being a director or having been named as a director, or having agreed to become a director, or of his having authorised the issue of the prospectus has satisfied any liability to make payment under this section, may recover a contribution, as in the cases of contract, from any other person, who, if sued separately, would have been liable to make the same payment, unless the person who has satisfied such liability was, and that other person was not, guilty of fraudulent misrepresentation.

*Liability of experts and others.*

143. (1) Where the consent of any person is required under section 135 and he has given such consent he—

- (a) shall not, by reason of his having given it, be liable as a person who has authorised the issue of the prospectus either—
  - (i) under section 142(1) or (2) to compensate the person subscribing or purchasing on the faith of the prospectus, except in respect of any untrue statement purporting to be made by him as an expert; or
  - (ii) under section 142(4) to indemnify any person against liability under the said section 142(1) or (2); but
- (b) shall, in respect of any untrue statement purporting to be made by him as an expert, be liable under section 142(1) or (2), unless one of the following matters (which shall in his case be in lieu of the grounds of defence available to others by virtue of section 142(3)), is proved, namely that—
  - (i) having given such consent, withdrew it in writing before lodgement of a copy of the prospectus for registration; or
  - (ii) after lodgement of a copy of the prospectus for registration and before allotment thereunder to, or before acceptance thereunder by the person complaining, he on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reason therefor; or
  - (iii) he was competent to make the statement and that he had reasonable ground to believe and did up to the time of the allotment of the shares or the acceptance of the offer, as the case may be, believe that the statement was true.

(2) If under section 135 the consent of any person is required to the issue of a prospectus, and he either has not given such consent or has withdrawn it before the issue of the prospectus, he shall be entitled to indemnity under section 142 as if he had without his consent been named in the prospectus and a director of the company.

*Offences in respect of untrue statements in prospectus.*

144. (1) Where a prospectus contains a statement which is untrue, every person referred to in section 142(1) or (2) shall, subject to the provisions of subsections (3) and (4) of this section, be guilty of an offence.

(2) Where there is published with or as part of a prospectus a report of any expert or an extract from such report and such report or extract contains a statement which is untrue, the expert shall, provided he has given his consent to the inclusion of such statement in the prospectus in the form and context in which it appears, and subject to the provisions of subsections (3) and (4), be guilty of an offence.

(3) In any prosecution under this section it shall be a defence if it is proved either that the untrue statement was immaterial or—

- (a) with respect to every such untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, that the person charged had, after investigation, reasonable ground to believe and did

up to the time of the allotment of the shares or acceptance of the offer (as the case may be) believe that the statement was true, and that there was no omission to state any material fact necessary to make the statement as set out not misleading; and

- (b) with respect to every untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that the person charged had reasonable ground to believe and did believe that the person making the report or valuation was competent to make it; and
- (c) with respect to every such untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of the statement or copy of or extract from the document.

(4) In any prosecution under this section of any person it shall be a defence if it is proved that—

- (a) having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
- (b) the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or
- (c) after the issue of the prospectus and before allotment or acceptance thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto and gave reasonable public notice of the withdrawal, and of the reason therefor.

*No diminution of liability under any other law or the common law.*

145. Nothing in this Chapter shall limit or diminish any liability which any person may incur under this Act apart from this chapter, or under any other law, or under the common law.

*Time limit as to allotment or acceptance.*

146. (1) A company shall not allot any shares or debentures of that company unless the application for allotment is received by the company or the offeror, as the case may be, before the expiry of a period of ninety (90) days after the date of lodgement of the prospectus.

(2) Any director or officer of a company or any offeror or, if the offeror is a company, any director or officer of that company who knowingly contravenes or permits the contravention of subsection (1) shall be guilty of an offence and liable to a fine.

*No allotment unless minimum subscription received.*

147. (1) No shares in or debentures of a company shall be allotted on any application made in pursuance of a prospectus for subscription unless the amount stated in such prospectus as the minimum amount which in the opinion of the directors of the company concerned must be raised by the issue of such shares in or debentures of the company has been subscribed and the amount so stated has been paid to and received by the company.

(2) For the purposes of subsection (1), an amount stated in any cheque received by the company shall not be deemed to have been paid to and received by it until the amount of the cheque has been unconditionally credited to its account with its bankers.

(3) The amount paid on application shall be set apart by the directors as a separate fund in a separate account with a banking institution licensed under the Financial Institutions Order, 1975, and shall not be available for the purposes of the company or for the satisfaction of its debts until the minimum subscription has been made up.

(4) If the requirements prescribed in subsection (1) have not been complied with on the term of the prospectus, all moneys received from applicants for shares in or debentures of the company shall forthwith be repaid to them without interest, and, if any such money is not so repaid within a period of twenty (20) days after the expiry of the term of the prospectus the directors and officers of the company shall be jointly and severally liable to repay such money with interest at the rate of eight (8) per cent per annum reckoned from the expiry of such period of twenty (20) days.

(5) It shall be a defence to any claim under subsection (4) to prove that the default which is the subject of the claim or charge, was not due to any misconduct or negligence on the part of the defendant, or the accused.

*Conditional allotment if prospectus states shares to be listed by stock exchange.*

148. (1) No prospectus containing a statement to the effect that application has been or will be made for permission for the shares in or debentures offered thereby to be dealt in on a stock exchange shall be issued unless such an application has been made in accordance with the requirements of the stock exchange concerned on or before the date of issue of such prospectus and it names the particular stock exchange to which such application has been made.

(2) Any allotment of shares or debentures in pursuance of a prospectus referred to in subsection (1) shall be subject to the condition that the application for permission for such shares or debentures to be dealt in on the stock exchange concerned, is granted or that an appeal against a refusal of such application, is upheld.

(3) Any money received by or on behalf of the company in respect of applications for shares or debentures in pursuance of a prospectus referred to in subsection (1) shall be set apart by the directors of the company as a separate fund in a separate account with a banking institution licensed under the Financial Institutions Order, 1975, or any other banking institution approved by the Central Bank of Swaziland for this purpose, and shall not be available for the purposes of the company or for the satisfaction of its debts so long as the company may in terms of subsection (5) become liable for the repayment thereof.

(4) If any issue of shares or debentures in pursuance of the prospectus referred to in subsection (1) is oversubscribed, the directors of the company shall forthwith repay the amounts oversubscribed to the applicants.

(5) Where the application for permission to deal in the shares or debentures on the stock exchange has been refused and no appeal has been noted or if an appeal against a refusal of an application has been dismissed or an appeal against the granting of an application has been upheld, the company shall forthwith repay all moneys received in respect of applications made in pursuance of the prospectus together with any interest earned thereon.

(6) If any money referred to in subsection (5) is not repaid within fourteen (14) days after the company becomes liable to repay it, the directors and officers of the company,

together with the company, shall be jointly and severally liable to repay such money with interest at the rate of eight (8) per cent per annum from the expiry of the fourteenth day.

(7) It shall be a defence to any claim under subsection (6) to prove that the default which is the subject of the claim or the contravention or non-compliance was not due to misconduct or negligence on the part of the defendant or the accused.

(8) The provisions of this section shall—

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

(b) in the case of a prospectus offering shares for sale, be construed, except in so far as the context otherwise indicates—

(i) as if any reference therein to the allotment of shares were a reference to the acceptance of the offer in respect thereof;

(ii) subject to the provisions of subparagraph (iii), as if any reference therein to a company by which a prospectus has been issued, or a director or officer thereof, were a reference to the person by whom the shares have been offered; and

(iii) where the person by whom the shares have been offered is a company, as if the reference therein to a director or officer of a company by which a prospectus has been issued, were a reference to a director or officer of the company by which the shares have been offered for sale.

## CHAPTER VII

### ADMINISTRATION OF COMPANIES

#### *Postal address and registered office of company.*

149. (1) A company including a foreign company shall have in the Kingdom of Swaziland—

(a) a registered office which shall be a place located in premises to which all communication be addressed or notices may be delivered; and

(b) a registered postal address to which all communications notices may be served addressed and notices or other process may be served.

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

(3) A change in the situation of the registered offices or the registered postal address shall not be of any force or effect until notice of such change be lodged with the Registrar as required by subsection (2).

(4) Any notice referred to in subsection (2) shall be in the prescribed form and shall be accompanied by the prescribed fee.

*Restrictions on commencement of business.*

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

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

- (a) shares held subject to the payment of the whole amount thereof in cash have been allotted to a total amount of not less than the minimum subscription;
- (b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription;
- (c) an affidavit by the secretary; or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with is lodged with the Registrar;
- (d) the Registrar has certified that the company may commence business.

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

- (a) a statement in lieu of prospectus is lodged with the Registrar;
- (b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash;
- (c) an affidavit by the secretary or one of the directors in the prescribed form that paragraph (b) has been complied with lodged with the Registrar;
- (d) the Registrar has certified that the company is entitled to commence business.

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

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

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

(7) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be guilty of an offence and liable to a fine not exceeding E200 for every day during which the offence continues.

*Annual return.*

151. (1) A company including a foreign company, shall not earlier than 1st July or later than 31st August of any calendar year, lodge with the Registrar the annual return, in the

prescribed form and accompanied by the prescribed fee, specifying the following particulars in regard to the company as at 30th June of each calendar year—

- (a) the name of the company, its registration number, the situation of its registered office and its registered postal address and the place where the registers of members, debenture-holders, allotments, interests in shares and debentures and interests in contracts are kept, if they are not kept at the registered office;
- (b) the date on which its financial year ends;
- (c) the date on which its last annual general meeting was held and, if an extension of time was applied for, a statement of such fact;
- (d) the names and addresses of the officers of the company;
- (e) the name and address of the auditor of the company;
- (f) the nominal and issued share capital;
- (g) in the case of a private company, only the names and addresses of its members.

(2) The annual return shall be signed by one of the directors or the secretary of the company and a copy thereof shall be kept in the registered office of the company.

(3) Section 97 relating to the inspection of the register of members of a company and the furnishing of copies thereof or extracts therefrom shall apply, *mutatis mutandis*, to the annual return by a company.

*Enforcement of duty of company to make returns to Registrar.*

152. (1) If a company, having made default in complying with any provision of this Act which requires it to lodge with, deliver or send to the Registrar any return, annual financial statements or other documents, or to give notice to him of any matter, fails to make good the default within thirty days after the service of a notice on the company requiring it to do so, the court may, on an application by any member or creditor of the company or by the Registrar, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application be borne by the company or by any officer of the company responsible for the default.

(3) Nothing in this section shall prejudice the operation of any provision of this Act imposing a penalty on a company or its officers in respect of any such default.

*Extension of time.*

153. If in terms of this Act any return is required to be lodged within a specified period of time, the Registrar may in any case, on application to him before or after the expiry of such period on payment of the prescribed fee extend such period as he may deem fit subject to the provisions of this Act, and if any period has been so extended, any reference in section 154 to such period shall be construed as a reference to such period as extended.

*Additional fees in respect of late submission of documents or notices.*

154. If any return required by this Act to be filed with the Registrar is not so filed within the specified time, such return may only be filed on payment of a penalty equal to three times the



amount of the fee which would ordinarily be payable in respect of the filing of such return, in addition to the payment of the fee ordinarily payable.

#### MEETINGS OF THE COMPANY

##### *Annual general meeting.*

155. (1) A company, shall hold general meetings to be known and described in the notices calling such meetings as annual general meetings of such company at such times as prescribed in this section.

(2) Such meetings shall be held—

- (a) in the case of the first such meeting, within a period of eighteen (18) months after the date of the incorporation of the company concerned;
- (b) thereafter within not more than nine (9) months after the end of every ensuing financial year of that company; and
- (c) within not more than fifteen (15) months after the date of the last preceding such meeting of that company.

(3) The annual general meeting of a company shall deal with and dispose of the matters prescribed by this Act and may deal with and dispose of such further matters as are provided for in the articles of the company and, subject to any other applicable provision, any matters capable of being dealt with by any general meeting of the company.

(4) The Registrar may, on application to him before the expiry of the period within which an annual general meeting of a company must be held and on good cause shown, and on payment of the prescribed fee, extend such period by a period not exceeding three (3) months but, notwithstanding any such extension, the date for the holding of the first annual general meeting following the meeting in respect of which the extension is granted, shall be determined as if such meeting had been held on the last day on which it should have been held if the extension had not been granted.

(5) If for any reason an annual general meeting of a company is not or cannot be held as provided in this section or any matter required by this Act to be dealt with and disposed of at the general meeting is not dealt with the Registrar may, on application by the company or any member and on payment of the prescribed fee, call or direct the calling of a general meeting of the company which shall be deemed to be an annual general meeting and may give such ancillary or consequential directions as he may think expedient, including directions modifying or supplementing, in relation to the calling, holding and conduct of the meeting, the operation of the company's articles, and directions providing for one member or any specified number of members present in person or by proxy, to be deemed to constitute a meeting, and any meeting called, held and conducted in accordance with any such direction shall for all purposes be deemed to be an annual general meeting of the company duly called, held and conducted.

(6) For the purpose of determining the date for the holding of the next succeeding annual general meeting of a company, after a meeting held in pursuance of subsection (5), the provisions of subsection (4) shall, *mutatis mutandis*, apply.

(7) A company may not hold any particular annual general meeting if all members entitled to attend that meeting agree thereto in writing, and in such event a resolution in writing dealing with and disposing of—

- (a) the matters required by this Act, or the articles of association, to be dealt with and disposed of at an annual general meeting of a company; and
- (b) such other matters, if any, as may, in terms of subsection (3) be dealt with such a meeting,

and signed by all members entitled to vote at the meeting, shall be deemed to be a resolution passed at an annual general meeting of the company held in terms of this section on the date on which the last signature to such resolution is affixed.

*Election by private company to dispense with annual general meeting.*

156. (1) A private company may elect by elective resolution in accordance with section 185, dispense with the holding of annual general meetings.

(2) An election has effect for the year in which it is made and subsequent year but does not affect any liability already incurred by reasons of default in holding an annual general meeting.

(3) In any year in which an annual general meeting would be required to be held but for the election, and in which no such meeting has been held, any member of the company may, by notice to the company not later than three months before the end of the year, require the holding of an annual general meeting in that year.

(4) If such notice is given, the provisions of section 155(1) and (4) apply with respect so the calling of the meeting and the consequences of default.

*General meetings.*

157. A general meeting of a company may, subject to its articles, be held from time to time.

*Calling of general meetings on requisition by members.*

158. (1) The directors of a company shall notwithstanding anything in its articles, on the requisition of members holding at the date of the lodging of the requisition not less than one-tenth of such of the capital of the company as at the date of the lodgment carries the right of voting at general meetings of the company, within fourteen (14) days of the lodging of the requisition issue a notice to members convening a general meeting of the company for a date not less than twenty-one (21) and not more than thirty-five (35) days from the date of the notice.

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

(3) If the directors do not within fourteen (14) days from the date of the lodging of the requisition issue a notice as required by subsection (1), the requisitionists representing more than one-half of the total voting rights of all of them, may themselves on twenty-one (21) days notice convene a meeting, stating the objects thereof, but no meeting so convened shall be held after the expiry ninety (90) days from such date.

(4) Any meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by the directors of the company concerned.

(5) Any reasonable expense incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were knowingly party to the default.

*Convening of general meetings by Registrar.*

159. Where all the directors of a company have become incapacitated or have ceased to be directors, the Registrar may, unless the articles of a company make other provisions in that respect, on the application of any member of the company or his legal representative, call or direct the calling of a general meeting of the company and may give such ancillary or consequential directions as he may deem expedient, including direction modifying or supplementing, in relation to the calling, holding and conduct of the meeting, the operation of the company's articles, and directions providing for one member or the legal representative or by proxy to be deemed to constitute a meeting, and any meeting, held or conducted in accordance with any such directions, shall for all purposes be deemed to be a general meeting of the company duly called, held and conducted.

*General meetings on order of court.*

160. If for any reason it is impracticable to call an annual general meeting or other general meeting of a company in any manner in which meetings of such company may be called, or to conduct any such meeting in the manner prescribed by the articles of a company or this Act, or if for any other reason the court thinks fit to do so, it may, either of its own motion or on the application of the Registrar or any director of the company or of any member of the company order a meeting of the company to be called, held and conducted in such manner as it may direct and may in making any such order give such ancillary or consequential directions as it thinks expedient, including directions providing for one member or any specified number of members present in person or by proxy to be deemed to constitute a meeting, and any meeting called, held and conducted in accordance with any such order, shall for all purposes be deemed to be an annual general meeting or a general meeting, as the case may be, of the company duly called, held and conducted.

*Meeting of company with one member.*

161. In the case of a company having only one member, such member present in person or by proxy shall be deemed to constitute a meeting.

*Duty of company to circulate notice of resolutions and statements by members.*

162. (1) Subject to this section, a company shall, on the requisition in writing of such number of members as is referred to in subsection (2), and unless the company otherwise determines at the expense of the requisitionists—

- (a) give to members of the company entitled to receive notice of the next annual general meeting, notice of any resolution which may properly be moved and is intended to be moved at that meeting; and
- (b) circulate to members entitled to have notice of any general meeting sent to them, any statement of not more than one thousand words with respect to the

matter referred to in any proposed resolution or the business to be dealt with at that meeting.

(2) The number of members necessary for a requisition under subsection (1) shall be any number of members representing not less than one-tenth of the total voting rights of all members having at the date of the requisition a right to vote at the meeting to which the requisition relates.

(3) Notice of any such resolution shall be given and any such statement shall be circulated to members of the company entitled to have notice of the meeting sent to them, by serving a copy of the resolution or statement on each such member in any manner permitted for the service of notice of the meeting, and notice of any such resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving him notice of meetings of the company.

(4) A copy of any such resolution or statement referred to in subsection (3) shall be served and notice of any such resolution shall be given in the same manner and, so far as practicable, at the same time as the notice of the meeting in question, or if it is not practicable to do so, as soon as practicable thereafter.

(5) A company shall not be bound under this section to give notice of any resolution or to circulate any statement unless—

(a) there is lodged at the registered office of the company a copy of the requisition signed by the requisitionists or two or more copies thereof which between them contain the signatures of all the requisitionists—

- (i) in the case of a requisition requiring notice of a resolution, not less than forty days before the meeting; and
- (ii) in the case of any other requisition, not less than before the meeting; and

(b) there is lodged or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect thereto:

Provided that if, after a copy of a requisition requiring notice of a resolution has been lodged at the registered office of the company, an annual general meeting is called for a date forty days or less after the copy has been lodged, the copy, though not lodged within the time required by this subsection, shall be deemed to have been properly lodged.

(6) The court may absolve any company from the obligation to circulate any resolution or statement in terms of this section if, on the application either of the company or of any other interested person, the court is satisfied that the rights thereby conferred are being abused to secure needless publicity for defamatory matter.

(7) An order under subsection (6) may include an order for the payment by the requisitionists of the costs or any portion of the costs incurred in connection with the relevant application whether or not they are parties to the application.

(8) The decision of the court on any application made under subsection (6) shall be final.

(9) Notwithstanding anything in the articles of a company, the business which may be dealt with at an annual general meeting thereof, shall include any resolution of which notice has been given in accordance with this section:

Provided that if the articles of the company so permit notice shall be deemed to have been so given notwithstanding the accidental omission to give such notice to one or more members.

*Notice of meetings and resolutions.*

163. (1) Unless the articles of a company provide for a longer period of notice, the annual general meeting or a general meeting called for the purpose of passing a special resolution may be called on not less than twenty-one (21) days' notice in writing and any other general meeting may be called by not less than fourteen (14) clear days' notice in writing and any provision in the articles of a company providing for a shorter period of notice, not being of an adjourned meeting, shall be void.

(2) Notwithstanding subsection (1), a meeting of a company which is called on a shorter period of notice than is prescribed therein or provided for in the company's articles, shall be deemed to have been duly called if it is so agreed by a majority in number of the members having a right to attend and vote at the meeting who hold not less than ninety-five (95) per cent of the total voting rights of all the members.

(3) A private company may elect by elective resolution in accordance with section 190 that subsection (2) shall have effect as if for the reference to ninety-five (95) per cent there were substituted reference to a lesser percentage, but not less than ninety (90) per cent, as may be specified in the resolution or subsequently determined by the company.

(4) No resolution of which special notice is required to be given in terms of this Act shall have effect unless notice of the intention to move it has been given to the company not less than twenty-eight (28) days before the meeting at which it is moved, and the company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of such meeting, or, if that is not practicable, either by advertisement in a newspaper having an appropriate circulation or in any other manner allowed by the articles of the company, not less than twenty-one (21) days before the meeting:

Provided that a meeting of the company called after notice of intention to move such a resolution has been given to the company for a date twenty-eight days or less, the notice, though not given within the time required by this subsection, shall be deemed to have been properly given for the purposes thereof.

*Manner of giving notice.*

164. Unless the articles of a company otherwise provide, notice of a meeting of a company shall be served on every member of the company in the manner in which notices are required to be served in terms of Table A or Table B of Schedule 1, whichever is applicable to the company.

*Representation of company or other body corporate at meetings of companies and meetings of creditors.*

165. (1) A company or other body corporate may, by resolution of its directors or other governing body, authorise any person to act as its representative at any meeting of any company of which it is a member or at any meeting or any class of members of that company.

(2) The provisions of subsection (1) shall, *mutatis mutandis*, apply with reference to meetings of debenture-holders and creditors of a company.

(3) A person authorised in terms of subsection (1) shall be entitled to exercise on behalf of the company or other body corporate which he represents, the same powers as such company or body corporate could have exercised if it were an individual shareholder, debenture holder or creditor of the company in relation to which such person has been authorised to act.

*Representation of members at meetings by proxies.*

166. (1) Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend, speak, and vote in his stead at any meeting of the company:

Provided that, unless the articles otherwise provide, a proxy shall not be entitled to vote except on a poll, and a member of a private company shall not be entitled to appoint more than one proxy.

(2) In every notice calling a meeting of a company and on the face of every proxy form issued at the company's expense there shall appear with reasonable prominence a statement that a member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and speak and vote at that meeting in his stead, and that a proxy need not also be a member of the company.

(3) Any provision in a company's articles shall be void in so far as it would have the effect of requiring the instrument appointing a proxy, or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy, to be received by the company at its registered office or by any other person more than forty-eight (48) hours before a meeting in order that the appointment may be effective thereat.

(4) (a) If for the purpose of any meeting of a company, invitations to appoint as proxy a person, or one of a number of persons, specified in the invitations are issued at the company's expense to some only the members entitled to notice of the meeting and to be represented thereat by proxy, every director or officer of the company who authorises or knowingly permits or is a party to such issue, commits an offence and shall be guilty of an offence.

(b) Paragraph (6)(a) shall not apply in respect of the issue to a member of the company at his request in writing of a form of appointment naming a proxy or a list of persons willing to act as proxy, if the form or list is available on request in writing to every member entitled to be represented at the meeting in question by proxy.

(5) If for the purposes of any meeting of a company, invitations to appoint as proxy a person, or one of a number of persons, specified in the invitation or the instruments appointing a proxy, are issued at the company's expense, any such invitation or instrument appointing a proxy shall—

(a) contain adequate blank space immediately preceding the name or names of the person or persons specified therein to enable a member to write in the name and, if so desired, an alternative name of a proxy of his own choice;

(b) provide for the member to indicate whether his proxy is to vote in favour of or against any resolution or resolutions to be put at the meeting or is to abstain from voting.

(6) The person present at a meeting of the company, whose name appears first in the list of names which have not been deleted in any instrument appointing a proxy, shall be the validly appointed proxy of the member concerned.

(7) If a member does not indicate on the instrument appointing a proxy that his proxy is to vote in favour of or against any resolution or resolutions or to abstain from voting, the proxy shall be entitled to vote as he thinks fit.

(8) This section shall apply in relation to meetings of any class of members of a company as they apply in relation to general meetings of the company.

*Quorum for meetings.*

167. Unless the articles of a company provide for a greater number of members entitled to vote to constitute a quorum at meetings of a company, the quorum for such meetings shall be—

- (a) in the case of a public company, two members entitled to vote, personally present, or if a member is a body corporate, represented;
- (b) in the case of a private company, not being a private company having one member, two members entitled to vote, present in person or by proxy or, if a member is a body corporate, represented.

*Chairman of meetings.*

168. Unless the articles of a company otherwise provide, any meeting of the company may elect any member to be the chairman of the meeting.

*Compulsory adjournment of meetings.*

169. (1) If at any meeting of a company any member of the company who is present or represented and entitled to vote at the meeting demands an adjournment of the meeting upon any ground stated by him, the chairman shall put the demand to the vote of the meeting, and if a majority of the members present or represented and entitled to vote at the meeting or members present or represented and entitled to vote representing either personally or by proxy more than half of the share capital of the company represented at the meeting, vote in favour of an adjournment, the chairman shall adjourn the meeting to a day to be decided by the meeting not earlier than seven (7) days (and not later than twenty-one (21)) days after the day of the meeting.

(2) If such a meeting has been so adjourned the company shall upon a date not later than three days after the adjournment, publish in a newspaper circulating in Swaziland where the registered office of the company is situated a notice stating—

- (a) the time, date and place to which the meeting has been adjourned;
- (b) the matter before the meeting at the time it was adjourned; and
- (c) the ground for adjournment:

Provided that a private company may, instead of publishing such notice in a newspaper, send it by registered post to the members not later than three (3) days after the adjournment.

VOTING RIGHTS AND VOTING

*Voting rights of shareholders.*

170. Subject to sections 171, 172 and section 173, every member of a company shall have a right to vote at meetings of that company in respect of each share held by him.

*Voting rights of preference shareholders.*

171. (1) Notwithstanding section 170, the articles of a company may provide that preference shares shall not confer the right to vote at meetings of the company except—

- (a) during any period determined as provided in subsection (2) during which any dividend or any part of any dividend on such share or any redemption payment remains in arrear and unpaid; or
- (b) in regard to any resolution proposed which directly affects any of the rights attached to such shares or the interests of the holders thereof, including a resolution for the winding-up of the company or for the reduction of its capital.

(2) The period referred to in subsection (1)(a) shall be a period commencing on a day specified in the articles of the company concerned, not being more than six (6) months after the due date of the dividend or redemption payment in question, or, if no due date is specified, after the end of the financial year of the company in respect to which such dividend accrued or such redemption payment became due.

*Determination of voting rights.*

172. (1) A member of a public company shall be entitled to that proportion of the total votes in the company which the aggregate amount of the nominal value of the shares held by him bears to the aggregate amount of the nominal value of all the shares issued by the company.

(2) The voting rights of a member of a private company shall, subject to section 170 be determined by the articles of the company.

(3) Notwithstanding this section, the articles of a company may provide—

- (a) for the chairman of any meeting to have a casting vote; and
- (b) for the votes to which any member is entitled above a stated number to increase, not in direct proportion to the number of shares held, but in some lower proportion specified in such articles and may in such event further provide that no member shall be entitled to a number of votes exceeding the number so specified or that the number of votes to which any member is entitled be limited to a specified number.

*Exceptions as regards voting rights in existing companies.*

173. (1) Section 170 shall not apply in respect of shares of a company which at the date of the commencement of this Act had already been issued within voting rights, or in respect of issued shares (other than preference shares) in respect of which at such date there existed different voting rights or in respect of shares subsequently issued in respect of which there existed at such date a contractual right or obligation to issue any such shares.

(2) If any such company issues new shares, all the provisions of this Act as to voting rights shall, save as provided in subsection (1), apply in respect of such new shares, and, for the purpose of determining the voting rights attached to such new shares as provided in



section 172 all its shares shall be deemed to have been issued with voting rights in accordance with this Act.

*Exercise of voting rights.*

174. (1) Any person present and entitled to vote on a show of hands, as a member or as a proxy or as a representative of a body corporate, at any meeting of the company shall on a show of hands have only one vote, irrespective of the number shares he holds or represents.

(2) On a poll at any meeting of a company, any member (including a body corporate) or his proxy shall be entitled to exercise all his voting rights as determined in accordance with this Act, but shall not be obliged to use all his votes or cast all the votes he uses in the same way.

*Right to demand a poll.*

175. (1) Any provision in a company's articles shall be void in so far as it would have the effect—

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

(b) of rendering ineffective a demand for a poll made—

(i) by not less than five (5) members having the right to vote at such a meeting;

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

(iii) by a member or members entitled to vote at the meeting and holding in the aggregate not less than one-tenth of the issued share capital of the company.

(2) The instrument appointing a proxy to vote at a meeting of a company shall be deemed also to confer authority to demand or join in demanding a poll, and for the purposes of subsection (1), a demand by a person as proxy for a member shall be the same as a demand by the member.

## SPECIAL RESOLUTIONS

*Requirements for special resolutions.*

176. (1) A resolution by a company shall be a special resolution if at a general meeting of which not less than twenty-one (21) days' notice has been given specifying the intention to propose the resolution as a special resolution, the terms and effect of the resolution and the reasons for it and at which members holding in the aggregate not less than one-fourth of the total votes of all the members entitled to vote thereat, are present in person or by proxy, the resolution has been passed, on a show of hands, by not less than three-fourths of the number of members of the company entitled to vote on a show of hands at the meeting who are present in person or by proxy or, where a poll has been demanded, by not less than three-fourths of the total votes to which the members present in person or by proxy are entitled.

(2) If less than one-fourth of the total votes of all the members entitled to attend the meeting and to vote thereat are present or represented at a meeting called for the purpose of passing a special resolution, the meeting shall stand adjourned to a day not earlier than seven (7) days and not later than twenty-one (21) days after the date of the meeting and the provisions of section 167(2) and (3) shall, *mutatis mutandis*, apply in respect of such adjournment.

(3) At an adjourned meeting under subparagraph (2) the members who are present in person or by proxy and are entitled to vote may deal with the business for which the original meeting was convened and a resolution passed by not less than three-fourths of such members shall be deemed to be a special resolution even if less than one-fourth of the total votes are represented at such adjourned meeting.

(4) With the consent of a majority in number of the members of a company having the right to attend and vote at such meeting and holding in the aggregate not less than ninety-five (95) per cent of the total votes of all such members, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one (21) clear days' notice has been given. A copy of such consent shall be lodged with the Registrar together with the copy of the special resolution.

(5) A private company may elect (by elective resolution in accordance with section 185), that subsection (4) shall have effect in relation to the company as if for the references to ninety-five (95) per cent there were substituted references to such lesser percentage but not less than ninety (90) per cent, as may be specified in the resolution or subsequently determined by the company in general meeting.

(6) Notwithstanding the provisions of subsection (1), a resolution may, with the written consent of all the members of the company, be proposed and passed as a special resolution at a meeting of which notice as contemplated in subsection (1) has not been given. A copy of such consent shall be lodged with the Registrar together with a copy of the special resolution.

(7) At any meeting at which a special resolution is submitted to be passed, a declaration by the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of such fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(8) If a poll is demanded, regard shall be had, in computing the majority on the poll, to the number of votes cast for and against the resolution.

(9) For the purposes of this section, notice of a meeting shall, subject to this Act, be deemed to have been duly given and the meeting shall be deemed to be duly held if the notice is given and the meeting is held in the manner provided by the articles of the company concerned.

#### *Registration of special resolutions.*

177. (1) Within thirty days from the passing of a special resolution, a copy of the minutes of the meeting recording such resolution shall be lodged with the Registrar, who shall, subject to subsection (2), and upon payment of the prescribed fee, register such resolution.

(2) The Registrar may refuse to register any special resolution so lodged with him, except upon an order of the court, if such resolution appears to him to be contrary to the provision of this Act or of the memorandum or articles of the company concerned.

(3) A copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the registration of the resolution.

(4) Any special resolution of which a copy is not lodged with the Registrar within six (6) months from the date of the passing of that resolution shall, unless the court otherwise directs, lapse and be void.

*Special resolution for altering memorandum or articles and matters in pursuance thereof may be passed at same meeting.*

178. Where this Act permits any company to do anything by special resolution subject to the condition that its memorandum or articles authorises it and its memorandum or articles do not provide for such authority, but do not prohibit it, the company concerned may convene a single meeting for the purpose of—

- (a) passing a special resolution for the creation of the said authority in the memorandum or articles; and
- (b) passing the intended special resolution.

*Dates on which resolutions take effect.*

179. (1) A special resolution shall take effect as soon as it has been lodged with the Registrar under section 177.

(2) Any other resolution passed by a meeting of a company or of the holders of any class of shares of a company shall have effect as from the date on which it is passed.

#### WRITTEN RESOLUTIONS

*Written resolutions of private companies.*

180. (1) Anything which in the case of a private company may be done—

- (a) by resolution of the company in general meeting; or
- (b) by resolution of a meeting of any class of members of the company, may be done, without a meeting and without any previous notice being required, by resolution in writing signed by or on behalf of all the members of the company who at the date of the resolution would be entitled to attend and vote at such meeting.

(2) The signatures need not to be on a single document provided each is on a document which accurately states the terms of the resolution.

(3) The date of the resolution means when the resolution is signed by or on behalf of the last member to sign.

(4) A resolution agreed to in accordance with this section has effect as if passed—

- (a) by the company in general meeting; or
- (b) by a meeting of the relevant class of members of the company, as the case may be; and any reference in any enactment to a meeting to which a resolution is passed or to members voting in favour of a resolution shall be construed accordingly.

(5) Any reference in any enactment to the date of passing of a resolution is, in relation to a resolution agreed to in accordance with this section, a reference to the date of the resolution, unless section 181(4) applies in which case it shall be construed as reference to the date from which the resolution has effect.

(6) A resolution may be agreed to in accordance with this section which would otherwise be required to be passed as a special, or elective resolution; and any reference in any enactment to a special, or elective resolution includes such resolution.

(7) This section has effect subject to the exceptions specified in section 184; and in relation to certain descriptions of resolution under this section, the procedural requirements of this Act have effect with the adaptations specified in that section.

*Rights of auditors in relation to written resolution.*

181. (1) A copy of any written resolution proposed to be agreed to in accordance with section 180 shall be sent to the company's auditors.

(2) If the resolution concerns the auditors as auditors, they may within seven (7) days from the day on which they receive the copy give notice to the company stating their opinion that the resolution should be considered by the company in general meeting or, as the case may be, by a meeting of the relevant class of members of the company.

(3) A written resolution shall not have effect unless—

(a) the auditors notify the company that in their opinion the resolution—

(i) does not concern them as auditors; or

(ii) does so concern them but need not be considered by the company in general meeting or, as the case may be, by a meeting of the relevant class of members of the company; or

(b) the period for giving a notice under subsection (2) expires without any notice having been given in accordance with that subsection.

(4) A written resolution previously agreed to in accordance with section 185 shall not have effect until that notification is given or, as the case may be, that period expires.

*Application of sections.*

182. (1) Sections 180 and 181 have effect notwithstanding any provisions of the company's memorandum or articles.

(2) Nothing in sections 180 and 181 affects any enactment or rule of law as to—

(a) things done otherwise than passing a resolution; or

(b) cases in which a resolution is treated as having been passed, or a person is precluded from alleging that a resolution has not been duly passed.

*Recording of written resolutions.*

183. (1) Where a written resolution is agreed to in accordance with section 185 which has effect as if agreed by the company in a general meeting, the company shall cause a record of the resolution (and of the signatures) to be entered in a book in the same way as minutes of proceedings of a general meeting of the company.

(2) Any such record, if purporting to be signed by a director of the company or by the company secretary, is evidence of the proceedings in agreeing to the resolution; and where a record is made in accordance with this section, the record shall be proof, until the contrary is proved, the requirements of this Act with respect to those proceedings shall be deemed to be complied with.

*Exceptions.*

184. Section 180 shall not apply to—

- (a) a resolution under section 200 removing a director before the expiration of his period of office; or
- (b) a resolution under section 238 removing an auditor before the expiration of his term of office.

#### ELECTIVE RESOLUTIONS

*Elective resolutions of private companies.*

185. (1) An election by a private company for the purposes of sections 248, 156, 163, 176 and 233 shall be made by resolution of the company in general meeting in accordance with this section and such resolution is referred to in this Act as an “elective resolution”.

(2) An elective resolution is not effective unless—

- (a) at least twenty-one (21) days’ notice in writing is given of the meeting, stating that an elective resolution is to be proposed and state the terms of the resolution; and
- (b) the resolution is agreed to at the meeting, in person or by proxy, by all the members entitled to attend and vote at the meeting.

(3) The company may revoke an elective resolution by passing an ordinary resolution to that effect.

(4) An elective resolution shall cease to have effect if the company is converted to a public company.

(5) An elective resolution may be passed or revoked in accordance with this section, and the provisions referred to in subsection (1) have effect, notwithstanding any contrary provisions in the company’ articles of association.

*Power to make further provision by regulations.*

186. (1) The Minister may by regulations make provisions enabling private companies to elect, by elective resolution in accordance with section 185 of the companies Act to dispense with compliance with such requirements as may be specified in the regulations, being requirements which appear to the Minister to relate primarily to the internal administration and procedure of companies.

(2) The regulations may add to, amend or repeal provisions of that Act; and may provide for any such provision to have effect, where an election is made subject to such adaptations and modifications as appear to the Minister appropriate.

(3) The regulations may make different provisions for different cases and may contain such supplementary, incidental and transitional provisions as appear to the Minister to be appropriate.

#### MINUTES, MINUTE BOOKS AND REPORTS OF MEETINGS

##### *Keeping of minutes of meetings of companies.*

187. (1) (a) Every company shall cause minutes of the proceedings at any meeting of the company to be entered, in one of the official languages of the Kingdom in one or more minute books kept for the purpose, within one month after the date on which the meeting was held.

(b) Any such minute book shall be kept at the registered office of the company or at the office where such minute book is made up.

(2) For the purpose of this section loose leaves of paper shall not be deemed to constitute a minute book unless they are bound together permanently, without means provided for the withdrawal or insertion of leaves and the pages are consecutively numbered.

(3) The minutes of any meeting purporting to be signed by the chairman of that meeting or by the chairman of the next succeeding meeting shall be evidence of the proceedings.

(4) Any company which fails to comply with any requirement of subsection (1) or (2), and every director or officer thereof who knowingly permits or is a party to the failure shall be guilty of an offence.

##### *Validity of proceedings.*

188. Where minutes have been made of the proceedings at any general meeting of a company, in accordance with the provisions of section 187, the meeting shall be deemed to have been duly held and convened and all proceedings had thereat to have been duly had and all appointments of directors, managers, liquidators, auditors and officers shall be deemed to be valid, until the contrary is proved.

##### *Right of members to inspect minute books.*

189. (1) Any minute book of a company kept under section 187 shall be open to inspection during business hours by any member of the company without charge, at the registered office of the company or the office where it is made up, subject to such restrictions as may be provided for in the articles or imposed by the company in general meeting, but so that not less than two (2) hours in each business day shall be allowed for inspection.

(2) Any member of a company shall be entitled to be furnished within seven (7) days after he has made a written request to the company with a copy of the minutes of the proceedings at any general meeting of the company, certified by the secretary or a director of the company as correct.

(3) If any inspection required under this section is refused or if any copy required under this section is not furnished within the proper time the court may on application order that the minutes in question be made available for inspection or that the copy required be furnished immediately or within such period as the court may direct and may order the costs

of the application to be paid by any director or officer of the company who is responsible for the default.

*Publication of reports of meetings.*

190. (1) No report purporting to be a report of the proceedings at any meeting of a company shall be circulated or advertised at the expense of the company unless it contains a fair summary of the proceedings of the meeting:

Provided that there shall not be required in any such report the inclusion of any matter which can reasonably be regarded as defamatory of any person or as detrimental to the interest of the company.

(2) Any director or officer of a company who authorises or knowingly permits or is a party to the circulation or advertising of a report contrary to the provisions of subsection (1), shall be guilty of an offence, and if in any prosecution under this subsection the defence is raised that matter omitted from a report was immaterial or could reasonably be regarded as defamatory of some person or as detrimental to the interests of the company, the burden of providing this shall be on the person raising the defence.

CHAPTER VIII

DIRECTORS

NUMBER AND APPOINTMENT

*Number of directors.*

191. (1) A public company shall have at least two directors and every private company shall have at least one director.

(2) Until directors are appointed, every subscriber to the memorandum of a company shall be deemed for all purposes to be a director of the company.

*Determination of number of directors and appointment of first directors.*

192. Subject to the articles of any company, the number of directors of the company may be determined and the first directors may be appointed in writing by a majority of the subscribers to its memorandum.

*Appointment of directors to be voted on individually.*

193. (1) At a general meeting of a company a motion for the appointment of two or more persons as directors of the company a single resolution shall not be moved, unless a resolution that it shall be so moved has first been agreed to by the meeting without any vote being given against it.

(2) Subject to section 195, a resolution moved in contravention of this section shall be void, whether or not its being so moved was objected to at the time, but if a resolution so moved is passed, no provision for the automatic reappointment of a retiring director in default of another appointment shall apply.

(3) For the purposes of this section, a motion for approving a person's appointment or for nominating a person for appointment shall be treated as a motion for his appointment.

- (4) This section shall not apply to a resolution altering the company's articles.

*Consent to act as director.*

194. (1) Subject to subsection (2), no person shall appointed as a director of a company unless he has signed and the company has lodged with the Registrar in the prescribed form, containing the particulars under section 196 a consent in writing to act as such director.

(2) This section shall not apply in respect of any person deemed to be a director under section 191(2).

*Defect in appointment of director and validity of acts.*

195. The acts of a director of a company shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

REGISTER OF DIRECTORS AND OFFICERS

*Register of directors and officers.*

196. (1) A company shall keep a register of directors and officers of a company and cause to be entered therein in respect of every director or officer—

- (a) his full forenames and surname and any former forenames and surname, his citizenship, his occupation, his date of birth, his residential, business and postal addresses and the date of appointment, and if any officer is a corporate body, its registered office;
- (b) the name and registered office of every other company of which such director is a director; and
- (c) any changes occurring from time to time in the particulars referred to in paragraph (a) and the dates and nature of such changes.

(2) There shall in addition be entered in such register the name and date of appointment of the auditor of the company and the date and particulars of any change of such name and date of appointment.

(3) For the purposes of subsection (1)(a), "former forenames and surname" does not include—

- (a) in the case of a person adopted as a child, any forename, and surname borne by him before his adoption;
- (b) any forename or surname previously borne by any person which was changed or disused before he attained the age of eighteen years or has been changed or disused for a period of not less than ten years; or
- (c) in the case of a married or divorced woman or a widow, any forename or surname borne by her before her marriage.

(4) The provisions of section 104 as to the place where the register of members of a company shall be kept and notice thereof to the Registrar and of section 97 as to the inspection of and copies of or extracts from that register, shall apply, *mutatis mutandis*, to the register to be kept under this section.



*Duties of directors and others of company in regard to register.*

197. (1) Any person, in respect of whom the particulars referred to in section 196 are in terms of such section to be entered in the register mentioned, shall furnish such particulars in writing to the company concerned—

- (a) in the case of a person appointed as a director of a company, within fourteen (14) days after the date of his appointment in the form of a duly signed copy of his consent to act as a director;
- (b) in the case of any change in such particulars, including any change contemplated in section 196(2), but excluding a change by way of the vacation of his office by the person concerned, within fourteen (14) days after the date of the occurrence of the change,

and such particulars or any change therein shall upon receipt thereof, and if any director, or auditor has vacated his office, a statement that such vacation of office has occurred, shall forthwith be entered in such register by the company.

(2) A company shall within twenty eight days after receipt of any particulars or any change in such particulars referred to in subsection (1) or after any director, or auditor has vacated his office, lodge a return with the Registrar in the prescribed form reflecting the contents of such register.

(3) If in the case of a person who is a director of a company, any change occurs in the particulars furnished under section 196 the company shall within twenty-one (21) days of the receipt of notification of such change, lodge with the Registrar in the prescribed form particulars of such change and the nature thereof, including additional particulars relating to his vacation of office, if any.

DISQUALIFICATIONS OF DIRECTORS

*Disqualifications of directors.*

198. (1) Any of the following persons shall be disqualified from being appointed or acting as a director of a company—

- (a) a body corporate;
- (b) a minor or any other person under legal disability, save a married woman subject to the marital power of her husband whose written consent to her appointment as a director has been lodged with the Registrar;
- (c) any person who is the subject of any order under this Act or the repealed Act disqualifying him from being a director;
- (d) save under authority of the court—
  - (i) an unrehabilitated insolvent;
  - (ii) any person removed from an office of trust on account of misconduct;
  - (iii) any person who has at any time been convicted (whether in Swaziland or elsewhere) of theft, fraud, forgery or uttering a forged document, perjury, or any offence involving dishonesty or in connection with the promotion, formation or management of a

company, and has been sentenced therefor to imprisonment without the option of a fine or to a fine exceeding one hundred Emalangeni.

(2) Any person disqualified from being appointed or acting as director of a company and who purports to act as a director or directly or indirectly takes part in or is concerned in the management of any company shall be personally liable for the debts incurred by the company while that person was so acting.

*Disqualification of directors, officers and others by the court.*

199. (1) The court may on the application of person concerned, make an order directing that, for such period as may be specified in the order, a person, director or officer shall not without the leave of the court be a director of or in any way, whether directly or indirectly, be concerned or take part in the management of any company if—

- (a) such person, director or officer, has convicted of an offence in connection with the promotion, formation or management of a company; or
  - (b) such person, director or officer has persistently failed, refused or neglected to comply with the provisions of the Companies Act requiring a company to lodge with, deliver or send to the Registrar any return, annual financial statement or other document, or to give notice to the Registrar of any matter, or any other provisions of the Act; or
  - (c) such person, director or officer has carried on the business of the company recklessly or with the intent to defraud creditors or for any fraudulent purpose; or
  - (d) the court has made an order for the winding-up of a company and the Master has made a report under this Act stating that in his opinion a fraud has been committed—
    - (i) by such person in connection with the promotion or formation of the company; or
    - (ii) by any director or officer of the company in relation to the company since its formation;
  - (e) in the course of the winding-up or judicial management of a company it appears that any such person—
    - (i) has been found liable under section 360 or 361; or
    - (ii) has otherwise been guilty while an officer of the company of any fraud in relation to the company or of any breach of his duty to the company; or
  - (f) a declaration has been made in respect of any person under section 362(1).
- (2) An order under subsection (1) may be made—
- (a) by the court having jurisdiction to wind up the company affected by the act or omission in respect of which the order is sought, on application by the Master or, in the case of a company being wound up or under judicial management, by the Attorney General in terms of section 337, or by the liquidator or the judicial manager or by any person who is a creditor or is or has been a member of such company; or

(b) in the case of an order in the circumstances set out in paragraph (a) of that subsection, also summarily by the court making such order,

and any leave required under that subsection may be granted by the court having jurisdiction to wind up the company in relation to which such leave is sought.

(3) If an order under subsection (1) has been made, the person to whom it relates shall give not less than ten days notice to the Master, the Attorney General, the liquidator or the person who was the judicial manager of the company concerned, of any application he intends making for leave of the court referred to in subsection (1), who shall draw the attention of the court to any matter which may appear to them to be relevant, may give evidence and call witnesses.

(4) (a) For the purposes of subsection (1)(b)(ii) the reference therein to an officer of a company shall be construed as including a reference to any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

(b) An order may be made under subsection (1)(b)(ii) whether or not criminal proceedings have been instituted in respect of any matter on which the order is based.

(5) (a) The Registrar shall keep a register of persons disqualified under this section.

(b) Where the court has made an order under subsection (1), the Registrar of the court shall submit such order to the Registrar for entry into the register referred to under subsection (5)(a).

(6) Any person who contravenes any order made under subsection (1), shall be guilty of an offence.

*Removal of directors and procedures in regard thereto.*

200. (1) The members of a company may, notwithstanding anything in its memorandum or articles or in any agreement between it and any director, by ordinary resolution remove a director before the expiration of his period of office.

(2) Special notice shall be lodged with the company of any proposed resolution to remove a director under this section or to appoint any person in the stead of a director so removed at the meeting at which he is removed, and, on receipt of notice of such proposed resolution, the company shall forthwith deliver a copy thereof to the director concerned who shall, whether or not he is a member of the company, be entitled to be heard on the proposed resolution at the meeting.

(3) Where notice is given of a proposed resolution to remove a director under this section, and the director concerned makes representations with respect thereto not exceeding a reasonable length in writing to the company requests their notification to members of the company, the company shall, unless representations are received by it too late for it to do so—

(a) in any notice of the resolution given to members of the company, state that such representations have been made; and

(b) send a copy of the representations to every member of the company to whom notice is sent before or after receipt of the representations by the company.

(4) If a copy of such representations is not sent as aforesaid because it was received too late or because of the company's default, the director concerned may (without prejudice to his right to be heard orally) require that the representations be read at the meeting.

(5) No copy of such representations shall be sent out and the representations need not be read out at any meeting if, on the application of the company or any other person who claims to be aggrieved the court is satisfied that the rights conferred by the section are being abused to secure needless publicity for defamatory matter.

(6) The court may order the company's or the said other person's costs on an application under subsection (5) to be paid in whole or in part by the director concerned, notwithstanding that he is not a party to the application.

(7) Nothing in this section shall be construed as depriving a person removed thereunder of compensation or damages which may be payable to him in respect of the termination of his appointment as director or of any appointment terminating with that of director or as derogating from any power to remove a director which may exist apart from this section.

## RESTRICTIONS ON DIRECTORS, THEIR POWERS AND CERTAIN ACTS

### *Restriction of power of directors to issue share capital.*

201. (1) Notwithstanding anything in its memorandum or articles, the directors of a company shall not have the power to allot or issue shares of the company without the prior approval of the company in general meeting.

(2) Any such approval may be in the form of a general authority to the directors, whether conditional or unconditional, to allot or issue any shares in their discretion or in the form of a specific authority in respect of any particular allotment or issue of shares.

(3) If any such approval is given in the form of a general authority to the directors, it shall be valid only until the next annual general meeting of the company but it may be varied or revoked by any general meeting of the company prior to such annual general meeting.

(4) Any director of a company who knowingly takes part in the allotment or issue of any shares in contravention of subsection (1), shall be liable to compensate the company for any loss, damages or costs which the company may have sustained or incurred thereby, but no proceedings to recover any such loss, damages or costs shall be commenced after the expiration of two (2) years from the date of the allotment or issue.

### *Restriction on issue of shares and debentures to director.*

202. (1) No provision in any memorandum or articles or in any resolution of a company authorising the directors to allot or issue any shares or debentures convertible into shares of the company at the discretion of the directors, shall authorise the allotment or issue of any such shares or debentures to any director of the company or his nominee, or to any body corporate which is or the directors of which are accustomed to act in accordance with the directions or instructions of such director or nominee or at a general meeting of which such director or his nominee is entitled to exercise or control the exercise of one-fifth or more of the voting power, or to any controlled company of such body corporate unless—

- (a) the particular allotment or issue has prior to the allotment or issue been specifically approved by the company in general meeting;
- (b) such shares or debentures are allotted or issued under a contract underwriting such shares or debentures;

- (c) such shares or debentures are allotted or issued in proportion to existing holdings, on the same terms and conditions as have been offered to all the members or debenture-holders of the company or to all the holders of the shares or such debentures of the class or classes being allotted or issued; or
- (d) such shares or debentures are allotted or issued on the same terms and conditions as have been offered to members of the public.

(2) Any director of a company who contravenes or permits the contravention of this section, shall be further liable to compensate the company for any loss, damages or costs which the company may have sustained or incurred thereby:

Provided that no proceedings to recover any such loss, damages or costs shall be commenced after the expiry of two (2) years from the date of the allotment or issue.

*Share option plans where director interested.*

203. After the commencement of this Act no option or right given directly or indirectly to any director or future director of a company in terms of any scheme or plan, to subscribe for any shares of that company or to take up any debentures convertible into shares of such company on any basis other than that provided for in section 202, shall be valid unless authorised in terms of a special resolution of such company:

Provided that—

- (a) the terms ‘future director’ shall not include a person who becomes a director of the company after the lapse of six months from the date upon which such option or right is acquired by such person; and
- (b) no such option or right shall be valid in terms of this section if such director or future director of the company holds salaried employment or office in the company and is given such option or right in his capacity as an employee.

*Prohibition of loans to, or security in connection with transactions by, directors and managers.*

204. (1) No company shall directly or indirectly make a loan to—

- (a) any director or manager of—
  - (i) the company;
  - (ii) its holding company; or
  - (iii) any other company or other body corporate controlled by one or more directors or managers of the company or of its holding company or of any company which is a subsidiary of its holding company;
- (b) any other company or other body corporate controlled by one or more directors or managers of the company or of its holding company or of any company which is a subsidiary of its holding company,

or provide any security to any person in connection with an obligation of such director, manager, company or other body corporate.

(2) For the purpose of subsection (1)—

- (a) “loan” includes—
  - (i) a loan of money, shares, debentures or any other property; and

- (ii) any credit extended by a company, where the debt concerned is not payable or being paid in accordance with normal business practice in respect of the payment of debts of the same kind;
- (b) one or more directors or managers of a company contemplated in subsection (1)(b) shall be deemed to control another company or body corporate if—
  - (i) such director or manager or his nominee is a member or such directors or managers or their nominees are members of such other company or body corporate and the composition of its board of directors is controlled by such director, manager or nominee or such directors, managers or nominees, and such composition shall be deemed to be so controlled if such director or manager or his nominee or such directors or managers or their nominees may, by the exercise of some power and without the consent or concurrence of any other person, appoint or remove the majority of the directors concerned, and such director, manager or nominee or such directors, managers or nominees shall be deemed to have power to appoint a director where a person cannot be appointed as a director without his or their consent or concurrence; or
  - (ii) more than one-half of the equity share capital of that other company or body corporate is held by such director, manager or nominee or such directors, managers or nominees;
- (c) “security” includes a guarantee;
- (d) the provisions of subsection (1) and of paragraph (b) of subsection (2) shall not be construed as prohibiting a company from making a loan to or providing security to any person in connection with an obligation of its holding company or subsidiary or a subsidiary of such holding company.
- (3) The provisions of subsection (1) shall not apply—
  - (a) in respect of—
    - (i) the making of a loan by a company to its own director or manager or a director or manager of its subsidiary; or
    - (ii) the provision of security by a company in connection with an obligation of its own director or manager or a director or a manager of its subsidiary with the consent of all the members of the company or in terms of a special resolution relating to a specific transaction;
    - (iii) the making of a loan by a company to any other company or other body corporate controlled by one or more of the directors or managers of the first-mentioned company; or
    - (iv) the provision of security by a company in connection with an obligation of any other company or other body corporate controlled by one or more of the directors or managers of the first-mentioned company;
  - (b) subject to the provisions of subsection (4), in respect of anything done to provide any director or manager with funds to meet expenditure incurred or to

be incurred by him for the purposes of the company concerned or for the purpose of enabling him properly to perform his duties as director or manager of that company;

- (c) in respect of anything done *bona fide* in the ordinary course of the business of a company actually and regularly carrying on the business of the making of loans or the provisions of security;
- (d) to the provision of money or making loans by a company for the purposes contemplated in section 80(b) and (c);
- (e) to the making of a loan or the provision of security with the approval of the company in general meeting for housing for its director or manager; or
- (f) in respect of—
  - (i) the making of a loan by a company to a director or manager of its subsidiary; or
  - (ii) the provision of security by a company to another person in connection with an obligation of a director or manager of its subsidiary;

Provided such director or manager is not also a director or manager of such company itself.

(4) No loan shall be made or security provided by virtue of the provisions of subsection (3)(b), except—

- (a) with the prior approval of the company given at a general meeting at which the amount of the loan or the extent of the security and the purposes thereof are disclosed; or
- (b) on condition that, if such approval is not given at or before the next annual general meeting of the company, the loan shall be repaid or the liability under the security shall be discharged, within six (6) months from the conclusion of such annual general meeting.

(5) Any director or officer of a company who authorises, permits or is a party to the making of any loan or the provision of any security contrary to this section, shall be liable to indemnify the company and any other person who had no actual knowledge of the contravention, against any loss directly resulting from the invalidity of such loan or security.

(6) For the purposes of subsection (5), a director or officer of a company includes, if the company is a subsidiary, any director or officer of its holding company.

*Payments to directors for loss of office or in connection with arrangements and take-over schemes.*

205. (1) Unless full particulars with respect to the proposed payment (including the amount thereof), benefit or advantage have been disclosed to the members of the company and the making of the payment or the grant of the benefit or advantage has been approved by special resolution of the company, no company shall make any payment or grant any benefit or advantage to any director or past director of the company or of its subsidiary or holding company or of any subsidiary of its holding company—

- (a) by way of compensation for loss of office as a consideration for or in connection with his retirement from office;

(b) by way of compensation, consideration or for any other reason, for loss or retention of office or otherwise in connection with any scheme referred to in section 268; or

(c) by way of such compensation, consideration or other reason in connection with any take-over scheme referred to in section 269.

(2) Any payment made or benefit or advantage granted contrary to subsection (1) shall—

(a) in the case of paragraphs (a) and (b) thereof, be deemed to have been received by the director or past director concerned in trust for the company; and

(b) in the case of paragraph (c) thereof, be deemed to have been received by the director or past director concerned in trust for any persons who have sold their shares as a result of the take-over offer concerned.

(3) If in connection with any take-over scheme the price to be paid to a director or past director for any shares of the company held by him is in excess of the price offered to other holders of such shares in terms of the take-over scheme or any benefit or advantage is granted to such director or past director, the excess or the money value of the benefit or advantage, as the case may be, shall for the purposes of this section, be deemed to have been a payment made contrary to the provisions of subsection (1)(c).

(4) A director's expenses of distributing any sum amongst persons entitled thereto by virtue of subsection (2)(b) shall be borne by him and shall not be retained out of that sum.

(5) Where in proceedings for the recovery of any payment, benefit or advantage deemed to have been received in trust, it is shown that—

(a) the payment was made or the benefit or advantage was granted in pursuance of any arrangement entered into as part of an agreement in respect of any scheme or take-over scheme, or within one (1) year before or two years after that agreement or the take-over offer; and

(b) the company, or the transferee company under any scheme or the offeror in respect of any take-over scheme was privy to that arrangement, the payment, benefit or advantage shall be deemed, except in so far as the contrary is shown, to be one to which this section applies.

(6) This section shall not apply with reference to any *bona fide* payment made or benefit or advantage granted by way of damage for breach of contract or by way of a pension, including any super-annuation allowance, gratuity or similar payment in respect of past services.

(7) Nothing in this section shall prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments, benefits or advantages as are mentioned in this section or with respect to any other payments, benefits or advantages made or granted or to be made or granted to the directors or past directors of a company.

*Disposal of undertaking or greater part of assets of company.*

206. (1) Notwithstanding anything in its memorandum or articles, the directors of a company shall not have the power, save with the approval of a general meeting of the company, to dispose of—

(a) the whole or substantially the whole of the undertaking of the company; or

(b) the whole or the greater part of the assets of the company.



(2) No resolution of the company approving any such disposal shall have effect unless it authorises or ratifies in terms the specific transaction.

#### INTERESTS OF DIRECTORS AND OFFICERS IN CONTRACTS

##### *Disclosure of interest.*

207. (1) If the articles of a company so permit it shall be permissible for its directors or officers or any of them to be interested in a contract entered into by the company to the extent as permitted by the articles; provided that in addition to such other requirements as may be laid down in the articles, a director or officer with a material interest in a material contract or a potential material contract being considered by the company, shall, as soon as his interest becomes apparent to him, declare such interest by notice in writing to the secretary and every director of the company, which notice shall specify—

- (a) the contract to which the declaration relates; and
- (b) the nature and extent of the interest of the director or officer making the declaration in the said contract.

(2) For the purposes of subsection (1), a general notice in writing given by a director or officer to the secretary or directors to the effect that he is a member, director or officer of another company or firm and is to be regarded as interested in any contract which may after the date of the notice and before the date of its expiry be entered into with the said company or firm, shall be deemed to be a sufficient declaration of interest provided that—

- (a) the nature and extent of the interest of the said director or officer in such company or firm shall be specified in the notice; and
- (b) if the nature and extent of the interest of such director or officer changes in any material way, a further notice specifying the nature and extent of such change shall as soon as possible thereafter be given by the said director or officer;
- (c) in any event such notice shall be given annually on or before the date of the annual general meeting of the company.

##### *Register of interests.*

208. (1) A company shall maintain at its registered office or at the office where it is made up, a bound book or books to the pages of which every declaration of interest referred to in section 267 shall be permanently affixed and consecutively numbered.

(2) It shall be the duty of any director or officer making a declaration of interest as provided for in section 267 to ensure that such declaration of interest has been properly inserted into the register referred to in subsection (1).

(3) The register referred to in subsection (1) shall be open to inspection during business hours by any member or director of the company without charge subject to such restrictions as may be provided for in the articles or imposed by the company in general meeting but so that not less than two (2) hours in each business day shall be allowed for inspection.

#### PROCEEDINGS AT MEETINGS OF DIRECTORS

*Keeping of minutes of directors' meetings.*

209. (1) The directors of a company shall cause minutes of all proceedings of meetings of directors to be entered in one or more bound minute books and each minute shall be consecutively numbered.

(2) Subject to the provisions of its articles, any resolution of directors of a company in the form of a written resolution signed by all the directors shall be deemed to be a minute of a meeting, and shall be entered in the book or books as provided for in subsection (1).

(3) The minute books required to be maintained in terms of subsection (1) shall be kept in a secured place at the registered office of the company or at the office where such minute are made up.

(4) The minutes of any meeting of directors of a company purporting to be signed by the chairman of that meeting or by the chairman of the next succeeding meeting shall, *prima facie*, be evidence of the proceedings at that meeting.

*When resolution at adjourned directors' meeting effective.*

210. Any resolution passed at an adjourned meeting of directors of a company shall for all purposes be treated as having been passed on the date on which it was in fact passed.

*Directors' meetings attendance register.*

211. (1) A director of a company present at any meeting of directors shall at the meeting sign his name under the date of the meeting in a bound book to be kept for that purpose.

(2) The book required to be maintained in terms of subsection (1) shall be kept in the same manner and place as the minute books referred to in section 171 and shall during business hours be open to inspection by any member of the company without charge.

**INDEMNITY AND RELIEF OF AND OFFENCES BY DIRECTORS AND OTHERS**

*Exemption from or indemnity against liability of directors, officers or auditors of a company.*

212. (1) Subject to subsection (2), any provision, whether contained in the articles of a company or in any contract with a company, and whether expressed or implied, which purports to exempt any director or officer or the auditor of the company from any liability which by law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company or to indemnify him against any such liability, shall be void.

(2) The provisions of subsection (1) shall not be construed as prohibiting a company from indemnifying any director, officer or auditor in respect of any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in respect of any such proceedings which are abandoned or in connection with any application under section 213 in which relief is granted to him by the court.

*Relief of directors and others by court in certain cases.*

213. (1) If in any proceedings for negligence, default, breach of the trust against any person concerned is proved with respect to the negligence, default, breach of duty or breach of

trust, but that the person acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, the court may relieve him, either wholly or partly, from his liability on such terms as the court may think fit.

(2) Any such director, officer or auditor who has reason to apprehend that any claim made against him in respect of any negligence, default, breach of duty or breach of trust, may apply to the court for relief, and the court shall on such application have the same powers to grant relief as are by subsection (1) conferred upon it with reference to proceedings referred to in that subsection.

CHAPTER IX  
REMEDIES OF MEMBERS  
UNFAIRLY PREJUDICIAL CONDUCT

*Members' remedy in case of unfairly prejudicial conduct.*

214. (1) Any member of a company who complains that any particular act or omission of a company is unfairly prejudicial, unjust or inequitable, or that the affairs of the company are being conducted in a manner unfairly prejudicial, unjust or inequitable to him or some part of the members of the company, may, subject to the provisions of subsection (2) make an application to the court for an order under this section.

(2) Where the act complained of relates to—

- (a) any alteration of the memorandum of the company under section 46 or 47;
- (b) any reduction of the capital of the company under section 69;
- (c) any variation of rights in respect of shares of a company under section 86; or
- (d) a conversion of a private company into a public company or of a public company into a private company under section 19,

an application to the court under subsection (1) shall be made within six weeks after the date of the passing of the relevant special resolution required in connection with the particular act concerned.

(3) If on any such application it appears to the court that the particular act or omission is unfairly prejudicial, unjust or inequitable, or that the company's affairs are being conducted as aforesaid and if the court considers it just and equitable, the court may, with view to bringing to an end the matter complained of, make such order as it thinks fit, whether for regulating the future conduct of the company's affairs or for the purchase of the shares of any member of the company by other members thereof or by the company and, in the case of a purchase by the company, for the reduction accordingly of the company's capital, or otherwise.

(4) Where an order under this section makes any alteration or addition to the memorandum or articles of a company—

- (a) the alteration or addition shall, subject to the provisions of paragraph (b), have effect as if it had been duly made by special resolution of the company; and
- (b) the company shall, notwithstanding any thing contained in this Act have no power, save as otherwise provided in the order, to make any alteration in or

addition to its memorandum or articles which is inconsistent with the order, except with the leave of the court.

(5) (a) A copy of any order made under this section which alters or adds to or grants leave to alter or add to memorandum or articles of a company shall, within one month after the making thereof, be lodged by the company in the form prescribed with the Registrar for registration.

(b) Any company which fails to comply with the provisions of paragraph (a), shall be guilty of an offence.

#### INQUIRY INTO MEMBERSHIP AND OWNERSHIP OF SHARES AND CONTROL OF COMPANY

*Power of Registrar to call for information concerning shares and members.*

215. (1) The Registrar may from time to time by notice in writing require a company or external company to transmit to him within fourteen days after the date of such notice particulars of the transfer of any share or shares and a list of persons for the time being members of the company and of all persons who ceased to be members as from a particular date.

(2) Any company or external company which fails to comply with any requirement of the Registrar under subsection (1) and every director or officer of such company who knowingly fails to comply with the requirement, shall be guilty of an offence.

*Appointment and powers of inspectors to investigate financial interest in and control of company.*

216. (1) The Minister may—

(a) when it appears to him that there is good reason to do so, appoint one or more inspectors to investigate and report to him on the membership of any company and otherwise with respect to such company for the purpose of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the company or able to control or materially to influence the policy of the company;

(b) on an application complying with the requirements prescribed in section 219 in respect of an application under that section, for an investigation to particular shares or debentures of a company, appoint an inspector to carry out such investigation.

(2) Any appointment of such an inspector shall define the scope of the investigation to be carried out by him, whether in respect of the matters to be investigated or the period in respect of which the investigation is to be undertaken or otherwise, and may provide for an investigation to be confined to particular shares or debentures.

(3) No application under subsection (1)(b) shall be refused unless the Minister is satisfied that the application is vexatious, nor shall there be excluded from the scope of the investigation by an inspect or appointed in pursuance of such an application any matter which the applicant seeks to have included therein, except in so far as in the opinion of the Minister it would be unreasonable for the matter to be investigated.

(4) The powers of an inspector shall, subject to the terms of his appointment, extend to the investigation of any circumstances suggesting the existence of an arrangement or

understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to any matter to be investigated.

(5) The provisions of sections 221, 222 and 223 shall, *mutatis mutandis*, apply with reference to any investigation under this section:

Provided that the Minister shall not be bound to furnish the company concerned or any other person with a copy of any report (or part thereof) by an inspector appointed under this section if there are substantial grounds in the public interest for not divulging the contents of the report or of parts thereof.

*Power to require information as to persons interested in shares or debentures.*

217. (1) When the Minister deems it necessary to investigate any interest in share or debentures of a company, he may by written notice require—

(a) any director or officer of the company; or

(b) any person whom he has reason to believe—

(i) to have or to have had a any interest in those shares or debentures;

(ii) to be acting or to have acted in relation to those shares or debentures as the trustee or agent nominee of someone having any interest therein,

to furnish the Minister in writing, within twenty-one (21) days after the date of the said notice, with any information which he has or can reasonably be expected to obtain as to any present or past interest in those shares or debentures and the name and address of the interested person concerned and of any person who is acting or has acted on his behalf in relation to those shares or debentures.

(2) For the purposes of this section, a person shall be deemed to have an interest in a share or debenture of a company if he has any right as against any member of any holder of a debenture of the company in respect of dividends, interest or capital received from the company by such member or holder, or if he has any right to acquire or dispose of the share or debenture or any interest of such voting right, or if his consent is necessary for the exercise of any of the rights of a member of any other person having an interest therein, or if a member or any other person having interest therein can be required or is accustomed to exercise his rights in accordance with his instructions, or if he is a beneficiary, of whatever nature, in relation to such share or debenture.

(3) Any person who fails to give information required of him under this section and which he is able to give or can reasonably obtain, or who in giving such information knowingly or recklessly makes any statement which is false in any material particular, shall be guilty of an offence.

*Power to impose restrictions on shares or debentures.*

218. (1) (a) Where in connection with an investigation under section 216 or 217 it appears to the Minister that there is difficulty in finding out the relevant facts about any shares of a company (whether issued or to be issued), and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned or any of them to assist in the investigation, the Minister may by notice published in the *Gazette* and served by post upon the company at its registered office declare that the shares shall as from the date of publication of the notice in the *Gazette* be subject to the restrictions imposed by this section.

(b) The Minister may in like manner withdraw or amend such notice.

(2) As long as any such notice is in force—

(a) any transfer of the shares to which it relates or, in the case of unissued shares, any transfer of the right to be issued therewith or any issue thereof, shall be void;

(b) no voting rights shall be exercisable in respect of such shares;

(c) no further shares shall be issued in pursuance of any right attached to such shares or in pursuance of an offer made to the holder thereof; and

(d) except in a winding-up, no payment shall be made of any sums due from the company in respect of such shares, whether in respect of capital or otherwise.

(3) Where the Minister in any such notice declares that shares shall be subject to the said resolution, or refuses to withdraw or amend any such notice, any person aggrieved thereby may apply to the court, and the court may, if it sees fit, direct that the shares shall cease to be subject to the said restrictions or to any one or more of them.

(4) Any notice of the Minister or order of the court directing that shares shall cease to be subject to any of the restrictions referred to in subsection (2), which is expressed to be made with a view to permitting a transfer of those shares, may continue the restrictions referred to in paragraphs (c) and (d) of that subsection, either in whole or in part, in so far as they relate to any right acquired or offer made before the transfer.

(5) Any person who—

(a) exercises or purports to exercise any right to dispose of any shares which to his knowledge are subject to the restrictions mentioned in subsection (2) or of any right to be issued with any such shares; or

(b) votes in respect of any such shares, whether as holder or proxy, or appoints a proxy to vote in respect thereof; or

(c) being the holder of any such shares, fails to give notice of their being subject to the said restrictions to any person whom he does not know to be aware of that fact, but does know to be entitled, apart from the said restrictions, to vote in respect of those shares, whether as holder or proxy,

shall be guilty of an offence.

(6) Where shares of any company are in contravention of the said restrictions, the company, and every director or officer who knowingly takes part in the contravention, shall be guilty of an offence.

(7) This section shall apply in relation to debentures as it applies in relation to shares.

#### INVESTIGATION INTO AFFAIRS OF COMPANY

##### *Inspection of company's affairs on application of members.*

219. (1) The Minister may appoint one or more inspectors to investigate the affairs of a company and report thereon in such manner as he may direct—

(a) in the case of a company limited by shares, on the application of not less than one hundred members or of members holding not less than one-twentieth of the shares issued; and

(b) in the case of a company limited by guarantee on the application of not less than one-tenth of the number of persons on the register of members.

(2) The application shall be supported by such evidence as the Minister may require showing that the applicants have good reason for desiring an inspection, and the Minister may before appointing an inspector on any such application, require the applicants to give security to his satisfaction in an amount not exceeding four hundred emalangenzi towards the cost of the investigation.

(3) Before appointing an inspector under subsection (1), the Minister shall, unless he is of opinion that to do so would defeat the objects of this section, furnish in writing to the company concerned a statement setting out the substance of the complaint made and afford it a reasonable opportunity of replying thereto.

*Investigation of company's affairs in other cases.*

220. (1) When a company by special resolution resolves or the court by order declares that the affairs of a company ought to be investigated, the Minister shall appoint one or more inspectors to investigate the affairs of such company and to report thereon, in such manner as he may direct.

(2) The Minister may appoint one or more inspectors to investigate the affairs of a company and to report thereon in such manner as he may direct, if it appears to him that there are circumstances suggesting—

(a) that the business of the company is being conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or an unlawful purpose or in a manner unfairly prejudicial or unjust or inequitable to any part of its members or that it was formed for any fraudulent or unlawful purpose; or

(b) that the persons concerned with its formation or the management of its affairs have in connection therewith been guilty of any fraud, delict or other misconduct towards it or toward its members; or

(c) that its members have not been given all the information with respect to its affairs they might reasonably expect.

(3) The provisions of section 219(3) shall apply, *mutatis mutandis*, in respect of an investigation under this section.

*Power of inspector to conduct investigation into affairs of related companies.*

221. An inspector appointed to investigate the affairs of a company may, if he considers it necessary for the purpose, with the approval of the Minister, also investigate the affairs of any other company or other body corporate which is or has at any relevant time been the first-mentioned company's subsidiary or holding company or a subsidiary of its holding company and shall in that event report on the affairs of such other company or other body corporate so far as the results of his investigation thereof are in his opinion relevant to the investigation of the affairs of the first-mentioned company.

*Production of documents and evidence on investigation.*

222. (1) Any director, officer or agent of a company or other body corporate whose affairs are being investigated by an inspector under this Act, shall at the request of such inspector produce to him all books and documents of or relating to the company or other body corporate, in his custody or under his control, and afford the inspector such assistance within his power in connection with the investigation of the affairs of the first-mentioned company.

(2) An inspector may for the purpose of any investigation conducted by him—

- (a) summon any director, officer, employee, member or agent of the company or other body corporate to appear before him at a time and place specified in the summons, to be interrogated or to produce any book or document so specified;
- (b) administer an oath to or accept an affirmation from any person appearing before him in pursuance of a summons, and interrogate such person and require him to produce any such book or document;
- (c) retain for examination any book or document produced to him in pursuance of a summons for a period not exceeding two months or for such further period or periods and require as the Registrar may on good cause shown, permit.

(3) A summons for the attendance of any person before an inspector or for the production to him of any book or document may be in such form as the inspector may determine, shall be signed by the inspector, and shall be served in the same manner as a subpoena in a criminal case issued by a magistrate's court.

(4) Any person duly summoned to appear before an inspector who without sufficient cause—

- (a) fails to attend at the time and place specified in the summons or to remain in attendance until excused by the inspector from further attendance; or
- (b) refuses upon being required to do so by the inspector, to take an oath or to affirm as a witness or refuses or fails to produce any book or document which he has been required to produce or to answer fully and satisfactorily to the best of his knowledge and belief all questions put to him by the inspector concerning the affairs of the company or other body corporate whose affairs are being investigated, whether or not the answer is likely to incriminate him,

shall be guilty of an offence:

Provided that, save as otherwise provided this in this subsection, in connection with the interrogation of any such person, or the production of any such book or document, the law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce any book or document before a court of law, shall apply.

(5) (a) If an inspector considers it necessary for the purpose of his investigation that a person whom he has no power to examine on oath should be so examined, he may apply to the court for an order calling upon such person to appear before it for examination and the court may thereupon if it thinks fit order that person to attend before it to be examined on oath on any matter relevant to the investigation, and on any such examination—

- (i) the inspector may take part therein either personally or by attorney or counsel;
- (ii) the court may put such questions to the person examined as the court thinks fit;



- (iii) the person examined shall answer all such questions as the court may put or allow to be put to him.
  - (b) Notes of the examination shall be taken down in writing and shall be read over to or by signed by the person examined, and may there after be used in evidence against him.
  - (c) The court may allow the person examined such costs as in its discretion it may think fit, and any costs so allowed shall be paid as part of the costs of the investigation.
- (6) In this section—
- (a) any reference to a director, officer, employee, member or agent of a company or other body corporate, includes a reference to a past director, officer, employee, member or agent of such company or other body corporate and;
  - (b) any reference to an agent of a company or other body corporate, includes a reference to the bankers, attorneys and auditor of the company or other body corporate.
- (7) Any person examined under this section may at his own cost employ an attorney with or without counsel, who shall be at liberty to put to him such questions as the inspector or the court may deem just for the purpose of enabling him to explain or qualify any answers given by him.

*Inspector's report.*

223. (1) An inspector may make interim reports to the Minister with regard to any investigation conducted by him if the Minister so directs, and shall, on the conclusion of the investigation make a final report to the Minister.

- (a) Any such reports shall be written or printed as the Minister may direct.
- (2) The Minister shall direct the Registrar—
- (a) to send a copy of any report made by an inspector to the registered office of the company or other body corporate concerned;
  - (b) to furnish a copy of such report on request and on payment of any fee that may be prescribed, to any person who is a member of the company or of any other body corporate dealt with in the report or whose interests as a creditor of the company or any such other body corporate appear to the Minister to be affected;
  - (c) where the inspector is appointed under section 219, to furnish a copy of the report to the applicants concerned at their request; and
  - (d) where the inspector is appointed under section 220 in pursuance of an order of the court, to furnish a copy of the report to the court, and may direct the Registrar to cause any such report to be printed and published.

*Proceedings on inspector's report.*

224. (1) If in the case of any company or other body corporate liable to be wound up under this Act, it appears to the Minister from any such report that it is expedient so to do by reason of any circumstance referred to in section 220(2)(a), (b) or (c), the Minister may, make application for it to be wound up if the court thinks it just and equitable that it be wound up, or

an application for an order such as is referred to in section 214 or both an application for an order that it be so wound up and an order such as is referred to in the said section, and the court may in that event make such order as it may consider appropriate.

(2) (a) If from any such report it appears to the Minister that proceedings ought in the public interest to be brought by any company or other body corporate dealt with by the report for the recovery of damages in respect of any fraud, delict or other misconduct in connection with the promotion or formation of that company or other body corporate or the management of its affairs, or for the recovery of any property of the company or other body corporate which has been misapplied or wrongfully retained, the Minister may bring proceedings for that purpose in the name of the company or other body corporate.

(b) The Minister shall indemnify the company or other body corporate against any costs or expenses incurred by it in or on connection with any proceedings brought by virtue of paragraph (a).

#### MATTERS INCIDENTAL TO INVESTIGATIONS

*Expenses of and incidental to investigation of company's affairs.*

225. (1) The Minister shall in the first instance defray the expenses of an incidental to an investigation under section 219 or 220, but the following persons shall, to the extent stated, be liable to repay the Minister—

(a) any person convicted of an offence disclosed by the investigation or ordered to pay damages or to restore any property in proceedings instituted under section 224(2)(a), shall be liable for such amount, if any, as may be determined by the court when convicting such person or ordering the payment of such damages or the restoration of such property;

(b) in any case where no proceedings are instituted in respect of any such offence and no order for the payment of any such damages or the restoration of any such property is made—

(i) any body corporate whose affairs were the subject of the investigation; and

(ii) in the case of an investigation under section 219, the applicants concerned shall be liable for such an amount as the Minister may in each case determine; and

(c) any body corporate in whose name proceedings are instituted under section 224(2)(a), shall be liable for the balance, if any, of such expenditure not recovered under paragraph (a), but not for an amount exceeding the amount or value of any property recovered in any such proceedings.

(2) The amount determined under subsection (1)(a) may be the full amount of the expenditure in question or such lesser or proportion thereof as the court considers just.

(3) The provisions of subsection (1)(b)(i) shall not apply in any case where it appears from the relevant report that there was no substance in the allegations which gave rise to the investigation to which the report relates.

(4) Any amount of which a body corporate may be liable by virtue of the provisions of subsection (1) shall be a first charge on the amount or value of any property recovered in proceedings referred to in subsection.

(5) An inspector may, if he deems fit, and shall, if the Minister so directs, include in his report on any investigation a recommendation as to the amount, if any, which in his opinion should under subsection (1)(b) be ordered to be paid by any body corporate or the applicants referred to therein.

(6) For the purposes of this section any costs of expenses incurred by the Minister in or in connection with proceedings instituted by him under section 224(2)(a), including any amount which may become payable by him in terms of paragraph (b) of that subsection, shall be regarded as part of the expenditure incurred by him in respect of the investigation giving rise to such proceedings.

*Saving in respect of attorneys and bankers.*

226. Nothing in this Act shall be construed as requiring the disclosure to the Minister or to an inspector—

- (a) by an attorney of any privileged communication made to him in his capacity as such, except as respects the name and address of his client; or
- (b) by a banker of any information as to the affairs of any of his customers except—
  - (i) a company or its nominee and any other body corporate whose affairs are being investigated; and
  - (ii) any person having an interest in shares held in the name of the banker's nominee.

*Report of inspectors to be evidence.*

227. A copy of the report of any inspector appointed under this Act shall be admissible in any legal proceedings as evidence of the opinion of the inspector in relation to any matter contained in the report.

#### PROCEEDINGS ON BEHALF OF COMPANIES

*Initiation of proceedings on behalf of company by a member.*

228. (1) Where a company has suffered damages or loss or has been deprived of any benefit as a result of any wrong, breach or trust or breach of faith committed by any director or officer of that company or by any past director or officer while he was a director or officer of that company and the company has not instituted proceedings for the recovery of such damages, loss or benefit, any member of the company may initiate proceedings on behalf of the company against such director or officer or past director or officer in the manner prescribed by this section notwithstanding that the company has in any way ratified or condoned any such wrong, breach of trust or breach of faith or any act or omission relating thereto.

(2) (a) Any such member shall serve a written notice on the company calling on the company to institute such proceedings within one month from the date of service of the notice and stating that if the company fails to do so, an application to the court under paragraph (b) will be made.

- (b) If the company fails to institute such proceedings within the said period of one month, the member may make application to the court for an order

appointing a *curator ad litem* for the company for the purpose of instituting and conducting proceedings on behalf of the company against such director or officer or past director or officer.

(3) If it the court is satisfied that—

- (a) the company has not instituted such proceedings;
- (b) there are *prima facie* grounds for such proceedings; and
- (c) an investigation into such grounds and into the desirability of the institution of such proceedings is justified,

may appoint a provisional *curator ad litem* and direct him to conduct such investigation and to report to the court on the return day of the provisional order.

(4) The court may on the return day discharge the provisional order referred to in subsection (3) or confirm the appointment of the *curator ad litem* for the company and issue such directions as to the institution of proceedings in the name of company and the conduct of such proceedings on behalf of the company by the *curator ad litem*, as it may think necessary and may order that any resolution ratifying or condoning the wrong, breach of trust or breach of faith or any act or omission in relation there to shall not be of any force or effect.

#### *Powers of curator ad litem.*

229. (1) A provisional *curator ad litem* appointment by the court under section 228(3) and a *curator ad litem* whose appointment is confirmed by the court under section 228(4) shall, in addition to the powers expressly granted by the court in connection with the investigation, proceedings and enforcement of a judgment, have the same powers as an inspector under section 222, and the provisions of that section shall, subject to the provisions of subsection (2) of this section, apply, *mutatis mutandis*, to the provisional *curator ad litem* and to the *curator ad litem* and to the directors, officers, employees, members and agents of the company concerned.

(2) If the disclosure of any information about the affairs of a company to a provisional *curator ad litem* or a *curator ad litem* would in the opinion of the company be harmful to the interests of the company, the court may on an application for relief by that company, if it is satisfied that the said information is not relevant to the investigation, grant such relief.

#### *Power of court as to costs.*

230. The court may order the company to pay the costs of the litigation where, in the circumstances of the case, it is established that the institution of the action by the applicant was a reasonable and prudent course to take in the interests of the company.

## CHAPTER X AUDITORS APPOINTMENT

#### *Appointment of first auditor of company.*

231. (1) The first auditor of a company shall be appointed by the directors within thirty (30) days of the issue of the certificate of incorporation in the case of a private company, and within thirty (30) days of the issue of the certificate that the company is entitled to commence

business in the case of a public company; and an auditor so appointed shall hold office until the conclusion of the first annual general meeting:

Provided that—

- (i) subject to the provisions of section 239 the company may at a general meeting, remove any such auditor and appoint in his place any other person who has by special notice been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than fourteen (14) days before the date of the meeting;
  - (ii) if the directors fail to exercise their powers under this section, the company in a general meeting may appoint the first auditor, and thereupon the said powers of the directors shall cease; and
  - (iii) if neither the directors nor the company appoint an auditor under this subsection, the Registrar may on the application of any member do so.
- (2) Notwithstanding anything to the contrary contained in this section, a private company shall not be required to appoint an auditor if—
- (a) the number of shareholders in such company does not exceed five (5);
  - (b) the equity share capital in the company does not exceed fifty thousand Emalangeni (E50,000,00).

*Annual appointment of auditor.*

232. (1) Every company shall at each annual general meeting appoint an auditor to hold office from the conclusion of that meeting, until the conclusion of the next annual general meeting.

(2) Where at an annual general meeting no auditor is appointed or re-appointed, the Registrar may appoint a person to fill the vacancy.

(3) The company shall, within one week of the Registrar's power under subsection (2) becoming exercisable, give him notice of that fact, and, if a company fails to give notice as required by this subsection, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine.

*Election by private company to dispense with annual appointment.*

233. (1) A private company may elect in accordance with section 185 to dispense with the obligation to appoint auditors annually.

(2) When such an election is in force the company's auditors shall be deemed re-appointed for each succeeding financial year on expiry of the time for appointing auditors for that year, unless a resolution has been passed under section 241 to the effect that their appointment should be brought to an end.

(3) If the election ceases to be in force, the auditors then holding office, shall continue to hold office until the conclusion of the next general meeting of the company and the provisions of section 232 shall then apply.

*Filling of casual vacancies.*

234. Directors may fill any casual vacancy in the office of auditor, but while such vacancy continues the surviving or continuing auditor may act.

*Firm may be appointed auditor.*

235. (1) A firm of auditors may be appointed to hold the office of auditor of a company.

(2) A change in the composition of the members of a firm of auditors while holding office as auditor of a company shall not constitute a casual vacancy in the office of auditor but if less than one-half of the members of such firm remain after any one such change, it shall be taken as a resignation of auditor and a casual vacancy shall have been constituted.

*Disqualification for appointment as auditor.*

236. (1) No person shall be qualified for appointment as auditor of a company if he is—

- (a) a director, officer or employee of the company;
- (b) a director, officer or employee of any company performing secretarial work for such company;
- (c) a partner, employer or employee of a director or an officer of such company;
- (d) a person who by himself or his partner or employee habitually or regularly performs the duties of secretary or bookkeeper of the company;
- (e) a person who at any time during the financial year was a director or officer of the company; or
- (f) not qualified to act as such under the Accountants Act, 1985.

(2) Any person who in terms of subsection (1) is disqualified for appointment as the auditor of a company shall likewise be disqualified for appointment as the auditor or another body corporate which is a subsidiary company controlled by that company, or is a holding company which controls that company, or is a subsidiary company of such holding company or would be so disqualified if such body corporate were a company.

(3) Subsection (1) shall not be construed as prohibiting the appointment as auditor of a private company, no shares of which are held by a public company, of a person who by himself or his partner or employee habitually or regularly performs the duties of secretary or bookkeeper of such private company if he is registered under The Accountants Act, 1985, and all the shareholders of such private company agree in writing to his appointment and the relevant circumstances are set out in the auditor's report on the affairs and annual financial statements of such private company.

(4) Any person who acts as the auditor of a company or other body corporate while disqualified under this section, shall be guilty of an offence.

(5) For the purposes of this section, "secretarial work" does not include share transfer secretarial work.

*Notice of appointment to Registrar.*

237. A company which is required to appoint an auditor under this Act shall, in writing, within fourteen (14) days of appointing such auditor, give notice of that appointment to the Registrar.

## REMOVAL, RESIGNATION, ETC., OF AUDITORS

### *Removal of auditors.*

238. (1) A company may by ordinary resolution at any time remove an auditor from office, notwithstanding anything in any agreement between it and him.

(2) Where a resolution removing an auditor is passed at a general meeting of a company, the company shall within 14 days give notice of that fact in the prescribed form to the Registrar.

(3) If a company fails to give the notice required by this subsection, the company and every officer of it who is in default is guilty of an offence and liable to a fine.

(4) Nothing in this section shall be taken as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as auditor.

(5) Where an auditor has reason to believe that in the conduct of the affairs of a company a material irregularity has taken place or is taking place and has caused or is likely of cause financial loss to the company or to any of its members or creditors and he has made a report thereon in writing to the directors of the company, he may not be removed from office until the provisions of section 19(b) of the Accountant Act have been complied with.

### *Special notice for removal of auditor.*

239. (1) Special notice is required for a resolution at a general meeting of a company—

(a) removing an auditor before the expiration of his term of office; or

(b) appointing an auditor a person, other than a returning auditor.

(2) On receipt of notice of such an intended resolution the company shall forthwith send a copy of it to the person proposed to be removed or, as the case may be, to the person proposed to be appointed and to the retiring auditor.

(3) The auditor proposed to be removed or (as the case may be) the retiring auditor may make with respect to the intended resolution representations in writing to the company (not exceeding a reasonable length) and request their notification to members of the company.

(4) The company shall (unless the representations are received by it too late for it to do so)—

(a) in any notice of the resolution given to member of the company, state the fact of the representations having been made; and

(b) send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent.

(5) If a copy of any such representation is not sent out as required because received too late or because of the company's default, the auditor may (without prejudice to his right be heard orally) require that the representations be read out at the meeting.

(6) Copies of the representations need not be sent out and the representations need not be read at the meeting if, on the application either of the company or of any other person claiming to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the

company's costs on the appreciation to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

*Resignation of auditors.*

240. (1) An auditor may at any time during the period of his office by depositing a notice in writing to that effect at the company's registered office.

(2) An auditor intending to resign shall deliver to the company and to the Registrar a statement in the prescribed form to the effect that he has no reason to believe that in the conduct of the affairs of the company a material irregularity has taken place or is taking place which has caused or is likely to cause financial loss to the company or to any of the members or creditors other than an irregularity (if any) in terms of section 19(b) of the Accountants Act, 1985, and it shall not be necessary that such an auditor shall have carried out, for all purposes of such notification, a special audit subsequent to the date up to which the last annual financial statement on which he has already reported, were made up.

(3) An effective notice of resignation operate to bring the auditor's term of office to an end as at the date on which notice is deposited or on such later date as may be specified in it.

(4) The company shall within fourteen (14) days of the deposit of a notice of resignation send a copy of the notice to the Registrar.

(5) If default is made in complying with this subsection, the company and every officer of it who is in default is guilty of an offence and liable to a fine.

*Termination of appointment of auditor not appointed annually.*

241. (1) When an election is in force under section 233, any member of the company may deposit notice in writing at the company's registered office proposing that the appointment of the company's auditors be brought to an end.

(2) No member may deposit more than one such notice in any financial year of the company.

(3) If such a notice is deposited it is the duty of directors—

(a) to convene a general meeting of the company for a date not more than twenty-eight (28) days after the date on which the notice was given; and

(b) to propose at the meeting a resolution, in a forum enabling the company to decide whether the appointment of the company's auditors should be brought to an end.

(4) If the decision of the company at the meeting is that the appointment of the auditors should be brought to an end, the auditors shall not be deemed to be re-appointed when next they would be and, if the notice was deposited within the period immediately following the distribution of accounts, any deemed re-appointment for the financial year following that to which those accounts relate which has already occurred shall cease to have effect.

(5) If the directors do not within fourteen (14) days from the date of the deposit of notice proceed duly to convene a meeting, the member who deposited the notice (or, if there was more than one, any of them) may himself convene the meeting; but any meeting so convened shall not be held after the expiration of three (3) months from that date.



(6) A meeting convened under this section by a member shall be convened in the same manner, as nearly as possible, as that which meeting are to be convened by directors.

(7) Any reasonable expenses incurred by a member by reason of the failure of the directors' duly to convene a meeting shall be made good to him by the company; and any such sums shall be recovered by the company from such of the directors as were in default out of any sums payable, or to become payable, by the company by way of fees or either remuneration in respect of their services.

(8) This section has effect notwithstanding anything in any agreement between the company and its auditors; and no compensation or damages shall be payable, by reason of the auditors' appointment being terminated under this section.

#### RIGHTS, DUTIES AND REMUNERATION

*Auditor's right of access to books and to be heard at general meetings.*

242. An auditor of a company shall—

- (a) have the right of access at all times to the accounting records and all books and documents of the company, and be entitled to require from the directors or officers of the company such information and explanations as he thinks necessary for the performance of his duties as auditor;
- (b) in the case of an auditor of a holding company, have the right of access to all current and former financial statements of any subsidiary and be entitled to require from the directors or officers of the company or subsidiary all such information and explanations in connection with any such statements and in connection with the accounting records, books and documents of the subsidiary as he may consider necessary; and
- (c) be entitled to attend any general meeting of the company and to receive all notices of and other communications relating to any general meeting which any member of the company is entitled to receive and to be heard at any general meeting which he attends on any part of the business of the meeting which concerns him as auditor.

*Duties of auditor.*

243. The auditor shall report to its members in such manner and on such matters as are prescribed by this Act and carry out all other duties imposed on him by this Act or any other law.

*Remuneration of auditor.*

244. (1) Save as is otherwise provided in this Act, the remuneration of the auditor shall be determined by agreement with the company.

(2) All payment made or to be made by a company to its auditor, specifying the remuneration for the audit, the remuneration for other specified services, the auditor's expenses and payments in respect of the respect of the audit and any other matter, shall be included under a separate heading in the income statement in respect of the accounting period concerned.

CHAPTER XI  
ACCOUNTING AND DISCLOSURE  
ACCOUNTING RECORDS

*Duty of company to keep accounting records.*

245. (1) Every company shall keep such accounting records as are necessary fairly to present the state of affairs and business of the company and to explain the transactions and financial position of the trade or business of the company, including—

- (a) records showing the assets and liabilities of the company;
- (b) a register of fixed assets showing the respective dates of acquisition and the cost thereof, depreciation, if any, the respective dates of any disposals and the consideration received in respect thereof:

Provided that in respect of fixed assets acquired before the commencement of this Act, a company may, as at the end of its first financial year after the said commencement, take an inventory of all fixed assets and make a realistic allocation of the total value of fixed assets as shown in the financial statements as at that date over the inventory of assets;

- (c) records containing entries from day to day in sufficient detail of all cash received and paid out and of the matters in respect of which receipts and payments take place;
- (d) where the trade or business of the company has involved dealings in goods, records of all goods sold and purchased and (except in the case of ordinary retail trade) records showing the goods and the buyers and the sellers thereof in sufficient detail to enable the nature of those goods and those buyers to be identified; and
- (e) statements of the annual stocktaking.

(2) The accounting records referred to in subsection (1) may be kept either by making entries in bound books or by recording the matters in question in any other manner, and where such records are not kept by making entries in bound books, adequate precautions shall be taken for guarding against falsification and facilitating its discovery.

(3) The accounting records shall be kept at such place in Swaziland as the directors think fit and shall at all times be open to inspection by the directors.

*Determination of financial year of company.*

246. (1) Every company shall have an annual accounting period, which shall be known as its financial year, the commencing date of which shall be stated in the articles of association of the company and shall end on the day before and the date on the following calendar year:

Provided that the first financial year of a company shall, if the commencing date so determined—

- (a) is a date more than six months after such incorporation, be the period commencing on such incorporation and ending on the date immediately preceding the commencing date so determined; or

- (b) is a date not more than six months after such incorporation, be the period commencing on such incorporation and ending on the date so determined as the end of the financial year in the next calendar year:

Provided further that in the case of a company incorporated before the commencement of this Act, the financial year shall be the financial year as established under the previous order which shall be deemed to be stated in the company's articles of association.

(2) A company may at any time before the end of its current financial year change the end of its financial year to a date being not more than six months earlier or six months later than the date of its current financial year.

(3) Any reference in this Act to the financial year of a company shall be construed as including a reference to any period which in terms of this section stated to be a financial year of that company.

*Duty to make out annual financial statements and to lay them before the annual general meeting.*

247. (1) The directors of a company shall in respect of every financial year of the company cause to be made out annual financial statements and shall lay them before the annual general meeting of the company required to be held in terms of section 155 in respect of that financial year.

(2) The annual financial statements required to be made out under subsection (1) shall consist of—

- (a) the components of financial statement as set out in the financial reporting standards issued by the International Accounting Standards Board or its successor body;
- (b) a directors' report complying with the requirements of this Act; and
- (c) an auditor's report as required by section 262.

(2) The annual financial statements of a company shall—

- (a) be in conformity with Swaziland and International Financial Reporting Standards;
- (b) shall be in accordance with and include the matters set out in Schedule 3 in so far as they are applicable;
- (c) fairly present the state of affairs of the company and its business as at the end of the financial year concerned and the results of its operations for that financial year.

*Election to dispense with laying of accounts and report before general meeting.*

248. (1) A private company may elect in accordance with section 185 to dispense with the laying of accounts and reports before the company in general meeting.

(2) An election has effect in relation to the accounts and report in respect of the financial year in which the election is made and subsequent financial years.

(3) Whilst an election is in force, the references in the provisions of this Act to the laying of accounts before the company in general meeting shall be read as references to the sending of copies of the account to members and others under section 263.

(4) If an election under this section ceases to have effect, section 263 applies in relation to the accounts and reports in respect of the financial year in which the election ceases to have effect and subsequent financial years.

*Right of shareholder to require laying of accounts.*

249. (1) Where an election under section 258 is in force, the copies of the accounts and reports sent out in accordance with section 263 shall be—

- (a) sent not less than twenty-eight (28) days before the end of the period allowed for laying and delivering accounts and report; and
- (b) accompanied, in the case of a member of the company, a notice informing him of his right to require the laying of the accounts and reports before a general meeting.

(2) Before the end of the period of twenty-eight (28) days beginning with the day on which the accounts and reports are sent out in accordance with section 263, any member or auditor of the company may by notice in writing deposited at the registered office of the company require that a general meeting be held for the purpose of laying the accounts and reports before the company.

(3) If the directors do not within twenty-one (21) days from the date of the deposit of such a notice proceed duly to convene a meeting, the person who deposited the notice may do so himself.

(4) A meeting so convened shall not be held more than three (3) months from that date and shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(5) Where the directors do not duly convene a meeting, any reasonable expenses incurred by reason of that failure by the person who deposited the notice shall be made good to him by the company, and shall be recouped by the company out of any fees, or other remuneration in respect of their services, due or to become due to such of the directors as were in default.

(6) The directors shall be deemed not to have duly convened a meeting if they convened a meeting if they convene a meeting for a date more than twenty-eight (28) days after the date of the notice convening it.

#### ACCOUNTING BY HOLDING COMPANIES

*Obligation to lay group statements before annual general meeting.*

250. (1) Where at the end of its financial year a company, which is not a wholly owned subsidiary of another company has subsidiaries, group annual financial statements shall be made out and shall be laid before the annual general meeting of the company before which its own annual financial statements are so laid under section 247(1).

(2) Subject to the provisions of section 253 such group annual financial statement shall together with the company's own annual financial statements in conformity with generally accepted accounting practice fairly present the state of affairs and business of the company and all its subsidiaries at the end of the financial year concerned and the profit or loss of the company and all its subsidiaries for the financial year, as a whole so far as concerns the members of the company and shall for that purpose include at least the matters prescribed

by Schedule 3, in so far as they applicable and comply with any other requirements of this Act.

*Group annual financial statements.*

251. (1) (a) Subject to section 252, group annual financial statements shall consist of consolidated financial statements as defined in the relevant financial reporting standards issued by the International Accounting Board or its successor body and shall include the following—

- (i) a consolidated balance sheet dealing with the state of affairs of the company and all the subsidiaries to be dealt with in group annual financial statements; and
- (ii) a consolidated income statements dealing with the profit or loss of the company and those subsidiaries;
- (iii) statements annexed to the company's own annual financial statements expanding the information there in contained about the subsidiaries,

or of any combination of these forms.

(2) Group annual financial statements may be wholly or partly incorporated in the company's own annual financial statements.

*Where annual financial statements are to be consolidated.*

252. Consolidated annual financial statements shall be presented in accordance with Swaziland and International Financial Reporting Standards.

*Where group annual financial statements need not deal with subsidiary.*

253. (1) Group annual financial statements need not deal with a subsidiary if the directors of the company are of the opinion that it is impracticable or would be of no real value to members of the company, in view of the insignificant amounts involved, or would entail expense or delay out of proportion to the value to members of the company and, if the directors are of such opinion about each of the company's subsidiaries, group annual financial statements shall not be required.

(2) If the directors of a company are of the opinion that—

- (a) if a subsidiary were to be dealt with in group annual financial statements, the result would be misleading or harmful to the business of the company or any of its subsidiaries; or
- (b) the business of the company and that of a subsidiary are so different that they cannot reasonably be treated as a single undertaking or are of such opinion about each of the company's subsidiaries,

group annual financial statements need not deal with that subsidiary or, as the case may be, no group annual financial statements shall be required, if the Registrar approves.

(3) (a) A company shall apply to the Registrar for his approval under subsection (2) on the prescribed form and the application shall be accompanied by a report by the auditor of the company on the opinion and decision of the directors.

(b) any such approval by the Registrar shall expire after two (2) years and may be renewed on application by the company.

(4) Any director or officer of a company who fails to comply with the provisions of subsection (3), shall be guilty of an offence.

*Accounting periods of company and subsidiary to be the same.*

254. The directors of any subsidiary shall, notwithstanding anything to the contrary in this Act or in its articles, cause annual financial statements as required by section 247 to be made out so as to cover an accounting period or accounting periods ending statements of its holding company or holding companies.

*Duty of auditor to report on decisions of directors on consolidated and group annual financial statements.*

255. In every case where the directors of a holding company decide not to make out consolidated annual financial statements under section 252, or not to deal with any subsidiary in group annual financial statements under section 253(1), the auditor of the holding company shall report on such decision of the directors.

#### DISCLOSURE OF CERTAIN MATTERS IN FINANCIAL STATEMENTS

*Annual financial statements of a company shall disclose loans and security for benefit of directors and managers.*

256. (1) The annual financial statements of a company shall state—

- (a) the amount and particulars of every loan referred to in section 204(1) which has during the financial year concerned been made by virtue of the provisions section 204(3)(a), (b) or (e), including every such loan which has during the said financial year been repaid;
- (b) the particulars of every security (and of the transaction to which it relates) referred to in section 204(1), which has during the financial year concerned been provided by virtue of the provisions of section 204(3)(a), (b) or (e), including every such security which has during the said financial year been cancelled;
- (c) the balance outstanding of every loan described in paragraph (a), made at any time before the said financial year and outstanding at the end of thereof; and
- (d) the particulars of every security (and of the transaction to which it relates) described in paragraph (b), provided at any time before the said financial year and still in existence at the end of thereof (including, if applicable, the balance outstanding on the said transaction to which it relates).

(2) If a company which has made a loan or provided any security referred to in subsection (1) is a subsidiary and its holding company is by this Act required to make out group annual financial statements or otherwise to furnish particulars of such subsidiary, there shall be included therein the information provided for in subsection (1).

(3) Where a loan is a loan of share, debentures or other property, or where any security is provided in respect of a loan of share, debentures or other property, the

requirements of this section may be complied with by stating the particulars in the director's report or by way of a note to the annual financial statements.

(4) If the provisions of this section are not complied with in respect of the annual financial statements of a company, the auditor of the company shall in his report relating to such annual financial statements include a statement containing such information in regard to the matter as he is reasonably able to furnish.

(5) (a) Any director or manager or past director or manager of a company or of its holding company (if any) or of any other subsidiary of that holding company shall at the written request of the first-mentioned company or its auditor in writing give such information, including particulars relating to his control of a company or body corporate contemplated in subsection (1)(b), as the company or its auditor may require for compliance with the provisions of this section.

(b) Any director or manager or past director or manager referred to in paragraph (a) who fails to comply with such request within one month from the date thereof, shall be guilty of an offence.

*Annual financial statements to disclose loans made to and security provided for benefit of directors or managers before their appointment.*

257. (1) The annual financial statements of a company shall state—

(a) the amount and particulars of every loan which has at any time been made by the company to any person before his appointment as director or manager of the company if—

(i) the loan was still in existence at the date of such appointment; and

(ii) such appointment was made at any time during the financial year concerned; and

(b) the particulars of every security (and of the transaction to which it relates) which has at any time been provided by the company for the benefit of any person before his appointment as director or manager of the company, if—

(i) the security was still in existence at the date of such appointment; and

(ii) such appointment was made at any time during the financial year concerned.

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

(a) "loan" includes—

(i) a loan of money, shares, debentures or any other property; and

(ii) any credit extended by a company where the debt concerned is not payable or being paid in accordance with normal business practice in respect of payment of debts of the same kind; and

(b) "security" includes a guarantee.

(3) The provisions of section 198(2), (3), and (4) shall, *mutatis mutandis*, apply with reference to loans and securities contemplated in this section.

(4) This section shall not apply in respect of a loan made or security provided *bona fide* in the ordinary course of the business of a company actually and regularly carrying on the business of making of loans or the provision of security.

*Annual financial statements to disclose director's emoluments and pensions.*

258. (1) The annual financial statements of a company shall in so far as the information necessary for the purpose is contained in the records of the company or is otherwise available to it, contain particulars showing—

- (a) the aggregate amount of the directors' emoluments;
- (b) the aggregate amount of directors' or past directors' pensions; and
- (c) the aggregate amount of any compensation to directors or past directors in respect of loss of office.

(2) The amount to be shown under subsection (1)(a)—

- (a) shall include any emoluments paid to or receivable by any person in respect of his services as a director of the company or any of its subsidiaries or in respect of services rendered in any other capacity while director of the company or of any subsidiary or otherwise in connection with any subsidiary or otherwise in connection with the carrying of the affairs of the company or any such subsidiary;
- (b) shall distinguish between emoluments in respect of services as a director, whether of the company or of its subsidiary, and other emoluments,

and for the purposes of this section "emoluments", in relation to a director, includes fees and percentages, salaries, any sums paid by way of expenses allowance, any contribution paid under any pension scheme and the estimated money value of any other material benefits received.

(3) The amount to be shown under subsection (1)(b)—

- (a) shall include any pension paid or receivable in respect of any such services of a director or past director of the company referred to in subsection (2) whether to or by him or on his nomination or, by virtue of dependence on or other connection with him, to or by any other person but shall not include any pension paid or receivable under a pension scheme, if the contributions payable thereunder are substantially adequate for the maintenance thereof; and
- (b) shall distinguish between pensions in respect of services as a director or otherwise, whether of the company or its subsidiary; and other pensions,

and for the purposes of this section, the expression "pension" includes any superannuation allowance, superannuation gratuity or similar payment, the expression "pension scheme" means a scheme for the provision of pensions in respect of services as a director or otherwise which is maintained in whole or in part by means of contributions, and the expression "contribution", in relation to a pension scheme, means any payment (including any insurance premium) paid for the purposes of the scheme by or in respect of which pensions will or may become payable under the scheme, but does not include any payment in respect of two or more person if the amount paid in respect of each of them is not ascertainable.

(4) The amount to be shown under subsection (1)(c)—



- (a) shall include any sums paid to or received by a director or past director by way of compensation for the loss of office as director of the company or for loss, while a director of the company, or any other office in connection with the carrying the management of the affairs of any subsidiary of the company; and
- (b) shall distinguish between compensation in respect of the office of director, whether of the company or its subsidiary, and compensation in respect of other offices,

and for the purpose of this section compensation for loss of office shall include sums paid as consideration for or in connection with a person's retirement from office.

(5) The amounts to be shown under each paragraph of subsection (1)—

(a) shall include all relevant sums paid by or received from—

- (i) the company;
- (ii) the company's subsidiaries; and
- (iii) any other person,

except sums to be accounted for to the company or any of its subsidiaries, or, by virtue of section 205 to past or present members of the company or any of its subsidiaries or any class of those members; and

(b) shall distinguish, in the case of the amount to be shown under subsection (1)(c), between the sums respectively paid by or receivable from the company, the company's subsidiaries and other persons.

(6) The amounts to be shown under this section for any financial year shall be the sums received in respect of that year, when ever paid, or in the case that where any sums are not shown in the annual financial statements for the relevant financial year on the ground that the person receiving them is liable to account as mentioned in subsection (5)(a), but the liability is there after being wholly or partly released or is not enforced within a period of two years, those sums shall, to the extent to which the liability is released or not enforced, be shown in the first annual financial statements in which it is statistical to show them and shall be distinguished from the amount to be shown therein apart from this provisions.

(7) For the purpose of enabling them to show separately the respective amounts received under different headings as required by this section, the directors of a company may apportion any payments received or receivable in such manner as they consider appropriate.

(8) In this section any reference to a company's subsidiary shall for the purpose of subsections (2) and (3) include a reference to a company which was a subsidiary of the first mentioned company at the time the services contemplated in the said subsection were rendered, and, for the purposes of subsection (4), include a reference to a company which was such a subsidiary immediately before the loss of office as director of the company concerned.

(9) Every director or past director of a company shall at the written request of the company or its auditor give notice in writing to the company or the auditor, within twenty-one (21) days from the date of such request, of such matters relating to himself as may be necessary for the purposes of this section, and shall if he fails to comply with any such request, be guilty of an offence.

(10) If in respect of any annual financial statements the requirements of this section are not complied with, the auditor of the company by whom the annual financial statements are

examined, shall include in his report so far as he is reasonably able to do so, a statement giving the required particulars.

#### FURTHER REQUIREMENTS AS TO FINANCIAL STATEMENTS

##### *Approval and signing of financial statements.*

259. (1) The annual financial statements of a company other than the auditor's report, shall be approved by its directors and signed on their behalf by two of the directors or, if there is only one director, by that director, and group annual financial statements shall similarly be approved and signed by the directors of the holding company.

(2) If a copy of any annual financial statements, or group annual financial statements which have not been approved and signed as required by subsection (1), is issued, circulated or published, every director or officer of the company concerned who is a party to such issue, circulation or publication there of, shall be guilty of an offence.

##### *Director's report.*

260. (1) Except in the case of a company which is wholly-owned subsidiary of any other company incorporated in Swaziland, every company shall, as part of its annual financial statements, lay before the annual general meeting a report by the directors with respect to the state of affairs, the business and the profit or loss of the company or of the company and its subsidiaries, if any.

(2) The director's report shall deal with every matter which is material for the appreciation by the members of the company of the state of affairs, the business and the profit or loss of the company or of the company and its subsidiaries, if any, and shall for the purpose be in accordance with and include at least the matters prescribed by Schedule 3, in so far as these are applicable, and comply with any other requirement of this Act.

(3) Any director of a company who fails to take all reasonable steps to ensure compliance with the provisions of this section, shall be guilty of an offence.

#### AUDITOR'S DUTIES AS TO ANNUAL FINANCIAL STATEMENTS

##### *Auditor's duties as to annual financial statements and other matters.*

261. It shall be the duty of the auditor of a company—

- (a) to audit the annual financial statements and group annual financial statements to be laid before its annual general meeting;
- (b) to satisfy himself that proper accounting records as required by this Act have been kept by the company and that proper returns adequate for the purposes of his audit have been received from branches not visited by him;
- (c) to satisfy himself that the minute books and attendance register in respect of meetings of the company and of directors and managers have been kept in proper form as required by this Act;
- (d) to satisfy himself that a register of interests in contracts as required by section 208 have been kept and that the entries therein are in accordance with the minutes of director's meetings;

- (e) to examine or satisfy himself as to the existence of any securities of the company;
- (f) to obtain all information and explanations which to the best of his knowledge and belief are necessary for the purposes of carrying out his duties;
- (g) to satisfy himself that the company's annual financial statements are in agreement with its accounting records and returns;
- (h) to examine group annual financial statements and satisfy himself that they comply with the requirements of this Act;
- (i) to examine such of the accounting records of the company and carry out such tests in respect of such records and such other auditing procedures as he considers necessary in order to satisfy himself that the annual financial position of the company and its subsidiaries and the result of its operations and those of its subsidiaries, are in conformity with Swaziland and International Financial Reporting Standards applied on a basis consistent with that of the preceding year;
- (j) to satisfy himself that statements made by the directors in their report do not conflict with a fair interpretation or distort the meaning of the annual financial statements and accompanying notes;
- (k) when he gets to know, or has reason to believe, that the company is not carrying on business or is not in operation and has no intention of resuming operations in the foreseeable future, to report forthwith accordingly by certified post to the Registrar;
- (l) to comply with any other duty imposed on him by this Act; and
- (m) to comply with any applicable requirements of the Accountants' Act, 1985.

*Auditor's report.*

262. (1) If the auditor of a company has carried out his audit free from any restrictions whatsoever, and in accordance with the requirements of section 261 and the International Standards on auditing and auditing guidelines as laid down by the Swaziland Institute of Accountants he shall make a report to the members of the company to the effect that he has examined the annual financial statements and that in his opinion they fairly represent the financial position of the company and the results of its operations in the manner required by this Act.

(2) In the event that the auditor is unable to make such a report or to make it without qualification, he shall include in his report a statement to that effect and set forth the facts or circumstances which prevent him from making his report or from making it without qualification.

ISSUE OF COPIES OF ANNUAL FINANCIAL STATEMENTS

*Duty of company to send financial statements.*

263. (1) A copy of the annual financial statements of a company and the group annual financial statements, if any, shall not less than twenty-one (21) days before the date of the annual general meeting of the company at which such financial statements are to be considered be sent to every member of the company and every holder of debentures of the company (whether or not such member or holder of debentures is entitled to receive notices of

general meetings of the company) and to all persons other than members or holders of debentures of the company who are entitled to receive such notices.

(2) Any such copy not sent to members at least twenty-one (21) days before the date of the relevant meeting shall be deemed to have been so sent if it is so agreed by all members entitled to attend and vote at the meeting and debenture-holders and other persons referred to in subsection (1).

(3) A public company shall on the day on which it sends such copies to its members as provided in subsection (1), send to the Registrar under cover of the prescribed form a copy, certified to be a true copy by a director and the secretary of the company of the annual financial statements and group annual financial statements, if any.

*Right of members and others to copies of annual financial statements and interim reports.*

264. (1) Any member or holder of debentures of a company shall be entitled to be furnished on demand without charge a copy of the last annual financial statements (including group annual financial statements where applicable).

(2) A judgment creditor of a company shall, if it appears from the return of the person whose duty it is to execute the judgment in question that he has not found sufficient disposable property to satisfy that judgment, be entitled to be furnished on demand without charge with a copy of the last annual financial statements of the company.

## CHAPTER XII

### COMPROMISE, AMALGAMATION, ARRANGEMENT AND TAKE-OVERS

*Compromise and arrangement between company, its members and creditors.*

265. (1) Where any compromise or arrangement is proposed between a company and its creditors or any class of them or between a company and its members or any class of them, the court may, on the application of the company or any creditor or member of the company or, in the case of a company being wound up, of the liquidator, or if the company is subject to a judicial management order, of the judicial manager, order a meeting of the creditors of class of creditors, or of the members of the company or class of members as the case may be, to be summoned in such manner as the court may direct.

(2) If the compromise or arrangement is agreed to by—

- (a) a majority in number representing three-fourths in value of the creditors or class of creditors; or
- (b) a majority representing three-fourths of the votes exercisable by the member or class of members,

as the case may be present and voting either in person or by proxy at the meeting, such compromise or arrangement shall if sanctioned by the court, be binding on all the creditors or the class of creditors, or on the member or class of members as the case may be and also on the company or on the liquidator if the company is being wound up or on the judicial manager if the company is subject to a judicial management order.

(3) If the compromise or arrangement is in respect of a company being wound up and provides for the discharge of the winding-up order or for the dissolution of the company without winding up, the liquidator of the company shall lodge with the Master a report in

terms of section 336(2) and a report as to whether or not any director or officer or past director or officer of the company is or appears to be personally liable for damages or compensation to the company or for any debts or liabilities of the company under any provision of this Act and the Master shall report thereon to the court.

(4) The court, in determining whether the compromise or arrangement should be sanctioned or not, shall have regard to the number of members or members of a class present or represented at the meeting referred to in subsection (2) voting in favour of the compromise or arrangement and to the report of the Master referred to in subsection (3).

(5) An order by the court sanctioning a compromise or arrangement shall have no effect until a certified copy thereof has been lodged with the Registrar and registered by him.

(6) A copy of the order of court under subsection (5) shall be annexed to every copy of the memorandum of the company issued after the date of the order.

(7) In this section, "company" means any company liable to be wound up under this Act and the expression "arrangement" includes a reorganisation of the share capital of the company by the consolidation of the share capital of the company by the consolidation of shares of different classes or by both these methods.

*Information as to compromises and arrangements.*

266. (1) Where a meeting of creditors or any class of creditors or of members or any class of members is summoned under section 265 for the purpose of agreeing to a compromise or arrangement, there shall—

(a) with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement—

- (i) explaining the effect of the compromise or arrangement;
- (ii) stating all relevant information material to the value of the shares and debentures concerned in any arrangement;
- (iii) in particular stating any material interest of the directors of the company, whether as directors or as creditors of the company or otherwise, and the effect thereon of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons; and

(b) in every notice summoning the meeting which is given by advertisement, be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement.

(2) Where the compromise or arrangement affects the rights of debenture holders of the company, such statement shall give the like explanation and statement as respects the trustee of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.

(3) Where a notice given by advertisement includes a notification that copies of such statement can be obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making application the manner indicated by the notice, be furnished by the company free of charge with a copy of the statement.

(4) Every director of a company and every trustee for debenture-holders shall give notice to the company of such matters relating to himself as may be necessary for the purposes of this section.

*Provisions facilitating reconstruction or amalgamation.*

267. (1) If an application is made to the court under section 265 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are referred to in that section, and it is shown to the court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as the 'transferor company') is to be transferred to another company (in this section referred to as the 'transferee company') the court may, by order, make provision for all or any of the following matter—

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;
- (b) the allotment or appropriation by the transferee company of any shares, debentures or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by the company to or for any person;
- (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
- (d) the dissolution, without winding up, of any transferor company;
- (e) the provision to be made for any persons who, within such time and in such manner as the court may direct, dissent from the compromise or arrangement;
- (f) such incidental, consequential and (supplemental) matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out:

Provided that no order for the dissolution, without winding up, of any transferor company shall be made under this subsection prior to the transfer in due form of all the property and liabilities of the said company.

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall by virtue of the order vest in, subject to transfer in due form, and those liabilities shall become the liabilities of the transferee company.

(3) If an order is made under this section, every company in relation to which the order is made shall, within thirty days after the making of the order, cause a copy thereof to be lodged with the Registrar, under cover of the prescribed form.

(4) In this section, the expression "property" includes property, rights and powers of every description, and the expression "liabilities" includes duties.

(5) Notwithstanding section 265(7), the expression "company" in this section does not include any company other than a company within the meaning of this Act.

*Power to acquire shares of minority in a take-over scheme.*

268. (1) Where a take-over offer under a scheme or contract involving the transfer of shares or any class of shares of a company to an offeror has, within four months after the making of the offer by the offeror, been accepted by the holders of not less than nine-tenths of the shares or any class of shares whose transfer is involved (other than shares already held at the date on which the offer is issued by, or by a nominee for, the offeror or its subsidiary), the offeror may at any time within two (2) months after such acceptance give notice in the prescribed manner to any shareholder who has not accepted the said offer, that he or it desires to acquire his shares, and where such notice is given, the offeror shall, unless on an application made by such shareholder within six (6) weeks from the date on which the notice was given, the court thinks fit to order otherwise, be entitled and bound to acquire those shares of the shareholders who have accepted the offer, and the shares are to be transferred to the offeror.

(2) Where a notice has been given by the offeror under this section and the court, on an application made by a shareholder who has not accepted the offer, has not ordered to the contrary, the offeror shall, on the expiration of six (6) weeks from the date on which the notice was given, or, if an application to the court by such shareholder is then pending, after the application has been disposed of, transmit a copy of the notice to the offeree company together with an instrument of transfer executed on behalf of such shareholder by any person appointed by the offeror and pay or transfer to the offeree company the amount or other consideration representing the price payable by the offeror for the shares which by virtue of this section he or it is entitled to acquire, and, subject to the payment of the stamp duties ordinarily payable, the offeree company shall thereupon register the offeror as the holder of those shares; provided that an instrument of transfer shall not be required for any share for which a share warrant is for the time being outstanding.

(3) Where, in pursuance of any such scheme or contract, shares of an offeree company are transferred to a person or another company or its nominee, and those shares together with any other shares of the said offeree company held by, or by a nominee for, the offeror or its subsidiary at the date of the transfer, comprise or include nine-tenths of the shares in the first-mentioned company or of any class of those shares, then—

(a) the offeror shall within a month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement) give notice of that fact in the prescribed manner to the holders of the remaining shares or of the remaining shares of that class, as the case may be, who have not accepted the offer under the scheme or contract; and

(b) any such holder may within three (3) months from the giving of the notice to him require the offeror to acquire the shares in question.

(4) Where a shareholder gives notice under subsection (3)(b) with respect to any shares, the offeror shall be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the shareholders who have accepted the offer were transferred to him or it, or on such other terms as may be agreed or as the court on the application of either the offeror or the shareholders may think fit to order.

(5) (a) Any sum received by the offeree company under this section shall be paid into a separate bank account with a banking institution registered under the Financial Institutions Act, and any such sums and any other consideration so received shall be held by the offeree

company for the several persons entitled to the shares in respect of which the said sums or other consideration was received.

(b) In this section—

- (a) “offeree company”, in relation to a take-over scheme or a take-over offer, means the company the shares of which are to be acquired under the scheme or offer;
- (b) “offeror” in relation to a take-over scheme or a take-over offer, means the person by whom, or the company, foreign company or any other body corporate by which, any take-over offer under a take-over offer is made jointly by more than one offeror shall be construed mutandis to include joining offerors;
- (c) “take-over offer” means an offer for the acquisition of shares under a take-over scheme; and
- (d) “take-over scheme” means a scheme involving the making of an offer by the offeror for acquiring shares of the offeree company which together with any shares of that company already held by the offeror at the time of the making of the offer, will have the effect of—
  - (i) vesting the control of the offeree company directly or indirectly in the offeror; or
  - (ii) the offeror acquiring all the shares or all the shares of a particular class of the offeree company, but does not include any offer made in the course of or in connection with any individual negotiation with any shareholder for the acquisition of any such shares;
- (e) “shareholder who has not accepted the offer” includes any shareholder who has failed or refused to transfer his shares to the offeror in accordance with the scheme or contract.

#### CHAPTER XIII

#### FOREIGN COMPANIES

#### REGISTRATION

*Registration of memorandum of foreign company.*

269. (1) A foreign company shall within twenty-one days after the establishment of a place of business in Swaziland or the commencement of this Act (or in the case of a foreign company which had established a place of business in Swaziland prior to the commencement of this Act), lodge with the Registrar, in the prescribed manner—

- (a) a certified copy of the memorandum of the company, and if the said memorandum is not in English, a certified translation thereof to the English language in such manner as the Registrar may determine;
- (b) a notice under section 149 in the prescribed form of the registered office and postal address of the company in Swaziland;
- (c) the name and address of the auditor of the company in Swaziland;



- (d) a list in the prescribed form containing particulars—
- (i) in respect of each director, if permanently employed, his full forenames, surname, and any other former forenames and surname, his nationality, his occupation, his relevant qualifications, his residential, business and postal addresses, proof of compliance with the immigration laws, and the date of his appointment:  
Provided that the provisions of section 201(3) shall apply, *mutatis mutandis*, to a former forename and surname of a director;
  - (ii) in respect of the local manager, the secretary and other member of the management team, their full forenames, surname, and any other former forenames and surname,  
their nationality, their occupation, their relevant qualifications, their residential, business and postal addresses, proof of compliance with the immigration laws, and the date of appointment and in the case of any local manager or secretary being a corporate body, its registered office;
- (e) in respect of each director, a list in the prescribed form containing particulars of the names and registered offices of companies incorporated in Swaziland and elsewhere of which he is a director;
- (f) a notice in the prescribed form of the name and address of the person authorised by the company to accept service on behalf of the company under section 273.

(2) The Registrar, upon payment of the prescribed fee, shall register the said memorandum in the register kept by him under section 70, distinguishing the registration from the registrations in respect of companies incorporated in Swaziland, and shall issue a certificate of registration under his hand and seal to the company.

(3) Upon registration of the memorandum of a foreign company, the Registrar shall allocate a registration number to that company.

(4) A foreign company which had established a place of business in Swaziland prior to the commencement of this Act shall, within twenty-one (21) days after the said commencement, comply with the provisions of this section.

*Effect of registration of memorandum of foreign company.*

270. (1) Upon the registration of the memorandum of a foreign company the foreign company shall be subject to the applicable provisions of this Act.

(2) A certificate of registration given by the Registrar in respect of any foreign company shall upon its mere production, in the absence of proof of fraud, be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with.

*Power of foreign company to own immovable property.*

271. (1) Unless expressly provided in any other law, a foreign company of which the memorandum has been registered under section 270 shall have the same power to own immovable property in Swaziland as if it were a company incorporated in Swaziland.

(2) As from a date three months after the commencement of this Act, no foreign company shall be capable of acquiring the ownership of immovable property in Swaziland unless its memorandum has been or is deemed to be registered under section 270.

#### ADMINISTRATIVE AND OTHER DUTIES OF FOREIGN COMPANIES

##### *Foreign company to have an auditor.*

272. (1) Every foreign company shall appoint and shall at all times have an auditor within the meaning of this Act in respect of its operations in the country and shall not later than fourteen days after such appointment or any change in the office of auditor, lodge with the Registrar in the prescribed form a notice stating the name and address of such auditor or the change in such office.

(2) The auditor of any foreign company may at any time resign as such and the provisions of section 240 shall, *mutatis mutandis*, apply with reference to such resignation.

(3) If a foreign company fails to appoint an auditor as provided in subsection (1), the Registrar shall appoint such auditor.

##### *Foreign company to have person authorised to accept service.*

273. (1) A foreign company shall appoint and shall at all times have one or more persons resident in Swaziland authorised by the company to accept on its behalf service of process and any notices required to be served on the company, notwithstanding the provisions of section 60.

(2) Any person authorised as aforesaid shall be entitled to withdraw from such authorisation after having given one month's written notice of such withdrawal to the company and shall at the same time lodge two copies of such notice with the Registrar under cover of the prescribed form.

##### *Register of directors, managers and secretaries, changes therein and power of Registrar to call for particulars.*

274. (1) Sections 194, 196 and 197 shall, *mutatis mutandis*, apply to a director, local manager and secretary of a foreign company—

- (a) the particulars of changes required under sections 196(1)(b) and 197(1)(c) shall be entered in the register at the end of the financial year of the company; and
- (b) the form of consent prescribed under section 194, signed by the director or his duly authorised agent on his behalf, shall be lodged with the Registrar together with the annual return under section 151.

(2) A foreign company shall, within twenty-one (21) days after the date of a written request by the Registrar to that effect, lodge with the Registrar complete particulars of the present residential, business and postal addresses of every director not resident in Swaziland.

##### *Changes in memorandum of foreign company.*

275. If an alteration is made in the memorandum or article of a foreign company, the company shall within three (3) months of such alteration, lodge with the Registrar under cover of the

prescribed form for registration, a certified copy of the instrument showing the alteration, and if such instrument is in a foreign language, a certified translation thereof in the English language.

*Foreign company to keep accounting records and lodge annual financial statements and interim report.*

276. (1) A foreign company shall keep such accounting records, including the matters referred to in section 245(1)(a) to (e) inclusive, as are necessary fairly to present the state of affairs and business of the company in Swaziland and to explain the transactions concerning its trade and business and its financial position in Swaziland.

(2) Section 256 in respect of the financial year of a company shall apply, *mutatis mutandis*, to every foreign company.

(3) Sections 242, 243 and 244 in regard to the rights, duties and remuneration of auditors and of Chapter XI in regard to the financial statements of companies shall apply, *mutatis mutandis*, to the financial statements of every foreign company.

*Foreign companies to lodge annual returns.*

277. (1) Section 151 shall, *mutatis mutandis*, apply in respect of foreign companies, and in such application a reference to the date of incorporation of a company shall be construed as a reference to the date of registration under section 270(2) by the Registrar of a certified copy of the memorandum of a foreign company.

*Further administrative duties of foreign company.*

278. (1) A foreign company shall—

- (a) conspicuously exhibit outside all its places of business in Swaziland the name of the company and the foreign country in which the company is incorporated; and
- (b) have the name of the company, its registration number granted under section 269(3) and the name of the foreign country in which the company is incorporated, mentioned in legible characters in all bill-heads, letter-heads, notices, advertisements and other official publications of the company, and for the purposes of this subsection, section 41 shall, *mutatis mutandis*, apply.

(2) A foreign company shall not issue or send to any person in Swaziland any trade catalogue, trade circular or business letter bearing the company's name unless the names of its directors, their nationality if not Swazi, the names of its local managers and its secretary are stated therein.

*Deregistration of foreign company.*

279. (1) If any foreign company ceases to have a place of business in Swaziland, it shall forthwith give notice of that fact to the Registrar.

(2) If the Registrar has reasonable cause to believe that a foreign company has ceased to have a place of business in Swaziland, he shall send to the company by registered post and to the person authorised to accept service on its behalf enquiring whether it continues to have such a place of business

(3) The Registrar may, if he receives a notice under subsection (1) or if he does not within one month after sending the letters under subsection (2) receive a reply thereto or if the letters are returned to him, publish in the *Gazette* and sent to the company by post, a notice that at the expiration of three months from the date of the notice the registration of the memorandum of the company will be cancelled, and the Registrar may then cancel such registration.

CHAPTER XIV  
WINDING-UP OF COMPANIES  
GENERAL

*Definitions.*

280. In this Chapter, unless the context otherwise indicates—

“contributory”, in relation to any company which is unable to pay its debts and is being wound up by the court or by a creditor’s voluntary winding-up, includes any person who is liable to contribute to the costs, charges and expenses of the winding up of the company;

*Application of repealed Act where winding-up has already commenced.*

281. (1) The provisions of this Act relating to the winding-up of a company shall not apply to any company if its winding-up was commenced before the commencement of this Act, and the winding-up of any such company shall be continued as if this Act had not been passed.

(2) If a company having shares which are not fully paid-up is wound up under this Act, the repealed Act in respect of such shares and the contributories in relation thereto shall continue to apply in respect of such a company notwithstanding the repeal of such Act.

*Law of insolvency to be applied mutatis mutandis.*

282. In the winding-up of a company unable to pay its debts, the law relating to insolvency shall, in so far as it is applicable, apply, *mutatis mutandis*, in respect of any matter not specially provided for by this Act.

*Voidable and undue preferences.*

283. (1) A disposition by a company of its property which, if made by an individual, could, for any reason be set aside in the event of his insolvency, may, if made by a company, be set aside in the event of the company being wound up and unable to pay all its debts, and the law relating to insolvency shall, *mutatis mutandis*, apply to any such disposition.

(2) For the purpose of this section, the event which shall be deemed to correspond with the sequestration order in the case of any individual shall be in the case of a—

- (a) winding-up by the court, the presentation of the application, unless that winding-up has superseded a voluntary winding-up, when it shall be the lodgement in terms of section 182 of the resolution to wind up the company;
- (b) voluntary winding-up, the registration in terms of section 182 of the resolution to wind up;

- (c) winding-up of any company unable to pay its debts by the court superseding a judicial management order, the presentation of the application to the court in terms of section 372(1) or 379.

(3) Any cession or assignment by a company of any of its property to trustees for the benefit or purported benefit of all its creditors shall be void.

*Dispositions and share transfers after winding-up void.*

284. (1) Any transfer of or alteration in the rights or obligations attaching to the shares of a company after the commencement of its winding-up shall be void unless sanctioned by the liquidator.

(2) Every disposition of its property (including rights of action), by any company unable to pay its debts, made after the commencement of the winding-up, shall be void unless the court otherwise orders application of assets and costs of winding-up.

*Application of assets and costs of winding-up.*

285. In every winding-up of a company the assets shall be applied in payment of the costs, charges and expenses incurred in the winding-up and, subject to section 374(1) the claims of creditors as nearly as possible as they would be applied in payment of the costs of sequestration and the claims of creditors under the law relating to insolvency and, unless the memorandum or articles otherwise provide, shall be distributed among the members according to their rights and interests in the company.

*Mode of winding-up.*

286. (1) A company may be wound up—
- (a) by the court; or
  - (b) voluntarily.
- (2) A voluntary winding-up of a company may be—
- (a) a member's voluntary winding-up; or
  - (b) a creditor's voluntary winding-up.

WINDING-UP BY THE COURT

*Circumstances in which company may be wound up by court.*

287. A company may be wound up by the court if—
- (a) the company has by special resolution resolved that it would be wound up by the court;
  - (b) the company has not commenced its business within a year from its incorporation or has suspended its business for a whole year;
  - (c) more than seventy-five percent of the issued share capital of the company has been lost or has become useless for the business of the company;
  - (d) the company is unable to pay its debts;
  - (e) it appears to the court that it is just and equitable that the company should be wound up.

*When company deemed unable to pay its debts.*

288. A company shall be deemed to be unable to pay up its debts if it is proved to the satisfaction of the court that it is unable to do so—

- (a) a creditor, by cession or otherwise, to whom the company is indebted in a sum not less than five thousand Emalangeni then due—
  - (i) has served on the company, by leaving it at its registered office, a demand requiring the company to pay the sum so due; or
  - (ii) in the case of any body corporate not incorporated under this Act, has served such demand by leaving it at its main office or delivering it to the secretary or some director, manager or principal officer of such body corporate or in such other manner as the court may direct, and the company or body corporate has twenty-one days thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or
- (b) any process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned by the sheriff or messenger with an endorsement that he has not found sufficient assets to satisfy the judgment, decree or order or that any assets found did not upon sale satisfy such process; or
- (c) it is proved to the satisfaction of the court that the company is unable to pay its debts.

*Application for winding-up of company.*

289. (1) An application to the court for the winding-up of a company may, subject to this section, be made—

- (a) by the company;
- (b) by one or more of its creditors (including contingent or prospective creditors);
- (c) by one or more of its members or any other person referred to in section 97(3) irrespective of whether his name has been included in the register of members or not;
- (d) jointly by any or all of the parties mentioned in paragraphs (a), (b) and (c);
- (e) in the case of any company being wound up voluntarily, by the Master or any creditor or member of that company;
- (f) in the case of the discharge of a provisional judicial management order under section 366(3) or 370(2) by the provisional judicial manager or the company; or
- (g) in the case of a cancellation of a judicial management order under section 379, by the judicial manager or the court.

(2) Every application to the court referred to in subsection (1), except an application by the Master in terms of paragraph (e) of that subsection shall be accompanied by a certificate by the Master, issued not more than ten days before the date upon which the application is issued, to the effect that sufficient security has been given for the payment of all fees and charges necessary for the prosecution of all winding-up proceedings and of all costs

of administering the company in liquidation until a provisional liquidator has been appointed by the court and has furnished security as provided in section 337(2).

(3) Before the application for the winding-up of a company is presented to the court, a copy of the application and of every affidavit confirming the facts stated therein shall be lodged with the Master.

(4) The Master may report to the court any facts ascertained by him which appear to him to be pertinent to the hearing of the application and shall transmit a copy of that report to the applicant or his agent and to the company.

*Power of court hearing application.*

290. (1) The court may grant or dismiss any application under section 289, or adjourn the hearing thereof, conditionally or unconditionally, or make any interim order or any other order it may deem just, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has assets.

(2) Where the application is presented by members of the company and it appears to the court that the applicants are entitled to relief, the court shall make a winding-up order, unless it is satisfied that some other remedy is available to the applicants and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

(3) If the application is presented to the court by—

(a) any applicant under section 289(1)(e), the court may in the winding-up order or by any subsequent order, confirm all or any of the proceedings in the voluntary winding-up; or

(b) any member, the court shall satisfy itself that the rights of the member will be prejudiced by the continuation of a voluntary winding-up.

*Commencement of the winding-up by court.*

291. A winding-up of a company by the court shall be deemed to commence at the time of the presentation to the court of the application for the winding-up.

VOLUNTARY WINDING-UP

*Circumstances under which company may be wound up voluntarily.*

292. A company, other than a foreign company, may be wound up voluntarily if the company has by special resolution resolved that it be so wound up.

*Voluntary winding-up and security.*

293. (1) The resolution for the voluntary winding up of a company shall be of no force or effect until—

(a) it has been lodged in terms of section 177; and

(b) prior to the lodgement thereof—

(i) security has been furnished to the satisfaction of the Master for the payment of the debts of the company within a period not exceeding

eighteen months from the commencement of the winding-up of the company; or

- (ii) the Master has dispensed with the furnishing of such security on production to him of—
  - (aa) a sworn statement by the directors of the company that it has no debts; and
  - (bb) a certificate by the auditor of the company that to the best of his knowledge and belief and according to the record of the company, it has no debts.

(2) A winding-up in the case of which such security has been furnished or dispensed with in accordance with this section shall be a members' voluntary winding-up and a winding-up in the case of which security has neither been furnished nor dispensed with as aforesaid shall be a creditors' voluntary winding-up.

(3) The costs incurred in furnishing the security referred to in paragraph (b) of subsection (1) may be recovered from the company concerned.

(4) Unless otherwise provided in a members voluntary winding-up, the liquidator may without the sanction of the court exercise all powers given to a liquidator in a winding-up by the court, subject to such directions as may be given by the company in a general meeting.

#### *Commencement of voluntary winding-up.*

294. (1) A voluntary winding-up of a company shall commence at the time of the lodgement in terms of section 177 of the special resolution authorising the winding-up.

(2) The Registrar shall forthwith after the lodgement by him of a special resolution referred to in subsection (1), transmit a copy thereof to the Master.

#### *Effect of voluntary winding-up on status of company and on directors.*

295. (1) A company which is being wound up voluntarily shall, notwithstanding anything contained in its articles, remain a body corporate and retain all its powers as such, but shall from the commencement of the winding-up cease to carry on its business except in so far as may be required for the beneficial winding-up thereof.

(2) As from the commencement of a voluntary winding-up, all the powers of the directors of the company concerned shall cease except in so far as their continuance is sanctioned by the liquidator or the company in a general meeting.

### GENERAL PROVISIONS AFFECTING ALL WINDING-UP

#### *Court may stay or set aside winding-up.*

296. (1) The court may at any time after the commencement of winding-up, on the application of any liquidator, creditor or members, and on proof to the satisfaction of the court that all proceedings in relation to the winding-up ought to be stayed or set aside, make an order staying or setting aside the proceedings or for the continuance of any voluntary winding-up on such terms and conditions as the court may deem fit.

(2) The court may, as to all matters relating to a winding-up, have regard to the wishes of the creditors or members as proved to it by any sufficient evidence.



*Notice to creditors or members in review by court in winding-up and no re-opening of confirmed account.*

297. (1) In any review by the court of any matter under the winding-up of a company where the general body of creditors, members or contributories is affected, notice to the liquidator shall be notice to them.

(2) The court shall not authorise the re-opening of any duly confirmed account or plan of distribution or of contribution otherwise than as is provided in section 350.

*Notice of winding-up of company.*

298. (1) The Master shall upon receipt of a copy of any winding-up order of any company lodged with him, give notice of such winding-up in the *Gazette*.

(2) Any company which passed a special resolution under section 292 for its voluntary winding-up, shall within twenty-eight (28) days after the lodgement of that resolution in terms of section 177—

(a) lodge with the Master a certified copy of the resolution, together with—

(i) in the case of a members' voluntary winding-up a certified copy of a resolution nominating a person or persons for appointment as a liquidator or liquidators; or

(ii) in the case of a creditors' voluntary winding-up, two certified copies of the statement referred to in section 302(1); and

(b) give notice of the voluntary winding-up in the *Gazette* and in one newspaper published in Swaziland.

*Notice of winding-up of certain officials and their duties.*

299. (1) A copy of every winding-up order, whether provisional or final and of any order staying, amending or setting such an order aside, made by the court, shall forthwith be transmitted by the liquidator and by the Registrar of the court to—

(a) the sheriff and the deputy sheriff of the district in which the registered office of the company is situate and to the deputy sheriff of every district in which it appears that the company owns property;

(b) the Registrar of Deeds and every registrar or other officer charged with maintenance of any register under any Act in respect of any property within Swaziland which appears to be an asset of such company; and

(c) the messenger of every magistrate's court by the order thereof, it appears that property of such company is under attachment.

(2) A copy of every special resolution for the voluntary winding-up of any company passed under section 292 and of every order of court amending or setting aside the proceedings in relation to such winding-up shall, within seven (7) days after the passing or the making thereof, be transmitted by the company to the officers and registrars in subsection (1)(a), (b) and (c).

(3) Any officer and registrar to whom a copy of any such order or resolution is transmitted in terms of subsection (1) or (3) shall record such copy and note thereon the day and hour of receipt thereof.

(4) Any registrar and officer referred to in subsection (1)(b) shall upon receipt of a copy of any order or resolution referred to in subsection (1) or (3), enter a caveat in his register accordingly.

*Stay of legal proceedings before winding-up order granted.*

300. At any time after the presentation of an application for winding-up and before a winding-up order has been made, the company concerned or any creditor or member thereof may—

- (a) where any action or proceeding by or against the company is pending in the court, for a stay of the proceedings; and
- (b) where any other action or proceeding is being or about to be instituted against the company,

apply to the court for an order restraining further proceedings in the action or proceeding and the court may stay or restrain the proceedings accordingly on such terms as it thinks fit.

*Legal proceedings suspended and attachments void.*

301. (1) Where the court has made an order for the winding-up of a company or a special resolution for the voluntary winding-up of a company has been lodged in terms of section 177. Any attachment or execution put in force against the estate or assets of the company after the commencement of the winding-up shall be void.

(2) Every person who, having instituted legal proceedings against a company which was suspended by a winding-up intends to continue the proceedings, and every person who intends to institute legal proceedings for the purpose of enforcing any claim against the company which arose before the commencement of the winding-up, shall within four (4) weeks after the appointment of the liquidator has come to his notice give the liquidator not less than three weeks notice in writing before continuing or commencing the proceedings.

(3) If notice required by subsection (2) is not so given, the proceedings shall be considered to be abandoned unless the court otherwise directs.

*Inspection of records of company being wound-up.*

302. (1) Any member or creditor of any company unable to pay its debts and being wound up by the court or by a creditor's voluntary winding-up may apply to the court for an order authorising him to inspect any or all of the books and papers of that company, whether in possession of the company or the liquidator, and the court may impose any condition it thinks fit in granting that authority.

(2) Subsection (1) shall not be construed as affecting any powers or rights conferred by any law upon any department of Government or any person acting under its authority at all times to inspect or cause to be inspected, the books and papers of any company being wound up.

*Custody of or control over, and vesting of property of, company.*

303. (1) In any winding-up by the court, all the property of the company concerned shall be deemed to be in the custody and under the control of the Master until a provisional liquidator has been appointed and has assumed office.

(2) In any winding-up of any company, at all times while the office of liquidator is vacant or he is unable to perform his duties, the property of the company shall be deemed to be in the custody and under the control of the Master.

(3) If for any reason it appears expedient, the court may by the winding-up order or by any subsequent order direct that all or any part of the property, immovable and movable (including rights of action), belonging to the company, or to trustees on its behalf, shall vest in the liquidator in his official capacity, and thereupon the property or the part thereof specified in the order shall vest accordingly, and the liquidator may, after giving such indemnity (if any) as the court may direct, bring or defend in his official capacity any action or other legal proceeding relating to that property, or necessary to be brought or defended for the purpose of effectually winding-up the company and recovering its property.

*Court may order directors, officers and other to deliver property to liquidator or to pay into bank.*

304. (1) The court may at any time after making a winding-up order or after the registration in terms of section 177 of a special resolution for the voluntary winding-up of a company, order any director, member, trustee, banker, agent or officer of the company concerned to pay, deliver, convey, surrender or transfer to the liquidator of the company forthwith, or within such time as the court directs, any money, property or books and papers in his hands to which the company is *prima facie* entitled.

(2) The court may order any director, member, purchaser or other person from whom money is due to any company which is being wound-up, to pay the same into a banking institution registered under the Financial Institutions Order, 1975, to be named by the court for the account of the liquidator instead of to the liquidator, and such order may be enforced in the same manner as if it had ordered payment to the liquidator.

(3) All moneys paid into a banking institution as provided for in subsection (2) in the event of a winding-up by the court shall be subject in all respects to the orders of the court.

*Directors and other to submit statement of affairs.*

305. (1) Where it is intended to pass a resolution for a creditors' voluntary winding-up of a company, the directors of that company shall make out or cause to be out, in the prescribed form, statement as to the affairs of the company and lay it before the meeting convened for the purpose of passing such a resolution.

(2) Where an order for the final winding-up of a company has been made by the court—

- (a) the persons who at the time of the winding-up order were directors and officers of the company; and
- (b) such persons who have been directors or officers of the company or who participated in its formation, at any time with one year before the winding-up order, as may be required to do so by the Master,

shall make out or cause to be made out, in the prescribed form, such statement as to the affairs of the company and lodge two certified copies thereof with the Master within fourteen (14) days from the date of the winding-up order in question or within such extended time as the Master or the court may for special reasons allow.

(3) The Master may exempt any person referred to in subsection (2) from the obligation to comply with such subsection if such person satisfies him by affidavit that he is unable to make out or cause to be made out or to verify such statement as to the affairs of the company concerned.

(4) The statement as to the affairs of a company referred to in subsection (1) or (2)—

(a) shall contain such matter and be in such form as prescribed including particulars of the company's assets, debts, liabilities (including contingent and prospective liabilities), any pending legal proceedings by or against it, the names and addresses and nature of the business of its creditors, the security held by each of them, the date when each of the securities was given and, in the case of such a statement under subsection (2), such further information as the Master may require; and

(b) shall be verified by affidavit by each of the persons referred to in subsections (1) and (2) such verifying affidavit shall be annexed to the said statement.

(5) The Master transmit a copy of any statement as to the affairs of a company lodged with him in terms of this section to the liquidator on his appointment.

(6) Any person shall be entitled by himself or his agent, on payment of the prescribed fee, to inspect or apply for a copy of or an extract from any statement as to the affairs of a company lodged with the Master in pursuance of this section.

(7) Any person who is required to make or cause to be made any statement as to the affairs of a company in terms of this section, shall be paid by the Master, out of the assets of the company such costs and expenses incurred by him in respect of the preparation and making of such statement as the Master may consider reasonable.

(8) Any person who fails to comply with any requirement of subsection (1), (2) or (4), shall be guilty of an offence.

*Master to summon first meetings of creditors and members and purpose thereof.*

306. (1) As soon as may be after a final winding-up order has been made by the court or a special resolution for a creditors' voluntary winding-up of a company has been registered in terms of section 177, the Master shall summon—

(a) a meeting of the creditors of the company for the purpose of—

(i) considering the statement as to the affairs of the company lodged with the Master under section 305;

(ii) the proof of claims against the company; and

(iii) nominating a person or persons for appointment as liquidator or liquidators; and

(b) a meeting of the members of the company for the purpose of—

(i) considering the statement referred to in paragraph (a)(i); and

(ii) nominating a person or persons for appointment as liquidator or liquidators,

unless the company in general meeting when passing a resolution referred to in section 292 has already disposed of the matters referred to in subparagraph (i) and (ii).

(2) Meetings of creditors under this section shall be summoned and held as nearly as may be in the manner provided by the law relating to insolvency and meetings of members in the manner prescribed by regulation:

Provided that, in the case of a meeting of creditors, the Master may direct the company concerned or the provisional liquidator to send a notice of such meeting by post to every creditor of the company.

*Offences in securing nomination as liquidator and restriction on voting at meetings.*

307. (1) Any person who gives or agrees or offers to give to any member, or creditor of a company any reward with a view to securing his own nomination or appointment or to securing or preventing the nomination or appointment of any person as the company's liquidator, shall be guilty of an offence.

(2) The provisions of the law relating to the insolvency in respect of voting, the manner of voting and voting by an agent of meetings of creditors, shall apply, *mutatis mutandis*, to any meeting referred to in section 306:

Provided that in any winding-up by the court a director or former director of a company shall have no voting right in respect of the nomination of a liquidator on the ground of his loan account with the company or claims for arrear salary, travelling expenses or allowances due by the company or claims paid by such director or former director on behalf of the company.

(3) Subsection (2) shall, *mutatis mutandis*, apply to a person to whom a right contemplated in the said paragraph has been ceded.

*Claims and proof of claims.*

308. In the winding-up of a company by the court and in a creditors' voluntary winding-up—

- (a) the claims against the company shall be proved at a meeting of creditors in accordance with the provisions relating to the proof of claims against an insolvent estate under the law relating to insolvency;
- (b) a secured creditor shall be under the same obligation to set a value upon his security as if he were proving his claim against an insolvent estate under the law relating to insolvency, and the value of his vote shall be determined in the same manner as is prescribed under that law; and
- (c) if the company is unable to pay its debts, a secured creditor and a liquidator shall each have same rights to take over the security as a secured creditor and a trustee would have under the law relating to insolvency.

## LIQUIDATORS

*Appointment of liquidator.*

309. For the purpose of conducting the proceedings in a winding-up of a company, a liquidator or liquidators shall be appointed in the manner as hereinafter provided.

*Appointment of provisional liquidator.*

310. (1) As soon as a winding-up order has been made in relation to a company, or a special resolution for a voluntary winding-up of a company has been registered in terms of

section 177, the Master may appoint any suitable person as provisional liquidator of the company.

(2) A provisional liquidator appointed in terms of (1) shall give security to the satisfaction of the Master for the proper performance of his duties and shall hold office until the appointment of a liquidator.

*Determination of person to be appointed liquidator.*

311. (1) In the case of a member's voluntary winding-up of a company, the Master shall subject to the provisions of section 312, appoint the person or persons nominated by the company in the resolution referred to in section 298(2)(a)(i) as liquidator or liquidators of the company concerned.

(2) (a) In the case of a creditors' voluntary winding up and a winding up by the court of a company, the Master shall, subject to the provisions of section 296 appoint the person or persons nominated by any meetings referred to in section 311 as liquidator or liquidators of the company concerned, if the same person or persons have been nominated by the said meetings.

(b) If the said meetings have nominated different persons, the Master shall, subject to the provisions of section 312, decide the difference and appoint all or any of the persons so nominated, as he thinks fit, as liquidator or liquidators of the company concerned.

*Master may decline to appoint nominated person as liquidator.*

312. (1) If a person who has been nominated as liquidator by meetings of creditors and members of a company was not properly nominated or is disqualified from being nominated or appointed as liquidator under section 314 or 315 or has failed to give within a period of seven (7) days as from the date upon which he has notified that the Master had accepted his nomination or within such further period as the Master, may allow, the security mentioned in section 317(1), or, if in the opinion of the Master the person nominated as liquidator should not be appointed as liquidator of the company concerned, the Master shall give notice in writing to the person so nominated that he declines to accept his nomination or to appoint him as liquidator and shall in that notice state his reason for declining to accept his nomination or to appoint him:

Provided that if the Master declines to accept the nomination for appointment as liquidator because he is of the opinion that the person nominated should not be appointed as liquidator, it shall be sufficient if the Master states, in such notice, the reason that he is of the opinion that person nominated should not be appointed as liquidator of the company concerned.

(2) (a) Where the Master has so declined to accept the nomination of any person or to appoint him as liquidator or the court has under section 313(3) set aside the appointment of a liquidator, the Master shall convene meetings of creditors and members or contributories of the company concerned for the purpose of nominating another person for appointment as liquidator in the place of the person whose nomination as liquidator the Master has declined to accept or whom the Master has declined to appoint or whose appointment has been so set aside.

(b) In the notice convening the said meetings the Master shall state that he has declined to accept the nomination for appointment as liquidator of the person

previously nominated or to appoint the person so nominated and the reason therefor, subject to the proviso to subsection (1), or that the appointment of the person previously appointed as liquidator has been set aside by the court, as the case may be, and that the meetings are convened for the purpose of nominating another person for appointment as liquidator.

- (c) The Master shall post a copy of such notice to every creditor whose claim against the company was previously proved and admitted.
- (d) The meetings referred to in paragraph (a) shall be deemed to be continuations of the first meetings of creditors, members or of the meetings referred to in sections 293 and 296.

(3) If the Master again declines for any reason mentioned in subsection (1) to accept the nomination of a person for appointment as liquidator by the meetings mentioned in subsection (2), or to appoint a person so nominated, he shall—

- (a) act in accordance with subsection (1); and
- (b) if the person so nominated was nominated as sole liquidator or if all the persons so nominated have not been appointed by him, appoint as liquidator or liquidators of the company concerned any other person or persons not disqualified from being liquidator of that company.

*Remedy of aggrieved persons.*

313. (1) Any person aggrieved by the appointment of a liquidator or the refusal of the Master to accept the nomination of a liquidator or to appoint a person nominated as a liquidator may within fourteen (14) days after the date of such appointment or refusal and after notice to the liquidator apply to the court for an order setting aside the Master's decision.

(2) The Master shall within seven (7) days of the receipt by him of the application referred to in subsection (1) submit, to the court, in writing, his reason for such appointment or refusal together with any relevant documents, information or objections received by him.

(3) The court may, on any such application referred to in (1), confirm, uphold or set aside the Master's decision, and in the event of the refusal by the Master being set aside, direct the Master to accept the nomination of the liquidator concerned and appoint him as liquidator or make such other order as it thinks fit.

*Persons disqualified from appointment as liquidator.*

314. A person shall not be qualified for nomination or appointment as the liquidator of a company, if he is—

- (a) insolvent;
- (b) a nominator or any other person under legal disability;
- (c) a person declared under section 315 to be incapable of being appointed as a liquidator, while he remains so incapable;
- (d) a person removed from an office of trust by the court on account of misconduct or a person who is the subject of any order under this Act disqualifying him from being a director;
- (e) a corporate body;

- (f) any person who has at any time been convicted (whether in Swaziland or elsewhere) of theft, forgery or uttering a forged document or perjury and has been sentenced to imprisonment without the option of a fine or to a fine exceeding twenty Emalangeni;
- (g) any person who has by means of any misrepresentation or any reward, whether directly or indirectly induced or attempted to induce any person to vote for him in the nomination of a liquidator or to effect or assist in affecting his nomination or appointment as liquidator of any company;
- (h) any person who does not reside in Swaziland, unless such person is appointed co-liquidator with a person ordinarily resident in Swaziland;
- (i) any person who at any time during a period of twelve (12) months immediately preceding the winding-up of a company acted as a director, officer or auditor of that company:  
 Provided this paragraph shall apply to an auditor in the case of members' voluntary winding-up of the company concerned as contemplated in section 293;
- (j) an agent authorised specially or under a general power of attorney to vote for or on behalf of a creditor at a meeting of creditors of the company concerned and acts or purports to act under such special authority or general power of attorney.

*Persons disqualified by court from being appointed or acting as liquidators.*

315. The court may, on the application of any interested person, declare any person proposed to be appointed or appointed as liquidator, to be disqualified from holding office, and, if he has been appointed, may remove him from office, and may, if it thinks fit, declare him

incapable for life or for such period as it may determine of being appointed as a liquidator under this Act—

- (a) if he has accepted or offered or agreed to accept or solicited from any auctioneer, agent or other person employed on behalf of a company in liquidation, any share of the commission or remuneration of such auctioneer, agent or person or any other benefit; or
- (b) if he has in order to obtain or in return for the vote of any creditor or member, in order to exercise any influence upon his nomination or appointment as liquidator—
  - (i) procured or been privy to the wrongful insertion or omission of the name of any person in or from any list or schedule required by this Act; or
  - (ii) directly or indirectly given or agreed to give any consideration to any person; or
  - (iii) offered or agreed with any person to abstain from investigating any transactions of or relating to the company or of any of its directors or officers; or
  - (iv) been guilty of or privy to the splitting of claims for the purpose of increasing the number of votes.



*Master may appoint co-liquidator at any time.*

316. Whenever the Master considers it desirable he may, appoint any person not disqualified from holding the office of liquidator and who has given security to his satisfaction, as a co-liquidator with the liquidator or liquidators of the company concerned.

*Appointment, commencement of office validity of acts of liquidator.*

317. (1) When the person to be appointed to the office of liquidator of a company has been determined and such person has given security to the satisfaction of the Master for the proper performance of his duties as liquidator (except where in the case of a members' voluntary winding-up the company concerned has resolved that no security shall be required), the Master shall appoint him as liquidator of the company by issuing to him a certificate of appointment.

(2) The certificate of appointment shall be valid throughout Swaziland.

(3) A liquidator shall be entitled to act as such from the date of his certificate of appointment.

(4) The acts of the liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

(5) Upon receipt of such certificate of appointment, the liquidator shall—

- (a) within seven (7) days after receipt thereof send a copy to the Registrar; and
- (b) give notice of his appointment in the *Gazette*.

*Title of liquidator.*

318. A liquidator shall be described as the liquidator of the particular company in respect of which he has been appointed and not his individual name.

*Filling vacancies.*

319. (1) If a vacancy occurs in the office of liquidator, the Master shall, for the purpose of nominating a person or persons for appointment as liquidators to fill the vacancy—

- (a) in the case of winding up by the court or a creditors' voluntary winding-up convene meetings of creditors and members or contributories of the company concerned; and
- (b) in the case of a members' voluntary winding up, convene or direct the company concerned to convene a meeting of members; or
- (c) if there is a remaining liquidator or liquidators, direct him or them to convene the meetings referred to in paragraph (a) or (b):

Provided that if the Master is of the opinion that the remaining liquidator will be able to complete the winding-up he may dispense with the appointment of a liquidator to fill the vacancy and may direct the remaining liquidator or liquidators to complete the winding-up.

(2) The provisions of this Act relating to the convening and conduct of such meetings and the nomination and appointment of a liquidator shall apply to the filling of a vacancy in the office of liquidator.

(3) Subject to the proviso to subsection (1), if for any reason a vacancy is not filled as provided in this section, the Master may appoint any person as liquidator to fill such vacancy.

*Leave of absence or resignation of liquidator.*

320. A liquidator shall not be absent from Swaziland for a period exceeding sixty (60) days unless—

- (a) the Master has before his departure from Swaziland, granted him permission in writing to be absent; and
- (b) he complies with such conditions as the Master may impose.

*Removal of liquidator.*

321. The court may, on application by the Master or any interested person, remove a liquidator from his office on the ground—

- (a) that he was not qualified for nomination or appointment as liquidator or that his nomination or appointment was for any other reason illegal or that he has become disqualified from being nominated or appointed as a liquidator or has been authorised, special or under a general power of attorney, to vote for or on behalf of a creditor, member or contributory at a meeting of creditors, members or contributories of the company of which he is the liquidator and has acted or purported to act under such special authority or general power of attorney;
- (b) that he has failed to perform satisfactorily any duty imposed upon him by this Act or to comply with a lawful demand of the Master or a commissioner appointed by the court under this Act; or
- (c) that his estate has become insolvent or that he has become mentally or physically incapable of performing satisfactorily his duties as liquidator;
- (d) that the majority (reckoned in number and in value) of creditors entitled to vote at a meeting of creditors or, in the case of a members' voluntary winding-up, a majority of the members of the company, wishes him to be removed;
- (e) that the liquidator is no longer suitable to be the liquidator of the company concerned; or
- (f) that there is other good cause for doing so.

*Notice of removal of liquidators.*

322. The Master shall give notice in the *Gazette* of the removal of any liquidator.

*Control of Master over liquidators.*

323. (1) The Master shall take cognizance of the conduct of liquidators and shall, if he has reason to believe that the liquidator is not faithfully performing his duties and duly observing all the requirements imposed on him by any law or otherwise with respect to the performance of his duties, or if any complaint is made to him by any creditor, member or contributory in regard thereto, enquire into the matter and take such action as he may think expedient.

(2) The Master may, at any time, require any liquidator to answer any enquiry in relation to any winding-up in which such liquidator is engaged and may, if he thinks fit, examine such liquidator or any other person on oath concerning the winding-up.

(3) The Master may, at any time, appoint a person to investigate the books and vouchers of a liquidator.

(4) The court may, upon the application to the Master, order that any costs reasonably incurred by him in performing his duties under this section be paid out of the assets of the company or by the liquidator *de bonis pro priis*.

(5) Any expenses incurred by the Master in carrying out any provision of this section shall, unless the court otherwise orders, be regarded as part of the costs of the winding-up of that company.

*Plurality of liquidators, liability and disagreement.*

324. (1) When two or more liquidators have been appointed, they shall act jointly in performing their functions as liquidators and shall be jointly and severally liable for every act performed by them jointly.

(2) Whenever two or more liquidators disagree on any matter relating to the company of which they are liquidators, one or more of them may refer the matter to the Master who may thereupon determine the question in issue or give directions as to the procedure to be followed for the determination thereof.

*Cost and reduction of security by liquidator.*

325. (1) The cost of giving security by a person appointed as liquidator to an amount which the Master considers reasonable shall, subject to section 93 of the Insolvency Act, 1955, be paid out of the assets of the company concerned as part of the costs of liquidation.

(2) When a liquidator has in the course of the winding-up of a company accounted to the satisfaction of the Master for any property belonging to the company, he may in writing, apply for the consent of the Master to a reduction of the security given by him and the Master, if he is satisfied that the reduced security will suffice to indemnify the company and the creditors and contributories thereof against any maladministration on the part of the liquidator in respect of the remaining property belonging to the company, may consent wholly or in part to such reduction.

*Remuneration of liquidator.*

326. (1) Subject to this section, in any winding up, a liquidator shall be entitled to a reasonable remuneration of his services to be taxed by the Master in accordance with the prescribed tariff of remuneration:

Provided that in the case of a member's voluntary winding-up, the liquidator's remuneration may be determined by the company in general meeting.

(2) The Master may reduce or increase the liquidator's remuneration if in his opinion there is good cause for doing so, and he may disallow such remuneration either wholly or in part if he is of the opinion that the liquidator has wilfully or negligently failed to carry out his duties or has unreasonably delayed in so doing.

(3) No person who employs or is a fellow employee or in the ordinary employment of the liquidator, shall be entitled to receive any remuneration out of the assets of the company concerned for services rendered in the winding-up thereof and no liquidator shall be entitled

either by himself or his partner to receive out of the assets of the company any remuneration for his services except the remuneration to which he is entitled under this Act.

*Certificate of completion of duties by liquidator and cancellation of security.*

327. (1) When a liquidator of a company has performed all the duties prescribed by this Act and complied with all the requirements of the Master, he may apply in writing to the Master for a certificate to that effect.

(2) The Master shall when he issues the said certificate, additionally state therein that he consents to the reduction of the security given by the liquidator to a stated amount to its cancellation.

#### POWERS OF LIQUIDATORS

*General powers.*

328. (1) The liquidator in any winding-up shall have power—

- (a) to execute in the name and on behalf of the company all deeds, receipts and other documents, and for that purpose to use the company's seal;
- (b) to prove a claim in the estate of any debtor of the company and receive payment in full or a dividend in respect thereof;
- (c) to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company:

Provided that no liquidator shall except with the leave of the court or the authority referred to in subsection (2) or (3), or for the purposes of carrying on the business of the company in terms of subsection (3)(f) have power to impose any additional liabilities upon the company;

- (d) to summon general meeting of the company or the creditors of the company for the purpose of obtaining its or their authority or sanction with respect to any matter or for such other purposes as he may consider necessary;
  - (e) subject to subsections (2), (3) and (4), to take such measures for the protection and better administration of the affairs and property of the company as the trustee of an insolvent estate may take in the ordinary course of his duties and without the authority of a resolution of creditors.
- (2) The liquidator of a company shall have the powers mentioned in subsection (3)—
- (a) in a winding-up by the court, with the authority granted by meetings of creditors and members;
  - (b) in a creditors' winding-up, with the authority granted by a meeting of creditors; and
  - (c) in a members' voluntary winding-up, with the authority granted by a meeting of members.
- (3) The powers referred to in subsection (2) are—
- (a) to bring or defend in the name and on behalf of the company any action or other legal proceeding of a civil nature, and, subject to the provisions of any law relating to, any criminal proceedings:

Provided that immediately upon the appointment of a liquidator and in the absence of the authority referred to in subsection (2), the Master may authorise, upon such terms as he thinks fit, any urgent legal proceedings for the recovery of outstanding accounts;

- (b) to agree to any reasonable offer of composition made to the company by any debtor and to accept payment of any part of a debt due to the company in settlement thereof or to grant an extension of time for the payment of any such debt;
- (c) to compromise or admit any claim or demand against the company including an unliquidated claim;
- (d) except where the company being wound up is unable to pay its debts, to make any arrangement with creditors including creditors in respect of unliquidated claims;
- (e) to submit to the determination of arbitrators any dispute concerning the company or any claim or demand by or upon the company;
- (f) to carry on or discontinue any part of the business of the company in so far as may be necessary for the beneficial winding-up thereof:

Provided that if he considers it necessary, the liquidator may carry on or discontinue any part of the business of the company concerned before he has obtained the leave of the court or the authority referred to in subsection (2), but shall not in that event be entitled, as between himself and the creditors or contributories of the company, to include the cost of any goods purchased by him in the course of winding-up of the company unless such goods were necessary for the immediate purpose of carrying on the business of the company and there are funds available for payment of the cost of such goods after providing for the costs of winding-up;

- (g) to exercise, *mutatis mutandis*, the same powers as are by the provisions of the Insolvency Act, 1955, conferred upon a trustee under such Act, on like terms and conditions as are therein mentioned:

Provided that the powers conferred by such Act shall not be exercised unless the company is unable to pay its debts;

- (h) to sell any movable and immovable property of the company by public auction, public tender or private contract and to give delivery thereof;
- (i) to perform any act or exercise any power for which he is not expressly required by this Order to obtain the leave of the court.

(4) In a winding-up, the court may, if it deems fit, grant leave to a liquidator to raise money on the security of the assets of the company concerned or to do any other thing which the court may consider necessary for winding up the affairs of the company and distributing its assets.

- (5) The Master may restrict the powers of a provisional liquidator.

*Exercise of liquidator's powers in winding-up by court.*

329. (1) Subject to the provisions of this Act, the liquidator of a company which is being wound up by the court shall, in the administration of the assets of the company, have regard to any directions that may be given by resolution of the creditors or members of the company at any general meeting.

(2) In regard to any matter which has been submitted by the liquidator for the directions of creditors and members in a general meeting, but as to which no directions have been given or as to which there is a difference between the directions of the creditors and members or contributories, the liquidator may apply to the Master for direction and the Master may give or refuse to give directions as he may deem fit.

(3) Where the Master has refused to give directions as aforesaid or in regard to any other particular matter arising under the winding-up, the liquidator may apply to the court for directions.

(4) Any person aggrieved by any act or decision of the liquidator may apply to the court after notice to the liquidator and thereupon the court may make such order as it thinks just.

*Court may determine questions in voluntary winding-up.*

330. (1) If a company is being wound up voluntarily, the liquidator or any member or creditor of the company may apply to the court to determine any question arising in the winding-up or to exercise any of the powers which the court might exercise if the company were being wound up by the court.

(2) The court may, if satisfied that the determination of any such question or the exercise of any such power will be just and beneficial, accede wholly or partly to the application of such terms and conditions as it may determine, or make such other order on the application as it thinks fit.

*Exercise of power to make arrangement and the binding of dissentient creditors.*

331. (1) Any arrangement entered into between a company able to pay its debtors and about to be or in the course of being wound up and its creditors shall, subject to subsection (2), be binding on the company if sanctioned by a special resolution of members and on the creditors of the company if acceded to by three-fourths in number and value of such creditors.

(2) Any such creditor or member may, within three (3) weeks from the completion of the arrangement, bring it under review by the court, and the court may amend, vary, set aside or confirm the arrangements in such manner as it thinks just.

*Exercise of power of liquidator in voluntary winding-up to accept shares for assets of company.*

332. (1) If a company is proposed to be or is being wound up voluntarily and the whole or part of its business or property is proposed to be transferred or sold to another company, whether registered under this Act or not (in this section called the transferee company), the liquidator of the first-mentioned company (in this section called the transferor company) may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale, shares, policies or other like

interests in the transferee company, or distribution among the members of the transferor company, or may enter into any other arrangement, whereby the members of the transferor company may, in lieu of receiving cash, shares, policies or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company:

Provided that, in the case of a creditors' voluntary winding-up the powers of the liquidator conferred by this section shall not be exercised save with the consent of three fourths in number and value of the creditors present or represented at a meeting called by him for that purpose and of which not less than fourteen days' notice has been given, or with sanction of the court.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the special resolution, express his dissent therefrom in writing addressed and delivered to the liquidator or left at the registered office of the company within seven days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in the manner provided by this section.

(4) If the liquidator elects to purchase such member's interest, the purchase money shall be paid before the company is dissolved and be raised by the liquidator in such manner as may be determined by special resolution of the company concerned.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for winding up the company by the court, the special resolution shall not be valid unless sanctioned by the court.

(6) For purposes of an arbitration under this section, the provisions of the Arbitration Act, 1904, shall apply.

#### DUTIES OF LIQUIDATORS

##### *General duties.*

333. A liquidator in any winding-up shall proceed forthwith to recover and reduce into possession all the assets and property of the company, movable and immovable, shall apply them so far as they extend in satisfaction of the costs of the winding-up and the claims of creditors, and shall distribute the balance among those who are entitled thereto.

##### *Liquidator's duty to give information to Master.*

334. Every liquidator shall give the Master information and access to and facilities for inspecting the books and documents of the company and generally aid as may be required to enable that officer to perform his duties under this Act.

##### *Liquidator's duty to keep records and inspection.*

335. (1) Immediately after his appointment, a liquidator shall open a book or other record wherein he shall enter from time to time a statement of all moneys, goods, books, accounts and other documents received by him on behalf of the company.

(2) The Master may at any time in writing require the liquidator to produce any such book or record for inspection.

(3) Any creditor may, subject to the control of the Master, at all reasonable times personally or by his agent inspect any such book or record.

*Banking accounts and investments.*

336. (1) The liquidator of a company—

- (a) shall open a current account in the name of the company in liquidation with a banking institution registered under the Financial Institutions (Consolidation) Order, 1975, within Swaziland, and shall, from time to time, deposit therein to the credit of the company all moneys received by him on its behalf;
- (b) may, with the written consent of the Master, open a savings account in the name of such company with such banking institution within Swaziland, and may transfer thereto moneys deposited in the account referred to in paragraph (a) and not immediately required for the payment of any claim against such company;
- (c) may, with the written consent of the Master, place moneys deposited in the account referred to in paragraph (a) and not immediately required for the payment of any claim against such company, on interest-bearing deposit with such banking institution within Swaziland;
- (d) shall not withdraw any money from any account referred to in paragraph (b) or (c) otherwise than by way of a transfer to the said current account referred to in paragraph (a).

(2) Whenever required by the Master to do so, the liquidator shall in writing notice the Master of the institution and the office, branch office or agency thereof with which he has opened an account referred to in subsection (1), and furnish the Master with a bank statement or other sufficient evidence of the state of the account.

(3) A liquidator shall not transfer any account from any such office or agency referred to in subsection (2) to any other office, branch office or agency except after written notice to the Master.

(4) All cheques or orders drawn upon any such account shall contain the name of the payee and the cause of payment and shall be drawn to order and be signed by the liquidator or his duly authorised agent.

(5) The Master and any surety for the liquidator or any person authorised by such surety shall have the same right to information in regard to such account as the liquidator himself possesses, and may examine all vouchers in relation thereto, whether in the possession of the banking institution or of the liquidator.

(6) The Master may, after notice to the liquidator, in writing direct the manager of any office, branch or agency with which an account referred to in subsection (1) has been opened, to pay over into the Guardian's Fund all moneys standing to the credit of such account at the time of the receipt, by such manager, of such direction, and all moneys which may thereafter be paid into such account, and the said manager shall carry out such direction.

(7) A liquidator who without lawful excuse retains or knowingly permits his co-liquidator to retain any sum of money exceeding forty Emalangeni belonging to the company concerned longer than the earliest day after its receipt on which it was possible for him or his co-liquidator to pay the money into the bank, or uses or knowingly permits his co-liquidator to use any assets of the company except for its benefit, shall, in addition to any



other penalty to which he may be liable, be liable to pay to the company an amount not exceeding double the sum so retained or double the value of the assets so used.

(8) Amount which the liquidator is so liable to pay, may be recovered by action any competent court at the instance of the liquidator, the Master or any creditor or contributory.

*Liquidator's duty to expose offences and to report thereon.*

337. (1) A liquidator shall examine the affairs and transactions of the company before its winding-up in order to ascertain—

(a) whether any of the directors and officers or past directors and officers of the company have contravened or appear to have contravened any provision of this Act or have committed or appear to have committed any other offence; and

(b) in respect of any of the persons referred to in paragraph (a), whether there are or appear to be any grounds for an order by the court under section 199 disqualifying a director from holding office.

(2) A liquidator shall, before lodging his final account with the Master, submit to him a report containing full particulars of any such contraventions or offences, suspected contraventions or offences and any such grounds which he has ascertained.

(3) Any report submitted to the Master under subsection (2) shall be confidential and shall not be available for inspection by any person.

(4) If any such report contains particulars of contraventions or offences committed or suspected to have been committed or of any of the said grounds, the Master shall forthwith transmit a copy thereof to the Attorney-General and the Director of Public Prosecutions.

(5) A liquidator shall conduct such further investigation and shall render such assistance in connection with any prosecution as the Master or the Director of Public Prosecutions may require.

*Attorney-General may make application to the court for disqualification of director.*

338. If the Attorney-General, after receipt of the report referred to in section 337 and after such further inquiry as he may deem fit, is satisfied that there are grounds for an application to the court for an order in terms of section 199, he may make such application to the court.

*Liquidator's duty to present report to creditors.*

339. Except in the case of a member's voluntary winding-up, a liquidator shall, as soon as practicable and, except with the consent of the Master, not later than three months after the date of his appointment, submit to a general meeting of creditors of the company concerned a report as to the following matters—

(a) the amount of capital issued by the Company and the estimated amount of its assets and liabilities;

(b) if the company has failed, the causes of the failure;

(c) whether or not he has submitted or intends to submit to the Master a report under section 337(2);

- (d) whether or not any director or officer or former director or officer appears to be personally liable for damages or compensation to the company or for any debts or liabilities of the company as provided in this Act;
- (e) any legal proceedings by or against the company which may have been pending at the date of the commencement of winding-up or which may have been or may be instituted;
- (f) whether or not further enquiry is in his opinion desirable in regard to any matter relating to the promotion, formation or failure of the company or the conduct of its business;
- (g) whether or not the company has kept the accounting records required by section 245, and, if not in what respects the requirements of that section have not been complied with;
- (h) the progress and prospects of the winding-up; and
- (i) any other matter which he may think fit or in regard to which he may desire the directions of the creditors.

*Liquidator's duty to file liquidation and distribution account.*

340. (1) A liquidator shall, unless he receives an extension of time as hereinafter provided, frame and lodge with the Master not later than six months after his appointment an account of his receipts and payments and a plan of distribution or, if there is a liability among creditors and contributories to contribute towards the costs of the winding-up, a plan of contribution apportioning their liability.

(2) If the account lodged under paragraph (1) is not a final account, the liquidator shall from time to time and as the Master may direct, but at least once in every period of six months (unless he receives an extension of time), frame and lodge with the Master a further account and plan to distribution:

Provided that the master may at any time and in any case where the liquidator has funds in hand, which ought in the opinion of the Master to be distributed or applied towards the payment of debts, direct the liquidator in writing to frame and lodge with him an account and plan for distribution in respect of such funds within a period specified.

(3) Any account shall be lodged in duplicate in the prescribed form shall be fully supported by vouchers, including the liquidator's bank statements or certified extracts from his bank accounts showing all deposits and withdrawals, and shall be verified by an affidavit in the prescribed form.

*Master may grant extension of time for lodging account.*

341. (1) If any liquidator is unable to lodge an account with the Master under section 340 he shall before the expiry of the prescribed under such section—

- (a) make and lodge with the Master an affidavit stating the reasons why he is not able to lodge an account, the amount of funds in hand available for distribution, a summary of the position in respect of the winding-up, and whether he has applied for an extension of time, and shall send a copy thereof to each creditors of the company; and

(b) lodge with the Master written reasons for his inability to lodge the account in question together with a statement of the grounds, if any, upon which he claims an extension of time within which to lodge such account, and the Master thereupon grant such an extension of time as he may in the circumstances think necessary.

(2) If any liquidator fails to lodge an account with the Master as required by section 340 and to comply with subsection (1)(a) and (b), the Master or any person having an interest in the company may serve a notice on the liquidator requiring him within two weeks after the date of the notice—

(a) to lodge the account in question with the Master; or

(b) to comply with the requirements of paragraphs (a) and (b) of such subsection have been complied with, grant such an extension of time as he may in the circumstances think necessary.

(3) Any liquidator who fails to satisfy the Master that he ought to receive an extension of time for the lodging of any account, may after notice to the Master and to any person referred to in subsection (2), apply to the court for an order granting him such an extension of time within which to lodge such account.

*Failure of liquidator to lodge account or to perform duties.*

342. (1) If any liquidator fails to lodge an account with the Master as and when required by or under this Chapter or to lodge any vouchers in support of such account or to perform any other duty imposed upon him by this Chapter or to comply with any reasonable demand of the Master for information or proof required by him in connection with the liquidation of the company, the Master or any person having an interest in the company may, after giving the liquidator not less than two (2) weeks' notice, apply to the court for an order directing the liquidator to lodge such account or vouchers in support thereof or to perform such duty or to comply with such demand.

(2) The costs adjudged to the Master to such person shall, unless ordered otherwise by the court, be paid by the liquidator *de bonis propriis*.

*Places for and periods of inspection of account.*

343. (1) Every liquidator's account shall lie open for inspection for such period, not being less than twenty one days, as the Master may determine at the office of the Master.

(2) The liquidator shall give due notice in the *Gazette* and in a newspaper circulating in Swaziland that the account will lie open for inspection and shall in that notice state the period during which the account will lie open for inspection and shall transmit by post or deliver a similar notice to every creditor who has proved a claim against the company.

(3) The Master shall cause to be affixed in or about his office a list of all such accounts as have been lodged in his office, showing the respective periods during which they will lie open for inspection.

*Objections to account.*

344. (1) Any person having an interest in the company being wound up may at any time before the confirmation of an account lodge with the Master an objection to such account stating the reasons for the objection.

(2) If the Master is of the opinion that any such objection ought to be sustained, he shall direct the liquidator to amend the account or give such other direction as he may think fit.

(3) If in respect of any account the Master is of the opinion that any improper charge has been made against the assets of a company or that the account is in any respect incorrect and should be amended, he may whether or not any objection to the account has been lodged with him, direct the liquidator to amend the account, or he may give such other directions as he may deem fit.

(4) The liquidator or any person aggrieved by any direction of the Master under this section, or by the refusal of the Master to sustain an objection lodged thereunder, may within fourteen days after the date of the Master's direction and after notice to the liquidator apply to the court for an order setting aside the Master's decision, and the court may on any such application confirm the account in question or make such order as it thinks fit.

(5) If any such direction given by the Master under this section affects the interest of a person who has not lodged an objection with the Master, such account as amended shall again lie open for inspection unless the person affected consents in writing to the immediate confirmation of the account.

*Confirmation of account.*

345. (1) If an account has lain open for inspection as prescribed in section 343 and—

(a) no objection has been lodged; or

(b) no objection has been lodged and the account has been amended in accordance with the direction of the Master and has lain open for inspection, if necessary, as prescribed in section 344(5), and no application has been made to the court within prescribed time to set aside the Master's decision; or

(c) an objection has been lodged but has been withdrawn or has not been sustained and the objector has not applied to the court within the prescribed time.

(2) The Master shall confirm the account and his confirmation shall have the effect of a final judgment, save as against such persons who may be permitted by the court to re-open the account after such confirmation but before the liquidator commences with the distribution.

*Distribution of estate.*

346. (1) Immediately after the confirmation of any account, the liquidator shall proceed to distribute the assets in accordance therewith or to collect from the creditors and contributories liable to contribute thereunder the amounts for which they may respectively be liable.

(2) The liquidator shall give notice of confirmation of the account in the *Gazette* and in a newspaper circulating in Swaziland and shall in such notice state, according to the circumstances, that a dividend is being paid or that a contribution is to be collected and that

every creditor and contributory liable to contribute is required to pay to the liquidator the amount for which he is liable and the address at which the contribution is to be paid.

*Liquidator's duty as to receipts and unpaid dividends.*

347. (1) The liquidator shall without delay lodge with the Master the receipts for any dividends paid or other proof of payment thereof.

(2) If any dividend remains unpaid for a period of two (2) months (or such longer period as the Master may approve) after the confirmation of the relevant account, the liquidator shall immediately pay the amount to the Master for deposit in the Guardian's Fund for the account of the creditor or member concerned.

(3) Any failure by a liquidator to furnish the Master within such period of two (2) months with a proper receipt or other proof of payment in respect of any dividend which has not been deposited as aforesaid, shall be *prima facie* evidence that such dividend has been retained by him and has not been dealt with as herein prescribed, and the Master may thereafter institute proceedings against the liquidator under section 342.

(4) The court may at the hearing of such proceedings order the liquidator to pay any such dividend which has not been paid or deposited and in addition to pay to the Master for the benefit of the Consolidated Revenue Fund an amount to the amount of such dividend.

(5) Any creditor or member of a company entitled to any dividend may if, payment thereof is delayed, after notice to the liquidator, apply to the court for an order compelling the liquidator to pay that dividend to such creditor or member.

*Payment of money deposited with Master.*

348. Any person claiming to be entitled to any money deposited with the Master by a liquidator under the provisions of this Act may apply to the Master for payment thereof, and the master may, on a certificate by the liquidator or on other sufficient evidence that the person claiming such payment is entitled thereto, pay the amount in question to the person concerned.

PROVISIONS AS TO MEETINGS IN WINDING-UP

*Meetings of creditors and members and voting at meetings of creditors.*

349. (1) In any winding-up of a company, meetings of creditors and members or contributories shall, save as otherwise provided in this Act, be convened and held in the following manner—

(a) in the case of meetings of creditors, as nearly as may be in the manner prescribed for the holding of meetings of creditors under the law relating to insolvency; and

(b) in the case of meetings of members in the manner prescribed by regulation.

(2) The provisions of the Insolvency Act, shall, *mutatis mutandis*, apply to the right of any creditor to vote at a meeting of creditors in winding-up of a company.

*Meetings to ascertain wishes of creditors and members.*

350. Where by this Act the court is authorised, in relation to a winding-up, to have regard to the wishes of creditors or members—

- (a) the value of the respective creditors' claims and the voting rights of the various members of the company in terms of its memorandum or articles shall also be taken into consideration; and
- (b) the court may, if it thinks fit, for the purpose of ascertaining the wishes of such creditors or members direct meetings of the creditors or members to be called, held and conducted in such manner as it directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.

*Duty of directors and officers to attend meetings.*

351. (1) In any winding-up of a company unable to pay its debts, every director and officer of the company shall—

- (a) attend the first and second meetings of creditors of the company, including any such meeting which adjourned, unless the Master has, after consultation with the liquidator, authorised him in writing to absent himself from that meeting;
- (b) attend any subsequent meeting or adjourned meeting of creditors of the company which the liquidator has in writing required him to attend.

(2) The Master or officer who is to preside or presides at any meeting of creditors, may subpoena any person—

- (a) who is known or on reasonable grounds believed to be or to have been in possession of any property which belongs or belonged to the company or to be indebted to the company, or who in the opinion of the Master or such other officer may be able to give material information concerning the company or its affairs, in respect of any time before or after the commencement of the winding-up, to appear at such meetings, including any such meeting which has been adjourned, for the purpose of being interrogated; or
- (b) who is known or on reasonable grounds believed to have in his possession or custody or under his control any book or document containing any such information as referred to in paragraph (a), to produce that book or document or an extract therefrom at any such meeting or adjourned meeting.

(3) Any director or officer of a company who fails to comply with subsection (1) or who fails to comply with the provisions of any subpoena issue against him under subsection (2), shall be guilty of an offence.

*Examination of directors and others at meetings.*

352. (1) The Master or officer presiding at any meeting of creditors of a company which is being wound-up and is unable to pay its debts, may call and administer an oath to or accept an affirmation from any director of the company or any other person present at the meeting who was or might have been subpoenaed in terms of section 351(2)(a), and the Master or such officer and any liquidator of the company and any creditor thereof who has proved a claim

against the company, or the agent of such liquidator or creditor, may interrogate the director or person so called and sworn concerning all matters relating to the company or its business or affairs in respect of any time, either before or after the commencement of the winding-up, and concerning any property belonging to the company:

Provided that the Master or such officer shall disallow any question which is irrelevant or would in his opinion prolong the interrogation unnecessarily.

(2) In connection with the production of any book or document in compliance with a subpoena issued under section 351(2)(b) or the interrogation of a person under subsection (1) of this section, the law relating to privilege as applicable to a witness subpoenaed to produce a book or document or give evidence in a magistrate's court shall apply:

Provided that a banker at whose bank the company concerned keeps or at any time kept an account, shall be obliged, if subpoenaed to do so under section 351(2)(b), to produce—

- (a) any cheque in his possession which was drawn by the company within one year before the commencement of the winding-up; or
- (b) if any cheque so drawn is not available, any records of the payment, the date of payment and the amount of the cheque which may be available to him, or a copy of such record, and shall, if called upon to do so, give any other information available to him in connection with any such cheque or the account of the company.

(3) No person interrogated under subsection (1) shall be entitled at such interrogation to refuse to answer any question upon the ground that the answer would tend to incriminate him.

(4) The Master or officer presiding at any such meeting shall record or cause to be recorded in the manner provided by the rules of court for the recording of evidence in a civil case before a magistrate's court the statement of any person giving evidence under this section:

Provided that if a person who may be required to give evidence under this section, has made to the liquidator or his agent a statement which has been reduced to writing, or has delivered a statement in writing to the liquidator or his agent, such statement may be read by or read over to such person when he is called as a witness under this section and, if then adhered to by him, shall be deemed to be evidence given under this section.

(5) Any evidence given under this section shall be admissible in any proceedings instituted against the person who gave that evidence or the body corporate of which he is or was an officer.

(6) Any person called upon to give evidence under this section may be represented at his interrogation by an attorney with or without counsel.

(7) Any person other than a director or officer of the company concerned subpoenaed to attend a meeting of creditors for the purpose of being interrogated under this section shall be entitled to such witness fees, to be paid out of the funds of the company as he would be entitled to if he were a witness in civil proceedings in a magistrate's court.

(8) Any director or other officer of a company who is called upon to attend any meeting of creditors held after the second meeting or an adjourned second meeting, shall be entitled to an allowance out of the funds of the company to defray his necessary expenses in connection with such attendance.

*Application of provisions of Insolvency Act, 1955.*

353. (1) Sections 66, 67 and 68 of the Insolvency Act, 1955, shall, in so far as they can be applied and are not inconsistent with the provisions of this Act, *mutatis mutandis* apply in relation to—

- (a) any person who is in terms of section 351(1) of this Act required to attend any meeting of a company being wound up and which is unable to pay its debts, as if such person were an insolvent required to attend any meeting referred to in section 64 of the Insolvency Act, 1955; and
- (b) any person subpoenaed in terms of section 351(2) of this Act to attend any meeting of the creditors of such a company or to produce any book or document at any such meeting,

and the provisions of section 65 of the Insolvency Act, 1955, shall, in so far as they can be applied and are not inconsistent with the provisions of this Act, *mutatis mutandis* apply in relation to the production of any book, document or the interrogation of any person under section 357 of this Act, as if such person had been subpoenaed to produce any book or document or were being interrogated under section 65 of the Insolvency Act, 1955.

(2) In applying sections 66, 67 and 68 of the Insolvency Act, 1955, any reference in any of the sections or in section 64 or section 65 of that Act to—

- (a) the estate of an insolvent, shall be construed as a reference to the estate of the company concerned;
- (b) the trustee of an insolvent estate, shall be construed as a reference to the liquidator of such company;
- (c) a meeting of the creditors of an insolvent, shall be construed as a reference to a meeting of the creditors of such company;
- (d) a creditor who has proved a claim against an insolvent estate, shall be construed as a reference to a person who has proved a claim against such company;
- (e) the business, affairs or property of an insolvent, shall be construed as a reference to the business or affairs or property of such company;
- (f) any person indebted to an insolvent estate, shall be construed as a reference to a person indebted to such company; and
- (g) the sequestration of an insolvent estate, shall be construed as a reference to the commencement of the winding-up of such company.

EXAMINATION OF PERSONS IN WINDING-UP

*Summoning and examination of persons as to affairs of company.*

354. (1) In any winding-up of a company unable to pay its debts, the court may at any time after it has made a winding-up order summon before it any director or officer of the company or person known or suspected to have in his possession any property of the company or believed to be indebted to the company, or any person whom the court deems capable of giving information concerning the trade, dealings, affairs or property of the company.

(2) Any person summoned under subsection (1) may be represented at his attendance before the court by an attorney.



(3) The court may examine any person summoned under subsection (1) on oath or affirmation concerning any matter referred to in that subsection, either orally or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(4) Any such person may be required to answer any question put to him at the examination, notwithstanding that the answer might tend to incriminate him, and any answer given to any such question may thereafter be used in evidence against him.

(5) The court may require any such person to produce any books or papers in his custody or under his control relating to the company but without prejudice to any lien claimed with regard to any such books or papers, and the court shall have power to determine all questions relating to any such lien.

(6) If any person who has been duly summoned under subsection (1) and to whom a reasonable sum for his expenses has been tendered, fails to attend before the court at the time appointed by the summons, without lawful excuse made known to the court at the time of its sitting and accepted by it, the court may cause him to be apprehended and brought before it for examination.

(7) Any person who applies for an examination or enquiry in terms of this section or section 355 shall be liable for the payment of costs and expenses incidental thereto, unless the court directs that the whole or any part of such costs and expenses shall be paid out of the assets of the company concerned.

(8) An examination or enquiry under this section or section 355 and any application therefore shall be private and confidential, unless the court, either generally or in respect of any particular person, directs otherwise.

#### *Examination by Commissioners.*

355. (1) Every magistrate and every other person appointed for the purpose by the court shall be a commissioner for the purpose of taking evidence or holding any enquiry under this Act in connection with the winding-up of any company.

(2) The court may refer the whole or any part of the examination of any witness or of any enquiry under this Act to any such Commissioner, whether or not he is within the jurisdiction of the court which issued the winding-up order.

(3) The Master, if he has not himself been appointed under subsection (1) the liquidator any creditor or member of the company may be represented at such an enquiry by Attorney, who shall be entitled to interrogate any witness:

Provided that a commissioner shall disallow any question which is irrelevant or would in his opinion prolong the interrogation unnecessarily.

(4) Section 354 (2), and (4) shall apply, *mutatis mutandis*, in respect of such an examination or enquiry.

(5) A commissioner shall in any matter referred to him have the same powers of summoning witnesses, of requiring the production or delivery of documents and, if the commissioner is a magistrate, of punishing defaulting or recalcitrant witnesses or causing defaulting witnesses to be apprehended and of allowing costs and expenses to witnesses, as the court referred to in section 353.

(6) A commissioner shall report on any examination or enquiry to the court, in such manner as the court directs.

(7) Any witness who has evidence before a court under section 354 or before a commissioner under this section, shall be entitled, at his cost, to a copy of the record of his evidence.

#### DISSOLUTION OF COMPANIES AND OTHER BODIES CORPORATE

##### *Dissolution of companies and other bodies corporate.*

356. (1) In any winding-up, when the affairs of a company have been completely wound up, the Master shall transmit to the Registrar a certificate to that effect and send a copy thereof to the liquidator.

(2) The Registrar shall record the dissolution of the company and shall publish notice thereof in the *Gazette* and in a newspaper circulating in Swaziland.

(3) The date of dissolution of the company shall be the date of recording referred to in subsection (2).

##### *Court may declare dissolution void.*

357. When a company, including any other body corporate, has been dissolved the court may, at any time on an application by the liquidator of the company or by any other person who appears to the court to have an interest, make an order upon such terms as the court thinks fit, declaring the dissolution void, and thereupon any proceedings may be taken against the company as might have been taken if the company had not been dissolved.

##### *Registrar to keep a register of directors of dissolved companies.*

358. (1) The Registrar shall establish and maintain a register of directors of companies which have been dissolved and were unable to pay their debts, and cause to be entered therein, in respect of each such director—

- (a) his full forenames and surname, and any former forenames and surname, his nationality, if not a citizen of Swaziland, his occupation, his date of birth and his last residential and postal addresses;
- (b) the name of the company of which he was a director when such company was dissolved for the reason that it was unable to pay its debts and, where more than one company was dissolved at the same time, the names of those companies;
- (c) the date of his appointment as director;
- (d) the date of dissolution of the company or companies.

(2) The liquidator shall, within fourteen days after the date of the certificate referred to in section 356(1), send to the Registrar on a prescribed form, in duplicate, in respect of each director of the company who was a director thereof at a date within two (2) years before the commencement of the winding-up, the particulars referred to in subsection (1), together with a statement as to which director in his opinion was the effective cause of the company being unable to pay its debts.

(3) The Registrar shall, under cover of a prescribed form send each director one copy of the particulars furnished under subsection (2) in respect of such director, and if the liquidator has in a statement furnished under the subsection expressed any opinion as to which director was the effective cause of the company being unable to pay its debts, the Registrar shall at the same time send a copy of such statement to the director named therein.

(4) A director may within one month of the date of the form referred to in subsection (3), object, by affidavit or otherwise to his name being entered in the register referred to in subsection (1).

(5) If after considering the objections made by or on behalf of a director or if a director fails to object and the Registrar is of opinion that the name of the director should be entered in the register, he shall inform such director accordingly.

(6) The Registrar shall, on the expiry of one month after the date of his decision under subsection (5) or, if an application under subsection (7) is then pending, after the application has been disposed of and the court has not ordered otherwise, enter the name of the director in the register.

(7) Any person aggrieved by the decision of the Registrar to make an entry or not to make an entry in the register, shall be entitled, within one month of the date of such decision, to apply to the court for relief, and the court shall have power to consider the merits of the matter, to receive further evidence and to make any order it deems fit.

(8) Any liquidator who fails to comply with the provisions of subsection (2), shall be guilty of an offence.

(9) Section 10 as to the inspection of documents kept by the Registrar and extracts therefrom certified by the Registrar shall, *mutatis mutandis*, apply to the register to be maintained by him under this section.

#### *Disposal of records of dissolved company.*

359. (1) When any company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidator may be disposed of—

(a) in the case of a winding-up by the court, in such way as the Master may direct;

(b) in the case of a members' voluntary winding-up, in such way as the company by special resolution may direct;

(c) in the case of a creditors' voluntary winding up, in such manner as the creditors may direct.

(2) After five (5) years from the dissolution of the company, no responsibility shall rest on the liquidator, or any person to whom the custody of the books and papers has been committed, by reason of the same not being forthcoming to a person claiming to be interested therein.

### PERSONAL LIABILITY OF DELINQUENT DIRECTORS AND OTHERS AND OFFENCES

#### *Delinquent directors and others to restore property and to compensate the company.*

360. (1) If in the course of the winding-up or judicial management of a company, it appears that any person who has taken part in the formation or promotion of the company, or any past or present director or any officer of the company has misapplied or retained or become liable or accountable for any money or property of the company or has been guilty of any breach of faith or trust in relation to the company the court may, on the application of the Master or of the liquidator or of any creditor or member of the company, enquire into the conduct of the promoter, director or officer concerned and may order 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 sum to the assets of the company by way of compensation in respect of the misapplication, retention, breach of faith or trust as the court thinks just.

(2) Notwithstanding any other penalty or sanction contained in this Act, every director and officer of a company shall be jointly and severally liable for any losses or damages sustained by the company or any other person as a result of failure to comply with the provisions of this Act unless he can show that he did not know of such non-compliance and he could not reasonably have known of such non-compliance.

(3) This section shall apply notwithstanding that the offence is one for which the offender may be criminally responsible.

*Liability of directors and others for fraudulent conduct of business.*

361. If it appears, whether it be in a winding-up, judicial management or otherwise, that any business of the company was or is being carried on recklessly or with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the court may on the application of the Master, the liquidator, the judicial manager, any creditor or member of the company, declare that any person who knowingly was a party to the carrying on of the business in such manner, shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court may direct.

*Wrongful trading.*

362. (1) Subject to subsection (3), if in the course of winding up of a company it appears that subsection (2) of this section applies in relation to a person who is or has been a director of the company, the court, on the application of the liquidator, may declare that that person is to be liable to make such contribution (if any) to the company's assets as the court thinks proper.

(2) This subsection applies in relation to a person if—

- (a) the company has gone into insolvent liquidation;
- (b) at some time before the commencement of the winding up of the company, that person knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation; and
- (c) that person was a director of the company at that time.

(3) The court shall not make a declaration under this section with respect to any person if it is satisfied that after the condition specified in subsection (2)(b) the that person took every step with a view to minimising the potential loss to the company's creditors as (assuming him to have known that there was no reasonable prospect that the company would avoid going into insolvent liquidation) he ought to have taken.

(4) For the purpose subsections (2) and (3), the facts which a director of a company ought to have known, the conclusions which he ought to reach and the steps which he ought to take are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having both—

- (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director in relation to the company; and

(b) the general knowledge, shall and experience that that director has.

(5) The reference in subsection (4) to the functions carried sent in relation to a company by a director of the company includes any functions which he does not carry out but which have been entrusted to him.

(6) For the purposes of this section a company put into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its bet s and other liabilities and the expenses of the winding up.

(7) This section is without prejudice to section 361.

*Proceedings under sections 361 and 362.*

363. (1) If the court makes such declaration under sections 361, it may give such further directions as it thinks proper for the purpose of giving effect to the declaration, and in particular may make provision for making the liability of any such person under the declaration of a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him or any company or person on his behalf or any person claiming as assignee from or through the person liable or any company or person acting on his behalf, and may from time to time make such further orders as may be necessary for the purpose of enforcing any charge imposed under this subsection.

(2) For the purposes of subsection (2), the expression “assignee” includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest was created, but does not include an assignee for valuable consideration given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(3) The section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is made.

*Application of criminal provisions of the law relating to insolvency.*

364. If any person who is or was a director or officer of a company in respect of which a winding up order has been granted, whether or not such order has been discharged or confirmed under this Act, and which is or was unable to pay its debts, has committed any act or made any omission in relation to any assets, books records, documents, business or the affairs of such company, which act or omission, if such act has been committed or such omission had been made by a person whose estate was sequestrated on the date upon which the winding-up of such company commenced, in relation to his assets, books documents business or affairs, or those of his estate, would have constituted an offence under the law relating to insolvency, such past or present director or officer shall be guilty of such offence and liable on conviction to the penalties provided by law insolvency, and all the provisions of the law of insolvency shall, *mutatis mutandis*, apply in respect of such act or omission, the method of establishing it, and such past or present director, officer charged with it.

CHAPTER XV  
JUDICIAL MANAGEMENT

*Circumstances in which company may be placed under judicial management.*

365. (1) If any company by reason of mismanagement or for any other cause—
- (a) is unable to pay its debts or is probably unable to meet its obligations; and
  - (b) has not become or is prevented from becoming a successful concern, and there is a reasonable probability that, if placed under judicial management, it will be able to pay its debts or meet its obligations and become a successful concern.

the court may grant a judicial management order in respect of such company.

(2) An application to court for a judicial management order in respect of any company may be made by any of the persons who are entitled under section 289 to make an application to court for the winding-up of a company, and the provisions of section 289(3) as to the application for winding-up shall, *mutatis mutandis*, apply to an application for a judicial management order.

(3) When an application for the winding-up of a company is made to court under this Act and it appears to the court that if the company is placed under judicial management the grounds for its winding-up may be removed and that it will become a successful concern and that the granting of a judicial management order would be just and equitable, the court may grant such an order in respect of such company.

*Provisional judicial management order.*

366. (1) The court may, on an application under section 365(2) or (3), grant a provisional judicial management order, stating the return day, or dismiss the application or make any other order that it deems just.

- (2) A provisional judicial management order shall contain—
- (a) directions that the company shall be under the management, subject to the supervision of the court, of a provisional judicial manager duly appointed, and that any other person vested with the management of the company's affairs shall from the date of the making of the order be divested thereof;
  - (b) such other directions as to the management of the company, or any matter incidental thereto, including directions conferring upon the provisional judicial manager the power, subject to the rights of the creditors of the company, to raise money in any way without the authority of shareholders as the court may consider necessary,

and may contain directions that while the company is under judicial management, all actions proceedings, the execution of all writs, summonses and other processes against the company be stayed and be not proceeded with without the leave of the court.

(3) The court which has granted a provisional judicial management order, may at any time and in any manner, on the application of the applicant, a creditor or member, the provisional judicial manager or the master, vary the terms of such order or discharge it.

*Custody of property and appointment of provisional judicial manager on the grant of judicial management order.*

367. (1) Upon the granting of a provisional judicial management order, the court shall appoint a provisional judicial manager (who shall not be the auditor of the company or any

person disqualified under this Act from being appointed as liquidator in a winding-up) who shall give such security for the proper performance of his duties in his capacity as such, as the Master may direct, and who shall hold office until discharged by the court as provided in section 369.

(2) As soon as practicable after the granting of such order, the Master shall convene separate meetings of the creditors and members and debenture-holders (if any) of the company for the purposes of referred to in section 369.

*Duties of provisional judicial manager upon appointment.*

368. A provisional judicial manager shall—

- (a) assume the management of the company and recover and reduce into possession all the assets of the company;
- (b) within seven (7) days after his appointment lodge with the Registrar, under cover of the prescribed form, a copy of his letter of appointment as provisional judicial manager; and
- (c) prepare and lay before the meeting convened under section 367 a report containing—
  - (i) an account for the general state of the affairs of the company;
  - (ii) a statement of the reasons why the company is unable to pay its debts or is probably unable to meet its obligations or has not become or is prevented from becoming a successful concern;
  - (iii) a statement of the assets and liabilities of the company;
  - (iv) a complete list of creditors of the company including contingent and prospective creditors, and of the amount and nature of the claim of each creditors;
  - (v) particulars as to the source of sources from which money has been or is to be raised for purposes of carrying on the business of the company; and
  - (vi) the considered opinion of the provisional judicial manager as to the respects of the company becoming a successful concern and of the removal of the facts or circumstances which prevent the company from becoming a successful concern.

*Purpose of meetings convened under section 367(2).*

369. (1) Any meeting convened under section 367(2) shall be presided over by the Master and shall be convened and held in the manner prescribed by section 349 in respect of a meeting in the winding-up of a company.

(2) The purpose of any such meeting shall be—

- (a) to consider the report of the provisional judicial manager under section 368(c) and the desirability or otherwise of placing the company finally under judicial management;

- (b) to nominate the person or persons not being disqualified under section 367(1) whose names shall be submitted to the Master for appointment as final judicial manager or managers; and
- (c) in the case of any such meeting of creditors, the proving of claims against the company.

(3) The chairman of any such meeting shall prepare and lay before the court a report of the proceedings of such meeting, including a summary of the reasons for any conclusion arrived at under subsection (2)(a).

(4) The provisions of this Act relating to the proof of claims against a company which is being wound up and to the nomination, appointment and qualifications of a liquidator of any such company shall, *mutatis mutandis*, apply with reference to the proof of claims against a company which has been placed under judicial management and the nomination, appointment and qualifications of a judicial manager of such a company.

*Return day of provisional order of judicial management and powers of the court.*

370. (1) Any return day fixed under section 366(1) shall not be later than sixty (60) days after the date of the provisional judicial management order but may be extended by the court on good cause shown.

- (2) On such return day, the court may after consideration of the—
  - (a) opinion and wishes of creditors and members of the company;
  - (b) report of the provisional judicial manager under section 368;
  - (c) number of creditors who did not prove claims at the first meeting of creditors and the amounts and nature of their claims;
  - (d) report of the Master; and
  - (e) report of the Registrar,

grant a final judicial management order if it appears to the court that the company will, if placed under judicial management, be able to become a successful concern and that it is just and equitable that it be placed under judicial management, or may discharge the provisional order or make any other order it may deem just.

- (3) A final judicial management order shall contain—
  - (a) directions for the vesting of the management of the company, subject to the supervision of the court, in the final judicial manager the handing over of all matters and the accounting by the provisional judicial manager to the final judicial manager and the discharge of the provisional judicial manager, where necessary; and
  - (b) such other directions as to the management of the company, or any matter incidental thereto, including directions conferring upon the final judicial manager the power, subject to the rights of the creditors of the company, to raise money in any way without the authority of shareholders, as the court may consider necessary.

(4) The court which has granted a final judicial management order, may at any time and in any manner, vary the terms of such order on the application of the Master, the final judicial manager or a representative acting on behalf of the general body of creditors of the



company concerned by virtue of a resolution passed by a majority in value and number of such creditors at a meeting of those creditors.

*Duties of final judicial manager.*

371. A judicial manager shall, subject to the memorandum and articles of company concerned in so far as they are not inconsistent with any direction contained in the relevant judicial management order.—

- (a) take over from the provisional judicial manager and assume the management of the company;
- (b) conduct such management subject to the orders of the court in such manner as he may deem most economic and most promotive of the interests of the members and creditors of the company;
- (c) comply with any direction of the court made in the final judicial management order or any variation thereof;
- (d) lodge with the Registrar within seven days of his appointment or of the cancellation of such judicial management order, as the case may be—
  - (i) a copy of the judicial management order and of the Master's letter of appointment under cover of the prescribed form;
  - (ii) in the event of the judicial management order being cancelled, a copy of the order cancelling it;
- (e) keep such accounting records and prepare such annual financial statements, interim reports and provisional annual financial statements as the company or its directors would have been obliged to keep or prepare if it had not been placed under judicial management;
- (f) convene the annual general meeting and other meetings of members of the company provided for by this Act and in that regard comply with all the requirements with which the directors of the company would in terms of this Act have been obliged to comply if the company had not been placed under judicial management;
- (g) convene meeting of the creditors of the company by notices issued separately on the dates on which the notices convening annual general meetings of the company are issued or to which any interim report is sent out to members and in the case of a private company not later than six (6) months after the end of its financial year, and submit to such meetings reports showing the assets and liabilities of the company, its debts and obligations as verified by the auditor of the company, and all such information as may be necessary to enable the creditors to become fully acquainted with the company's position as the date of the end of the financial year or the end of the period covered by any such interim report or, in the case of a private company, as at a date six (6) months after the end of its financial year;
- (h) lodge with the Master copies of all the documents submitted to the meetings as provided in paragraphs (g) and (h);
- (i) examine the affairs and transactions of the company before the commencement of the judicial management in order to ascertain whether any director, past director, officer or past officer of the company has contravened

or

appears to have contravened any provision of this Act or has committed any other offence, and within six (6) months from the date of his appointment submit to the Master such reports as are in terms of section 368 required to be submitted to the Master by a liquidator, and in relation to which the provisions of such section shall apply;

- (j) examine the affairs and transactions of the company before the commencement of the judicial management in order to ascertain whether any director, past director, officer or past officer of the company is or appears to be personally liable for damages or compensation to the company or for any debts or liabilities of the company, and within six (6) months from the date of his appointment prepare and submit to the Master and to the next succeeding meeting of members and of creditors of the company, a report containing full particulars of any such liability; and
- (k) if at any time he is of the opinion that the continuation of the judicial management will not enable the company to become a successful concern, apply to the court, after not less than fourteen (14) days notice by registered post to all members and creditors of the company, for the cancellation of the relevant judicial management order and the issue of an order for the winding-up of the company.

*Application of assets during judicial management.*

372. (1) A judicial manager shall not without the leave of the court sell or otherwise dispose of any of the company's assets save in the ordinary course of the company's business.

(2) Any money of the company becoming available to the judicial manager shall be applied by him in paying the costs of the judicial management and in the conduct of the company's business in accordance with the judicial management order and so far as the circumstances permit in the payment of the claims of creditors which arose before the date of the order.

(3) The costs of the judicial management and the claims of creditors of the company shall be paid, *mutatis mutandis*, in accordance with the law relating to insolvency as if those costs were costs of the sequestration of estate and those claims were claims against an insolvent estate.

*Remuneration of provisional judicial manager or judicial manager.*

373. (1) The provisional judicial manager or the judicial manager shall be entitled to such remuneration for his services as may be fixed by the Master from time to time.

(2) In fixing the remuneration the Master shall take into account the manner in which the provisional judicial manager or the judicial manager has performed his functions and any recommendation of the members or creditors of the company relating to such remuneration.

*Pre-judicial management creditors may consent to preference.*

374. (1) The creditors of a company whose claims arose before the granting of a judicial management order in respect of such company may at a meeting convened by the judicial manager or provisional judicial manager for the purpose of this subsection, or by the Master in

terms of section 367(2) resolve that all liabilities incurred or to be incurred by the judicial manager or provisional judicial manager in the conduct of the company's business shall be paid in preference to all other liabilities not already discharged exclusive of the costs of the judicial management and thereupon all claims based upon such first-mentioned liabilities shall have preference in the order in which they were incurred over all unsecured claims against the company except claims arising out of the costs of the judicial management.

(2) If a judicial management order is superseded by a winding-up order—

(a) the preference conferred in terms of subsection (1) shall remain in force except in so far as claims arising out of the costs of the winding-up are concerned; and

(b) all claims based on such liabilities incurred by the judicial manager shall be taken to have been proved and the provisions of section 308 shall not apply in respect thereof.

(3) The law relating to insolvency shall, *mutatis mutandis*, apply in connection with the convening of a meeting of creditors referred to in subsection (1), the conduct of such meeting, the right to vote thereat, the manner of voting and the calculation of the value of votes, shall be as if such meeting were a meeting of creditors of an insolvent estate:

Provided that a provisional judicial manager may with the consent of the Master or of the court call a meeting of creditors referred to in subsection (1).

#### *Voidable and undue preferences in judicial management.*

375. (1) Every disposition of its property which if made by an individual could be for any reason be set aside in the event of his insolvency, may if made by a company unable to pay its debts, be set aside by the court at the sit of the judicial manager in the event of the company being placed under judicial management, and the provisions of the law relating to insolvency shall, *mutatis mutandis*, apply in respect of any such disposition.

(2) For the purposes of this section the event which shall be deemed to correspond with a sequestration order under the Insolvency Act, 1955, in the case of an insolvent, shall be presentation to the court of the application in pursuance of which a judicial management order is granted.

#### *Period of judicial management to be discounted in determining preference under mortgage bond.*

376. The time during which any company being a mortgage debtor in respect of any mortgage bond, is subject to a judicial management order, shall be excluded in the calculation of any period of time for the purpose of determining whether such mortgage bond confers any preference in terms of the provision of the Insolvency Act, 1955, as applied to the winding-up of companies by this Act.

#### *Position of auditor in judicial management.*

377. Notwithstanding the granting of a judicial management order in respect of any company and for so long as the order is in force, the provisions of this Act relating to the appointment and reappointment of an auditor and the rights and duties of an auditor shall continue to apply as if any reference in the said provisions to the directors of the company were a reference to the judicial manager.

*Application to judicial management of certain provisions of winding-up.*

378. (1) In every case in which a company is placed under judicial management, the provisions of sections 8, 302, 349, 360, 361, 362, 363 and 364 shall apply as if the company under judicial management were a company being wound up and the judicial manager were the liquidator.

(2) The provisions of section 354 and, if the court so orders, any provision of sections 351, 352, 353 and 365, shall apply in a judicial management as they apply in a winding-up of a company which is unable to pay its debts, and reference to the liquidator being taken to be a reference to the judicial manager.

*Cancellation of judicial management order.*

379. (1) If at any time on application by the judicial manager or any person having an interest in the company it appears to the court which granted a judicial management order that the purpose of such order has been fulfilled or that for any reason it is undesirable that such order should remain in force, the court may cancel such order and thereupon the judicial manager shall be divested of his functions.

(2) In cancelling any such order the court shall give such directions as may be necessary for the resumption of the management and control of the company by the officers thereof, including directions for the convening of a general meeting of members for the purposes of electing directors of the company.

*Regulations.*

380. (1) The Minister may make regulations—

- (a) providing for the conduct and administration of the Office of the Registrar of Companies Office and prescribing the practice and procedure to be observed therein;
- (b) prescribing the practice and procedure to be observed in the office of the Master in connection with the winding-up and judicial management of companies;
- (c) providing for the production of any records in the Office of the Registrar of Companies or the office of the Master by microfilm, microcard, miniature photographic process or any other process deemed suitable by the Minister;
- (d) providing for the use for official purposes and the admissibility in evidence in any proceedings, whether in a court of law or otherwise, of any reproduction contemplated in paragraph (c); and
- (e) providing for the keeping and preservation of any records or any reproduction thereof contemplated in paragraph (c) in the Office of the Registrar of Companies or the office of the Master, the removal from such offices and preservation in any other place of such records and prescribing the circumstances under which any such records may be destroyed;
- (f) prescribing the form and the contents of any return, notice or form provided for by this Act;
- (g) prescribing when an additional copy of documents to be lodged under this Act shall require to be lodged and whether any such additional copy shall be in

the form of a copy certified in the manner prescribed or shall be in duplicate original form;

- (h) in consultation with the Minister responsible for finance, the matters in respect of which fees shall be payable and the tariff of such fees;
- (i) providing for a table of fees, subject to taxation by the Master, which shall be payable to a liquidator as remuneration;
- (j) prescribing a tariff of remuneration payable to any person performing on behalf of a liquidator any act relating to the winding-up of a company, and prohibiting the charging or recovery of remuneration at a higher tariff than the tariff so prescribed;
- (k) prescribing the procedure to be followed with respect to any matter in connection with the winding-up and judicial management of companies;
- (l) as to any matter required or permitted by this Act to be prescribed by regulation; and
- (m) generally, as to any matter which he considers it necessary or expedient to prescribe in order that the purposes of this Act may be achieved.

(2) Any regulations made under subsection (1) may prescribe penalties for any contravention thereof or failure to comply therewith not exceeding a fine of three hundred Emalangeni or imprisonment for a period of twelve months or both such fines and such imprisonment.

*Regulations and rules to remain in force.*

381. Any Regulations or Rules made of the repealed Act shall remain in force until repealed by Regulation or Rule.

*Amendment of schedules.*

382. (1) The Minister may, by notice in the *Gazette* from time to time, amend schedules to this Act.

(2) The provisions of any such notice amending—

- (a) Tables A, or B, C, D and E contained in Schedule 1 shall not apply in relation to any company in respect of which the provisions of the Table in question applied immediately before the date on which the notice took effect;
- (b) Schedule 3 shall not apply in respect of any financial year of any company which ended prior to the date of such notice.

*Application.*

383. (1) This Act shall apply to every company incorporated under the Act, every foreign company and, save as is otherwise provided herein, to every existing company.

(2) Any reference in this Act, expressed or implied, to the date of incorporation of an existing company, shall be construed as a reference to the date on which such company was originally incorporated.

(3) Nothing in this Act contained shall affect any right or privilege acquired or liability incurred by any existing Company or foreign Company, whether by agreement or

otherwise, before the commencement of this Act or affect the validity of the Memorandum and Articles of any such existing Company or the Memorandum of an external Company enforced or deemed to be enforced at such commencement and not in conflict with the provisions of this Act.

*Restricted application.*

384. The provisions of this Act shall not apply—

- (a) to any Company the formation, registration and management whereof are governed by the provisions of any law relating to Building Societies, Insurance Companies, Trade Unions and Employer's Organisation or Co-operative Societies save insofar as may be otherwise provided in any such law;
- (b) with reference to any Company or foreign Company or society which is subject to provisions of any law relating to Banks and Insurance Companies or Societies insofar as those provisions are inconsistent with this Act.

TRANSITIONAL PROVISIONS

*Unlimited companies and partly paid-up shares.*

385. (1) Any existing company which is an unlimited company within the meaning of the repealed Act and which is not converted into a type or form of company under this Act, shall remain on the register of companies as an unlimited company and the provisions of the repealed Act shall, save as is otherwise provided in this Act, continue to apply to such company as if that Act had not been repealed.

(2) Any existing company which has issued any shares which are at the commencement of this Act not fully paid up remain subject to the provision of the Repealed Act in respect of such shares only as if this Act had not been passed.

*Repeal.*

386. (1) The Companies Act, 1912, is hereby repealed.

(2) Notwithstanding the repeal, rules or regulations issued under the repealed Act, shall, to the extent that they are not inconsistent with this Act, continue to be valid unless otherwise revoked under this Act.

(3) The provision of this Act shall not apply—

- (a) to any Company, the formation, registration and management whereof are governed by the provisions of law relating to Building Societies, Insurance Companies, Trade Unions and Employer's Organisation or Co-operative Societies save in so far as may be otherwise provided in any such law;
- (b) to Banks and Insurance Companies or Societies in so far as those provisions are inconsistent with this Act.

SCHEDULE 1

TABLE A

## ARTICLES OF ASSOCIATION OF A PUBLIC COMPANY LIMITED BY SHARES

### *Interpretation*

1. In these articles, unless the context otherwise indicates—
  - (a) “the Act” means the Companies Act, 2009; and
  - (b) “foreign committee” means a committee appointed under article 64 of these articles.

### *Commencement of business.*

2. The directors shall have regard to the restrictions on the commencement of business imposed by section 150 of the Act.

### *Shares and Certificate of Shares.*

3. Subject to the provisions, if any, of the memorandum, and without prejudice to any special rights previously conferred on the holders of existing shares, any share may be issued with such preferred, deferred or other special rights, or subject to such restrictions (whether in regard to dividend, voting, return of share capital or otherwise) as the company may from time to time determine, and the company may determine that any preference shares shall be issued on the condition that they are, or are at the option of the company, liable to be redeemed.
4. Every person whose name is entered in the register of members shall be entitled to one certificate for all the shares registered in his name, or to several certificates, each for a part of such shares. Every share certificate shall specify the number of shares in respect of which it is issued. Every original member shall be entitled to one share certificate free of charge but for every subsequent certificate the directors may make such charge as from time to time they may think fit; Provided that if a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding twenty-five cents, and on such terms, if any, as to evidence and indemnity as the directors may think fit.
5. Share certificates shall be issued under the authority of the directors, or the foreign committee when authorised thereto by resolution of the directors, in such manner and form as the directors shall from time to time prescribe. If any shares are numbered all such shares shall be numbered in numerical progression beginning with the number one, and each share shall be distinguished by its appropriate number, and, if any shares are not numbered, each share certificate in respect of such shares shall be numbered in numerical progression and each share certificate distinguished by its appropriate number and by such endorsement as may be required under section 91(3) of the Act.
6. A certificate for shares registered in the names of two or more persons shall be delivered to the person named in the register as a holder thereof, and delivery of a certificate for a share to that person shall be a sufficient delivery to all joint holders of that share.

### *Variation of Rights*

7. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued

shares of that class or with the sanction of a resolution passed at a separate general meeting of the shares of the class, and the provisions of section 181 of the Act shall, *mutatis mutandis*, apply to the said resolution and meeting as if the resolution were a special resolution. To every such separate general meeting the provisions of these articles relating to general meetings shall, *mutatis mutandis*, apply.

*Register of members.*

8. (a) The company shall maintain at its registered office a register of members of the company as provided in section 104 of the Act. The register of members shall be open to inspection, as provided in section 97 of the Act.

(b) The company may maintain a branch register under section 109 of the Act and the provisions of paragraph (a) shall, *mutatis mutandis*, apply to such register.

*Payment of commission.*

9. (a) The company may pay a commission at a rate not exceeding ten (10) per cent of the issue price of a share to any person in consideration of his subscribing or agreeing to procure or agreeing to procure, whether absolutely or conditionally, subscriptions for any shares of the company.

(b) Such commission may be paid in cash or by the allotment of shares of the company.

(c) The company may, on any issue of shares, pay such brokerage as may be lawful.

*Transfer and transmission of shares.*

10. The instrument of transfer of any share of the company, shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the register of members in respect thereof.

11. Subject to such of the restrictions as may be applicable, any member may transfer all or any of his shares by instrument in writing in any usual or common form or any other form which the directors may approve.

12. The directors may suspend the registration of transfers during the fourteen days immediately preceding any general meeting of the company and at any other times, provided that the periods of suspension shall not in any one year exceed sixty (60) days.

13. The directors may decline to recognise any instrument of transfer unless—

(a) a sum not exceeding E1 is paid to the company in respect thereof;

(b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transfer to make the transfer; and

(c) the share transfer duty thereon has been paid.

14. Every instrument of transfer shall be left at a transfer office of the company at which it is presented for registration, accompanied by a certificate of the shares to be transferred.



Every power of attorney given by a shareholder authorising the transfer of shares, shall when lodged, produced or exhibited to the company or any of its proper officers, be deemed as between the company and the donor of the power to continue and remain in full force and effect, and the company may allow that power to be acted upon until such of the company's transfer offices as the power was lodged, produced, or exhibited as aforesaid. The company shall not be bound to allow the exercise of any act or matter by an agent for a shareholder unless a duly certified copy of that agent's authority be produced and lodged with the company.

15. The executor of the estate of a deceased sole holder of a share shall be the only person recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the executor of the deceased survivor shall be the only persons recognised by the company as having any title to the share.

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

17. The parent or guardian of a minor and the *curator bonis* of a lunatic member and any person becoming entitled to shares in consequences of the death or insolvency of any member of the marriage of any female member or by any lawful means other than by transfer in accordance with these articles, may, upon producing such evidence as sustains the character in which he proposes to act under this article, or of his title, as the directors think sufficient, transfer those shares to himself or any other person subject to the articles as to transfer hereinbefore contained.

This article is hereinafter referred to as the "transmission clause".

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

19. A person who submits proof of his appointment as the executor, administrator, trustee, curator or guardian in respect of the estate of a deceased member of the company or the estate of a member whose estate has been sequestrated, or who is otherwise under a disability or as the liquidator of any body corporate which is a member of the company shall be entitled in the register of members of the company *nominee officii*, and shall thereafter, for all purposes, be deemed to be a member of the company.

#### CONVERSION OF SHARES INTO STOCK

20. The company may by special resolution convert all or any of its paid-up shares into stock, and reconvert such stock into any number of paid-up shares.

21. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same articles as the shares from which the stock arose might prior to conversion have been transferred, or as near thereto as circumstances permit; but the directors

may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of such minimum, but the minimum shall not exceed the nominal amount, in the case of shares of par value or the issue price in the case of shares of par value or the shares from which the stock arose.

22. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges, and advantages as regards dividends, voting at meetings of the company and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any aliquot part of stock as would not, if existing in shares, have conferred privilege or advantage.

23. Such of the articles of the company (other than those relating to share warrants) as are application to shares shall apply to stock, and the word "share" and "shareholder" therein shall include "stock" and "stock-holder".

#### *Share warrants.*

24. The company may issue share warrants, and accordingly the directors or, if so authorised, any foreign committee, may, in their discretion, with respect to any share, on application in writing signed by the person registered as holder of the share, and authenticated by such evidence as the directors or foreign committee may from time to time require as to the identity of the person signing the request, and on receiving the certificate of the share and the stamp duty (if any), on the warrant and such sum as the directors may, from time to time, require, issue a warrant, duly stamped, if stamp duty is payable, stating that the bearer of the warrant is entitled to the shares therein specified.

25. A share warrant shall entitle the bearer to the shares included in it and the shares shall be transferred by the delivery of the share, and the provisions of the articles of the company with respect to transfer and transmission of shares shall not apply thereto.

26. The bearer of a share warrant shall, on surrender of the warrant to the company for cancellation, and on payment of such sum as the directors may from time to time prescribe, be entitled to have his name entered as a member in the register of members in respect of the shares included in the warrant.

27. The bearer of a share warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two (2) clear days from the time of the deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one (1) person shall be recognised as depositor of the share warrant. The company shall, on two (2) days' written notice, return the deposited share warrant to the depositor.

28. Save as herein otherwise expressly provided, no person shall as bearer of a share warrant, sign a requisition for calling a meeting of the company, or attend, or vote, or exercise any other privilege of a member at a meeting of the company, or be entitled to receive any notices from the company, but the bearer of a share warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.

29. The directors may, from time to time, make rules as to the terms on which (if they think fit) a new share warrant or coupon may be issued by way of renewal in case of defacement, loss or destruction.

#### *Alteration of Capital*

30. (a) The company may, from time to time, by special resolution increase the share capital by such sum divided into shares of such amount, as the resolution shall prescribe.

(b) New shares shall be subject to the same provisions as to transfer, transmission and otherwise as the shares in the original capital.

31. The company may, by special resolution—

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

(b) sub-divide its existing shares or any of them into shares of smaller amount than is fixed by its memorandum;

(c) cancel any shares which, at the date of the passing of the resolution, have not been taken by any person, or which no person has agreed to take;

(d) reduce its share capital, any capital redemption fund or any share premium account in any manner and with, and subject to, any incident authorised, and consent required, by law;

(e) subject to the provisions of section 83 of the Act, convert its issued preference shares into shares which can be redeemed.

#### *General Meetings*

32. The company shall hold its first annual general meeting within eighteen months after the date of its incorporation and shall thereafter in each year hold an annual general meeting; Provided that not more than fifteen months shall elapse between the date of one annual general meeting and that of the next and that an annual general meeting shall be held within six (6) months after the expiration of the financial year of the company.

33. Other general meetings of the company may be held at any time.

34. Annual general meetings and other general meetings shall be held at such time and place as the directors shall appoint or at such time and place as is determined if the meetings are convened under section 155(5), 158 or 160 of the Act.

#### *Notice of General Meetings*

35. An annual general meeting and a meeting called for the passing of a special resolution shall be called by not less than twenty-one (21) clear days' notice in writing and any other general meeting shall be called by not less than fourteen (14) clear day's notice in writing. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of the meeting and shall be given in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under these articles, entitled to receive such notices from the company:

Provided that a meeting of the company shall, notwithstanding the fact that it is called by shorter notice than that specified in this article, be deemed to have been duly called if it is so agreed 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 (95) per cent of the total voting rights of all the members.

*Proceedings at general meetings.*

36. The annual general meeting shall deal with and dispose of all matters prescribed by the Act, including the sanctioning of a dividend, the consideration of the annual financial statements, the election of directors and the appointment of an auditor, and may deal with any other business laid before it. All business laid before any other general meeting shall be considered special business.

37. 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. Save as herein otherwise provided, two members present in person, or if the company is a wholly owned subsidiary, the nominee of the holding company, present in person or by proxy, shall be a quorum.

38. If within half an hour after the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to a day not earlier than seven (7) days and not later than twenty-one (21) days after the date of the meeting and if at such adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting the members present in person or by proxy shall be a quorum.

39. Where a meeting has been adjourned as aforesaid, the company shall, upon a date not later than three (3) days after the adjourned, publish in a newspaper circulating in the province where the registered office of the company is situated, a notice stating—

- (a) the date, time and place to which the meeting has been adjourned;
- (b) the matter before the meeting when it was adjourned; and
- (c) the ground for the adjournment.

40. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall elect one of their number to be chairman.

41. 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 at which the adjournment took place. When a meeting is adjourned, the provisions of articles 38 and 39 shall, *mutatis mutandis*, apply to such adjournment.

42. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman or members referred to in section 175(1)(b) of the Act, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or negatived, and an entry to that effect in the book containing the minutes of the proceedings of the company, shall be

conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution. The demand for a poll may be withdrawn.

43. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded, Scrutineers shall be elected to determine the result of the poll. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.

44. A poll demanded on the election of a chairman or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded.

#### *Inspection of minutes.*

45. The minutes kept of every general meeting and annual meeting of the company under section 187 of the Act, may be inspected and copies as provided in section 97 of the Act.

#### *Votes of members.*

46. Subject to any rights or restrictions for the time being attached to any class or classes of shares, on a show of hands every member present in person and if a member is a body corporate, its representative, shall have one vote and on a poll every member present in person or by proxy shall be entitled to exercise the voting rights determined by section 172 of the Act.

47. In the case of joint holders the vote of the person whose name appears first in the register of members and who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders.

48. The present or guardian of a minor, and the *curator bonis* of a lunatic member, and also any person entitled under the transmission clause to transfer any shares, may vote at any general meeting in respect thereof in the same manner as if he were the registered holder of those shares:

Provided that forty-eight (48) hours at least before the time of holding the meeting at which he proposes to vote he shall satisfy the directors that he is such parent, guardian or *curator* or that he is entitled under the transmission clause to transfer those shares, or that the directors have previously admitted his right to vote in respect of those shares. Co-executors of a deceased member in whose name shares stand in the register shall, for the purposes of this article, be deemed to be joint holders of those shares.

49. On a poll, votes may be given either personally or by proxy.

#### *Proxies.*

50. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his agent duly authorised in writing, or, if the appointer is a body corporate, under the hand of an officer or agent authorised by the body corporate. A proxy need not be a member

of the company. The holder of a general or special power of attorney, whether he is himself a member or not, given by a shareholder shall be entitled to attend meetings and to vote, if duly authorised under that power to attend and take part in the meetings.

51. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of such power or authority shall be deposited at the registered office of the company not more than forty-eight (48) hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default of complying herewith the instrument of proxy shall not be treated as valid. No instrument appointing a proxy shall be valid after the expiration of six (6) months from the date when it was signed, unless so specifically stated in the proxy itself, and no proxy shall be used at an adjourned meeting which could not have been used at the original meeting.

52. The instrument appointing a proxy shall be in the following form or as near thereto as circumstances permit.

“ ..... Limited  
I, ....., of .....  
being a member of the ..... Limited, hereby appoint  
..... of ..... or failing him  
..... of ..... or failing him  
..... of .....  
as my proxy to vote for me and on my behalf at the annual general or general meeting (as the case may be) of the company to be held on the .....  
day of ..... and at any adjournment thereof as follows:

	<u>In favour of</u>	<u>Against</u>
Resolution to .....	.....	.....
Resolution to .....	.....	.....
Resolution to .....	.....	.....

(Indicate instruction to proxy by way of a cross in space provided above) Unless otherwise instructed, my proxy may vote as he thinks fit.)

(Note: A member entitled to attend and vote is entitled to appoint a proxy to attend, speak and on a poll vote in his stead, and such proxy need not also be a member of the company.)”

*Directors.*

53. The number of the directors shall not be less than two and the names of the first directors may be determined in writing by a majority of the subscribers of the memorandum. Until directors are appointed, whether or not the directors have been named by a majority of the subscribers of the memorandum, every subscriber of the memorandum shall be deemed for all purposes to be a director of the company.

54. The remuneration of the directors shall, from time to time, be determined by the company in a general meeting.

55. If any directors be called upon to perform extra services or to make any special exertions in going or residing abroad, or otherwise, for any of the purposes of the company, the company may remunerate that director either by a fixed sum or by a percentage of profits or otherwise as may be determined and such remuneration may be either in addition to, or in substitution for, the remuneration determined under article 54.

*Alternate directors.*

56. Each director shall have the power to nominate any person who is a shareholder of the company except where the company is a wholly owned subsidiary, when such person need not be a shareholder) possessing the necessary qualifications of a director, to act as alternate director in his place during his absence or inability to act as such director, provided that the appointment of an alternate director shall be approved by the board, and on such appointment being made, the alternate director shall, in all respects, be subject to the terms, qualifications, and conditions existing with reference to the other directors of the company.

57. The alternative directors, whilst acting in the stead of the directors who appointed them shall exercise and discharge all the powers, duties and functions of the directors they represent shall cease to hold office, whenever the director who appointed him ceases to be a director or gives notice to the secretary of the company that the alternate director representing him has ceased to do so, and in the event of the disqualification or resignation of any alternate director during the absence or inability to act of the director whom he represents, the vacancy so arising shall be filled by the chairman of the directors who shall nominate a person who is a shareholder of the company (except where the company is a wholly owned subsidiary, when such person need not be a shareholder of the company) to fill such vacancy, subject to the approval of the board.

*Powers and duties of directors.*

58. Subject to the provisions of the Act, the memorandum and the articles and to any directions given by special resolution, the business of the company shall be managed by the directors who may exercise all the powers of the company. No alteration of the memorandum or articles and no such direction shall invalidate any prior act of the directors which would have been valid if that alteration had been made or that direction had not been given. The powers given by this regulation shall not be limited by any special power given to the directors by the articles and a meeting of directors at which a quorum is present may exercise all powers exercisable by the directors.

59. The directors may, by power of attorney or otherwise, appoint any person to be the agent of the company for such purposes and on such conditions as they determine, including authority for the agent to delegate all or any of his powers.

*Borrowing powers.*

60. The directors may exercise all the powers of the company to borrow money and to mortgage or bind its undertaking and property or any part thereof, and to issue debentures, denture stock and other securities whether outright or as security for any debt, liability or obligation of the company or of any third party:

Provided that the amount for the time being remaining undischarged in respect of moneys borrowed or secured by the directors as aforesaid (apart from temporary loans

obtained from the company's bankers in the ordinary course of business) shall not at any time, without the prior sanction of the company in general meeting, exceed one-half of the amount of the share premium account (if any) or of the stated capital.

*Managing director.*

61. The directors may, from time to time, appoint one or more of their body to the office of managing director or manager for such term and at such remuneration (whether by way of salary or commission or participation in profits or partly in one way and partly in another) as they may think fit and may revoke such appointment subject to the terms of any agreement entered into in any particular case. A director so appointed shall not, while holding such office, be subject to retirement by rotation, or taken into account in determining the rotation of retirement of directors; but appointment shall determine if he ceases for any reason to be a director.

62. The directors may, from time to time, entrust to or confer upon a managing director or manager, for the time being, such of the powers and authorities vested in them as they may think fit, and may confer such powers and authorities for such time and to be exercised for such objects and purposes and upon such terms and conditions and with such restrictions as they may think expedient, and they may confer such powers and authorities either collaterally or to the exclusion of, or in substitution for, all or any of the powers and authorities of the directors and may from time to time revoke or vary or any of such powers and authorities.

*Minutes.*

63. The directors shall, in terms of section 187 of the Act, cause minutes to be kept—

- (a) of all appointment of officers;
- (b) of names of directors present at every meeting of the company and of the directors; and
- (c) of all proceedings at all meetings of the company and of the directors.

Such minutes shall be signed by the chairman of the meeting at which the proceedings took place or by the chairman of the next succeeding meeting.

*Foreign committees.*

64. The directors may, from time to time, appoint persons resident in a foreign country to be foreign committee for the company in that country with such powers and duties as the directors may from time to time determine. The directors may from time to time establish branch registers of members and transfer offices in foreign countries, close them at any time and may appoint and remove agents for any purposes in any foreign country.

*Disqualification of directors.*

65. The office of director shall be vacated if the director—

- (a) ceases to be a director or becomes prohibited from being a director by virtue of any provision of the Act; or
- (b) without the consent of the company in general meeting holds any other office or profit under the company except that of managing director or manager; or



- (c) resigns his office by notice in writing to the company and the Registrar; or
- (d) for more than six months is absent without permission of the directors from meetings of directors held during that period; or
- (e) is directly or indirectly interested in any contract or proposed contract with the company and fails to declare his interest and the nature thereof in the manner required by the Act.

*Rotation of directors.*

66. At the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being, or if their number is not three or a multiple of three, the number nearest to one-third, shall retire from office.

67. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day, those to retire shall, unless they otherwise agree among themselves, be determined by lot.

68. A retiring director shall be eligible for re-election.

69. The company, at the annual general meeting at which a director retires in the manner aforesaid or at any other general meeting may fill the vacancy by electing a person thereto.

70. If at any meeting at which an election of directors ought to take place the offices of the retiring directors are not filled, unless it is resolved not to fill such vacancies, the meeting shall stand adjourned and the provisions of articles 38 and 39 shall apply, *mutatis mutandis*, to such adjournment, and if at such adjourned meeting the vacancies are not filled, the retiring directors or such of them as have not had their offices filled shall be deemed to have been re-elected at such adjourned meeting unless a resolution for the re-election of any such director shall have been put to the meeting and negatived.

71. The company may, from time to time, in general meeting increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to retire from office.

72. Unless the shareholders otherwise determine in general meeting any casual vacancy on the board of directors may be filled by the directors, but the directors, and may also determine in what rotation such increased or reduced number is to retire from office.

73. The directors shall have power at any time, and from time to time, to appoint a person as an additional director but so that the total number of directors shall not at any time exceed the number fixed according to these articles, and such director shall retire from office at the next following annual general meeting and shall then be eligible for re-election, but shall not be taken into account in determining which directors are to retire by rotation at such meeting.

*Proceedings of directors.*

74. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In the event of an equality of votes, the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time convene a meeting of the directors.

75. Subject to the provisions of section 207 of the Act, a director shall not vote in respect of any contract or proposed contract with the company in which he is interested, or any matter arising therefrom, and if he does so vote, his vote shall not be counted.

76. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall, when the number of directors exceeds three, be three and when the number of directors does not exceed three, shall be two.

77. The continuing directors may act notwithstanding any vacancy on their body, but if and so long as their number is reduced below the number fixed by or pursuant to these articles as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of convening a general meeting of the company, but for no other purpose.

78. The directors may elect a chairman of their meetings and determine the period for which he is to hold office, but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may elect one of their number to be chairman of the meeting.

79. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to the rules that may be imposed on it by the directors.

80. A committee may elect a chairman of its meetings. If no such is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may elect one of their number to be chairman of the meeting.

81. A committee may meet and adjourn as it thinks fit. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the event of an equality of votes the chairman shall have a second or casting vote.

82. All acts done by any meeting of the directors or a committee of directors or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or person acting as aforesaid or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and were qualified to be a director.

#### *Dividends and Reserve*

83. The company in annual general meeting may declare dividends but no dividend shall exceed the amount recommended by the directors.

84. The directors may, from time to time, pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

85. No dividend shall be paid otherwise than as provided in the Act, or bear interest against the company.

86. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think fit as a reserve or reserves, which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the company may be properly applied and, pending such application may, at the like discretion, either be employed

in the business of the company or be invested in such investments (other than also without placing the same to reserve carry forward any profits which they may think prudent not to divide.

87. Notice of any dividend that may have been declared shall be given in the manner hereinafter provided to the persons entitled to share therein.

88. Every dividend or other moneys payable in cash in respect of shares may be paid by cheque, warrant, coupon or otherwise as the directors may, from time to time, determine, by cheque, warrant, coupon or otherwise as the directors may, from time to time, determine, and shall, if paid otherwise than by coupon, either be sent by post to the registered address of the member entitled thereto or be given to him personally, and the receipt or endorsement on the cheque or warrant of the person whose name appears in the register as the shareholder, or his duly authorised agent, or the surrender of any coupon shall be a good discharge to the company in respect thereof. Any one of two or more joint holders may give effectual receipts for any dividends or other moneys payable in respect of the shares held by them as joint holders.

89. The company shall not be responsible for the loss in transmission of any cheque, warrant, coupon or other document sent through the post to the registered address of any member, whether or not it was so sent at his request.

*Accounting records.*

90. The directors shall cause such accounting records as are prescribed by section 245 of the Act to be kept. Proper accounting records shall not be deemed to be kept if there are not kept such accounting records as are necessary fairly to present the state of affairs and business of the company and to explain the transactions and financial position of the trade or business of the company.

91. The accounting records shall be kept at the registered office of the company or at such other place or places as the directors think fit, and shall always be open to inspection by the directors.

92. The directors shall from time to time determine whether and to what extent and at what time and places and under what conditions or regulations the accounting records of the company or any of them shall be open to inspection by members not being directors, and no member (not being a director) shall have any right of inspection any accounting records or documents of the company except as conferred by the Act or authorised by the directors or by the company in general meeting.

*Annual financial statements and interim reports.*

93. The directors shall from time to time, in accordance with sections 247 and 250 of the Act, cause to be prepared and laid before the company in general meeting such annual financial statements, group annual statements and group reports (if any) as are referred to in those sections.

94. The directors shall, in accordance with the provisions of the Act, prepare or cause to be prepared interim reports, a copy of which shall be sent to every member of the company and to the Registrar.

95. A copy of any annual financial statements, group annual financial statements and group reports which are to be laid before the company in annual general meeting, shall not less than twenty-one (21) days before the date of the meeting be sent to every member of, and every holder of debentures of, the company and to the Registrar:

Provided that this article shall not require a copy of those documents to be sent to any person of whose address the company is not aware or to more than one of the joint holders of any shares or debentures.

*Audit.*

96. An auditor shall be appointed in accordance with Chapter X of the Act.

*Notices.*

97. A notice may be given by the company to any member either by advertisement or personally, or by sending it by post in a prepaid letter addressed to such member at his registered address (if any) within Swaziland supplied by him to the company for the giving of notices to him. Any notice which may be given by advertisement shall be inserted in the *Gazette* and in such newspapers as the directors may, from time to time, determine.

98. Whenever a notice is to be given personally or sent by post, the notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register in respect of the share.

99. Whenever a notice is to be personally or sent by post, the notice may be given by the company to the persons entitled to a share in consequence of the death or insolvency of a member, or by sending it through the post in prepaid addressed to them by name, or by the title of representatives of the deceased, or trustees of the insolvent or by any like description, at the address (if any) in Swaziland supplied for the purpose by the persons claiming to be so entitled, or (until such address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or insolvency had not occurred.

100. Notice of every general meeting shall be given in any manner authorised—

- (a) to every member of the company (including bearers of share warrants) except, in the case of notices to be given personally or sent by post, those members who (having no registered address within Swaziland) have not supplied to the company an address within the Swaziland for the giving of notices to them;
- (b) to every person entitled to a share in consequence of the death or insolvency of a member who, but for his death or insolvency, would have been entitled to receive notice of the meeting; and
- (c) to the auditor for the time being of the company.

No other person shall be entitled to receive notice of general meetings.

101. Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and any notice by advertisement shall be deemed to have been given on the day upon which the advertisement was published in the *Gazette*, and in proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

102. A notice given to any member shall be binding on all persons claiming on his death or on any transmission of his interests.

103. The signature to any notice given by the company may be written or printed, or partly written and partly printed.

104. When a given number of days' notice or notice extending over any other period is required to be given, the day of service shall not be counted in such number of days or period.

105. If the company has a seal, it shall not be affixed to any instrument except by the authority of a resolution of the directors, and shall be affixed in the manner and subject to such safeguards as the directors may, from time to time, determine.

*Winding-up.*

106. If the company be wound up, the assets remaining after payment of the debts and liabilities of the company and the costs of the liquidation shall be applied as follows—

- (a) to repay to the members the amounts paid up on the shares respectively held by each of them; and
- (b) the balance (if any) shall be distributed among the members in proportion to the number of shares respectively held by each of them:

Provided that the provisions of this article shall be subject to the rights of the holders of shares, (if any) issued upon special conditions.

107. In a winding-up, any part of the assets of the company, including any shares or securities of other companies, may, with the sanction of a special resolution of the company, be divided among the members of the company in *specie*, or may, with the same sanction, be vested in trustees for the benefit of such members, and the liquidation of the company may be closed and the company dissolved.

TABLE B

ARTICLES OF ASSOCIATION OF A PRIVATE COMPANY LIMITED BY SHARES

1. The regulations contained in Table A (with the exception of regulations 13, 37 and 53) shall apply.
2. The company is a private company and accordingly—
  - (a) the right to transfer shares is restricted in the manner hereinafter prescribed;
  - (b) any invitation to the public to subscribe for any shares or debentures of the company is prohibited.
3. The directors may, in their absolute discretion and without assigning any reason therefor, decline to register any transfer of any share where or not it is a fully paid share.
4. 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; except as herein otherwise provided, two members present in person or by proxy shall be a quorum.
5. Subject to the provisions of the Act, a resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at general meetings (or being corporations by their duly authorised representatives) shall be as valid and effect as if the same had been passed at a general meeting of the company duly convened and held.

6. The subscribers to the memorandum of association shall be the directors of the company and shall hold office until directors are appointed by the company in general meeting.

7. The directors may at any time require any person whose name is entered in the register of members of the company to furnish them with any information, supported (if the directors so require) by a statutory declaration, which they may consider necessary for the purpose of preparing the annual return.

*Note:* Regulations 3 and 4 of this Part are alternative to regulations 13 and 37 respectively of Table A.

**TABLE C**  
**FORM OF MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES**

- 1st. The name of the company is "The Ezulwini Transport Company Limited".
- 2nd. The objects for which the company is established are, "the conveyance of passengers and goods in motor vehicles between such places as the company may from time to time determine, and the doing of all such other things as are incidental or conducive to the attainment of the above object".
- 3rd. The liability of the members is limited.
- 4th. The share capital of the company is E800,000.00 divided into 800,000 shares of E1 each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

<i>Names, Addresses and Descriptions of</i>	<i>Number of shares taken by each Subscriber</i>
<i>Subscribers</i>	

.....	.....
.....	.....

Total Shares taken .....

Dated the ..... day of ....., 20 .....

Witness to the above Signature	Address
.....	.....
.....	.....
.....	.....

**TABLE D**  
**FORM OF ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE**

*Interpretation.*

1. In these articles—

“Act” means the Companies Act, 2001;

“secretary” means any person appointed to perform the duties of the secretary of the company.

Expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form.

Unless the context otherwise, words or expressions contained in these articles shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these articles become binding on the company.

*Members.*

2. The number of members with which the company proposes to be registered is 500, but the directors may from time to time register an increase of members.

3. The subscribers to the memorandum of association and such other persons as the directors shall admit to membership shall be members of the company.

*General meetings.*

4. The company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen (15) months shall elapse between the date of one annual general meeting of the company and that of the next:

Provided that so long as the company holds its first annual general meeting within eighteen (18) months of its incorporation, it need not hold it in the year of its incorporation or in the following year. The annual general meeting shall be held at such time and place as the directors shall appoint.

5. All general meeting other than annual general meetings shall be called extraordinary general meetings.

6. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall be convened on such requisition, or, in default, may be convened by such requisitions, as provided by section 98 of the Act. If at any time there are not within Swaziland sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

*Notice of general meeting.*

7. An annual general meeting and a meeting called for the passing of a special resolution shall be called by twenty-one (21) days' notice in writing at the least, and a meeting of the company other than an annual general meeting or a meeting for the passing of a special resolution shall be called by fourteen (14) days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which

it is given, and shall specify the place, the day and the hour of meeting and, in case of special business, the general nature of that business and shall be given, in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the articles of the company, entitled to receive such notices from the company:

Provided that a meeting of the company shall, notwithstanding that it is called by shorter notice than that specified in this article be deemed to have been duly called if it is so agreed—

- (i) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and
- (ii) in the case of any other meeting, by a majority of the members having a right to attend and vote at the meeting, being a majority together representing not less than ninety-five (95) per cent of the total voting rights at that meeting of all the members.

8. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

*Proceedings at general meetings.*

9. All business shall be deemed special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance sheets, and the reports of the directors and auditors, the election of directors in the place of those retiring and the appointment of, and the fixing of the remuneration, if any, of the auditors.

10. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; except as herein otherwise provided three members present in person shall be a quorum.

11. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case, it shall stand adjourned to the same day in the next week, at the same and place, or to such other time and place as the directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.

12. The chairman, if any, of the board directors shall preside as chairman at every meeting of the company, or if there is no such chairman, or if he shall not be present within fifteen (15) 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 chairman of the meeting.

13. If at any meeting no director is willing to act as chairman or if no director is present within fifteen (15) minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

14. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting



shall be given as in the case of an original meeting. Except as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

15. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded—

- (a) by the chairman;
- (b) by at least three members present in person or by proxy; or
- (c) by any 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.

Unless a poll be so demanded a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost and an entry to that effect in the book containing the minutes of proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution. The demand for a poll may be withdrawn.

16. Except as provided in article 18, if a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

17. In the case of equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

18. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

19. Subject to the provisions of the Act a resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at general meetings (or being corporations by their duly authorised representatives) shall be as valid and effective as if the same had been passed at a general meeting of the company duly convened and held.

#### *Votes of members.*

20. Every member shall have one vote.

21. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in insanity, may vote, whether on a show of hands or on a poll, by his *curator bonis* or any other person appointed by that court and any such *curator bonis* or other person may, on a poll, vote by proxy.

22. No member shall be entitled to vote at any general meeting unless all moneys presently payable by him to the company have been paid.

23. On a poll votes may be given either personally or by proxy.

24. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing, or, if the appointer is a corporation, either under

seal or under the hand of an officer or attorney duly authorised. A proxy need not be a member of the company.

25. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company or at other place within Swaziland as is specified for that purpose in the notice convening the meeting, not more than forty-eight (48) 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 (24) hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.

26. An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit—

“I/We ..... of ..... being a member/members of the above named company, hereby appoint ..... of ..... or failing him ..... of ..... as my/our proxy to vote for me/us on my/our behalf at the (annual or extraordinary, as the case may be) general meeting of the company to be held on the ..... day of ....., 20..... and at any adjournment thereof.

Signed this ..... day of ....., 20.....”

27. Where it is desired to afford members an opportunity of voting for or against a resolution the instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit—

“I/We ..... of ..... being a member/members of the above named company, hereby appoint ..... of ..... or failing him ..... of ..... as my/our proxy to vote for me/us on my/our behalf at the (annual) or extraordinary, as the case may be) general meeting of the company to be held on the ..... day of ....., 20..... and at any adjournment thereof.

Signed this ..... day of ....., 20.....

This form to be used \*in favour of ..... the resolution against

Unless otherwise instructed the proxy will vote as he thinks fit.

\*Strike out whichever is not desired”.

28. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

29. A vote given in accordance a proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, provided that no intimation in writing of such death, insanity or revocation as aforesaid shall have been received by the company at the office before the commencement of the meeting or adjourned meeting at which the proxy is used.

*Corporations acting by representatives at meetings.*

30. Any corporation which is a member of the company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

*Directors.*

31. The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum of association or a majority of them.

32. The remuneration of the directors, if any, shall from time to time be determined by the company in general meeting. Such remuneration shall be deemed to accrue from day to day. The directors may also be paid all travelling, hotel 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 in connection with the business of the company.

*Borrowing powers.*

33. The directors may exercise all the powers of the company to borrow money, and to mortgage or charge its undertaking and property, or any part thereof, and to issue debentures, debenture stock and other securities, whether outright or as security for any debt, liability or obligation of the company or of any third party.

*Powers and Duties of Directors*

34. Subject to the provisions of the Act, the memorandum and the articles and to any directions given by special resolution, the business of the company shall be managed by the directors who may exercise all the powers of the company. No alteration of the memorandum or articles and no such direction shall invalidate any prior act of the directors which would have been valid if that alteration had been made or that direction had not been given. The powers given by this regulation shall not be limited by any special power given to the directors by the articles and a meeting of directors at which a quorum is present may exercise all powers exercisable by the directors.

35. The directors may, by power of attorney or otherwise, appoint any person to be the agent of the company for such purposes and on such conditions as they determine, including authority for the agent to delegate all or any of his powers.

36. The directors may, from time to time, and at any time by power of attorney appoint any company, firm or person or body of persons, whether nominated directly or indirectly by the directors, to be the attorney or attorneys of the company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under these articles) and for such period and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may think fit and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

37. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for moneys paid to the company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the directors shall, from time to time, by resolution determine.

38. The directors shall cause minutes to be made in books provided for the purpose—

- (a) of all appointments of officers made by the directors;
- (b) of the names of the directors present at each meeting of the directors and of any committee of the directors;
- (c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committee of directors,

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

#### DISQUALIFICATION OF DIRECTORS

39. The office of director shall be vacated if the director—

- (a) without the consent of the company in general meeting holds any other office of profit under the company;
- (b) becomes insolvent or makes any arrangement, assignment or composition with his creditors generally;
- (c) becomes prohibited from being a director by the terms of section 208 of the Act or by reason of an order made under section 209 of the Act;
- (d) becomes of unsound mind;
- (e) resigns his office by notice in writing to the company;
- (f) is directly or indirectly interested in any contract with the company and fails to declare the nature of his interest in the manner required by section 207 of the Act; or
- (g) is removed in terms of section 200 of the Act.

A director shall not vote in respect of any contract in which he is interested or any matter arising thereout, and if he does so vote his vote shall not be counted.

#### *Rotation of directors.*

40. At the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being, or if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

41. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

42. A retiring director shall be eligible for re-election.

43. The company at the meeting at which a director retires in the manner aforesaid may fill the vacated office by electing a person thereto, and in default the retiring director shall, if offering himself for re-election, be deemed to have been re-elected, unless at such meeting it

is expressly resolved not to fill such vacated office or unless a resolution for the re-election of such director shall have been put to the meeting and lost.

44. No person other than a director retiring at the meeting shall, unless recommended by the directors, be eligible for election to the office of director at any general meeting unless, not less than three or more than twenty-one (21) days before the date appointed for the meeting, there shall have been left at the registered office of the company notice in writing, signed by a member fully qualified to attend and vote at the meeting for which such notice is given, of his intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected.

45. The company may, from time to time, by ordinary resolution increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

46. The directors shall have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these articles. Any director so appointed shall hold office only until the next following annual general meetings, and shall then be eligible for re-election, but shall not be taken into account in determining the directors who are to retire by rotation at such meetings.

47. The company may by ordinary resolution, of which special notice has been given in accordance with section 163 of the Act, remove any director before the expiration of his period of office notwithstanding anything in these articles or in any agreement between the company and such director. Such removal shall be without prejudice to any claim such director may have for damages for breach of any contract of service between him and the company.

48. The company may by ordinary resolution appoint another person in place of a director removed from office under article 47. Without prejudice to the powers of the directors under article 46 the company in general meeting may appoint any person to be a director either to fill a casual vacancy or as an additional director. The person appointed to fill such a vacancy shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

#### *Proceedings of directors.*

49. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meeting, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors. It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from Swaziland.

50. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two.

51. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the articles of the company as the necessary quorum of directors, the continuing directors or director may act for

the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

52. The directors may elect a chairman of their meetings and determined the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

53. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.

54. A committee may elect a chairman of its meeting; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

55. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairman shall have a second or casting vote.

56. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

57. A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

#### *Secretary.*

58. The secretary shall be appointed by the directors for such term, at such remuneration, if any, and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.

59. A provision of the Act or these articles 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.

#### *The Seal.*

60. The directors shall provide for the safe custody of the seal, which shall only be used by the authority of the directors or of a committee of the directors authorised by the directors in that behalf, and every instrument to which the seal shall be affixed shall be signed by a director and shall be countersigned by the secretary or by a second director or by some other person appointed by the directors for that purpose.

#### *Accounts.*

61. The directors shall cause proper books of account to be kept with respect to—
- (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
  - (b) all sales and purchases of goods by the company; and
  - (c) the assets and liabilities of the company.

Proper books shall not be deemed to be kept if there are not kept such books of accounts as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

62. The books of account shall be kept at the registered office of the company, or, subject to the provisions of the Act, at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

63. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the account and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the company in general meeting.

64. The directors shall from time to time in accordance with the provisions of the Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets, group accounts (if any) and reports as are referred to in those sections.

65. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting, together with a copy of the auditor's report, shall not less than twenty-one (21) days before the date of the date of meeting be sent to every member of, and every holder of debentures, of the company:

Provided that this article shall not require a copy of those documents to be sent to say person of whose address the company is not aware or to more than one of the joint holders of any debentures.

#### AUDIT

66. Auditors shall be appointed and their duties regulated in accordance with sections 236 to 249 of the Act.

#### NOTICES

67. A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within Swaziland) to the address, if any, within Swaziland supplied by him to the company for the giving of notice to him, Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of forty-eight (48) hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

68. Notice of every general meeting shall be given in any manner hereinbefore authorised to—

- (a) every member except those members who (having no registered address within Swaziland) have not supplied to the company an address within Swaziland for the giving of notices to them;
- (b) every person being a legal personal representative or a trustee in insolvency of a member where the member but for his death or insolvency would be entitled to receive notice of the meeting; and
- (c) the auditor for the time being of the company.

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

*Signatures, Full Names, Addresses and Occupations of Subscribers.*

Dated the ..... day of ....., 20.....

Witness to the above signatures .....

Full residential or business address .....

.....

Occupation .....

TABLE E

FORM OF MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE

*Memorandum of Association.*

- 1st. The name of the company is “The Empangeni School Association, Limited”.
- 2nd. The objects for which the company is established are the carrying on of a school for boys in the district of Lobamba and the doing of all such other things as are incidental or conducive to the attainment of the above object.
- 3rd. The liability of the members is limited.
- 4th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company, contracted before he ceases to be a member, and of the costs, charges and expenses of winding up the same and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding E40.

We, the several person whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

*Signatures, Full Names, Addresses and Occupation of Subscribers*

Dated the ..... day of ....., 20.....

Witness to the above signatures .....

Full residential or business address .....

Occupation .....



## SCHEDULE 2

### MATTERS WHICH MUST BE STATED IN A PROSPECTUS IN ADDITION TO THOSE SPECIFIED IN THE ACT

#### *Interpretation.*

For the purposes of this Schedule, unless the context otherwise indicates—

- (a) in respect of any property hired or proposed to be hired by the company, this Schedule shall have effect as if the expression “vendor” included the lessor and the expression “purchase money” included the consideration for the lease;
- (b) “mining company” means, without limiting the generality thereof, any company which carried on or proposes to carry on mining, development or prospecting for or exploitation of any mineral resources, or which acquires or proposes to acquire any mineral rights thereto or options thereon;
- (c) “property” includes movable and immovable property and, without limiting the generality thereof, shares in any other body corporate but does not include any property if its purchase price is not material;
- (d) “the Act” means the Companies Act, 2001;
- (e) “vendor” includes any person who, directly or indirectly, sells or otherwise disposes of property to the company.

#### PART I

#### *Name, address and incorporation.*

1. (a) The name and address of the registered office and of the transfer office, the date of incorporation of the company and, if an external company, the country in which it is incorporated and the date of registration in the Kingdom.

(b) If the company is a subsidiary, the name and address of the registered office of its holding company, or of any body corporate which, had it been registered under the Act, would have been its holding company.

#### *Directors and Management*

2. (a) The names, occupations and addresses of the directors and proposed directors of the company (specifying the chairman and managing director, if any), and their nationalities, if not Swazi.

(b) The term of office for which any director has been or is to be appointed, the manner in and terms on which any proposed director will be appointed and particulars of any right held by any person relating to the appointment of any director.

(c) Particulars of any remuneration or proposed remuneration of the directors or proposed directors in their capacity as directors, managing directors or in any other capacity, whether determined by the articles or not, by the company and any subsidiary.

(d) If the business of the company or its subsidiary or any part thereof is managed or is proposed to be managed by a third party under a contract, the name and address (or the

address of its registered office, if a company) of such third party and a description of the business so managed or to be managed.

(e) The borrowing powers of the company and its subsidiary exercisable by the directors and the manner in which such borrowing powers may be varied.

*Auditor.*

3. The name and address of the auditor of the company.

*Attorney, banker, stockbroker, trustee and underwriter.*

4. The names and addresses of the attorney, banker, stockbroker, trustee, if any, and underwriter, if any.

*Secretary.*

5. The name, address and professional qualification, if any, of the secretary of the company.

*History, state of affairs and prospects of company.*

6. (a) The general history of the company and its subsidiary stating, inter alia—

- (i) the length of time during which the business of the company and of any subsidiary has been carried on;
- (ii) brief particulars of any alteration of capital during the past three years;
- (iii) a summary of any offers of shares of the company to the public for subscription or sale during the preceding three years, the prices at which such shares were offered, the number of shares allotted in pursuance thereof and whether issued to all shareholders in proportion to their shareholdings and, if not, to whom issued, the reasons why the shares were not so issued and the basis of allotment;
- (iv) the date of conversion into a public company.

(b) A general description of the business carried on or to be carried on by the company its subsidiary and, where the company or its subsidiary carried on or proposes to carry on, two or more business which are material having regard to the profits or losses, assets employed or to be employed or any other factor, information as to the relative importance of each such business.

(c) The situation, area and tenure (including in the case of leasehold property the rental and unexpired term of the lease) of the principal immovable property held or occupied by the company and its subsidiary.

(d) Details of any change in the business of the company, if material, during the past five (5) years.

(e) A general description giving a fair presentation of the state of affairs of the company and its subsidiary, including—

- (i) the name, date and place of incorporation and the issued or stated capital of its subsidiary, together with details of the shares held by the holding

company, and the main business of its subsidiary and the date on which it became a subsidiary; and

- (ii) if material, a statement as to the estimated commitments of the company and its subsidiary for the purchase and erection of buildings, plant and machinery, the estimated date of completion and the commencement of the operational use thereof.

(f) For the company and each subsidiary, in respect of each of the preceding five (5) years, particulars of—

- (i) the profits or losses before and after tax;
- (ii) the dividends paid;
- (iii) the dividends paid in cents per share; and
- (iv) the dividend cover for each year,

or where the company is a holding company, the same information, *mutatis mutandis*, for the company in consolidated form.

(g) If any part of the proceeds of the issue of shares is to be applied, directly or indirectly, to the acquisition by the company or its subsidiary of the shares of any other company or body corporate, in consequence of which that company or that body corporate will become a subsidiary of the company, in respect of each of the preceding five years, the same particulars relating to such company or body corporate as are required, *mutatis mutandis*, by subparagraph (f) and a general history of such company or body corporate, as required by subparagraphs (a) and (b).

(h) If any part of the proceeds of the issue of shares is to be applied, directly or indirectly, to the acquisition by the company or its subsidiary of a business undertaking, in respect of each of the preceding five (5) years, particulars relating to such business undertaking of—

- (i) the profits before and after tax;
- (ii) its general history.

(i) The opinion of the directors, stating the grounds therefor, as to the prospects of the business of the company and of its subsidiary and of any subsidiary or business undertaking to be acquired.

#### *Purpose of the offer.*

7. A statement of the purpose of the offer giving reasons why it is considered necessary for the company to raise the capital offered, and if the capital offered is more than the amount of the minimum subscription referred to in paragraph 21, the reasons for the difference between the capital offered and the said minimum subscription.

#### *Share capital of the company.*

8. Particulars of the share capital—

- (a) the authorised and issued share capital, share premium and share capital held in reserve, the number and classes of shares and their nominal value;

- (b) the stated capital, distinguishing between each of the items specified in section 96 of the Act, and, in the case of items (a) and (b), between different classes of shares;
- (c) the number of shares issued and held in the reserve and the classes of shares;
- (d) a description of the respect preferential conversion and exchange rights, rights to dividends, profits or capital of each class, including redemption rights and rights on liquidation or distribution of capital assets;
- (e) the number of founders' and management or deferred shares, if any, and the special rights attaching thereto.

*Loans.*

9. (a) Details of material loans, including debentures, to the company and to its subsidiary at the date of the prospectus, stating—

- (i) whether such loans are secured or unsecured;
- (ii) the names of the lenders if not debenture holders;
- (iii) the amount, terms and conditions of repayment;
- (iv) the rates of interest on each loan; and
- (v) details of the security; if any.

(b) Details of material loans by the company or by its subsidiary, other than in the ordinary course of business, at the date of the prospectus, stating—

- (i) the date of the loan;
- (ii) the person to whom made;
- (iii) the rate of interest;
- (iv) if the loan is in arrears, the last date on which it was paid and paid and the extent of the arrears;
- (v) the period of the loan;
- (vi) the security held;
- (vii) the value of such security and the method of valuation;
- (viii) if the loan is unsecured, the reasons therefor; and
- (ix) if the loan was made to another company, the names and addresses of the directors of such company.

*Options or preferential rights in respect of shares.*

10. The substance of any contract or arrangement or proposed contract or arrangement, whereby any option or preferential right of any kind was or is proposed to be given to any person to subscribe for any shares of the company or its subsidiary or its subsidiary, giving the number and description of any such shares, including, in regard to the option or right, particulars of—

- (a) the period during which it is exercisable;
- (b) the price to be paid for shares subscribed for under it;
- (c) the consideration given or to be given for it;

- (d) the names and addresses of the person to whom it was given, other than to existing shareholders as such or to employee under a *bona fide* staff option scheme;
- (e) if given to existing shareholders as such, material particulars thereof; and
- (f) Any other material fact or circumstance concerning the granting of such option or right.

Subscribing for shares shall, for the purpose of this paragraph, include acquiring them from a person to whom they were allotted or were agreed to be allotted with a view to his offering them for sale.

*Shares issued or to be issued otherwise than for cash.*

11. The number of shares which within the proceeding two years were issued, or were agreed to be issued, by the company or its subsidiary, to any person, otherwise than for cash, and the consideration for which those shares were issued or were agreed to be issued, and the value of the property, if any, acquired or to be acquired.

*Property acquired or to be acquired.*

12. (a) Particulars of any immovable property or other property of the nature of fixed assets purchase or acquired by the company or its subsidiary or proposed to be purchased or acquired, the purchase price of which is to be defrayed in whole or in part out of the proceeds of the issue, or is to be or was within the preceding two years paid in whole or in part in securities of the company or its subsidiary, or out of the funds of the company or its subsidiary, whether in cash or shares, or the purchase or acquisition of which has not been completed at the date of the prospectus, and the nature of the title or interest therein acquired or to be acquired by the company or its subsidiary;

(b) details of the consideration given, or to be given, for the acquisition of any such property, specifying the value payable goodwill, if any;

(c) the names and addresses of the vendors and the consideration received or to be received by each;

(d) brief particulars of any transaction relating to the property completed within the preceding two years in which any vendor of the property to the company or its subsidiary or any person who is or was at the time of the transaction a promoter or a director or proposed director of the company had any interest, direct or indirect: Provided that where the vendors or any of them are a partnership, the members of the partnership shall not be treated as separate vendors; and

(e) particulars of the price at which any such property which is immovable property or an option over immovable property was purchased or sold within three (3) years prior to the date of the prospectus where any promoter or director was a member of a partnership, syndicate or other association of persons which had such an interest, with the dates of any such purchases and sales and the names of any such promoter or director, and the nature and extent of his interest; for the purposes of this subparagraph, shares of a company, the major asset of which immovable property, shall be deemed to be immovable property.

*Amounts paid or payable to promoters.*

13. The amount paid within the preceding two (2) years or proposed to be paid to any promoter, with his name and address, or to any partnership, syndicate or other association of which he is or was a member, and the consideration for such payment, and any other benefit given to such promoter, partnership, syndicate or other association within the said period or proposed to be given, and the consideration for the giving of such benefit.

*Commissions paid or payable in respect of underwriting.*

14. The amount, if any, or the nature and extent of any consideration, paid within the preceding two (2) years, or payable as commission to any person (including commission so paid or payable to any sub-underwriter who is a promoter or director or officer of the company) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions for any shares of the company, the name, occupation and address of each such person, particulars of the amounts underwritten or sub-underwritten by each and the rate of the commission payable for such underwriting or sub-underwriting contract with such person; and if such person is a company, the names of the directors of such company and the nature and extent of any interest, direct or indirect, in such company of any promoter, director or officer of the company in respect of which the prospectus is issued.

*Preliminary expenses and issue expenses.*

15. The amount or estimated amount of preliminary expenses, if incurred within two (2) years of the date of the prospectus, and the persons by whom any of those expenses were paid or are payable, and the amount or estimated amount of the expenses of the issue and the persons by whom any of those expenses were paid or are payable.

*Material contracts.*

16. (a) The dates and the nature of, and the parties to, every material contract entered into by the company or its subsidiary, not being a contract entered into the ordinary course of the business carried on or proposed to be carried on by the company or its subsidiary or a contract entered into more than two (2) years before the date of the prospectus, and a reasonable time and place at which any such contract or a copy thereof may be inspected.

(b) A brief summary of existing contracts or proposed contracts, either written or oral, relating to the directors' and managerial remuneration, royalties, and secretarial and technical fees payable by the company and its subsidiary.

*Interest of directors and promoters.*

17. (a) Full particulars of the nature and extent of any material interest, direct or indirect, of every director or promoter in the promotion of the company and in any property proposed to be acquired by the company out of the proceeds of the issue, and where the interest of such director or promoter consists in being a member of a partnership, company, syndicate or other association of persons, the nature and extent of the interest of such partnership, company, syndicate or other association, and the nature and extent of such director's or promoter's interest in the partnership, company, syndicate or other association.

(b) Full particulars of the nature and extent of any material interest, direct or indirect, of every director or promoter in the property acquired or proposed to be acquired by the company or its subsidiary during the three years preceding the date of the prospectus.

(c) A statement of all sums paid or agreed to be paid within the three years preceding the date of the prospectus to any director or to any company in which he is beneficially interested or of which he is a director, or to any partnership, syndicate or other association of which he is a member, in cash or shares or otherwise, by any person either to induce him to become or to qualify him as a director, or otherwise for services rendered by him or by the company, partnership, syndicate or other association in connection with the promotion or formation of the company.

*Particulars of the offer.*

18. (a) Particulars of the shares offered, including—

- (i) the class of shares;
- (ii) the nominal value of the shares, if applicable;
- (iii) the number of shares offered;
- (iv) the issue price; and
- (v) other conditions of the offer.

(b) Particulars of the debentures offered, including—

- (i) the class of debentures;
- (ii) the conditions of the debentures;
- (iii) if the debentures are secured, particulars of the security, specifying the property comprising the security and the nature of the lien on the property; and
- (iv) other conditions of the offer.

*Time and date of the opening and of the closing of the offer.*

19. The time and date of the opening and of the closing of the subscription lists or of the offer.

*Issue price.*

20. The amount payable by way of premium, if any, on each share which is to be issued or was issued in the five years preceding the date of the prospectus, stating the dates of issue, the reasons for any such premium, and, where some shares were or are to be issued at a premium and other shares at par or at a lower premium, also the reasons for the differentiation, and how any such premium was or is to be dealt with.

*Minimum subscription.*

21. (a) The minimum amount which, in the opinion of the directors, must be raised by the issue of the shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums required to be provided, in respect of each of the following matters—

- (i) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;
- (ii) any preliminary expense payable by the company, and any commission payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares of the company;
- (iii) the repayment of moneys borrowed by the company and its subsidiary in respect of any of the foregoing matters;
- (iv) working capital, stating the specific purposes for which it is to be used and the estimated amount required for each such purpose;
- (v) any other expenditure, stating the nature and purposes thereof and the estimated amount in each case; and

(b) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue, and the sources from which those amounts are to be provided.

*Statement as to adequacy of capital.*

22. A statement that in the opinion of the directors the issued capital of the company (including the amount to be raised in pursuance of this offer) is adequate for the purposes of the business of the company and of its subsidiary, and if they are of the opinion that it is inadequate, the extent of the inadequacy and the manner in which and the sources from which the company and its subsidiary are or are to be financed.

*Statement as to listing on stock exchange.*

23. A statement as to whether or not an application has been made under section 153 of the Act for a listing of the shares offered and the name of the Stock Exchange.

*Requirements for prospectus of mining company.*

24. (a) A report by an expert containing information appropriate to the subject matter of the prospectus and including, if applicable—

- (i) a statement describing briefly the geological characteristics of the occurrence;
- (ii) details of previous operations and production relevant to the workability and playability of the proposed mining operations;
- (iii) survey, drilling and borehole results;
- (iv) or reserves;
- (v) an interpretation of the information available with reference to the viability of the project.

(b) Material information not otherwise required by this Schedule relating to the mineral rights, or any other right to mine, mining title, including any Government mining lease, and immovable property available for the mine, including, if applicable—

- (i) whether the aforesaid is owned by the company, or in process of transfer or is under option or lease;
- (ii) the name of the farm on and district in which each is situated;
- (iii) the area of each;



- (iv) the aggregate price of other consideration for which they were or are to be acquired;
  - (v) relevant details of any option as aforesaid.
- (c) A statement by the directors of the plans for reaching the production stage or for increasing output, including information regarding—
- (i) shaft sinking and development;
  - (ii) capital expenditure for each material state of development.

## PART II

### REPORTS TO BE SET OUT

#### *Report by auditor of company.*

25. (1) A report by the auditor of the company with respect to—
- (a) profits or losses and assets and liabilities, in accordance with subparagraph (2) or (3) of the paragraph, as the case require; and
  - (b) the rates of the dividends, if any, paid by the company in respect of each class of shares of the company in respect of each of the five (5) financial years immediately preceding the issue of the prospectus, giving particulars of each such class of shares on which such dividends were paid and particulars of the cases in which no dividends were paid in respect of any class of any respect of any of those years, and, if no annual financial were made out in respect of any part of the period of five (5) years ending on a date three months before the issue of the prospectus, a statement of that fact.
- (2) If the company has no subsidiary, the report shall—
- (a) in regard to profits or losses, deal with the profits or losses of the company in respect of each of the five (5) financial years immediately preceding the issue of the prospectus; and
  - (b) in regard to assets and liabilities, deal with assets and liabilities of the company at the last date to which the annual financial statement of the company were made out.
- (3) If the company has a subsidiary, the report shall—
- (a) in regard to profits or losses, deal separately with the company's profits or losses as provided by subparagraph (2), and in addition, deal—
    - (i) as a whole with the combined profits or losses of all subsidiaries, as far as they concern members of the company; or
    - (ii) individually with the profits or losses of each subsidiary, so far as they concern members of the company; or
    - (iii) as a whole with the consolidated profits or losses of the company and (so far as concerns members of the company) of all subsidiaries; and
  - (b) in regard to assets and liabilities, deal separately with the company's assets and liabilities as provided by subparagraph (2) and, in addition, deal—

- (i) as a whole with the combined assets and liabilities of all subsidiaries, indicating the interests therein of members other than the company; or
  - (ii) individually with the assets and liabilities of each subsidiary, indicating the interests therein of members other than the company; or
  - (iii) as a whole with the consolidated assets and liabilities of the company and all subsidiaries, indicating the interests therein of members other than the company;
- (c) if a subsidiary incurred losses, state the amounts of such losses and the manner in which provision was made therefor.
- (4) The auditor shall satisfy himself, as far as reasonably practicable, that save as stated in his report—
- (a) the debtors and creditors do not include any accounts other than trade accounts;
  - (b) the provisions for doubtful debts are adequate;
  - (c) adequate provision has been made for obsolete, damaged or defective goods, and for supplies purchased at prices in excess of current market prices;
  - (d) inter company profits in the group have been eliminated;
  - (e) there have been no material changes in the assets and liabilities of the company and of any subsidiary since the date of the last annual financial statements.

*Report by auditor where business undertaking to be acquired.*

26. If the proceeds, or any part of the proceeds, of the issue of the shares or any other funds are to be applied directly or indirectly in the purchase of any business undertaking, a report made by an auditor (who shall be named in the prospectus) upon—

- (a) the profits or losses of the business undertaking in respect of each of the five (5) financial years preceding the date of the prospectus; and
- (b) the assets and liabilities of the business undertaking at the last date to which the financial statements of the business undertaking were made out.

*Report by auditor where body corporate will become a subsidiary.*

27. (1) If the proceeds or any part of the proceeds of the issue of the shares are to be applied, directly or indirectly, in any manner resulting in the acquisition by the company or its subsidiary of shares of any body corporate by reason of which or of anything to be done in consequence thereof in connection therewith, that body corporate will become a subsidiary of the company, a report made by an auditor (who shall be named in the prospectus) upon—

- (a) the profits or losses of the other body corporate in respect of each of the five (5) financial years preceding the date of the prospectus; and
- (b) the assets and liabilities of the other body corporate at the last date of which the annual financial statements of the body corporate were made out.

(2) The said report shall—

- (a) indicate how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company and what allowance would have fallen to be made, in respect of assts and liabilities so dealt with, for other shares, if the company had at all material times held the shares to be acquired; and
- (b) where the other body has a subsidiary, or, had it been a company in terms of the Act, would have had a subsidiary, or, had it been a company in terms of the Act, would have had a subsidiary, deal with the profits or losses and the assets and liabilities of the body corporate and its subsidiary and such other body corporate as would have been its subsidiary if it had been a company in terms of the Act, in the manner provided by paragraph 25(3) in relation to the company and its subsidiary.

*Auditor not qualified to make reports.*

28. Any report by an auditor required by this Schedule shall not be made by any auditor who is a director, officer or employee or a partner of or in the employment of a director, officer or employee of the company or of the company's subsidiary or holding company or of any other subsidiary of the holding company.

*Qualification in respect of references to period of five years.*

29. If in the case of a company which has been carrying on business, or of a business undertaking which has been carried on, for less than five (5) years, the annual financial statements of the company of business undertaking have only have been made out in respect of four (4) years, three (3) years, two (2) years, or one (1) year, this Part of this Schedule shall have effect as if references to four (4) years, three (3) years, two (2) years or one (1) year, as the case may be, were substituted for references to five (5) years.

*Adjustment of figures in reports.*

30. Any report required by this Part of this Schedule shall either indicate by way of note any adjustments as regards the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make these adjustments and indicate that adjustments have been made.

*Report by directors as to material changes.*

31. A report by the directors of the company setting out any material change in the assets or liabilities of the company or any subsidiary which may have taken place between the last date to which the annual financial statements of the company or any subsidiary, as the case may be, were made out, and the date of the prospectus.

PART III

MATTERS WHICH MUST BE STATED IN A PROSPECTUS UNDER  
SECTION 134 OF THE ACT

*Names, addresses and incorporation.*

32. The name and address of the registered office and of the transfer office, and if an external company, or a body corporate incorporated outside the Kingdom, the country in which it is incorporated.

*Description of business.*

33. If there has been a material change in the nature of the activities of the company since the issue of its last financial statements, then a general description of the business carried on by the company and any subsidiary.

*Directors.*

34. The names of the directors of the company.

*Secretary.*

35. The name, address and professional qualifications, if any, of the secretary of the company.

*Purpose of the offer.*

36. A statement of the purpose of the offer, giving reasons why it is considered necessary for the company to raise the capital offered. If it is the intention to acquire a business undertaking or property, a brief history of such business undertaking or property must be given, including—

- (a) particulars of any such business undertaking or property purchased or acquired or proposed to be purchased or acquired by the company or its subsidiary, the purpose price of which is to be defrayed in whole or in part out of the proceeds of the issue;
- (b) the amount, if any, paid or payable as purchase money in cash or shares, for any such business undertaking or property as aforesaid, specifying the amount, if any, payable for goodwill;
- (c) the name and address of any vendor;
- (d) the count payable in cash or shares to any vendor and, where there is more than one vendor or the company is a sub-purchaser, the amount so payable to each vendor.

*Share capital of the company.*

37. Particulars of the share capital—

- (a) the authorised and issued share capital, share premium and share capital held in reserve, the number and classes of shares and their nominal value;
- (b) the stated capital, distinguishing between each of the items specified in subsection (1) of section 96 of the Act, and, in the case of items (a) and (b), between different classes of shares;
- (c) the number of shares issued and held in reserve and the classes of shares;

- (d) a description of the respective preferential, conversion and exchange rights, rights to dividends, profits or capital of each class, including redemption rights and rights on liquidation or distribution of capital assets;
- (e) the number of founders' and management or deferred shares, if any, and any special rights attaching thereto.

*Previous issues of debentures.*

38. Where debentures are offered—

- (a) the aggregate amount raised before the date of the offer by the issue of debentures which have not been redeemed;
- (b) particulars of debentures issued during the preceding period of two years, specifying the classes of debentures, whether secured or unsecured and, if secured, the property comprising the security;
- (c) any material outstanding loans.

*Options or preferential rights in respect of shares.*

39. The substance of any contract or arrangement or proposed contract or arrangement, whereby an option or preferential right of any kind was or is proposed to be given to any person to subscribe for any shares of the company or its subsidiary, giving the number and description of any such shares of the company or its subsidiary, giving the number and description of any such shares, including, in regard to the option or right, particulars of—

- (a) the period during which it is exercisable;
- (b) the price to be paid for shares subscribed for under it;
- (c) the consideration given or to be given for it;
- (d) the names and addresses of the person to whom it was given, other than existing shareholders as such or to employees under a *bona fide* option scheme;
- (e) if given to existing shareholders as such, material particulars thereof; and
- (f) any other material fact or circumstance concerning the granting of such option or right.

*Material contracts.*

40. The dates and nature of, and the parties to, every material contract entered into by the company or its subsidiary, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or its subsidiary or a contract entered into more than two (2) years before the date of the prospectus, and a reasonable time and place at which any such contract or a copy thereof may be inspected.

*Interest of directors.*

41. (a) Full particulars of the nature and extent of any material interest, direct or indirect, of every director in any property proposed to be acquired by the company or its subsidiary out of the proceeds of the issue, and, where the interest of such director consists in being a member of a partnership, company, syndicate or other association of persons, the nature and extent of

the interest of such partnership, company, syndicate or other association, and the nature and extent of such director's interest in the partnership, company, syndicate or other association.

(b) Full particulars of the nature and extent of any material interest, direct or indirect, of every director in the property acquired or proposed to be acquired by the company or its subsidiary during the three years preceding the date of the prospectus.

(c) A statement of all paid or agreed to be paid within the three years preceding the date of the prospectus to any director or to any company in which he is beneficially interested or of which he is a director, or to any partnership, syndicate or other association of which he is a member, in cash or shares or otherwise, by any person either to induce him to become or to director, or otherwise, by any person either to induce him to become or to qualify him as a director, or otherwise for services rendered by him or by the company, partnership, syndicate or other association in connection with the promotion or formation of the company.

*Commissions paid or payable in respect of underwriting.*

42. In respect of the issue, the amount, or the nature and extent of any consideration, paid or payable as commission to any person (including a sub-underwriter who is a director or officer of the company) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions for any shares of the company which are being issued in terms of the prospectus, the name, occupation and address of each such person, particulars of the amounts which has underwritten and the rate of the commission payable for such underwriting to such person; and if such a person is a company, the names of the directors of such company and the nature and extent of any interest, direct or indirect, in such company of any director or other officer of the company in respect of which the prospectus is issued.

*Particulars of the offer.*

43. (a) Particulars of the shares offered, including—

- (i) the class of shares;
- (ii) the nominal value of the shares, if applicable;
- (iii) the number of shares offered;
- (iv) the issue price; and
- (v) other conditions of the offer.

(b) Particulars of debentures offered, including—

- (i) the class of debentures;
- (ii) the conditions of the debentures;
- (iii) if the debentures are secured, particulars of the security, specifying the property comprising the security and the nature of the titled of the property; and
- (iv) other conditions of the offer.

*Time and date of the opening and of the closing of the offer.*

44. The time and date of the opening and of the closing of the subscription lists of the offer.

*Statement where an offer is not underwritten.*

45. In the event of the offer not being underwritten, a statement by the directors of the manner in which, and the sources from which, any shortfall in the amount proposed to be raised by means of the offer is to be financed.

*Report by directors as to material changes.*

46. A report by the directors of the company setting out any material change in the state of the affairs of the company or its subsidiary which may have taken place between the last date to which the interim reports or the annual financial statements were made out and the date of the prospectus.

*Report by auditor where business undertaking is to be acquired.*

47. If the proceeds, or any part of the proceeds, of the issue of the shares are to be applied, directly, in the purchase of any business undertaking, a report made by an auditor (who shall be named in the prospectus) upon—

- (a) the profit or losses of the business undertaking in respect of each of the five (5) financial years preceding the date of the prospectus; and
- (b) the assets and liabilities of the business undertaking at the last date to which the financial statements of the business undertaking were made out.

*Report by auditor where body corporate will become a subsidiary.*

48. (1) If the proceeds or any part of the proceeds of the issue of the shares are to be applied, directly or indirectly, in any manner resulting in the acquisition by the company or its subsidiary of shares of any other body corporate by reason of which or of anything to be done in consequence thereof or in connection therewith, that body corporate will become a subsidiary of the company, a report made by an auditor (who shall be named in the prospectus) upon—

- (a) the profits or losses of the other body corporate in respect of each of the five (5) financial years preceding the date of the prospectus; and
  - (b) the assets and liabilities of the other body corporate at the last date to which the annual financial statements of the body corporate were made out.
- (2) The said report shall—
- (a) indicate how their profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company and what allowance would have fallen to be made, in respect of assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired; and
  - (b) where the other body corporate has a subsidiary or, had it been a company in terms of the Act, would have had a subsidiary, deal with the profit or losses and the assets and liabilities of the body corporate and its subsidiary and such other body corporate as would have been its subsidiary if it had been a company in terms of the Act, in the manner provided by paragraph 25(3) in relation to the company and its subsidiary.

#### PART IV

## DIRECTIONS AS TO THE FORM OF A PROSPECTUS

49. The information required to be stated in a prospectus shall be set out in print or type and shall not be less conspicuous than that in which any additional matter is printed or typed and shall be set out in separate paragraphs under the headings included in this Schedule.

50. A prospectus shall deal with each of the applicable paragraphs of this Schedule under its prescribed heading but not necessarily in the same order, and shall in each case by means of a number in brackets, or otherwise, refer to the number of the paragraph of this Schedule. In the paragraph of the prospectus under the heading “Paragraphs of Schedule 2 which are not applicable”, the numbers of the paragraphs of this Schedule which are not applicable shall be stated.

51. As far as possible the general matter of a prospectus shall be presented in narrative form and statistical matter in tabular form.

## SCHEDULE 3

### REQUIREMENTS FOR ANNUAL FINANCIAL STATEMENTS AND INTERIM REPORTS

#### *Preliminary.*

1. The annual financial statements shall fairly present the state of affairs and operations 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, both by way of figures and by narrative report complementing and explaining where necessary figures in financial statements. The requirements in this respect in relation to interim reports are contained in Part IV of this Schedule.

2. This Schedule has effect in addition to the requirements of the Act in respect of annual financial statements and interim reports.

3. A company may, in addition to matters expressly permitted by this Schedule, give any information required by this Schedule to be stated in a balance sheet or income statement, in the form of a note or annexure thereto if such presentation would be more effective or convenient.

#### *Interpretation.*

4. (1) For the purpose of this Schedule, unless the context otherwise indicates—

“accounting date” means, in the case of annual financial statements, the date on which the financial year of a company terminates and in the case of interim reports, the date on which the accounting period concerned terminates;

“accounting period” means, in the case of annual financial statements, the financial year of the company and in the case of interim reports, the period concerned for which an accounting is required by the Act;

“distributable reserve” means, subject to subparagraph (3) of this paragraph, any amount which has been carried and which may, in accordance with generally accepted accounting practice and legal principles, be taken to the credit of the income statement 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;

“fellow subsidiary” means, in relation to another company, a company which is a subsidiary of the same holding company of which that other company is a subsidiary;

“group annual financial statements” means the annual financial statements in respect of groups of companies as prescribe by section 284 of the Act;

“group of companies” or “group” means a holding company, not itself being a wholly owned subsidiary, together with all the companies being its subsidiaries;

“listed investment” means an investment in regard to which permission has been granted to deal therein on a recognised stock exchange or on any stock exchange of repute outside the Kingdom; and “unlisted investment” shall be construed accordingly;

“material” means anything significant in relation to the circumstances applicable to each company; and “materially” shall have a corresponding meaning;

“provisions” means, subject to subparagraph (3) of this paragraph, any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for an known liability including the liability to each company; and “materially” shall have a corresponding meaning;

“the Act” means the Companies Act, 2001.

(2) In respect of “distributable reserve” and “provision” referred to in subparagraph (1), “liability” includes all liabilities in respect of expenditure contracted for and all disputed or contingent liabilities.

(3) Where—

- (a) any amount written off or retained by way of provision for depreciation, renewals 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, and if, contrary to the opinion of the directors, the auditor considers that an amount should be treated as reserve, he shall report specifically on the subject to the shareholders.

## PART I

### A. BALANCE SHEET

*Share capital and shares.*

5. There shall be stated—

- (a) the authorised and issued share capital;
- (b) the classes of share, their respective number and nominal value, into which the authorised share capital is divided;

- (c) the number of the issued shares and the amount of the issued share capital in respect of each class of shares;
- (d) the stated capital account;
- (e) the amount of the share premium account;
- (f) in respect of redeemable preference shares, the earliest and latest dates on which the company has power to redeem them, whether they must be re-deemed in any event or are liable to be redeemed at the option of the company, and the premium, if any, payable on redemption; and
- (g) in respect of preference shares convertible into ordinary shares, the conditions of conversion, rights of conversion or a note where the conditions may be inspected.

6. The respective aggregate amounts, if material, of reserves and provisions (other than provisions for depreciation, or diminution in value of assets) shall be stated under separate headings and subheading indicating the types of reserves and provisions.

7. In respect of the financial year concerned there shall be stated (unless it is shown in the income statement or a statement or report annexed thereto, or the amount involved is not material)—

- (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.

#### LIABILITIES

##### *Debentures.*

8. There shall be stated—

- (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 where the conditions of conversion are numerous, a note where these conditions may be inspected;
- (b) where any the company's debentures are held by a nominee of, or trustee for, the company, the nominal amount of the debentures and the amount at which they are stated in the books of the company;
- (c) particulars of any redeemed debentures which the company has power to re-issue.

##### *General.*

9. The liabilities shall be summarised with such particulars as are necessary to disclose their general nature and shall be classified under headings and sub-headings appropriate to the company's business and where the amount of any class of liability is not material, it may be included under the same heading as some other class.

*Overdrafts, loans and dividends.*

10. There shall be shown under separate headings—
- (a) the aggregate amount of bank overdrafts;
  - (b) the amounts of loans made to the company, where the date of repayment of the loan is more than one (1) year after the accounting date, the rates of interest in respect thereof, the respective dates of repayment and, if repayment and, if repayable in instalments, the amounts thereof (the matters prescribed in this subparagraph may, if desired, be stated by way of a note);
  - (c) the aggregate amount which has been declared or is recommended for distribution by way of dividend.

*Secured liabilities.*

11. Where any liability of the company is secured by any assets of the company, otherwise than by operation of law, that fact shall be stated, specifying the liability and the assets by which it is secured.

*Indebtedness to companies in group.*

12. There shall be shown under separate headings—
- (a) the aggregate amount of indebtedness (whether on account of loan or otherwise) to the company's subsidiaries;
  - (b) the aggregate amount of the company's indebtedness to all bodies corporate of which it is a subsidiary or a fellow subsidiary, distinguishing between indebtedness in respect of debentures and otherwise.

ASSETS

*General.*

13. The assets shall be summarised with such particulars as are necessary to disclose their general nature and shall be classified under headings and sub-headings appropriate to the company's business and, where the amount of any class of assets is not material, it may be included under the same heading as some other class.

14. Fixed assets, current assets and assets that are neither fixed nor current shall be separately identified.

*Fixed assets.*

15. 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.

16. (1) The method of arriving at the amount of any fixed assets (and asset neither fixed nor current) shall, subject to subparagraph (2), be to take the difference between—

- (a) its cost, or if it stands in 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, for depreciation or diminution of value.

(2) Subparagraph (1) shall not apply—

(a) to assets the replacement of which is provided for wholly or partly—

(i) by making provision for renewals and charging the cost of replacement against the provision so made; or

(ii) by charging the costs of replacement direct to revenue;

(b) to any listed and unlisted investments;

(c) to goodwill, patents or trade marks.

(3) In respect of the assets under each heading whose amount is arrived at in accordance with subparagraph (1) of this paragraph, there shall be shown—

(a) the aggregate of the amounts referred to in paragraph (a) of that subparagraph; and

(b) the aggregate of the amounts referred to in paragraph (b) thereof.

(4) As regards the assets under heading whose amount is not arrived at in accordance with the said subparagraph (1) because their replacement is provided for as mentioned in subparagraph (2)(a) of this paragraph, there shall be stated—

(a) the means by which their replacement is provided for; and

(b) the aggregate amount of the provision, if any, made for renewals and not used.

(5) As regards any land and buildings which are fixed assets, there shall also be stated—

(a) a description of such land and buildings and the situation thereof;

(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 building were carried out:

Provided that where there are more than five different items of land and buildings a company may, if it considers that compliance with this subparagraph would be inconvenient or cumbersome, include the information in a schedule or register and shall in the event state in the balance sheet that the said schedule or register shall be open for inspection by members or their duly authorised agents at the registered office of the company. The provisions of section 97 of the Act in regard to the inspection of a register of members shall, *mutatis mutandis*, apply to the inspection of the said schedule or register: Provided further that the requirements of subparagraph (5)(b), (c) and (d) shall not apply to land and buildings acquired or used solely for the purpose of carrying on mining operations, including housing for mine employees.

(6) As regard any fixed assets referred to in subparagraph (5), the amount of which is arrived at by reference to a valuation, the provisions of subparagraphs (b) and (c) thereof shall not apply, but there shall be stated 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:

Provided that where there are more than different items of land and building which have over the years been severally valued, a company may, if it considered that compliance with this subparagraph would be inconvenient or cumbersome, include the information in a schedule or register and shall in that event state in the balance sheet that the said schedule or register shall be open for inspection by members or their duly authorised agents at the registered office of the company. The provisions of section 97 of the Act in regard to the inspection of the register of members shall, *mutatis mutandis*, apply to the inspection of the said schedule or register.

*Interests in subsidiaries.*

17. The aggregate amount of interests of the company, if a holding, consisting of share of, or amounts owing (whether on account 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 holding company and fellow subsidiaries.*

18. The aggregate amount of the indebtedness to the company of all holding companies and fellow subsidiaries, shall be set out, distinguishing between indebtedness in respect of debentures and otherwise.

*Loans to, and security for directors, managers and employees.*

19. The aggregate amounts of any outstanding loans under section 80(b) and (c) of the Act and the particulars required by sections 255 and 207 of the Act shall be shown under separate headings.

*Goodwill, patents and trade marks.*

20. If the amount of the goodwill and of any patents and trade marks or part of that amount is shown as a separate item in, or is otherwise ascertainable from, the accounting records, or 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 said amount so shown or ascertainable, so far as it is not written off, or, as the case may be, the said amount so far as it is shown or ascertainable, shall be stated as a separate item.

*Investments.*

21. (1) There shall be shown under separate headings the aggregate amounts respectively of the company's listed and unlisted investments, not being interests in subsidiaries dealt with in group annual financial statements.

(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 paragraph 22, the aggregate of the directors' valuation of such investments.

22. Where no directors' valuation as prescribed by paragraph 21(2)(b) is shown, the following information shall be stated in a note or statement 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 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 accounting periods in respect of which they have issued annual financial statements during the company's financial year concerned, after deducting these companies' losses for those period (or vice versa);
- (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 (or vice versa);
- (d) the manner in which any losses have been dealt with in the company's financial statements.

23. There shall be shown in the balance sheet or in an annexure thereto, except in the case where the aggregate amount of the interest of the company consisting of shares, or amounts owing (whether on account of loan or otherwise to another company) is not material, the names of all companies (excluding subsidiary companies) 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. 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.

24. 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: provided that the requirements of this paragraph shall not apply in respect of the proceeds of or profits on the realisation of investments dealt with under paragraph 36(a).

#### *Current assets.*

25. (1) For the purposes of this paragraph, "Stock" means any property, whether corporeal or incorporeal, which the company buys, or manufactures, or processes, or develops or sells in the ordinary course of its business.

(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 sub-headings which shall include, where applicable—

- (a) raw materials (including component parts);
- (b) finished goods;

- (c) merchandise which shall include any form of stock not mentioned in subparagraph (1) and which may itself be shown under appropriate sub-headings;
- (d) consumable stores (including maintenance spares);
- (e) work in progress (including standing crops);
- (f) contracts in progress:

Provided that where the directors are of the opinion that classification into some or all of the categories referred to would result in a failure to present a fair view, then the classification should be reduced to those categories where a fair view would be obtained and the reasons given for indicating all categories.

(3) 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 year;
- (b) whether it is the lower of cost or net realisable or replacement value or other expressly specified value;
- (c) the accounting basis which has been used in determining the value of stock on hand. Where several different bases of determining the value of stock have been used and, in the opinion of the directors, a statement of all the bases used would be of little value to the shareholders, an intelligible summary of the bases used must be stated;
- (d) in the case of work in progress and contracts in progress, whether the value includes both direct costs and overheads;
- (e) in the case of spares held for maintenance purposes, the method of providing for obsolescence employed.

(4) 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.

(5) If in the opinion of the directors any of the current assets have not 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, commissions and discounts.*

26. There shall be stated under separate sub-headings so far as they are not written off—

- (a) the preliminary expenses;
- (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;
- (d) the amount of the discount allowed on any issue of shares at a discount.

*Corresponding accounts of preceding year.*

27. Except in the case of the 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 paragraphs 29 to 36, inclusive, shall be stated by way of a note or in a statement or report annexed to the balance sheet, if not otherwise shown.

*Shares or debentures held by subsidiary.*

29. There shall be stated the number, description and amount of the shares and debentures of the company held by its subsidiaries or their nominees, but excluding any such shares or debentures in respect of which the subsidiary is concerned in a representative capacity or as a trustee under a trust in which neither the company nor any subsidiary thereof 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.

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;
- (b) the price to be paid for share subscribe 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 arrear.

*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, fit if 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 of 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.



*Loans and security to be disclosed by subsidiary.*

35. The following particulars in respect of any funds employed in a loan or security provided by a company shall, if the provisions of section 38 of the Act apply to such loan or security, be stated—

- (a) The name of the company which the loan was directly or indirectly made, or in connection with an obligation of which security was directly or indirectly provided to another person.
- (b) The group relationship between the subsidiary and the company contemplated in subparagraph (a).
- (c) When funds of the subsidiary have been employed in a loan—
  - (i) the date of the loan;
  - (ii) the name of the intermediary concerned if the loan was made indirectly;
  - (iii) the amount of the loan outstanding balance under the loan during the financial year;
  - (iv) the rate at which interest was or is to be paid, the amount paid as interest, and any other consideration which was or is to be given by the borrowing company, covering the whole financial year;
  - (v) the security, if any, obtained in respect of the loan, and if no security was obtained, a statement of that fact;
  - (vi) the terms upon which the loan is being or is to be repaid and, if such terms have not been complied with, the extent of such non-compliance: Provided that, if more than one loan was made by the subsidiary to any particular company on identical terms, such loans may, for purposes of this paragraph, be combined.
- (d) When security has been provided by the subsidiary—
  - (i) the name of the person to whom the security was provided;
  - (ii) the nature of the security;
  - (iii) the date upon which the security was provided;
  - (iv) the amount for which security was provided;
  - (v) the period for which the security will submit or, if terminated, the date of such termination;
  - (vi) the consideration, if any, which was or is to be received by the subsidiary for providing the security;
  - (vii) the payments, if any, made by the subsidiary under or by virtue of its liability in terms of the security, and the amounts, if any, recovered thereafter under or by virtue of any right of recourse.

*Basis of conversion of foreign currency.*

36. The basis on which foreign currencies have been converted into Swazi currency, where the amount of the assets or liabilities affected is material, shall be stated.

**B. INCOME STATEMENT**

37. There shall be shown separately in the income statement—
- (a) profits or losses on share transactions, showing the application of profits or part thereof to write down the amount of the remaining investments, if not already dealt with under paragraph 24;
  - (b) the amount of income from investments, distinguishing between listed and unlisted investments;
  - (c) the aggregate amount of income from subsidiaries, 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 amount charged to revenue by way of provisions (other than provisions for diminution in values of current assets) specifying the nature of each provision of the amount withdrawn from such provisions and not applied for the purpose thereof;
  - (f) the amount provided for taxation (specifying, where material, the origin and different classes of taxes) in respect of the financial concerned and the amount, if any, so provided in respect of any other financial year;
  - (g) the amounts respectively set aside for redemption of shares and of loans;
  - (h) the amount, if material, set aside or proposed to be set aside, to, or withdrawn from, reserves;
  - (i) the amount, if material, of any credit or charge arising in consequence of an event in a preceding financial year;
  - (j) the amount of interest (or other consideration) on any loans, including debentures and bank overdrafts made to the company;
  - (k) the amount of interest on share capital paid out of capital during the financial year concerned and the rate of such interest;
  - (l) the amount paid by way of leasing charged for the use of any asset other than immovable property, which, if owned by the company, would have been subject to a charge for depreciation; and
  - (m) the respective amounts paid as remuneration for managerial, technical, administrative or secretarial services, however described, other than to be *bona fide* employees of the company.
38. The amount for the remuneration of the auditor shall be shown under a separate heading and shall distinguish between the fee for the audit, the fee for other services and his expenses.
39. (1) Unless the directors are of the opinion that the disclosure of the amount of turnover or the percentage increase or decrease of turnover would be harmful or meaningless to the company, and the reasons for such opinion are stated, 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 preceding financial year:

Provided that where by virtue of the nature of the business of the company there could be doubt as to what is meant by turnover, there should be indicated (by way of a note) upon what basis turnover has been determined.

(2) 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.

40. Except in the case of the first income statement, the corresponding amount for the immediately preceding financial year for all items shown in the income statement, shall be stated.

#### NOTES TO THE INCOME STATEMENT

41. The matters referred to in paragraphs 42, 43 and 44 shall be stated by way of a note, if not otherwise shown.

42. 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.

43. If no provision for taxation has been made, that fact, the reason therefor and the financial year in respect of which no provision has been made, shall be stated.

44. There shall be stated any material respects in which any items included in the income statement (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, including the amounts paid as fines in respect of contraventions of the Act; any change in the methods for the determination of the amount of any assets.

#### C. STATEMENT OF SOURCE AND APPLICATION OF FUNDS

45. There shall be annexed to the balance sheet or separately contained therein a statement showing the sources and the application of any funds received and applied during the financial year specifying at least—

(1) funds derived from—

- (a) net income (before deduction of taxes, dividends paid and proposed, and internal provisions and retentions);
- (b) the disposal of specified fixed and other non-current assets;
- (c) the proceeds of loans raised and debentures issued;
- (d) the proceeds of shares issued;
- (e) repayments received on loans and advances made; and
- (f) any reduction in net working capital (being current assets less current liabilities); and

(2) funds applied to—

- (a) meeting any loss;
- (b) the acquisition of specified fixed and other non-current assets;

- (c) the redemption of any loans and debentures;
- (d) loans and advances made and the purposes for which made;
- (e) liabilities for taxes;
- (f) dividends paid and proposed; and
- (g) any increase in net working capital (being current assets less current liabilities).

## PART II

### GROUP ANNUAL FINANCIAL STATEMENTS

#### *Preliminary.*

46. The provisions contained in paragraphs 47 to 50, inclusive, shall apply to all forms of group annual financial statements and shall also apply in respect of the requirements of paragraphs 56 to 59, inclusive, in relation to subsidiaries not dealt with in group annual financial statements.

47. Any profit or loss arising from transactions within the group, in so far as those profits or losses may not have been realised or incurred in respect of a transaction with a person or company 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.

48. Inter-group balances shall be excluded in determining the total assets and liabilities of the group.

49. (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) such holding company is itself the subsidiary of another body corporate; and
- (b) the shares of the subsidiary were acquired from that other body corporate or a subsidiary of it; and
- (c) the profits out of which the dividend is declared accrued after the company became a subsidiary of that other body corporate or of a subsidiary of it.

(2) For the purpose 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 accrued from day to day during that year and be apportioned accordingly.

50. There shall be stated any qualifications contained in the report of the auditors of the subsidiaries on their annual financial statements and any note or saving contained in those financial statements to call attention to the matter which, part from the note or saving, would properly have been referred to in such a qualification, note or saving, in so far as the matter which is the subject of the qualification is not covered by the holding company's own annual financial statements or the annual group financial statements and is material from the point of view of its members.

*Group annual financial statements in the form of consolidated financial statements.*

51. Subject to the provisions of paragraphs 52 to 54, inclusive, the consolidated balance sheet and the consolidated income statement shall combine the information contained in the separate balance sheets and income statements of the holding company and of the subsidiaries dealt with in such consolidated financial statements, but with such appropriate adjustments as may be necessary fairly to present the state of affairs as at the accounting date and the results of the operations during the accounting period, of the group of companies.

52. Subject as aforesaid and to Part V of this Schedule, the consolidated financial statements shall, in giving the said information, comply, so far as practicable, with requirements of this Act and this Schedule as if they were the financial statements of an actual company.

53. Section 258 of the Act (concerning the disclosure of directors' remuneration) shall not, by virtue of the requirements of paragraphs 50 and 51, apply for the purposes of consolidated financial statements.

54. In relation to any subsidiaries of the holding company not dealt with in the consolidated financial statements—

- (a) paragraph 12 (concerning indebtedness to companies in the group), paragraph 17 (concerning interests in subsidiaries), paragraph 18 (concerning indebtedness of holding company and fellow subsidiaries) and paragraph 29 (concerning shares or debentures held by subsidiaries), shall apply for the purposes of such consolidated financial statements as if those statements were the statements of an actual company of which they were the subsidiaries; and
- (b) there shall be annexed the information required by paragraphs 56 to 59, inclusive, in respect of subsidiaries not dealt with in group annual financial statements, but as if reference therein to the holding company's annual financial statements were reference to the consolidated statements.

*Group annual financial statements in a form other than consolidated statements.*

55. Where group annual financial statements are prepared in a form other than consolidated statements 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 of companies as would be in the consolidated financial statements, 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 such 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 the subsidiaries. Provided that non-distributable reserves arising on the acquisition of shares in a subsidiary may be set off against any excess of cost of shares of other subsidiaries over the net asset value of such shares;
- (b) the holding company's share 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 the subsidiaries in the group;

- (d) the interest of the holding company, in so far as it has not been disclosed in the annual group financial statements, 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 preceding accounting date; and
  - (ii) the revenue profits or losses of subsidiaries for the accounting period.

*Requirements in respect of subsidiaries not dealt with in group annual financial statements.*

56. Where a subsidiary is not dealt with in group annual financial statements in terms of section 223 of the Act and the interest in such subsidiary is material in relation to the financial position or the results of the holding company, there shall be included in the annual financial statements of the holding company the information required to be stated in terms of paragraphs 57 to 59, inclusive, and, if any such information is not obtainable, the reasons therefore shall be stated: provided that this paragraph shall not apply to a holding company which is a wholly owned subsidiary of another company.

57. The reasons shall be stated why the subsidiaries or any of them are not dealt with in annual group financial statements.

58. In regard to the shareholders' equity, liabilities and assets of the subsidiaries not dealt with in annual group financial statements there shall be stated the aggregate amount of—

- (a) the cost of the holding company's investment in shares of subsidiaries;
- (b) the excess (if any) of the cost of the shares of the subsidiaries over the net asset value of such 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:

Provided that non-distributable reserves arising on the acquisition of shares in a subsidiary may be set off against any excess of shares of other subsidiaries over the net asset value of such shares;

- (c) the holding company's share 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 by companies in the group;
- (f) fixed assets;
- (g) net current assets;
- (h) goodwill, if any, shown in the books of the subsidiaries in so far as it has not already been absorbed in the calculation referred to in subparagraph (b); and
- (i) separately stated assets not included in subparagraphs (f), (g) and (h).

59. In regard to revenue profits or losses and distributable reserves of the subsidiaries not dealt with in annual group financial statements, there shall be stated the aggregate interest of the holding company in—

- (a) the accumulated revenue or losses and accumulated distributable reserves of subsidiaries for the period from the dates on which they respectively became subsidiaries to the preceding accounting date;
- (b) the revenue profits or losses and distributable reserves attributable to any shares of subsidiaries disposed of during the accounting period;
- (c) the revenue profits or losses of subsidiaries for the accounting period;
- (d) dividends paid or declared by subsidiaries during the accounting period; and
- (e) the revenue profits or losses and distributable reserves at the accounting date not dealt with in the annual financial statements of the holding company.

PART III  
DIRECTORS' REPORT

*Preliminary.*

60. (1) The directors' report shall deal in narrative form with all descriptive matters under appropriate headings and amounts or statistics shall be set out as far as practicable in tabular form.

(2) Any matter not prescribed by this Schedule but which is material for the appreciation of the state of the affairs of the company and its subsidiaries, if any, shall be dealt with in the directors' report under appropriate headings.

(3) Where any amounts are stated, the corresponding amounts, if any, in respect of the immediately preceding accounting period shall be stated.

*General review.*

61. (1) The said report shall generally review the business and operations of the company during the accounting period and the results thereof and shall deal with every fact or circumstance material to the appreciation of the state of the company's affairs by its members including a statement of the estimated proportion of profit or loss attributable to the various classes of business of the company.

(2) The said report shall deal with any material fact or circumstance which has occurred between the accounting date and the date of the report.

*Specific matters.*

62. Unless such information is already given in any document annexed to the annual financial statements, the said report shall state—

- (a) the nature of the business of the company and of its subsidiaries, if any, any major change therein during the accounting period;
- (b) in aggregate figures the amounts and particulars of any shares and debentures issued during the accounting period and the purposes for and circumstances in which such shares and debentures have been issued;
- (c) any major change in the nature of the fixed assets of the company and of its subsidiaries, if any, during the accounting period or any change in policy relating to the use of fixed assets;

- (d) the amount, if any, already paid or declared or proposed to be paid by way of dividend in respect of each class of shares;
- (e) the fact that the business of the company or any part thereof or of a subsidiary has been managed by a third person or a company in which a director has an interest, under any agreement during the accounting period (if it has been so managed) and the name of such third person or company and the director's interest in such company, if material;
- (f) the names of the directors and the secretary, his business and postal addresses, and any changes during the accounting period; and
- (g) the name of the company's holding company and its ultimate holding company, if any, and if any such holding company has been incorporated in a foreign country, the names of the country.

#### MATTERS TO BE STATED WHERE COMPANY IS A HOLDING COMPANY

##### *A. General information.*

63. If the company is at the accounting date a holding company and if it is not itself a wholly owned subsidiary, the directors' report shall in respect of each subsidiary state—

- (a) the name and, if incorporated in a foreign country, the name of that country;
- (b) if any of the business, or part thereof, of any subsidiary controlled by the holding company, have been managed during the accounting period by any third person under an agreement, that fact and the name of such third person; and
- (c) if the financial year of any subsidiary did not end with that of the company—
  - (i) the reasons for that fact; and
  - (ii) the accounting period of such subsidiary in respect of which the information has been included in the annual financial statements of the holding company.

##### *Interest in each subsidiary.*

64. In respect of each subsidiary and any company which was a subsidiary at the preceding accounting date but which is no longer a subsidiary at the accounting date to which the report, refers, and where the interest of the subsidiary is material to the financial position or the results of the holding company, there shall be stated—

- (a) the amount of its issued capital of any class, the proportion thereof held by the holding company, either in its own name or through a nominee or a subsidiary, and any changes in such holdings during the accounting period;
- (b) the amount of the interest of the holding company consisting of shares of the subsidiary or amounts owing to the holding company (whether on account of loan or otherwise) distinguishing shares from indebtedness and any change in such interest during the accounting period.



*Profits and losses of subsidiaries.*

65. In so far as concerns the interest of the holding company in its subsidiaries, there shall be stated the aggregate amount of profits after tax and the aggregate amount of the losses (after taking into account taxation, if any, paid by subsidiaries reporting losses).

C. GENERAL REVIEW OF GROUP

66. The said report shall—

(1) generally review the business and operations of the group of companies during the accounting period and the results thereof and shall deal with every fact or circumstance material to the appreciation of the state of affairs of the group by the members of the holding company; and

(2) deal with any material fact or circumstance which has occurred in the group of companies between the accounting date and the date of the report.

PART IV

INTERIM REPORT AND PROVISIONAL ANNUAL FINANCIAL STATEMENTS

*Preliminary.*

67. (1) The information appearing in the interim report and the provisional annual financial statements shall not require to be audited.

(2) Where amounts are not available from the accounting records in respect of formation to be shown in the interim report and the provisional annual financial statements, any such amount may be stated by way of estimate, provided the fact that it is an estimate is stated.

*Interim report.*

68. (1) The interim report shall deal in narrative form with all descriptive matter under appropriate headings, and amounts or statistics shall be set out as far as practicable in tabular form.

(2) Any matter not prescribed by Part IV of this Schedule but which is material to the appreciation of the result of the operations during the interim accounting period of the company and its subsidiaries (if any) shall be dealt with in the interim report under appropriate headings, and in particular there shall be stated any material change, as compared with the book value, in the net realisable value or replacement value of the assets of which the directors are aware.

(3) Where any amounts are given the corresponding amounts (if any) in respect of the immediately preceding corresponding interim accounting period shall be stated.

69. The interim report shall state—

(a) the net profit or loss, after taxation, of the company for the interim accounting period or, in the case of a holding company, the consolidated net profit or loss, after taxation, for the period;

(b) dividends paid or proposed by the company during the interim accounting period;

- (c) any comments on any fact or circumstances relative to the state of the affairs of the company, and, where applicable, of the group, which are necessary better to appreciate the information given, including information regarding capital commitments, acquisitions and disposals of subsidiaries and changes in the relative holding in any subsidiary;
- (d) the extent, if any, to which any change in the basis of accounting has materially affected the report as compared with previous reports.

*Provisional annual financial statements.*

70. The provisional annual financial statements shall state—
- (a) the net profit or loss, after taxation, of the company for the year or, in the case of a holding company, the consolidated net profit or loss, after taxation, for the accounting period;
  - (b) dividends paid or proposed by the company during the year;
  - (c) any comments on any facts or circumstances relative to the state of the affairs of the company, and, where applicable, of the group, which are necessary better to appreciate the information given, including information regarding capital commitments, acquisitions and disposals of subsidiaries and changes in the relative holding in any subsidiary;
  - (d) the extent, if any, to which any change in the basis of accounting has materially affected the report as compared with previous reports.

SCHEDULE 4

FEES

FIRST TABLE

Table of fees to be paid by a company (other than a foreign company) under this Act.

	<b>Registration fee E</b>
(1) For registration of a company	50.00
(2) For registration of any increase of capital made after the first registration of the company	50.00
(3) Certificate of Incorporation of any company	10.00
(4) Registration of altered memorandum of association and order of court confirming same	30.00
(5) For registration of change of name and issue of certificate thereof	20.00
(4) For registration of any prospectus pursuant to section 44, 35	

SECOND TABLE

Table of fees to be paid a foreign company under this Act.

- |   |          |
|---|----------|
| (1) For the registration of the Charter, Statutes or Memorandum and | 1,000.00 |
|---|----------|

Articles of the company, or other instrument constituting or defining the constitution of the company	
(2) For registration of any alteration in such instrument	200.00
(3) For registration of any document or making a record of any fact authorised or required to be delivered, sent or forwarded to the Registrar and not previously specified	20.00
(4) For any certificate issued by the Registrar of Deeds	20.00
(5) For inspection of any documents relating to any company filed with the Registrar—	
(a) in the case of a private company	5.00
(b) in the case of a public company	10.00
(6) For inspection of the entries in the registers kept by the Register or the Registrar of Deeds relating to any one company	5.00
(7) Copies of any deed or other document—	
(a) when prepared by an official, per 100 words, E75 with minimum of	7.50
(b) when prepared by an applicant, per 100 words, E50 with a minimum of	5.00
(8) For collating documents for certification, for every 100 words or part thereof	50.00

Provided that any person engaged in research work of an historical character or of general public interest may be permitted, subject to such conditions as the Registrar may stipulate, to inspect the records and registers or to make copies of any deed or other document free of the payment of any fee.

**THIRD TABLE**  
**MISCELLANEOUS FEES**

Table of fees to be paid in respect of any company other than a foreign company under this Act.

	E c
(1) For any certificate issued by the Registrar or Registrar of Deeds	3.00
(2) For inspection of any documents relating to any company filed with the Registrar—	
(a) in the case of a private company	1.00
(b) in the case of a public company	2.00
(3) For inspection of the entries in the register kept by the Registrar or the Registrar of Deeds relating to any one company	1.00
(4) Copies of any deed or other document—	
(a) when prepared by an official, per 100 words, E50 with a minimum of	3.00
(b) when prepared by an official, per 100 words, E20 with a minimum of	2.00

- (5) For collating documents for certification, for every 100 words or part thereof 25.00

Provided that any person engaged in the work specified in section 10(2) of the Act of an historical character or of general public interest shall be permitted, to inspect the records and registers to obtain on certificate or to make copies of any deed or other document free of the payment of any fee.

#### FOURTH TABLE

Table of fees to be paid to the Master in connection with winding-up or judicial management of any company.

	E c
(1) For every certificate under the hand of the Master	50.00
(2) For every report prepared by the Master, in the discretion of the Master	1.00 to 50.00
(3) (a) Searching for an entry or for any document or for the inspection of any one record or document whether by an official or a member of the public (but excluding the liquidator) for each search or inspection	10.00
(b) When the result of search or inspection as above is conveyed by letter an additional fee in the discretion of the Master, not exceeding	50.00
(4) For taxing liquidator's remuneration or bill of costs, on every E5 or fraction of E5 of the amount taxed	10.00
(5) For binding documents in each winding up according to the number and volume of the documents in the discretion of the Master	From 1.00 to 10.00
(6) Making copy of any document, per 100 words, E10 with a minimum of	50.00
Photostatic copy, foolscap or smaller size page, each	30.00
Photostatic copy, larger than foolscap size page, each	50.00
(7) On the assets available for distribution (before deducting this fee) among creditors and contributories, of any company in liquidation, including any security taken over by a creditor, an inventory fee to be affixed to the liquidation account: for each E400 or portion of E400 of the gross value of the assets dealt with in such liquidation account	15.00
<i>Note:</i> In the case of a company which has been placed under judicial management and is thereafter wound up, this fee shall not be payable.	
(8) In respect of companies which have been placed under judicial management there shall be paid a stamp fee on the gross value of the assets owned by the company as disclosed by the reports or other information which the judicial manager is required to submit to the Master in terms of the Act for each E400 or portion of E400 of the gross value of the gross value of the asset	15.00

#### FIFTH TABLE

##### *Table of fees payable to liquidator*

- (1) Where the appointment is provisional and—  
 (a) the petition is withdrawn or dismissed; or

(b) the winding-up order is made, but the provisional liquidator is not continued as a liquidator.

a fee to be taxed by the Master, with due regard to the special circumstances of the case.

(2) Where a liquidator is appointed to liquidate the company, he shall be entitled—

(a) to remuneration at the following tariffs—

On the proceeds of the movable property (other than shares or similar securities) sold, or upon the amount collected under promissory notes or book debts, or as rent interest or other income 10 per cent

On the proceeds of immovable property, shares and similar securities sold, life insurance policies and mortgages bonds recovered—

On the first E20,000 5 per cent

On any amount in excess of the first E20,000 3 per cent

If the total remuneration at the rate of 5 per cent on the value of all the assets of the company, with a minimum of E20.50;

(b) to travelling expenses, in the discretion of the Master;

(3) Where the liquidator is appointed for the purpose of carrying out a reconstruction or other scheme by which the affairs of the company are wound up otherwise than by the realisation and distribution of the assets—

On the first E20,000 or fraction thereof 2 per cent

On the next E80,000 or fraction thereof 1 per cent

On the next E100,000 or fraction thereof ½ per cent

On the next E200,000 or fraction thereof ¼ per cent

Thereafter ½ per cent