

**ACTS SUPPLEMENT**

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**Act 1**

*Companies Act*

**2012**

THE COMPANIES ACT, 2012.

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**THE COMPANIES ACT, 2012**

**An Act to amend, replace and reform the law relating to the incorporation, regulation and administration of companies and to make provision for related matters.**

DATE OF ASSENT: 27th August, 2012.

*Date of Commencement:* See Section 1.

BE IT ENACTED by Parliament as follows:

**PART I—PRELIMINARY.****1. Commencement.**

(1) This Act shall come into force on a date appointed by the Minister by statutory instrument.

(2) The Minister may, under subsection (1), appoint different dates for different provisions of this Act.

**2. Interpretation.**

In this Act, unless the context otherwise requires—

“accounts” includes a company’s group accounts whether prepared in the form of accounts or not;

“annual return” means the return required to be made in the case of a company having a share capital, under section 132 and in the case of a company not having a share capital, under section 133;

“approved stock exchange” means a stock exchange approved under section 26 of the Capital Markets Authority Act and includes an interim stock trading facility approved under section 89 of that Act;

“articles” means the articles of association of a company as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained in Table A in the First Schedule to the repealed Companies Act or in Table A in the Third Schedule to this Act;

“book or paper” includes accounts, deeds, writings and documents;

“capital markets authority” means the capital markets authority established by the Capital Markets Authority Act;

“charge” means a form of security for the payment of a debt or performance of an obligation consisting of the right of a creditor to receive payment out of some specific fund or out of the proceeds of the realization of specific property; and includes a mortgage;

“company” means a company formed and registered under this Act or an existing company or a re-registered company under this Act;

“company limited by guarantee” and “company limited by shares” have the meaning assigned to them respectively by section 4(2);

“court” used in relation to a company, means the court having jurisdiction under this Act;

“currency point” has the value assigned to it by the First Schedule to this Act;

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

- “director” includes any person occupying the position of director by whatever name called and shall include a shadow director;
- “document” includes summons, notice, order and other legal process and registers, indices, reports, certificates and accounts and may be in any form including any writing, any material, and any information recorded or stored by means of any mechanical or electronic device and any material derived from them;
- “dormant company” means a company that is not doing business and does not have accounting transactions in a financial year;
- “existing company” means a company formed and registered before the coming into force of this Act;
- “financial year” means in relation to a body corporate, the period in respect of which any financial statements of the body corporate laid before it in a general meeting is made up whether that period is a year or not;
- “group accounts” has the meaning assigned to it by section 157(1);
- “holding company” means a company as defined by section 161;
- “insurance company” means an insurance company within the meaning of the Insurance Act which carries on the business of insurance either solely or in conjunction with any other business or businesses;
- “limited liability company” means a company limited by shares or a company limited by guarantee;
- “lifting the corporate veil” means disregarding the corporate personality of a company in order to apportion liability to a person who carries out any act;
- “members voluntary winding up” has the meaning assigned to it by the law that governs insolvency in Uganda;

“memorandum” means the memorandum of association of a company as originally framed or as altered from time to time;

“Minister” means the Minister responsible for justice;

“officer” in relation to body corporate, includes a director, manager or secretary;

“personal representative” means—

- (a) in the case of a deceased person to whom the Succession Act applies either wholly or in part, his or her executor or administrator;
- (b) in the case of any other deceased person, any person who, under law or custom is responsible for administering the estate of such deceased person;

“printed” means reproduced by original letterpress or by such other means as may be prescribed;

“private company” has the meaning assigned to it by section 5(1);

“prospectus” means a prospectus, notice, circular, advertisement or other invitation, offering to the public securities for subscription or purchase and includes—

- (a) a prospectus relating to an offer of debt securities to the public;
- (b) a prospectus in respect of any other offer of securities to the public;

“registrar” means the registrar of companies or an assistant registrar or other officer performing the duty of registration of companies under this Act;

“repealed Companies Act” means the Companies Act repealed under section 298;

“resolution for reducing share capital” has the meaning assigned to it by section 76(2);

“shadow director” means a person in accordance with whose directions or instructions the directors of a company are accustomed to act but does not include a person who gives advice to the directors in a professional capacity;

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

“share warrant” has the meaning assigned to it by section 95(2);

“statutory meeting” means the meeting required to be held by section 137(1);

“statutory report” has the meaning assigned to it by section 137(2);

“subsidiary” means a subsidiary as defined by section 161;

“unlimited company” has the meaning assigned to it by section 4(3)(c).

(2) A provision of this Act overriding or interpreting a company’s articles, shall, except as otherwise provided by this Act, apply in relation to articles in force at the commencement of this Act, as well as to articles coming into force after the commencement of this Act and shall apply also in relation to a company’s memorandum as it applied in relation to its articles.

### **3. Register of companies.**

There shall be kept by the registrar a record called “the Register of Companies” where all the matters prescribed by this Act shall be entered.

## PART II—INCORPORATION OF COMPANIES AND RELATED MATTERS

**4. Mode of forming an incorporated company.**

(1) Any one or more persons may for a lawful purpose, form a company, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability.

(2) The company may be—

- (a) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them in this Act referred to as “a company limited by shares”; or
- (b) a company having the liability of its members limited by the memorandum to the amount that the members undertake in the memorandum to contribute to the assets of the company if it is being wound up, in this Act referred to as “a company limited by guarantee”;
- (c) a company not having any limit on the liability of its members in this Act referred to as “an unlimited company”; or
- (d) private or public.

*Private companies.***5. Meaning of a private company.**

(1) For the purpose of this Act, “private company” means a company which by its articles—

- (a) restricts the right to transfer its shares and other securities;
- (b) limits the number of its members to one hundred, not including persons who are employed by the company and persons who, have been formerly employed by the company; and

- (c) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

(2) Where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this section, be treated as a single member.

*Public companies*

**6. Meaning of a public company**

A company which is not a private company under section 5 is a public company.

*Memorandum of association*

**7. Requirements with respect to memorandum.**

(1) The memorandum of every company shall be printed in the English language and shall state—

- (a) the name of the company, with “limited” as the last word of the name in the case of a company limited by shares or by guarantee;
- (b) that the registered office of the company is to be situated in Uganda; and
- (c) may also state the objects of the Company.

(2) The memorandum of a company limited by shares or by guarantee must also state that the liability of its members is limited.

(3) The memorandum of a company limited by guarantee must also state that each member undertakes to contribute to the assets of the company if it is being wound up while he or she is a member or within one year after he or she ceases to be a member, for payment of the debts and liabilities of the company contracted before he or she ceases to be a member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves such amount as may be required, not exceeding a specified amount.

(4) In the case of a company having a share capital—

- (a) the memorandum must also, unless the company is an unlimited company, state the amount of share capital with which the company proposes to be registered and the division of that share capital into shares of a fixed amount;
- (b) a subscriber of the memorandum may not take less than one share; and
- (c) each subscriber shall write opposite his or her name the number of shares he or she takes.

(5) Notwithstanding subsection (1)(c), where the company's memorandum states that the object of the company is to carry on business as a general commercial company the memorandum shall state that—

- (a) the object of the company is to carry on any trade or business whatsoever; and
- (b) the company has power to do all such things as are incidental or conducive to the carrying on of any trade or business by it.

## **8. Signature of memorandum.**

(1) The memorandum shall be dated and shall be signed by each subscriber in the presence of at least one attesting witness who shall state his or her occupation and postal address.

(2) Opposite the signature of every subscriber there shall be written in legible characters his or her full name, occupation and postal address.

## **9. Restriction on alteration of memorandum.**

A company may not alter the conditions contained in its memorandum except in the cases in the mode and to the extent for which express provision is made in this Act.

**10. Mode in which and extent to which objects of company may be altered.**

(1) A company that has included in its memorandum its objects, may, by special resolution, alter its memorandum with respect to the objects of the company, so far as may be required to enable it to—

- (a) carry on its business more economically or more efficiently;
- (b) attain its main purpose by new or improved means;
- (c) enlarge or change the local area of its operations;
- (d) carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company;
- (e) restrict or abandon any of the objects specified in the memorandum;
- (f) sell or dispose of the whole or any part of the undertaking of the company; or
- (g) amalgamate with any other company or body of persons, except that if an application is made to the registrar in accordance with this section for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the registrar.

(2) A resolution under this section may be passed—

- (a) by the holders of not less in aggregate than fifteen percent in nominal value of the company's issued share capital or any class of them, if the company is not limited by shares, not less than fifteen percent of the company's members; or
- (b) by the holders of not less than fifteen percent of the company's debentures entitling the holders to object;

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

(3) An application for the cancellation of a resolution altering the memorandum shall be made to the registrar within twenty-one days after the date on which the resolution altering the memorandum was passed.

(4) On application to the registrar under sub section (3), the registrar may make an order cancelling the alteration or confirming the alteration either wholly or in part.

(5) Where parties propose an arrangement, the registrar shall adjourn the proceedings in order to allow an arrangement to be made for the purchase of the interests of the dissenting members and may give such directions and directions as he or she may think fit.

(6) Where an arrangement is proposed to be entered into in accordance with sub section (5), no part of the capital of the company shall be expended in any such purchase.

(7) The debentures entitling the holders to object to alterations of a company's objects shall be any debentures secured by a floating charge or which form part of the same series as any debentures issued.

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

(9) In the case of a company which is, by virtue of a licence from the registrar exempt from the obligation to use the word "limited" as part of its name, a resolution altering the company's objects shall also require the same notice to the registrar as to members of the company.

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

- (a) if no application for cancellation is made to the registrar under this section, it shall, within fourteen days from the end of the period for making the application deliver to the registrar a printed copy of its memorandum as altered; and
- (b) if the application for cancellation is made, the registrar shall stay registration of the resolution for alteration until the application is heard and disposed of.

*Articles of Association.*

**11. Articles prescribing regulations for companies.**

It shall be lawful for a company to register in addition to its memorandum and articles of association, such regulations of the company as the company may deem necessary.

**12. Regulations required in case of unlimited company or company limited by guarantee.**

(1) In the case of an unlimited company, the articles must state the number of members with which the company proposes to be registered and, if the company has a share capital, the amount of share capital with which the company proposes to be registered.

(2) In the case of a company limited by guarantee, the articles must state the number of members with which the company proposes to be registered.

(3) Where an unlimited company or a company limited by guarantee has increased the number of its members beyond the registered number, it shall, within fourteen days after the increase was resolved on or took place, give to the registrar notice of the increase and the registrar shall record the increase.

(4) Where default is made in complying with subsection (3), the company and every officer of the company who is in default is liable to a default fine of twenty five currency points.

**13. Adoption and application of Table A.**

(1) Articles of association may adopt all or any of the regulations contained in Table A.

(2) In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered or, if articles are registered in so far as the articles do not exclude or modify the regulations contained in Table A, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in the duly registered articles.

**14. Adoption and application of Table F.**

(1) A public company shall, at the time of registration of its articles, adopt and incorporate into its articles the provisions of the code of corporate governance contained in Table F.

(2) A private company may, at the time of registration of its articles or subsequently, adopt and incorporate into its articles the provisions of the code of corporate governance contained in Table F.

(3) Where a company adopts all or any Part of the codes in Table F, a printed copy of that table shall be annexed to or incorporated in each copy of its articles of association.

(4) A company that has adopted the code of corporate governance shall annually file a statement of compliance with the registrar and the Capital Markets Authority.

(5) A company that fails to comply with sub section (4) shall be liable to pay a fine of fifty currency points.

(6) The Minister shall in consultation with the Capital Markets Authority by statutory instrument amend Table F.

**15. Printing and signature of articles.**

Articles shall be—

- (a) in the English language;
- (b) printed;
- (c) divided into paragraphs numbered consecutively; and
- (d) signed by each subscriber to the memorandum of association in the presence of at least one witness who shall attest the signature and add his or her occupation and postal address.

**16. Alteration of articles by special resolution.**

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

(2) An alteration made under subsection (1) in the articles shall, subject to this Act, be as valid as if originally contained in the articles and be subject to alteration by special resolution.

*Form of memorandum and articles.*

**17. Statutory forms of memorandum and articles.**

The form of—

- (a) the memorandum of association of a company limited by shares;
- (b) the memorandum and articles of association of a company limited by guarantee and not having a share capital; and
- (c) the memorandum and articles of association of an unlimited company having a share capital,

shall be respectively in accordance with the forms set out in Tables B, C, D and E in the Third Schedule to this Act or as near to them as circumstances permit.

**18. Form for registration of a company.**

(1) A company shall be registered by filling in the particulars contained in the registration form in the second schedule to this Act.

(2) On filing of the form under sub section (1), the registrar shall register the company and assign to it a registration number if the registrar is satisfied that the applicant has complied with the Act.

(3) On registration of the company, the registrar shall issue a certificate signed by him or her that the company is incorporated and in the case of a limited liability company, that the company is limited.

**19. Registration of memorandum and articles.**

(1) The memorandum and the articles, if any, shall be delivered to the registrar and he or she shall retain and register them and shall assign a registration number to each company so registered.

(2) A company shall indicate its registration number on all its official documents.

**20. Lifting the corporate veil.**

The High Court may, where a company or its directors are involved in acts including tax evasion, fraud or where, save for a single-member company, the membership of a company falls below the statutory minimum, lift the corporate veil.

**21. Effect of memorandum and articles.**

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

(2) All money payable by any member to the company under the memorandum or articles shall be a debt due from him or her to the company.

## **22. Conclusiveness of certificate of incorporation.**

(1) A certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental to registration have been complied with and that the association is a company authorized to be registered and duly registered under this Act.

(2) A statutory declaration by an advocate engaged in the formation of the 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 requirements referred to in subsection (1) shall be produced to the registrar and the registrar may accept the declaration as sufficient evidence of compliance.

## **23. Re-registration of unlimited company as limited.**

(1) Subject to this section, a company registered as unlimited may re-register under this Act as limited or a company already registered as a limited liability company may re-register under this Act as unlimited.

(2) The re-registration of an unlimited company as a limited liability company shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred or any contract entered into, by, with or on behalf of the company before the re-registration.

(3) On re-registration under this section, the registrar shall close the original registration of the company and may dispense with the delivery to him or her of copies of any documents furnished on the occasion of the original registration of the company, but, subject to this subsection, the re-registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Act.

**24. Re-registration of private company as a public company.**

(1) Subject to this section, a private company, other than a company not having a share capital, may be re-registered as a public company if—

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

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

(3) The special resolution under subsection (1) shall—

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

(4) The application shall be in the prescribed form and be signed by a director or secretary of the company and the documents to be delivered with it are the following—

- (a) a printed copy of the memorandum and articles as altered in accordance with the resolution;
- (b) a copy of a written statement by the company's auditors that in their opinion the relevant balance sheet shows that at the balance sheet date the amount of the company's net assets was not less than the aggregate of its called-up share capital and undistributable reserves;

- (c) a copy of the relevant balance sheet, together with a copy of an unqualified report by the company's auditors in relation to that balance sheet; and
- (d) a statutory declaration in the prescribed form by a director or secretary of the company stating—
  - (i) that the special resolution required by this section has been passed and that the conditions specified in sections 25 and 26 so far as applicable, have been satisfied; and
  - (ii) that between the date of the balance sheet and that of the application for re-registration, there has been no change in the company's financial position that has resulted in the amount of its net assets becoming less than the aggregate of its called-up share capital and undistributable reserves.

(5) In this section, “relevant balance sheet” means a balance sheet prepared as at a date not exceeding seven months before the company's application under this section.

(6) A resolution that a company be re-registered as a public company may change the company name by deleting the word “company” or the words “and company” including any abbreviations of them.

(7) A private company not being a single member company which has two or more members on the commencement of this Act shall not become a single member company.

## **25. Consideration for shares recently allotted to be valued.**

(1) This section applies if shares have been allotted by the company between the date as at which the relevant balance sheet was prepared and the passing of the special resolution under section 24 and those shares were allotted as fully or partly paid up as to their nominal value or any premium on them otherwise than in cash.

(2) Subject to this section the registrar shall not entertain an application by the company under section 24 unless—

- (a) the consideration for the allotment has been valued; and
- (b) a report with respect to the value of the consideration has been made to the company in accordance with that section during the six months immediately preceding the allotment of the shares.

(3) Where an amount standing to the credit of any of the company's reserve accounts or of its profit and loss account, has been applied in paying up to any extent any of the shares allotted or any premium on those shares, the amount applied does not count as consideration for the allotment and accordingly subsection (2) does not apply to it.

(4) Subsection (2) does not apply if the allotment is in connection with an arrangement providing for it to be on terms that the whole or part of the consideration for the shares allotted is to be provided by the transfer to the company or the cancellation of all or some of the shares or of all or some of the shares of a particular class in another company, with or without the issue to the company applying under section 20 of shares or of shares of any particular class in that other company.

(5) Subsection (4) does not exclude the application of subsection (2), unless under the arrangement it is open to all the holders of the shares of the other company in question or, where the arrangement applies only to shares of a particular class, all the holders of the other company's shares of that class to take part in the arrangement.

(6) In determining whether subsection (2) is excluded under subsection (5), shares held by a company or by a nominee of the company allotting shares in connection with the arrangement by a company or by a nominee of the company which is that company's holding company or subsidiary or a company which is a subsidiary of its holding company shall be disregarded.

(7) Subsection (2) does not preclude an application under section 24 if the allotment of the company's shares is in connection with its proposed merger with another company; where one of the companies concerned proposes to acquire all the assets and liabilities of the other in exchange for the issue of shares or other securities of that one to shareholders of the other, with or without any cash payment to shareholders.

(8) In this section—

- (a) “arrangement” means any agreement, scheme or arrangement including an arrangement sanctioned in accordance with the insolvency laws on a company compromise with creditors and members or liquidator in winding up accepting shares as consideration for sale of company's property; and
- (b) “another company” includes any body corporate.

## **26. Additional requirements relating to share capital.**

(1) For a private company to be re-registered under section 24 as a public company, the following conditions with respect to its share capital must be satisfied at the time the special resolution under that section is passed—

- (a) the nominal value of the company's allotted share capital must not be less than the authorized minimum; and
- (b) each of the company's allotted shares must be paid up at least as to one-quarter of the nominal value of that share and the whole of any premium on it.

(2) In addition to the conditions specified in subsection (1), if any shares in the company or any premium on them have been fully or partly paid up by an undertaking given by any person that he or she or another person should do work or perform services whether for the company or any other person, the undertaking must have been performed or otherwise discharged.

(3) Subject to subsection (4), if shares have been allotted as fully or partly paid up as to their nominal value or any premium on them otherwise than in cash and the consideration for the allotment consists of or includes an undertaking to the company other than one to which subsection (4) applies, then either—

- (a) the undertaking must have been performed or otherwise discharged; or
- (b) there must be a contract between the company and some person under which the undertaking is to be performed within five years from the time the resolution under section 24 is passed.

(4) For purpose of determining whether subsections (1)(b), (2) and (3) are complied with, certain shares in the company may be disregarded if any share was allotted in accordance with an employees' share scheme and by reason of which the company would but for this subsection, be precluded under subsection (1)(b) from being re-registered as a public company.

(5) A share is not to be disregarded under subsection (4), if the aggregate in nominal value of that share and other shares proposed to be so disregarded is more than one-tenth of the nominal value of the company's allotted share capital; but for that purpose the allotted share capital is treated as not including any shares disregarded under subsection (4).

(6) Any shares disregarded under subsection (4) shall be treated as not forming part of the allotted share capital for the purposes of subsection (1) (a).

## **27. Certificate of re-registration.**

(1) Where the registrar is satisfied, on an application under section 24, that a company may be re-registered under that section as a public company, the registrar shall—

- (a) retain the application and other documents delivered to him or her under that section; and
- (b) issue the company with a certificate of incorporation stating that the company is a public company.

(2) The registrar may accept a declaration under section 24(4)(d) as sufficient evidence that the special resolution required by that provision has been passed and the other conditions of re-registration have been satisfied.

(3) The registrar shall not issue the certificate if it appears to him or her that the court has made an order confirming a reduction of the company's capital which has the effect of bringing the nominal value of the company's allotted share capital below the authorised minimum.

(4) Upon the issue to a company of a certificate of incorporation under this section—

- (a) the company by virtue of the issue of that certificate becomes a public company; and
- (b) any alterations in the memorandum and articles set out in the resolution take effect accordingly.

(5) The certificate is conclusive evidence—

- (a) that the requirements of this Act in respect of re-registration and of matters precedent and incidental to it have been complied with; and
- (b) that the company is a public company.

## **28. Modification for unlimited company to re-register.**

(1) The special resolution required by section 24(1)(a) must, in addition to the matters mentioned in subsection (3) of that section—

- (a) state that the liability of the members is to be limited by shares and what the company's share capital is to be; and

- (b) make such alterations in the company's memorandum as are necessary to bring it in substance and in form into conformity with the requirements of this Act with respect to the memorandum of a company limited by shares.

(2) The certificate of incorporation issued under section 27(1)(b) shall in addition to containing the statement required by paragraph (b) of that subsection, state that the company has been incorporated as a company limited by shares, and—

- (a) the company by virtue of the issue of the certificate becomes a public company limited by shares; and
- (b) the certificate is conclusive evidence of the fact that it is such a company.

*Limited liability company becoming unlimited.*

**29. Re-registration of limited liability company as unlimited.**

(1) Subject to this section, a company which is registered as a limited liability company may be re-registered as an unlimited company on an application for the purpose of complying with the requirements of this section.

(2) A company is excluded from re-registering under this section if it is a limited liability company by virtue of re-registration under section 23.

(3) A public company cannot be re-registered under this section as an unlimited company.

(4) An application under this section must be in the prescribed form and be signed by a director or the secretary of the company and be lodged with the registrar, together with the documents specified in subsection (8).

(5) The application must set out such alterations in the company's memorandum which—

- (a) if it is to have a share capital, are required to bring it in substance and in form into conformity with the requirements of this Act with respect to the memorandum of a company to be formed as an unlimited company having a share capital; or
- (b) if it is not to have a share capital, are required in the circumstances.

(6) If articles have been registered, the application must set out such alterations in them which—

- (a) if the company is to have a share capital, are required to bring the articles in substance and in form into conformity with the requirements of this Act with respect to the articles of a company to be formed as an unlimited company having a share capital; or
- (b) if the company is not to have a share capital, are required in the circumstances.

(7) Where articles have not been registered, the application must have annexed to it and request the registration of printed articles and these must, if the company is to have a share capital, comply with the requirements mentioned in subsection (6)(a) and, if not, be articles appropriate to the circumstances.

(8) The documents to be lodged with the registrar in respect of an application under this section are—

- (a) the prescribed form of assent to the company's being registered as unlimited, subscribed by or on behalf of all the members of the company; and
- (b) a statutory declaration made by the directors of the company stating—

- (i) that the persons by whom or on whose behalf the form of assent is subscribed constitute the whole membership of the company; and
  - (ii) if any of the members have not subscribed that form themselves; that the directors have taken all reasonable steps to satisfy themselves that each person who subscribed it on behalf of a member was lawfully empowered to do so;
  - (c) a printed copy of the memorandum incorporating the alterations in it set out in the application; and
  - (d) if articles have been registered, a printed copy of them incorporating the alterations set out in the application.
- (9) For the purposes of this section—
- (a) subscription to a form of assent by the personal representative of a deceased member of a company is taken to be subscription by him or her; and
  - (b) a trustee in bankruptcy of a member of a company is, to the exclusion of the latter, taken to be a member of the company.

### **30. Certificate of re-registration.**

(1) The registrar shall retain the application and other documents lodged with him or her under section 29 and shall—

- (a) if articles are annexed to the application, register them; and
- (b) issue to the company a certificate of incorporation appropriate to the status to be assumed by it by virtue of section 29.

(2) On the issue of the certificate—

- (a) the status of the company, by virtue of the issue is changed from limited to unlimited;

- (b) the alterations in the memorandum set out in the application and if articles have been previously registered, any alterations to the articles in the application shall take effect as if duly made by resolution of the company; and
  - (c) the provisions of this Act apply accordingly to the memorandum and articles as altered.
- (3) The certificate is conclusive evidence that—
- (a) the requirements of section 29 in respect of re-registration and of matters precedent and incidental to it have been complied with; and
  - (b) the company was authorised to be re-registered under section 29 and was duly so re-registered.

*Unlimited company becoming limited.*

### **31. Re-registration of unlimited company as limited.**

(1) Subject to this Act, a company which is registered as unlimited may be re-registered as limited if a special resolution that it should be so re-registered is passed and, the requirements of section 27 are complied with in respect of the resolution and otherwise.

(2) A company cannot under this section be re-registered as a public company; and a company is excluded from re-registering under it if it is unlimited by virtue of re-registration under section 29.

(3) The special resolution under subsection (1) shall state whether the company is to be limited by shares or by guarantee and—

- (a) if it is to be limited by shares, must state what the share capital is to be and provide for the making of such alterations in the memorandum as are necessary to bring it, in substance and in form, into conformity with the requirements of this Act with respect to the memorandum of a company so limited and such alterations in the articles as are necessary in the circumstances;

- (b) if it is to be limited by guarantee, must provide for the making of such alterations in its memorandum and articles as are necessary to bring them in substance and in form into conformity with the requirements of this Act with respect to the memorandum and articles of a company limited by guarantee.

(4) The special resolution is subject to the provisions on the registration of resolutions under this Act; and an application for the company to be re-registered as limited, in the prescribed form signed by a director or by the secretary of the company, must be lodged with the registrar, together with the documents specified in subsection (5), not earlier than the day on which the copy of the resolution forwarded is received by him or her.

(5) The documents to be lodged with the registrar are—

- (a) a printed copy of the memorandum as altered in accordance with the resolution; and
- (b) a printed copy of the articles as altered.

(6) This section does not apply in relation to the re-registration of an unlimited company as a public company under section 24.

### **32. Certificate of re-registration.**

(1) The registrar shall retain the application and other documents lodged with him or her under section 31 and shall issue to the company a certificate of incorporation appropriate to the status to be assumed by the company by virtue of that section.

(2) On the issue of the certificate—

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

(3) The certificate is conclusive evidence that the requirements of section 31 in respect of re registration and of matters precedent and incidental to it have been complied with and that the company was authorised to be re-registered under that section and was duly so re-registered.

*Public company becoming private.*

**33. Re-registration of public company as private.**

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

- (a) a special resolution complying with subsection (2) that it should be so re-registered is passed and has not been cancelled by the court;
- (b) an application for the purpose in the prescribed form and signed by a director or the secretary of the company is delivered to the registrar, together with a printed copy of the memorandum and articles of the company as altered by the resolution;
- (c) the period during which an application for the cancellation of the resolution under this Act may be made has expired without any such application having been made; or
- (d) where an application under this section is made and the application is withdrawn or an order is made under section 34(5) confirming the resolution and a copy of that order is delivered to the registrar.

(2) The special resolution must alter the company's memorandum so that it no longer states that the company is to be a public company and must make such other alterations in the company's memorandum and articles as are required in the circumstances.

(3) A company shall not under this section be re-registered otherwise than as a company limited by shares or by guarantee.

(4) The re-registration of a public company as a private company shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred or any contract entered into, by, with or on behalf of the company before the re-registration.

### **34. Objection to resolution under section 33.**

(1) Where a special resolution by a public company to be re-registered under section 31 as a private company has been passed, an application may be made to the registrar for the cancellation of that resolution.

(2) The application under subsection (1) may be made—

- (a) by the holders of not less in aggregate than five percent in nominal value of the company's issued share capital or any class of shares in the company;
- (b) if the company is not limited by shares, by not less than five percent of its members; or
- (c) by not less than fifty of the company's members, but not by a person who has consented to or voted in favour of the resolution.

(3) The application must be made within twenty eight days after the passing of the resolution 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) Where such an application is made, the company shall give notice in the prescribed form of that fact to the registrar.

(5) On the hearing of the application, the registrar shall make an order cancelling or confirming the resolution and—

- (a) may make that order on such terms and conditions as he or she thinks fit and may adjourn the proceedings in order that an arrangement may be made to the satisfaction of the registrar for the purchase of the interests of dissenting members; and
- (b) may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect the arrangement.

(6) The order of the registrar may provide for the purchase by the company of the shares of any of its members and for the reduction accordingly of the company's capital and may make such alterations in the company's memorandum and articles as may be required in consequence of that provision.

(7) Where the order of the registrar requires the company not to make any or any specified alteration in its memorandum or articles, the company shall not without the leave of the registrar make any such alteration.

(8) An alteration in the memorandum or articles made by virtue of an order under this section, if not made by resolution of the company is of the same effect as if duly made by resolution and this Act applies accordingly to the memorandum or articles as so altered.

(9) A company which fails to comply with subsections (4) or (7) and any officer of it who is in default is liable to a fine of twenty five currency points and, for continued contravention, to a daily default fine of five currency points.

(10) A person aggrieved by a decision of the registrar made under this section may appeal to court

### **35. Certificate of re-registration.**

(1) If the registrar is satisfied that a company may be re-registered under section 33 he or she shall—

- (a) retain the application and other documents delivered to him or her under that section; and

- (b) issue the company with a certificate of incorporation appropriate to a private company.
- (2) On the issue of the certificate—
  - (a) the company by virtue of the issue becomes a private company; and
  - (b) the alterations in the memorandum and articles set out in the resolution under section 33 take effect accordingly.
- (3) The certificate is conclusive evidence that—
  - (a) the requirements of section 33 in respect of re-registration and of matters precedent and incidental to it have been complied with; and
  - (b) the company is a private company.

*Provisions with respect to names of companies.*

### **36. Reservation of name and prohibition of undesirable names.**

(1) The registrar may, on written application, reserve a name pending registration of company or a change of name by an existing company, any such reservation shall remain in force for thirty days or such longer period, not exceeding sixty days as the registrar may, for special reasons, allow and during that period no other company is entitled to be registered with that name.

(2) No name shall be reserved and no company shall be registered by a name, which in the opinion of the registrar is undesirable.

(3) Upon registration, a limited liability company shall add the initials “LTD” or the word “Limited” at the end of its name.

### **37. Power to require company to abandon misleading name.**

(1) Where in the registrars’ opinion the name by which a company is registered gives a misleading indication of the nature of its activities as to be likely to cause harm to the public, the registrar may direct it to change its name.

(2) The direction shall, if not duly made the subject of an application to the court under subsection (3), be complied with within six weeks from the date of the direction or such longer period as the registrar may think fit to allow.

(3) The company may, within a period of twenty one days from the date of the direction, apply to the court to set it aside and the court may set the direction aside or confirm it and, if it confirms the direction, shall specify a period within which it must be complied with.

(4) Where a company makes default in complying with a direction under this section, it is liable to a fine of twenty five currency points and, for continued contravention, to a daily default fine of five currency points.

(5) Where a company changes its name under 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 circumstances of the case and the change of name has effect from the date on which the altered certificate is issued.

(6) A change of name by a company under this section does not affect any of the rights or obligations of the company or render defective any legal proceedings by or against it and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

### **38. Prohibition on trading under misleading name.**

(1) A person who is not a public company commits an offence if he or she carries on any trade, profession or business under a name which includes as its last part, the words “public limited liability company”.

(2) A public company commits an offence if in circumstances in which the fact that it is a public company is likely to be material to any person, it uses a name which may reasonably be expected to give the impression that it is a private company.

(3) A company or officer of a company who contravenes subsection (1) or (2) is liable to a fine not exceeding one thousand currency points or imprisonment not exceeding two years or both and, for continued contravention, to a daily default fine not exceeding twenty thousand currency points.

### **39. Prohibition of improper use of “limited”.**

A person shall not trade or carry on business under a name or title of which “limited” or any contraction or imitation of that word is the last word, unless duly incorporated with limited liability.

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

(1) A company may by special resolution and with the approval of the registrar signified in writing change its name.

(2) Where, through inadvertence or otherwise, a company on its first registration or on its registration by a new name is registered by a name which, in the opinion of the registrar, is too similar to the name by which a company in existence is previously registered, the first-mentioned company may change its name with the consent of the registrar and, if the registrar so directs within six months after it is registered by that name, shall change it within six weeks from the date of the direction or such longer period as the registrar may allow.

(3) Where a company defaults in complying with a direction under this subsection, it is liable to a fine of five currency points or a fine of five currency points for every day on which the offence continues.

(4) Where a company changes its name under this section, it shall, within fourteen days, give to the registrar notice of the change of name and the registrar shall enter the new name on the register in place of the former name, and shall issue to the company a certificate of change of name and notify the change of name in the Gazette and in a newspaper of wide circulation.

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

**41. Power to dispense with “Ltd” or “Limited” in the name of charitable organisations and other companies.**

(1) Where it is proved to the satisfaction of the registrar that—

- (a) an association about to be formed as a limited liability company is to be formed for promoting commerce, art, science, religion, charity or any other useful object; and
- (b) the association intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members;

the registrar may by licence direct that the association may be registered as a company with limited liability, without the addition of the word “limited” to its name, and the association may be registered accordingly and shall, on registration, enjoy all the privileges and, subject to the provisions of this section, be subject to all the obligations of a limited liability company.

(2) Where it is proved to the satisfaction of the registrar that—

- (a) the objects of a company registered under this Act as a limited liability company are restricted to those specified in subsection (1) and to objects incidental or conducive to them; and
- (b) that by its constitution the company is required to apply its profits, if any, or other income in promoting its objects and is prohibited from paying any dividend to its members,

the registrar may by licence authorise the company to make by special resolution a change in its name including or consisting of the omission of the word “limited”, and sections 40(4) and (5) shall apply to a change of name under this subsection as they apply to a change of name under that section.

(3) A licence by the registrar under this section may be granted on such conditions and subject to such regulations as the registrar thinks fit, and those conditions and regulations shall be binding on the company to which the licence is granted, and where the grant is under subsection (1) shall, if the registrar so directs, be inserted in the memorandum and articles or in one of those documents.

(4) A body to which a licence is granted under this section shall be excepted from the provisions of this Act relating to the use of the word “limited” as any part of its name, the publishing of its name and the sending of lists of members to the registrar.

(5) The registrar may, upon the recommendation of the registrar, revoke a licence under this section, and upon revocation the registrar shall enter in the register the word “private limited liability company” at the end of the name of the company to which it was granted, and the company shall cease to enjoy the exemptions and privileges or, as the case may be, the exemptions granted by this section; but before a recommendation is made to the registrar, the registrar shall give to the body notice in writing of his or her intention and shall afford it an opportunity of being heard in opposition to the revocation.

(6) Where a company in respect of which a licence under this section is in force alters its memorandum with respect to its objects, the registrar may, unless he or she sees fit to recommend the revocation of the licence, recommend to the registrar the variation of the licence by making it subject to such conditions and regulations as the registrar may think fit, in lieu of or in addition to the conditions and regulations, if any, to which the licence was formerly subject.

*General provisions with respect to memorandum and articles.*

**42. Interpretation of certain provisions in the memorandum, articles or resolutions of a company limited by guarantee.**

(1) In the case of a company limited by guarantee and not having a share capital, every provision in the memorandum or articles or any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member is void.

(2) For the purposes of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of a company limited by guarantee purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified.

**43. Alterations in memorandum or articles increasing liability to contribute to share capital not to bind existing members without consent.**

(1) Notwithstanding anything in the memorandum or articles of a company, a member of the company is not bound by an alteration made in the memorandum or articles after the date on which he or she became a member, if and so far as the alteration requires him or her to take or subscribe for more shares than the number held by him or her at the date on which the alteration is made, or in any way increases his or her liability as at that date to contribute to the share capital of, or otherwise to pay money, to the company.

(2) This section does not apply where the member agrees in writing before or after the alteration is made, to be bound.

**44. Power to alter conditions in memorandum which could have been contained in articles.**

(1) Subject to sections 43 and 247, any condition contained in a company's memorandum which could lawfully have been contained in articles of association instead of the memorandum may, subject to this section, be altered by the company by special resolution.

(2) Where an application is made to the registrar for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the registrar.

(3) This section does not apply where the memorandum itself provides for or prohibits the alteration of all or any of the conditions referred to in subsection (1) and does not authorise any variation or abrogation of the special rights of any class of members.

(4) Sections 10(2)(a), (3), (4), (7) and (8) apply in relation to any alteration and to any application made under this section as they apply in relation to alterations and to applications made under that section.

(5) This section applies to a company's memorandum whether registered before or after the commencement of this Act.

(6) A person aggrieved by a decision of the registrar under this section may appeal to court

#### **45. Copies of memorandum and articles to be given to members.**

(1) A company shall, when required by any member, send to him or her a copy of the memorandum and articles, if any and a copy of any written law which alters the memorandum, subject to payment in the case of a copy of the memorandum and articles, of one currency point or such less sum as the company may prescribe and in the case of a copy of a written law, of a sum not exceeding the published price of the written law as the company may require.

(2) Where a company defaults in complying with this section, the company and every officer of the company who is in default is liable to a fine of twenty five currency points for each default.

#### **46. Issued copies of memorandum to embody alterations.**

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

(2) Where an alteration has been made under section 43 and the company at any time after the date of the alteration issues any copies of the memorandum which are not in accordance with the alteration, the company is liable to a fine of twenty five currency points for each copy issued and every officer of the company who is in default is liable to the same penalty.

*Membership of company.*

**47. Definition of member.**

(1) The subscribers to the memorandum of a company shall be taken to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

(2) A 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.

**48. Membership of a holding company.**

(1) Except as otherwise provided in this section, a body corporate cannot be a member of a company which is its holding company and any allotment or transfer of shares in a company to its subsidiary is void.

(2) Nothing in this section shall apply where the subsidiary is concerned as personal representative, or where it is concerned as trustee, unless the holding company or a subsidiary of it is beneficially interested under the trust and is not so interested only 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.

(3) This section shall not prevent a subsidiary which is, at the commencement of this Act, a member of its holding company, from continuing to be a member but, subject to subsection (2), the subsidiary shall have no right to vote at meetings of the holding company.

(4) Subject to subsection (2), subsections (1) and (3) shall apply in relation to a nominee for a body corporate which is a subsidiary, as if references in subsections (1) and (3) to such a body corporate include references to its nominee.

(5) In relation to a company limited by guarantee or unlimited which is a holding company, the reference in this section to shares, whether or not the company has a share capital, shall be construed as including a reference to the interest of its members as such, whatever the form of that interest.

*Reduction of number of members below a legal minimum in case of a public company.*

**49. Members severally liable for debts where a business is carried on with fewer than the required number of members.**

Where a company, other than a private company limited by shares or by guarantee, carries on business without having at least two members and does so for more than six months, a person who, for the whole or any part of the period that it so carries on business after those six months—

- (a) is a member of the company; and
- (b) knows that it is carrying on business with only one member, is liable jointly and severally with the company for the payment of the company's debts contracted during the period or as the case may be, that part of it.

*Contracts and related particulars.*

**50. Form of contracts.**

(1) A company may make a contract, by execution under its common seal or on behalf of the company, by a person acting under its authority, express or implied.

(2) Contracts on behalf of a company may be made as follows—

- (a) a contract which if made between private persons would by law be required to be in writing, signed by the parties to be charged with, may be made on behalf of the company in writing executed by any person acting under its authority, express or implied; or
- (b) a contract which if made between private persons would by law be valid although made orally and not reduced into writing may be made orally on behalf of the company by any person acting under its authority, express or implied.

(3) A contract made according to this section shall be effectual in law and shall bind the company and its successors and all other parties to it.

(4) A contract made according to this section may be varied or discharged in the same manner in which it is authorised by this section to be made.

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

(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 anything contained in the company's memorandum.

(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; but no such proceedings shall lie in respect of an act to be done in fulfillment of a legal obligation arising from a previous act of the company.

(3) The directors shall observe any limitations on their powers contained in the company's memorandum, 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.

(4) A resolution ratifying the action under subsection (3) shall not affect any liability incurred by the directors or any other person and relief from the liability must be agreed to separately by special resolution.

**52. Power of directors to bind the company.**

(1) The power of the board of directors to bind the company or authorise others to do so in favour of a person dealing with the company in good faith shall not be limited by the company's memorandum.

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

- (a) a person “deals with” a company if he or she is a party to any transaction or other act to which the company is a party; and
- (b) a person shall be presumed to have acted in good faith unless the contrary is proved.

(3) The references in this section to limitations on the directors' power under the company's memorandum include limitations deriving from—

- (a) a resolution of the company in a general meeting or a meeting of any class of shareholders; or
- (b) any agreement between the members of the company or of any class of shareholders.

(4) Subsection (1) does 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 the directors; but no such proceedings shall lie in respect of an act to be done in fulfillment of a legal obligation arising from a previous act of the company.

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

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

A party to a transaction with a company is not bound to enquire 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 authorize others to do so.

**54. Pre-incorporation contracts.**

(1) A contract which purports to be made on behalf of a company before the company is formed, has effect, as one made with the person purporting to act for the company.

(2) A company may adopt a pre-incorporation contract with its formation and registration made on its behalf without a need for novation.

(3) In all cases where the company adopts a pre-incorporation contract, the liability of the promoter of that company shall cease.

**55. Documents executed.**

A document executed by a director and the secretary of a company or by two directors of a company and expressed to be executed by the company has the same effect as if executed under the common seal of the company.

**56. Bills of exchange and promissory notes.**

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

**57. Execution of deeds abroad.**

(1) A company may, by writing under its common seal or a signature by a person acting under its authority empower any person, either generally or in respect of any specified matters as its attorney, to execute deeds on its behalf in any place not situated in Uganda.

(2) A deed signed by an attorney under subsection (1) on behalf of the company and under his or her seal shall bind the company and have the same effect as if it were under the common seal of the company.

**58. Power for a company to have official seal for use abroad.**

(1) A company whose objects require or comprise the transaction of business beyond the limits of Uganda may, if authorised by its articles, have for use in any place outside Uganda, an official seal which shall take the form of an embossed metal die which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every place where it is to be used.

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

(3) A company having an official seal for use in a place referred to in subsection (1) may, by writing under its common seal, authorise any person appointed for the purpose in that place, to affix the official seal to any deed or other document to which the company is party in that place.

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

(5) The person affixing an official seal under subsection (3) shall, by writing signed by him or her, certify on the deed or other instrument to which the seal is affixed, the date and place at which it is affixed.

**59. Authentication of documents.**

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

## PART III—SHARE CAPITAL AND DEBENTURES.

**60. Registration of prospectus.**

A prospectus shall not be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication—

- (a) the Capital Markets Authority has approved the company's prospectus in accordance with the Capital Markets Authority Act; and
- (b) there has been delivered to the registrar for registration a copy of the prospectus signed by every person who is named in it as a director or proposed director of the company or by his or her agent authorised in writing.

*Allotment.***61. Return as to allotment.**

(1) Whenever a private company limited by shares or a company limited by guarantee and having a share capital makes any allotment of its shares, the company shall, within sixty days thereafter, deliver to the registrar for registration—

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

(2) Where a contract under subsection (1) is not reduced into writing, the company shall, within sixty days after the allotment deliver, to the registrar for registration the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced into writing and those particulars shall be deemed to be an instrument within the meaning of the Stamps Act and the registrar may, as a condition of filing the particulars, require that the duty payable on it be adjudicated under section 36 of that Act.

(3) Where default is made in complying with this section, every officer of the company who is in default is liable to a fine of twenty five currency points and an additional fine of five currency points for every day during which the default continues.

*Commissions, discounts and financial assistance.*

**62. Power to pay certain commissions; prohibition of payment of all other commissions, discounts and related particulars.**

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

- (a) the payment of the commission is authorised by the articles;
- (b) the commission paid or agreed to be paid does not exceed ten percent of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is less;
- (c) the amount or rate percent of the commission paid or agreed to be paid is—
  - (i) in the case of shares offered to the public for subscription, disclosed in the prospectus; or

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

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

(2) Except as provided in this section, a company shall not 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 or her subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions whether absolute or conditional for any shares in the company, whether the shares or money be so applied by being added to the purchase money 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 money or contract price, or otherwise.

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

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

(5) If default is made in complying with the provisions relating to the delivery to the registrar of the statement in the prescribed form, the company and every officer of the company who is in default is liable to a fine of twenty five currency points and in case of continued default, five currency points for each day on which the default continues.

**63. Prohibition of provision of financial assistance by company for purchase of or subscription for its own or its holding company's shares.**

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

(2) Nothing in this section shall be taken to prohibit—

- (a) the lending of money by the company; where the lending of money is part of the ordinary business of a company;
- (b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of, or subscription for, fully paid shares in the company or its holding company, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of the company including any director holding a salaried employment or office in the company;
- (c) the making by a company of loans to persons, other than directors, in good faith in the employment of the company with a view to enabling those persons to purchase or subscribe for fully paid shares in the company or its holding company to be held by themselves by way of beneficial ownership; and
- (d) the assistance is given in good faith in the interests of the company.

(3) This section does not prohibit—

- (a) a distribution of a company's assets by way of dividend lawfully made or a distribution made in the course of the company's winding up;
- (b) the allotment of bonus shares;
- (c) a reduction of capital confirmed by order of the court under this Act;
- (d) a redemption or purchase of shares made in accordance with this Act;
- (e) anything done in accordance with an order of court under this Act and compromises and arrangements with creditors and members;
- (f) anything done under an arrangement made in accordance with the insolvency law acceptance of shares by liquidator in winding up as consideration for sale of property; or
- (g) anything done under an arrangement made between a company and its creditors which is binding on the creditors by virtue of the insolvency laws.

(4) Where a company acts in contravention of this section, the company commits an offence and is liable to a fine not exceeding one thousand currency points.

(5) Where a company commits an offence under subsection (4), every officer of the company who contributes to the default commits an offence and is liable on conviction to imprisonment not exceeding two years or a fine not exceeding two hundred currency points or both.

(6) For the purposes of this section, "financial assistance" means—

- (a) financial assistance given by way of gift in the best interests of the company;

- (b) financial assistance given by way of guarantee, security or indemnity, other than an indemnity in respect of the indemnifier's own neglect or default or by way of release or waiver;
- (c) financial assistance given by way of a loan or any other agreement under which any of the obligations of the person giving the assistance are to be fulfilled at a time when in accordance with the agreement, 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
- (d) any other financial assistance given by a company the net assets of which are by reason of the financial assistance reduced to a material extent or which has no net assets.

#### **64. Special restrictions for public companies.**

(1) In the case of a public company, financial assistance may only be given if the company has net assets which are not reduced by the financial assistance or, to the extent that those assets are reduced by the financial assistance, if the assistance is provided out of distributable profits.

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

- (a) “net assets” means the amount by which the aggregate of the company's assets exceeds the aggregate of its liabilities taking the amount of both assets and liabilities to be as stated in the company's accounting records immediately before the financial assistance is given; and
- (b) “liabilities” includes any amount retained as reasonably necessary for the purpose of providing for any liability or loss which is either likely to be incurred or certain to be incurred but uncertain as to amount or as to the date on which it will arise.

**65. Relaxation of the rule in section 63 for private companies.**

(1) A private company is not prohibited from giving financial assistance—

- (a) for the acquisition of its shares; or
- (b) for the acquisition of shares in another company where the acquisition of shares is in its holding company and—
  - (i) the holding company is a private company; and
  - (ii) giving the assistance complies with the requirements of sections 70 and 72.

(2) The financial assistance may only be given if the company has net assets which are not reduced by the financial assistance or, to the extent that they are reduced, if the assistance is provided out of distributable profits.

(3) A private company, which is a subsidiary company, shall not give financial assistance for the acquisition of shares in its holding company, where the subsidiary is also a subsidiary of a public company which is a subsidiary of the holding company in which the shares were or are to be acquired.

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

(5) Where the financial assistance is to be given by the company in a case where the acquisition of shares in question is or was an acquisition of shares in its holding company, that holding company and any other company which is both the company's holding company and a subsidiary of that other holding company except in any case, a company which is a wholly-owned subsidiary shall also approve by special resolution in a general meeting the giving of the financial assistance.

(6) The directors of the company proposing to give the financial assistance and, where the shares acquired or to be acquired are shares in its holding company, the directors of that company and of any other company which is both the company's holding company and a subsidiary of that other holding company shall, before the financial assistance is given, make a statutory declaration stating that this section has been complied with.

*Issue of shares at premium, discount and redeemable preference shares.*

### **66. Application of premiums received on issue of shares.**

(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 premiums on those shares shall be transferred to an account, to be called "the share premium account", and the provisions of this Act relating to the reduction of 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) The share premium account may, notwithstanding anything in subsection (1), be applied by the company in paying up un-issued shares of the company to be issued to members of the company as fully paid bonus shares in writing off—

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

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

(4) Any part of the premium which has been applied as referred to in subsection (3) that it does not at the commencement of this Act form an identifiable part of the company's reserves within the meaning of the Fifth Schedule to this Act shall be disregarded in determining the sum to be included in the share premium account.

**67. Power to issue shares at a discount.**

(1) Subject to this section, a company may issue at a discount shares in the company of a class already issued, except that—

- (a) the issue of the shares at a discount must be authorised by resolution passed in a general meeting of the company and must be sanctioned by the court;
- (b) the resolution must specify the maximum rate of the discount at which the shares are to be issued;
- (c) not less than one year must at the date of the issue have elapsed since the date on which the company was entitled to commence business; and
- (d) 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.

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

**68. Power to issue redeemable preference shares.**

(1) Subject to this section, a company limited by shares may, if authorised, by its articles, issue preference shares which are or at the option of the company are to be liable, to be redeemed.

(2) Subsection (1) is subject to the following—

- (a) shares shall not be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption;
- (b) the shares shall not be redeemed unless they are fully paid;
- (c) the premium, if any, payable on redemption, must have been provided for out of the profits of the company or out of the company's share premium account before the shares are redeemed; and
- (d) where shares are redeemed under this section otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise have been available for dividend be transferred to a reserve fund to be called "the capital redemption reserve fund", a sum equal to the nominal amount of the shares redeemed and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid up share capital of the company.

(3) Subject to this section, the redemption of preference shares under this section may be effected on the terms and in the manner provided by the articles of the company.

(4) The redemption of preference shares under this section by a company shall not be taken as reducing the amount of the company's authorised share capital.

(5) Where a company has redeemed or is about to redeem any preference shares under this section, the company may issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and, accordingly, the share capital of the company shall not for the purpose of any enactments relating to stamp duty be deemed to be increased by the issue of shares under this subsection.

(6) Where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be taken to have been issued under subsection (5) unless the old shares are redeemed within one month after the issue of the new shares.

(7) 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 bonus shares.

*Miscellaneous provisions as to share capital.*

**69. Power of a company to arrange for different amounts being paid on shares.**

(1) A company, if so authorised by its articles, may do any one or more of the following things—

- (a) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;
- (b) accept from any member the whole or a part of the amount remaining unpaid on any shares held by him or her, although no part of that amount has been called up; or
- (c) pay dividend; in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

(2) A company shall not pay a dividend or make any other distribution to its members except out of profits available for that purpose.

(3) For the purposes of this section, a company's profits available for the payment of a dividend or other distribution are its accumulated, realised profits, so far as not previously utilised by distribution or capitalisation, less its accumulated, realized losses, so far as not previously written off in a reduction or reorganisation of capital duly made.

(4) In determining whether a company has profits available for the payment of a dividend or other distribution, the directors of the company shall rely upon the accounts of the company which the directors reasonably believe have been prepared in accordance with generally accepted accounting principles consistently applied.

(5) In case of a willful or negligent contravention of this section, the directors under whose administration the contravention happened shall be jointly and severally liable, at any time within six years after paying the unlawful dividend or other distribution to its members, to the company and to the company's creditors upon its dissolution or insolvency, to the full amount of the dividend or other distribution unlawfully paid.

(6) A member of a company that has paid a dividend or made a distribution in contravention of this section may bring a suit on behalf of the company against the directors of the company.

#### **70. Reserve liability of a limited liability company.**

(1) A limited liability company may by special resolution determine that any portion of its capital, which has not been already called up shall not be capable of being called up, except where the company is being wound up and for the purposes of winding up.

(2) Where a special resolution has been passed under subsection (1), the share capital to which the resolution relates shall not be capable of being called except where the company is being wound up and for the purposes of the winding up.

#### **71. Power of a company limited by shares to alter its share capital.**

(1) A company limited by shares or a company limited by guarantee and having a share capital, if authorised by its articles, may alter the conditions of its memorandum by—

- (a) increasing its share capital by new shares of such amount as it thinks expedient;
- (b) consolidating and dividing all or any of its share capital into shares of larger amount than its existing shares;

- (c) converting all or any of its paid up shares into stock and reconverting that stock into paid up shares of any denominations;
- (d) subdividing its shares or any of them, into shares of smaller amount than is fixed by the memorandum, except that in the subdivision the proportion between the amount paid and the amount, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived; or
- (e) canceling shares which, at the date of the passing of the relevant resolution have not been taken or agreed to be taken by any person and diminishing the amount of its share capital by the amount of the shares cancelled.

(2) The powers conferred by this section shall be exercised by the company in a general meeting.

(3) A cancellation of shares under this section shall not be taken to be a reduction of share capital within the meaning of this Act.

**72. Notice to the registrar of consolidation of share capital, conversion of shares into stock and related particulars.**

(1) If a company having a share capital has—

- (a) consolidated and divided its share capital into shares of a larger amount than its existing shares;
- (b) converted any shares into stock;
- (c) reconverted stock into shares;
- (d) subdivided its shares or any of them or redeemed any redeemable preference shares; or
- (e) cancelled any shares, otherwise than in connection with a reduction of a share capital under section 76,

it shall, within thirty days after doing so, give notice of the decision to the registrar specifying the shares consolidated, divided, converted, subdivided, redeemed or cancelled or the stock reconverted.

(2) Where default is made in complying with this section, the company and every officer of the company who is in default are liable to a default fine of twenty five currency points.

### **73. Notice of increase of share capital.**

(1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, it shall, within thirty days after the passing of the resolution authorising the increase, give the registrar notice of the increase and the registrar shall record the increase.

(2) A notice under subsection (1) shall include such particulars as may be prescribed with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued and there shall be forwarded to the registrar together with the notice, a printed copy of the resolution authorising the increase.

(3) Where default is made in complying with this section, the company and every officer of the company who is in default are liable to a default fine of twenty five currency points.

### **74. Power of unlimited company to provide for reserve share capital on re-registration.**

An unlimited company having a share capital may, by its resolution for registration as a limited liability company under this Act—

- (a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares but subject to the condition that no portion of the increased capital shall be capable of being called up except where the company is being wound up and for the purposes of the winding up; or
- (b) provide that a specified portion of its uncalled share capital shall not be capable of being called up except where the company is being wound up and for the purpose of the winding up.

**75. Power of a company to pay interest out of capital in certain cases.**

(1) Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the sum so paid by way of interest to capital as part of the cost of construction of the work or building or the provision of plant.

(2) Subsection (1) is subject to the following—

- (a) payment shall not be made unless it is authorised by the articles or by special resolution;
- (b) the payment whether authorised by the articles or by special resolution shall not be made without the previous approval of the registrar;
- (c) before approving the payment the registrar may, at the expense of the company, appoint a person to inquire and report to him or her as to the circumstances of the case and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry;
- (d) the payment shall be made only for period determined by the registrar, and that period shall not 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;
- (e) the rate of interest shall not exceed five per cent per year or such other rate as the Minister may for the time being by regulations prescribe; and
- (f) 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.

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

(1) Subject to confirmation by the court, a company limited by shares or a company limited by guarantee and having a share capital may, if authorised by its articles, by special resolution reduce its share capital in any way, and, in particular, without prejudice to the generality of the foregoing power, may—

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

(2) A special resolution under this section is in this Act referred to as “resolution for reducing share capital”.

**77. Application to the court for a confirming order; objections by creditors and settlement of the list of objecting creditors.**

(1) Where a company has passed a resolution for reducing share capital, it shall apply by petition to the court for an order confirming the reduction and shall in the meantime cause the resolution to be published in the *Gazette* and in a newspaper having national wide circulation.

(2) Where the proposed reduction of share capital involves diminishing of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the court so directs, the following provisions shall have effect, subject, to subsection (3)—

- (a) a creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company is entitled to object to the reduction;
- (b) the court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be entered or are to be excluded from the right of objecting to the reduction;
- (c) where a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his or her debt or claim by appropriating as the court may direct, the following amount—
  - (i) if the company admits the full amount of the debt or claim or though not admitting it, is willing to provide for it, then the full amount of the debt or claim; or
  - (ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim or if the amount is contingent or not ascertained, then an amount fixed by the court after the like inquiry and adjudication as if the company were being wound up by the court.

(3) Where a proposed reduction of share capital involves the diminishing of any liability in respect of any paid up share capital, the court may, if having regard to any special circumstances of the case it thinks proper to do so, direct that subsection (2) shall not apply as regards any class or classes of creditors.

**78. Order confirming the reduction and powers of the court on making that order.**

(1) The court, if satisfied, with respect to every creditor of the company who under section 77 is entitled to object to the reduction, that either his or her consent to the reduction has been obtained or his or her debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

(2) Where the court makes an order under subsection (1), it may—

- (a) during a period, commencing on or at any time after the date of the order as is specified in the order, add to its name as the last words of the name the words “and reduced”; and
- (b) make an order requiring the company to publish in the *Gazette* and in any other method that the court may direct, the reason for reduction or such other information in regard to it 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.

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

**79. Registration of order and minute of reduction.**

(1) The registrar, on production to him or her of an order of the court confirming the reduction of the share capital of a company and the delivery to him or her of a copy of the order and of a minute approved by the court, showing with respect to the share capital of the company, as altered by the order, the amount of the share capital, the number of shares into which it is to be divided and the amount of each share and the amount, if any, at the date of the registration taken to be paid up on each share, shall register the order and minute.

(2) The resolution for reducing share capital as confirmed by the order under subsection (1) shall only take effect on the registration of the order and the minute.

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

(4) The registrar shall issue a certificate signed by him or her in respect of the registration of the order and minute and the certificate signed by the registrar shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with and that the share capital of the company is such as is stated in the minute.

(5) The minute when registered shall be taken to be substituted for the corresponding part of the memorandum and shall be valid and may be altered as if it had been originally contained in the memorandum.

(6) The substitution of the minute under subsection (5) for part of the memorandum of the company shall be taken to be an alteration of the memorandum within the meaning of section 46.

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

(1) In the case of a reduction of share capital, a member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount of the share as fixed by the minute referred to in section 80 and the amount paid, or the reduced amount, if any, which is to be taken to have been paid, on the share, as the case may be.

(2) If any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his or her ignorance of the proceedings for reduction, or of their nature and effect with respect to his or her claim, not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of this Act with respect to winding up by the court, to pay the amount of his or her debt or claim, then—

- (a) every person who was a member of the company at the date of the registration of the order for reduction and minute shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he or she would have been liable to contribute if the company had commenced to be wound up on the day before the date of registration; and
- (b) if the company is wound up, the court, on the application of the creditor and proof of his or her ignorance may, if it thinks fit, settle accordingly a list of persons liable to contribute and make and enforce calls and orders on the contributories settled on the lists as if they were ordinary contributories in a winding up.

(2) This section shall not affect the rights of the contributories among themselves.

### **81. Penalty for concealing the name of a creditor, etc.**

If an officer of the company—

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

he or she commits an offence and is liable on conviction to imprisonment not exceeding one year or to a fine not exceeding one hundred currency points or both.

#### *Variation of shareholders' rights.*

### **82. Rights of holders of special classes of shares.**

(1) Where the share capital of a company is divided into different classes of shares, and 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 approval of a resolution passed at a separate meeting of the holders of those shares and in accordance with that provision, then if the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than fifteen 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.

(2) Where an application is made under subsection (1), the variation shall not have effect unless and until it is confirmed by the court.

(3) An application under this section shall be made by petition within thirty 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 shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(4) On an application under this section, 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 the application may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.

(5) The decision of the court on any application under this section shall be final.

(6) The company shall within thirty days after the making of an order by the court on an application under this section, forward a certified copy of the order to the registrar.

(7) If default is made in complying with subsection (6) the company and every officer of the company who is in default is liable to a default fine of twenty five currency points.

(8) In this section, “variation” includes abrogation and “varied” shall be construed accordingly.

*Transfer of shares and debentures, evidence of title and related particulars.*

**83. Nature of shares.**

The shares or other interest of any member in a company shall be movable property transferable in the manner provided by the articles of the company.

**84. Numbering of shares.**

(1) Each share in a company having a share capital shall be distinguished by its appropriate number.

(2) If at any time all the issued shares in a company or all the issued shares in the company of a particular class are fully paid up and rank *pari passu* for all purposes, none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up.

**85. Transfer not to be registered except on production of instrument of transfer.**

(1) Notwithstanding anything in the articles of a company, it is not lawful for the company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company.

(2) Nothing in this section shall prejudice any power of the company to register as shareholder or debenture-holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of the law.

**86. Transfer by personal representative.**

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

**87. Transfer of shares in a single member company.**

(1) A single member company may transfer or allot shares on the death of the single member or by operation of law or by a single member company converting into a private company not being a single member company.

(2) In case of a transfer of shares or further allotment of shares the company shall—

- (a) pass a special resolution for change of status from single member company to private company and alter its articles accordingly within thirty days of transfer of shares or further allotment of shares; and
- (b) appoint and elect one or more additional directors within fifteen days of date of passing of the special resolution and notify the appointment to the registrar.

(3) In case of death of single member, the company may either be wound up or be converted into a private company not being a single member company for which—

- (a) the nominee director shall transfer the shares in the name of the legal heirs of the single member within thirty days;
- (b) the company shall pass a special resolution for change of status from single member company to private company not being a single member company and alter its articles accordingly within thirty days of transfer of shares; and

(c) the members shall appoint or elect one or more additional directors in accordance with this Act and within fifteen days of date of passing of the special resolution and notify the appointment to the registrar.

(4) In case of operation of the law the company shall—

(a) transfer the shares, within seven days, in the name of relevant persons to give effect to the order of the court or any other authority;

(b) pass a special resolution for change of status from single member company to private company and alter its articles accordingly within thirty days of transfer of shares; and

(c) appoint additional director or directors in accordance with this Act within fifteen days of date of passing of the special resolution and notify the appointment in the prescribed form within fourteen days of date after the appointment.

(5) The persons becoming members due to transfer or transmission or further allotment of shares, as the case may be, shall pass a special resolution to make alterations in articles and appoint one or more additional directors.

(6) Where a single member company converts into a private company pursuant to subsection (1), it shall file a notice in writing, with the registrar within sixty days from the date of passing of special resolution.

### **88. Registration of a transfer at request of the transferor.**

On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

**89. Notice of refusal to register a transfer.**

(1) Where a company refuses to register a transfer of any shares or debentures, the company shall, within sixty days after the date on which the transfer was lodged with the company, send to the transferee notice of the refusal.

(2) Where default is made in complying with this section, the company and every officer of the company who is in default is liable to a default fine of twenty five currency points.

**90. Certification of a transfer.**

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

(2) Where a person acts on the faith of a false certification by a company made negligently, the company shall be under the same liability to him or her as if the certification had been made fraudulently.

(3) For the purposes of this section—

- (a) an instrument of transfer shall be taken to be certified if it bears the words “certificate lodged” or words to the like effect;
- (b) the certification of an instrument of transfer shall be taken to be made by a company if—
  - (i) the person issuing the instrument is a person authorised to issue certificated instruments of transfer on the company’s behalf; and
  - (ii) the certification is signed by a person authorised to certificate transfers on the company’s behalf or by any officer or servant either of the company or of a body corporate so authorised;

- (c) a certification shall be taken to be signed by a person if—
- (i) it purports to be authenticated by his or her signature or initials whether handwritten or not; and
  - (ii) it is not shown that the signature or initials was or were placed there by himself or herself or by any person authorised to use the signature or initials for the purpose of certifying transfers on the company's behalf.

**91. Duties of a company with respect to issue of certificates.**

(1) A company shall, within sixty days after the allotment of any of its shares, debentures or debenture stock and within two months after the date on which a transfer of the shares, debentures or debenture stock is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

(2) For the purposes of subsection (1), "transfer" means a transfer duly stamped and otherwise valid and does not include a transfer which the company is for any reason entitled to refuse to register and does not register.

(3) If default is made in complying with this section, the company and every officer of the company who is in default is liable to a default fine of twenty five currency points.

(4) If a company on which a notice has been served requiring the company to make good any default in complying with subsection (1), fails to make good the default within ten days after the service of the notice, the registrar may, on the application of the person entitled to have the certificates or the debentures delivered to him or her, make an order directing the company and any officer of the company to make good the default within the time specified in the order.

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

**92. Certificate to be evidence of title.**

A certificate, under the common seal of the company or any other title evidencing securities under this Act or any other law specifying any shares held by any member shall be prima facie evidence of title of the member to the shares.

**93. Transfer of title to securities without written documents.**

The Minister may, by statutory instrument make regulations providing for the title to securities to be evidenced and transferred without written documents.

**94. Evidence of grant of probate.**

The production to a company of any document which is by law sufficient evidence of—

- (a) probate of the will or letters or certificate of administration of the estate, of a deceased person having been granted to some person; or
- (b) the Administrator General having undertaken administration of an estate under the Administrator General's Act,

shall be accepted by the company, notwithstanding anything in its articles as sufficient evidence of the grant or undertaking.

**95. Issue and effect of share warrants to bearer.**

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

(2) A warrant described in subsection (1) is, in this Act referred to as a “share warrant”.

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

### **96. Penalty for impersonation of shareholder.**

If a person falsely and deceitfully impersonates an owner of any share or interest in any company, or of any share warrant or coupon, issued under this Act, and obtains or endeavours to obtain any such share or interest or share warrant or coupon, or receives or endeavours to receive any money due to the owner, as if the offender were the true and lawful owner, he or she commits an offence and is liable on conviction to imprisonment not exceeding seven years.

### **97. Offences in connection with share warrants.**

(1) If a person—

- (a) with intent to defraud, forges or alters or offers, utters, disposes of or puts off, knowing it to be forged or altered, any share warrant or coupon or any document purporting to be a share warrant or coupon, issued under this Act; or
- (b) by means of any such forged or altered share warrant, coupon or document, purporting to be a share warrant, demands or endeavours to obtain or receive any share or interest in any company under this Act or to receive any dividend or money payable in respect of it, knowing the warrant, coupon or document to be forged or altered,

he or she commits an offence and is liable on conviction to imprisonment not exceeding five years.

(2) If a person without lawful authority or excuse, proof of which shall lie on him or her—

- (a) engraves or makes on any plate, wood, stone or other material any share warrant or coupon purporting to be—

- (i) a share warrant or coupon issued or made by any particular company under this Act;
- (ii) a blank share warrant or coupon so issued or made;
- (iii) a part of such a share warrant or coupon; or
- (b) uses any such plate, wood, stone or other material for the making or printing of any such share warrant or coupon or of any such blank share warrant or coupon or any part of it respectively; or
- (c) knowingly has in his or her custody or possession any such plate, wood, stone or other material,

he or she commits an offence and is liable on conviction to imprisonment not exceeding five years.

*Special provisions as to debentures.*

**98. Provisions as to registers of debenture holders.**

(1) A company which, issues a series of debentures shall keep at the registered office of the company a register of holders of the debentures.

(2) Subject to subsection (1)—

- (a) where the work of making up the register or duplicate is done at some office of the company other than the registered office, the register or duplicate may be kept at that office;
- (b) where the company keeps in Uganda both the register and duplicate referred to in paragraph (a), it shall be kept at that office; and
- (c) where the company keeps in Uganda both the register and duplicate referred to in paragraph (a), it shall keep them at the same place.

(3) A company shall give notice to the registrar of the place where the register and any duplicate is kept and of any change in that place.

(4) A company shall not be bound to give notice under subsection (3) if the register or duplicate has, at all times since it came into existence after the commencement of this Act, been kept at the registered office of the company.

**99. Rights of debenture holders and shareholders to inspect the register of debenture holders and to have copies of a trust deed.**

(1) A register of holders of debentures of a company shall, except when duly closed be open to the inspection of the registered holders of the debentures or any holder of any shares in the company without fee and to any other person, on payment of a fee of half a currency point or such less sum as may be prescribed by the company.

(2) The company may, in a general meeting, impose reasonable restrictions on inspection under subsection (1) but the restrictions shall not be such as to reduce the period of inspection to less than two hours in each day.

(3) Every registered holder of debentures and every holder of shares in a company may require a copy of the register of the holders of debentures of the company or any part of it on payment of a reasonable fee prescribed by the company for every hundred words required to be copied.

(4) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his or her request on payment in the case of a printed trust deed of the sum of a reasonable fee prescribed by the company or, where the trust deed has not been printed, on payment of a reasonable fee prescribed by the company for every hundred words required to be copied.

(5) If inspection is refused or a copy is refused or not forwarded, the company and every officer of the company who is in default is liable to a default fine of twenty five currency points and further fine of five currency points for each day the default continues.

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

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

(8) A person aggrieved by a decision of the registrar under this section may appeal to court.

### **100. Liability of trustees for debenture holders.**

(1) Subject to this section, any provision 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 is void in so far as it would have the effect of exempting a trustee under the trust deed from or indemnifying him or her against liability for breach of trust where he or she fails to show the degree of care and diligence required of him or her as trustee, having regard to the provisions of the trust deed conferring on him or her any powers, authorities or discretion.

(2) Subsection (1) shall not invalidate—

- (a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or

- (b) a provision enabling the release to be given—
  - (i) on the agreement to it of a majority of not less than three-fourths in value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for those purposes; and
  - (ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act.
- (3) Subsection (1) shall not operate—
  - (a) to invalidate any provision in force at the commencement of this Act so long as any person then entitled to the benefit of that provision or afterwards given the benefit of it under subsection (4) remains a trustee of the deed in question; or
  - (b) to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him or her while the provision was in force.
- (4) While any trustee of a trust deed remains entitled to the benefit of a provision saved by subsection (3) the benefit of that provision may be given either—
  - (a) to all trustees of the deed, present and future; or
  - (b) to any named trustees or proposed trustees, by a resolution passed by a majority of not less than three-fourths in value of the debenture holders present in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose in accordance with the provisions of the deed or, if the deed makes no provision for summoning meetings, a meeting summoned for the purpose in any manner approved by the registrar.

**101. Perpetual debentures.**

A condition contained in any debentures or in any deed for securing any debentures whether issued or executed before or after the commencement of this Act, shall not be invalid by reason only that the debentures are made irredeemable or redeemable only on the happening of a contingency however remote or on the expiration of a period, however long, notwithstanding any rule of equity to the contrary.

**102. Power to reissue redeemed debentures in certain cases.**

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

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

the company shall have and shall be taken always to have had power to reissue the debentures either by reissuing the same debentures or by issuing other debentures in their place.

(2) Subject to section 103, on a reissue of redeemed debentures the person entitled to the debentures shall have and shall be taken always to have had the same priorities as if the debentures had never been redeemed.

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

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

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

### **103. Specific performance of contracts to subscribe for debentures.**

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

### **104. Payment of certain debts out of assets subject to floating charge in priority to claims under the charge.**

(1) Where either a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company is not at the time in the course of being wound up, the debts which in every winding up are under Part IX of this Act relating to preferential payments to be paid in priority to all other debts shall be paid out of any assets coming to the hands of the receiver or other person who takes possession as referred to in this subsection priority to any claim for principal or interest in respect of the debentures.

(2) The periods of time mentioned in Part IX of this Act shall be reckoned from the date of the appointment of the receiver or of possession being taken as referred to in subsection (1), as the case may be.

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

PART IV—REGISTRATION OF CHARGES.

*Registration of charges with registrar.*

**105. Registration of charges.**

(1) Subject to this Part, every charge created by a company registered in Uganda and being a charge to which this section applies is, so far as any security on the company's property or undertaking is conferred by it, is void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge, together with the instrument, if any, by which the charge is created or evidenced are delivered to or received by the registrar for registration in a manner required by this Act within forty two days after the date of its creation.

(2) Subsection (1) shall apply without prejudice to any contract or obligation for repayment of the money secured by the charge and when a charge becomes void under this section the money secured by the charge shall immediately become payable.

(3) This section applies to the following charges—

- (a) a charge for the purpose of securing any issue of debentures;
- (b) a charge on uncalled share capital of the company;
- (c) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale;
- (d) a charge on immovable property, wherever situated or any interest in it;
- (e) a charge on book debts of the company;

- (f) a floating charge on the undertaking or property of the company;
- (g) a charge on calls made but not paid;
- (h) a charge on a ship or any share in a ship; and
- (i) a charge on goodwill, on a patent or a licence under a patent, on a trade mark or on a copyright or a licence under a copyright.

(4) In the case of a charge created outside Uganda comprising property situated outside Uganda, the delivery to and the receipt by the registrar of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself and forty two days after the date on which the instrument or copy could in due course of post and if dispatched with due diligence, have been received in Uganda shall be substituted for forty two days after the date of the creation of the charge as the time within which the particulars and instrument or copy are to be delivered to the registrar.

(5) The instrument creating or purporting to create the charge may be sent for registration under this section notwithstanding that further proceedings may be necessary to make the charge valid or effectual.

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

(7) The holding of debentures entitling the holder to a charge on immovable property shall not be taken to be an interest in immovable property.

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

- (a) the total amount secured by the whole series;
- (b) the dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined;
- (c) a general description of the property charged; and
- (d) the names of the trustees, if any, for the debenture holders, together with the deed containing the charge or a copy of it verified in the prescribed manner or, if there is no such deed, one of the debentures of the series.

(9) Subject to subsection (8), where more than one issue is made of debentures in the series, there shall be sent to the registrar, for entry in the register particulars of the date and amount of each issue; but an omission to do that shall not affect the validity of the debentures issued.

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

(11) Subject to subsection (9), the deposit of any debentures as security for any debt of the company shall not for the purposes of subsection (10) be treated as the issue of the debentures at a discount.

(12) For the purposes of this Part a charge shall be taken to be created in the case of an instrument creating a charge, on the date of the execution of the charge by or on behalf of the company, and in the case of a charge created by deposit of title deeds on the date of the deposit of the title deeds.

### **106. Duty of a company to register charges created by the company.**

(1) It shall be the duty of a company to send to the registrar for registration the particulars of every charge created by the company and of the issues of debentures of a series, requiring registration under section 105, but registration of any such charge may be effected on the application of any person interested in the charge.

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

(3) If a company fails for forty two days or such extended period as the registrar may order to send to the registrar for registration the particulars of any charge created by the company or of the issues of debentures of a series, requiring registration, then unless the registration has been effected on the application of some other person, the company and every officer or other person who is a party to the default is liable to a default fine of fifty currency points.

(4) For the purpose of subsection (3)—

- (a) in the case of a mortgage the forty two days referred to in that subsection shall be taken to run from the time of filing the mortgage instrument with the registrar of titles;
- (b) in the case of a debenture, the time shall run from the date of execution of the debenture.

**107. Duty of a company to register charges existing on property acquired.**

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

(2) If the property under subsection (1) is situated and the charge was created outside Uganda, thirty days after the date on which the copy of the instrument could in due course of post and if dispatched with due diligence, have been received in Uganda shall be substituted for forty two days after the completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the registrar under that subsection.

(3) If default is made in complying with this section, the company and every officer of the company who is in default is liable to a default fine of twenty five currency points.

**108. Certificate of registration of a charge.**

(1) The registrar shall issue a certificate signed by him or her of the registration of the charge registered under this Part and within any period allowed under this Part, stating the amount secured by the charge.

(2) The certificate shall be conclusive evidence that the requirements of this Part as to registration have been complied with.

**109. Endorsement of certificate of registration on debentures.**

(1) The company shall cause a copy of every certificate of registration given under section 108 to be endorsed on every debenture or certificate of debenture stock which is issued by the company and the payment of which is secured by the registered charge.

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

(3) Where a person knowingly and willfully authorises or permits the delivery of any debenture or certificate of debenture stock which under this section is required to have endorsed on it a copy of a certificate of registration without the copy being endorsed upon it, he or she shall without prejudice to any other liability, is liable to a fine of twenty five currency points.

### **110. Entries of satisfaction and release of property from charge.**

The registrar on evidence being given to his or her satisfaction with respect to any registered charge—

- (a) that the debt for which the charge was given has been paid or satisfied in whole or in part; or
- (b) that part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, may enter on the register a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be, and where he or she enters a memorandum of satisfaction in whole he or she shall, if required, furnish the company with a copy of the memorandum of satisfaction.

### **111. Extension of time to register charges.**

(1) The registrar, on being satisfied that the omission to register a charge within the time required by this Act or that the omission or misstatement of any particular with respect to any such charge or in a memorandum of satisfaction was accidental, or due to inadvertence or

to some other sufficient cause or is not of a nature to prejudice the position of creditors or shareholders of the company or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested and on such terms and conditions as seem to the registrar just and expedient, order that the time for registration shall be extended or as the case may be, that the omission or misstatement shall be rectified.

(2) Where a person defaults in complying with the requirements of this section, he or she is liable to a default fine not exceeding ten currency points for each day of which the default continues.

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

**112. Copies of instruments creating charges to be kept by the company.**

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

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

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

(2) Where a director, manager or other officer of the company knowingly and willfully authorises or permits the omission of any entry required to be made under this section, commits an offence and is liable on conviction to a fine not exceeding one thousand currency points.

**114. Right to inspect copies of instruments creating mortgages and charges and company's register of charges.**

(1) The copies of instruments creating a charge requiring registration under this Part with the registrar and the register of charges kept under section 113 shall be open during business hours to the inspection of any creditor or member of the company without fee, and the register of charges shall also be open to the inspection of any other person on payment of a fee, not exceeding one currency point for each inspection, as the company may prescribe.

(2) The company may in a general meeting impose reasonable restrictions under subsection (1) but the restrictions shall not be such as to reduce the period of inspection to less than two hours in each day.

(3) Where inspection of the copies or register under subsection (1) is refused, any officer of the company who refuses the inspection and every director and manager of the company who authorises or knowingly and willfully permits the refusal, is liable to a fine not exceeding twenty five currency points and a further fine not exceeding five currency points for every day during which the refusal continues; and the court may by order compel an immediate inspection of the copies or register.

## PART V—MANAGEMENT AND ADMINISTRATION

*Registered office and name.***115. Registered office of a company.**

(1) A company shall, as from the day on which it commences to carry on business or as from the fourteenth day after the date of its incorporation, whichever is the earlier, have a registered office and a registered postal address to which all communications and notices may be addressed.

(2) Where a company fails to comply with subsection (1), the registrar may give notice to the company giving it reasonable time in which to comply.

(3) The notice under subsection (2) may be given by publication in the *Gazette* or in a newspaper of wide circulation or both.

(4) Where after due notice under subsection (2), the Company continues to be in default in relation to subsection (1), the registrar may deregister the Company.

(5) Notwithstanding anything in this section, where there is default in complying with this section, the company and every officer of the company who is in default is liable to a default fine of twenty five currency points.

### **116. Notification of the situation of the registered office, the registered postal address and of any change in them.**

(1) Notice of the situation of the registered office and the registered postal address, and of any change in them shall be given within fourteen days after the date of incorporation of the company or of the change as the case may be, to the registrar, who shall record the change.

(2) The inclusion in the annual return of the company, of a statement as to the situation of its registered office or as to its registered postal address shall not be taken to satisfy the obligations imposed by this section.

(3) Where there is default in complying with this section, the company and every officer of the company who is in default is liable to a default fine of twenty five currency points.

### **117. Publication of name by company.**

(1) Every company—

- (a) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on in a conspicuous position in legible letters;
- (b) shall have its name engraved in legible letters on its seal which shall take the form of embossed metal die; and

- (c) shall have its name mentioned in legible letters in all business letters of the company and in all notices and other official publications of the company and in all bills of exchange, promissory notes, endorsements, checks and order for money or goods purporting to be signed by or on behalf of the company and in all bills of parcels, invoices, receipts and letters of credit of the company.

(2) Where a company does not paint or affix its name in the manner provided under subsection (1)(a), the company and every officer of the company who is in default is liable to a fine not exceeding twenty five currency points and if a company does not keep its name painted or affixed in the manner provided under subsection (1)(a), the company and every officer of the company who is in default is liable to a default fine of twenty five currency points.

(3) Where a company fails to comply with subsection (1)(b) or (c), the company shall be liable to a fine not exceeding five hundred currency points.

(4) Where an officer of a company or any person on its behalf—

- (a) uses or authorises the use of any seal purporting to be a seal of the company on which its name is not engraved as required by subsection (1)(b) or which is not in the form of an embossed metal die;
- (b) issues or authorises the issue of any business letter of the company or a notice or other official publication of the company or signs or authorises to be signed on behalf of the company a bill of exchange, promissory note, endorsement, cheque or order for money or goods in which its name is not mentioned in a manner described in subsection (1)(c); or
- (c) issues or authorises the issue of any bill of parcels, invoice receipt or letter of credit of the company in which its name is not mentioned in the manner described in subsection (1)(c),

he or she is liable to a fine not exceeding twenty percent of the bill of exchange, promissory note, cheque or order for money or goods for the amount of the instrument in question unless it is duly paid by the company.

*Statement of amount of paid up capital.*

**118. Statement of amount of capital subscribed and amount paid up.**

(1) Where any notice, advertisement or other official publication of a company contains a statement of the amount of the authorised capital of the company, the notice, advertisement or other official publication shall also contain a statement in an equally prominent position and in equally conspicuous characters of the amount of the capital which has been subscribed and the amount paid up.

(2) A company which contravenes subsection (1) defaults in complying with the requirements of this section and every officer who is in default is liable on conviction to a fine not exceeding five hundred currency points.

(3) Every officer of the company by recision of whose action of omission a company commits an offence under this section also commits the offence and is liable to the same penalty as the company.

*Register of members.*

**119. Register of members.**

(1) A company shall keep a register of its members and enter in the register the following particulars—

- (a) the names and postal addresses of the members and in the case of a company having a share capital a statement of shares held by each member, distinguishing each share by its number if the share has a number and of the amount paid or agreed to be considered as paid on the shares of each member;
- (b) the date on which each person was entered in the register as a member; and

- (c) the date on which any person ceased to be a member, except that where the company has converted any of its shares into stock the register shall show the amount and class of stock held by each member instead of the amount of shares and the particulars relating to shares specified in paragraph (a).

(2) The register of members shall be kept at the registered office of the company; except that—

- (a) if the work of making it up is done at another office of the company, it may be kept at that other office; and
- (b) if the company arranges with some other person for the making up of a register to be understood on behalf of the company by that other person, it may be kept at the office of that person at which the work is done but it shall not be kept at a place outside Uganda.

(3) A company shall send notice to the registrar of the place where its register of members is kept and of any change of place.

(4) A company shall send notice under this section where the register has, at all times since it came into existence or in the case of a register in existence at the commencement of this Act, at all times since the commencement of this Act been kept at the registered office of the company.

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

(6) Where a company defaults in complying with subsection (1) or makes default for fourteen days in complying with subsection (5), the company and every officer of the company who is in default is liable to a daily default fine of twenty five currency points.

**120. Index of members.**

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

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

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

(4) Where there is default in complying with this section, the company and every officer of the company who is in default is liable to a default fine of twenty five currency points.

**121. Provisions as to entries in the register in relation to share warrants.**

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

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

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

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

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

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

## **122. Inspection of the register and index.**

(1) Except when the register of members is closed under this Act, the register and index of the names, of the members of a company shall, during business hours be open to inspection of any member without charge and of any other person on payment of one currency point or such less sum as the company may prescribe, for each inspection.

(2) The company may in a general meeting impose reasonable restrictions on inspection under subsection(1) but the restrictions shall not be such as to reduce the period of inspection to less than two hours in each day.

(3) A member or other person may require a copy of the register or of any part of it, on payment of one currency point or such less sum as the company may prescribe.

(4) The company shall cause any copy required under subsection (3) by any person to be sent to that person within a period of fourteen days commencing on the day next after the day on which the requirement is received by the company.

(5) Where an inspection required under this section is refused or if a copy required under this section is not sent within the period specified in subsection (4), the company and every officer of the company who is in default is liable in respect of each offence to a fine not exceeding twenty five currency points and further to a default fine of five currency points in respect of each day of which the default continues.

(6) In the case of a refusal or default referred to in subsection (5), the court may, by order compel an immediate inspection of the register and index or direct that the copies required shall be sent to the person requiring them.

### **123. Consequences of failure to comply with requirements as to register owing to agent's default.**

Where by virtue of section 119(2)(b), the register of members is kept at the office of a person other than the company, and by reason of any default of that company fails to comply with section 119(3), 120(3) or 122 of or with any requirement of this Act as to the production of the register, that other person is liable to the same penalty as if he or she were an officer of the company who was in default and the power of the court under section 122(5) shall extend to the making of orders against that other person and his or her officers and servants.

### **124. Power to close the register.**

A company may, on giving notice by advertisement in a newspaper of wide circulation in Uganda, close the register of members for any time or times not exceeding in the whole, thirty days in each year.

### **125. Power of the court to rectify register.**

(1) Where—

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

(2) Where an application is made under this section, the court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.

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

(4) In the case of a company required by this Act to send a list of its members to the registrar, the court, when making an order for rectification of the register shall by its order direct notice of the rectification to be given to the registrar.

### **126. Trusts not to be entered on the register.**

A notice of any trust, expressed, implied or constructive shall not be entered on the register or be receivable by the registrar.

### **127. Register to be evidence.**

The register of members shall be prima facie evidence of any matters by this Act directed or authorised to be inserted in the register.

#### *Branch register.*

### **128. Power for a company to keep a branch register.**

(1) A company having a share capital may, if authorised by its articles, cause to be kept in any part of the commonwealth outside Uganda a branch register of members resident in that part of the commonwealth in this Act called a “branch register”.

(2) The company shall give to the registrar notice of the situation of the office where any branch register is kept, and of any change in its situation and if it is discontinued, of its discontinuance, and any such notice shall be given within one month after the opening of the office or after the change or discontinuance, as the case may be.

(3) Where default is made in complying with subsection (2), the company and every officer of the company who is in default are liable to a default fine of twenty five currency points.

### **129. Regulations as to a branch register.**

(1) A branch register shall be taken to be part of the company's register of members, in this section called "the principal register".

(2) The 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 advertisement before closing the register shall be inserted in a newspaper with wide circulation in the area where the branch register is kept.

(3) The company shall—

- (a) transmit to its registered office a copy of every entry in its branch register as soon as possible after the entry is made; and
- (b) cause to be kept at the place where the company's principal register is kept a duplicate of its branch register duly entered up from time to time.

(4) Every duplicate branch register shall for all the purposes of this Act be taken to be part of the principal register.

(5) Subject to this section, the shares registered in a branch register shall be distinguished from the shares registered in the principal register and no transaction with respect to any shares registered in a branch register shall during the continuance of that registrations be entered in any other register.

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

(7) Subject to this Act, any company may, by its articles make provisions as it may think fit in respect of the keeping of branch registers.

(8) Where default is made in complying with subsection (3), the company and every officer of the company who is in default is liable to a default fine of ten currency points and where, by virtue of section 119(2)(b), the principal register is kept at the office of some person other than the company and by default of that person the company fails to comply with subsection (3)(b), that other person is liable to the same penalty as if he or she were an officer of the company who was in default.

### **130. Stamp duty in cases of shares registered in branch registers.**

An instrument of transfer of a share registered in a branch register shall be taken to be a transfer of property situated outside Uganda and, unless executed in any part of Uganda shall not be exempt from stamp duty chargeable in Uganda if the country where it is executed has a double taxation agreement with Uganda.

### **131. Provisions as to branch registers of Commonwealth companies kept in Uganda.**

Where by virtue of the law in force in any part of the commonwealth companies incorporated under that law have power to keep in Uganda branch registers of their members resident in Uganda, the Minister may by statutory instrument direct that section 117(2) and 123 shall, subject to any modifications and adaptations specified in the instrument, apply to and in relation to any such branch registers kept in Uganda as they apply to and in relation to the registers of companies within the meaning of this Act.

#### *Annual returns.*

### **132. Annual return to be made by a company having a share capital.**

(1) A company having a share capital shall, once at least in every year, make a return containing with respect to the registered office of the company, registers of members and debenture holders, shares and debentures indebtedness, past and present members and directors and secretary, the matters specified in Part I of the Fourth Schedule to this Act and the return shall be in the form and shall be made up to the date set out in Part II of that Schedule or as near to it as circumstances admit.

- (2) Notwithstanding subsection (1)—
- (a) a company need not make a return under that subsection in the year of its incorporation or, if it is not required by section 138 to hold an annual general meeting during the following year, in that year;
  - (b) where the company has converted any of its shares into stock list referred to in paragraph 5 of Part I of the Fourth Schedule it must state the amount of stock held by each of the existing members instead of the amount of shares and the particulars relating to shares required by that paragraph; and
  - (c) the return may in any year, if the return for either of the two immediately preceding years has given as at the date of that return the full particulars required by paragraph 5, give only such of the particulars required by that paragraph as relate to persons ceasing to be or becoming members since the date of the last return and to shares transferred since that date of the last return and to shares transferred since that date or to changes as compared with that date or in the amount of the stock held by a member.
- (3) In the case of a company keeping a branch register—
- (a) references in subsection (2)(c) particulars required by paragraph 5 shall be taken as not including any contained in the branch register in so far as copies of the entries containing those particulars are not received at the registered office of the company before the date when the return in question is made; and
  - (b) where an annual return is made between the date when any entries are made in the branch register and the date when copies of those entries are received at the registered office of the company the particulars contained in those entries, so far as relevant to an annual return, shall be included in the next or a subsequent annual return as may be appropriate having regard to the particulars included in that return with respect to the company's register of members.

(4) Where a company fails to comply with this section, the company and every officer of the company who is in default is liable to a default fine of twenty five currency points.

(5) For the purposes of Part I of the Fourth Schedule to this Act, "director" and "officer" include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

### **133. Annual return to be made by a company not having a share capital.**

(1) A company not having a share capital shall at least once in every calendar year make a return stating—

- (a) the situation of the registered office of the company and the registered postal address of that office;
- (b) in a case in which the register of members is under this Act, kept elsewhere than at the registered office, the address of the place where it is kept;
- (c) in a case in which any register of holders of debentures of a company or any duplicate of the register or part of the register is, under this Act, kept in Uganda, elsewhere than at the registered office of the company, the address of the place where it is kept;
- (d) all such particulars with respect to the persons who at date of the return are the directors of the company and any person who at that date is secretary of the company as are by this Act required to be contained with respect to directors and the secretary in the register of directors and secretaries of a company; and
- (e) to what extent the company has complied with the principles of good corporate governance contained in Table F.

(2) Subject to subsection (1), a company need not make a return under that subsection either in the year of its incorporation or, if it is not required by section 140 to hold an annual general meeting during the following year, in that year.

(3) Where a company fails to comply with this section, the company and every officer of the company who is in default is liable to a default fine of twenty five currency points.

(4) For the purposes of this section, “officer” and “director” include a person in accordance with whose directions or instructions the directors of the company are accustomed to act.

### **134. Time for completion of the annual return.**

(1) The annual return shall be completed within forty two days after the annual general meeting for the year, whether or not that meeting is the first or only ordinary general meeting, or the first or only general meeting of the company in the year and the company shall within that period forward to the registrar a copy signed both by a director and by the secretary of the company.

(2) Where a company fails to comply with this section, the company and every officer of the company who is in default is liable to a default fine of twenty five currency points.

(3) For the purposes of subsection (2), "officer" includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

(4) Where a company is dormant, the directors shall notify the registrar within fifteen working days from the date of the resolution for dormancy and the company shall be exempted from filing returns for 12 months; that is the grace period.

(5) If after expiry of five years from date specified in subsection (1), the company has not filed any annual returns, the registrar shall require the company file a statement of solvency and show cause why a company should not be struck off the register.

(6) Where the company does not show cause why it should not be struck off the register in accordance with subsection(5), the registrar and publish in the gazette and newspaper of wide national circulation a notice of the striking-off of that company the registrar.

**135. Documents to be annexed to the annual return.**

(1) There shall be annexed to the annual return—

- (a) a copy, certified both by a director and by the secretary of the company to be a true copy, of every balance sheet laid before the company in general meeting during the period to which the return relates (including every document required by law to be annexed to the balance sheet); and
- (b) a copy, certified as provided in paragraph (a), of the report of the auditors on and of the report of the directors accompanying, each such balance sheet, and where any such balance sheet or document required by law to be annexed is in a foreign language, there shall be annexed to that balance sheet a translation in the English language of the balance sheet or document certified in the prescribed manner to be a correct translation.

(2) Where any such balance sheet or document required by law to be annexed to it did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets or documents as the case may be, there shall be made such additions to and corrections in the copy as would have been required to be made in the balance sheet or document in order to make it comply with the requirements and the fact that the copy has been so amended shall be stated on it.

(3) Where a company fails to comply with this section, the company and every officer of the company who is in default is liable to a default fine of twenty five currency points.

(4) For the purposes of subsection (3), "officer "includes a person in accordance with whose directions or instructions the directors of the company are accustomed to act.

(5) Subsection (1) does not apply to a private company unless at least one shareholder is a public company.

**136. Certificates to be sent by a private company with the annual return.**

The annual return required by section 134 shall, in the case of a private company be endorsed with or accompanied by a certificate signed both by a director and by the secretary of the company that the company has not, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company and, where the annual return discloses the fact that the number of members of the company exceeds one hundred also a certificate so signed that the excess consists wholly of persons who under section 5 are not to be included in reckoning the number of one hundred.

*Meetings and proceedings.*

**137. Statutory meeting and statutory report.**

(1) A company limited by shares and every company limited by guarantee and having a share capital shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company which shall be called “the statutory meeting”.

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

(3) Subject to subsection (2), if the statutory report is forwarded later than is required by that subsection, it shall, notwithstanding that fact, be taken to have been duly forwarded if it is so agreed by all the members entitled to attend and vote at the meeting.

(4) The statutory report shall be certified by not less than two directors of the company and shall state—

- (a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up or otherwise than in cash and stating in the case of shares partly paid up, the extent to which they are so paid up and in either case the consideration for which they have been allotted;
- (b) the total amount of cash received by the company in respect of all shares allotted, distinguished as described in paragraph (a);
- (c) an abstract of the receipts of the company and of the payments made out of them, up to a date within seven days before the date of the report, exhibiting under the distinctive headings the receipts of the company from shares and debentures and other sources, the payments made on them and particulars concerning the balance remaining in hand and an account or estimate of the preliminary expenses of the company;
- (d) the names, postal addresses and descriptions of the directors, auditors, if any, managers, if any and secretary of the company; and
- (e) the particulars of any contract the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(5) The statutory report shall, so far as it relates to the shares allotted by the company and to the cash received in respect of those shares and to the receipts and payments of the company on capital account, be certified as correct by the auditors, if any, of the company.

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

(7) The directors shall cause a list showing the names and postal addresses of the members of the company and the number of shares held by them respectively, to be produced at the commencement of the meeting and to remain open and accessible to any member of the company during the continuance of the meeting.

(8) The members of the company present at the meeting are free to discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not but no resolution of which notice has not been given in accordance with the articles may be passed.

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

(10) Where there is a default in complying with this section, every director of the company who is knowingly and willfully commits a default or in the case of default by the company, every officer of the company who is in default is liable to a fine of twenty five currency points.

(11) This section does not apply to a private company but applies to a company which was a private company before becoming a public company.

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

(1) A Public company shall in each year hold a general meeting in addition to any other meetings in that year and shall specify the meeting as general meeting in the notices calling it and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next.

(2) A private company may at the requisition of a member hold an annual general meeting.

(3) Subject to subsection (1), if a company holds its first annual general meeting within eighteen months after its incorporation, it need not hold it in the year of its incorporation or in the following year.

(4) Where default is made in holding a meeting of the company in accordance with subsection (2), the registrar may, on the application of any member of the company, call or direct the calling of a general meeting of the company and give such ancillary or consequential directions as the registrar thinks expedient including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the company's articles.

(5) The directions that may be given under subsection (3) include a direction that one member of the company present in person or by proxy shall be taken to constitute a meeting.

(6) A general meeting held under subsection (3) shall, subject to any directions of the registrar, be taken to be an annual general meeting of the company; but, where that meeting is not held in the year in which the default in holding the company's annual general meeting occurred, the meeting shall not be treated as the annual general meeting for the year in which it is held unless at that meeting the company resolves that it shall be treated as such.

(7) Where a company resolves under subsection (4) that a meeting shall be treated as an annual general meeting, a copy of the resolution shall, within fourteen days after the passing of the resolution, be forwarded to the registrar and recorded by him or her.

(8) Where default is made in holding a meeting of the company in accordance with subsection (1) or in complying with any directions of the registrar under subsection (3), the company and every officer of the company who is in default are liable to a default fine of twenty

five currency points and if default is made in complying with subsection (4), the company and every officer of the company who is in default are liable to a default fine of five currency points.

**139. Convening of an extra ordinary general meeting on requisition.**

(1) The directors of a company, notwithstanding anything in its articles, shall, on the requisition of the members holding not less than one tenth of the paid up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company or in the case of a company not having a share capital, members of the company representing not less than one tenth of the total voting rights of all the members having that date a right to vote at general meetings of the company, shall proceed duly to convene an extraordinary general meeting of the company.

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

(3) Where the directors do not within twenty one days after the deposit of the requisition under subsection (2) held the meeting attended by members representing more than one half of the total voting rights at a general meeting then after the expiration of three months after the date of deposit of the requisition the meeting shall not be held.

(4) A meeting convened under this section shall be convened in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

(5) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company and any sum regard 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 the directors who are in default.

(6) For the purposes of this section, the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be taken not to have duly convened the meeting if they do not give the notice required by section 149.

#### **140. Length of notice for calling meetings.**

(1) Any provision of a company's articles shall be void in so far as it provides for the calling of a meeting of the company other than an adjourned meeting by a shorter notice than twenty-one days.

(2) The notice under subsection (1) shall be in writing.

(3) Except where the articles of a company make other provision not being a provision declared to be void for the purpose by subsection (1), a meeting of the company other than an adjourned meeting may be called by twenty-one days' notice in writing.

(4) A meeting of a company shall, notwithstanding that it is called by shorter notice than that specified in subsection (3) or in the company's articles, as the case may be, be taken to have been duly called if it is agreed—

- (a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote at the meeting; and
- (b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than ninety five per cent in nominal value of the shares giving a right to attend and vote at the meeting or in the case of a company not having a share capital, together representing not less than ninety five per cent of the total voting rights at that meeting of all members.

**141. General provisions as to meetings and votes.**

The following provisions shall have effect in so far as the articles of the company do not make other provision for the purpose—

- (a) notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A and for the purpose of this paragraph, the expression "Table A" means that Table as for the time being in force;
- (b) two or more members holding not less than one tenth of the issued share capital or, if the company has not a share capital, not less than five per cent in number of the members of the company may call a meeting;
- (c) in the case of a private company two members, and in the case of any other company three members, personally present shall form a quorum;
- (d) any member elected by the members present at a meeting may be chairperson of the meeting;
- (e) in the case of a company originally having a share capital, every member shall have one vote in respect of each share or each twenty currency points of stock held by him or her and in any other case every member shall have one vote.

**142. Power of the court to order a meeting.**

(1) Where for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called or conduct the meeting of the company in the manner prescribed by the articles or this Act, the court may of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting order a meeting of the company to be called, held and conducted in the manner the court thinks fit.

(2) Where an order is made under this section the court may give such ancillary or consequential directions as it thinks expedient and it is declared that the directions that may be given under this subsection include a direction that one member of the company present in person or by proxy shall be taken to constitute a meeting.

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

### **143. Proxies.**

(1) A member of a company entitled to attend and vote at a meeting of the company is entitled to appoint another person whether a member or not as his or her proxy to attend and vote instead of him or her and a proxy appointed to attend and vote instead of a member of a private company shall also have the same right as the member to speak at the meeting.

(2) Subject to subsection (1), unless the articles otherwise provide—

- (a) that subsection shall not apply in the case of a company not having a share capital;
- (b) member of a private company shall not be entitled to appoint more than one proxy to attend on the same occasion; and
- (c) a proxy shall not be entitled to vote except on a poll.

(3) Every notice calling a meeting of a company having a share capital, shall state clearly that a member entitled to attend and vote is entitled to appoint a proxy or, where that is allowed, one or more proxies to attend and vote instead of him or her and that a proxy need not also be a member.

(4) Where there is default in complying with subsection (2) in respect of any meeting, every officer of the company who is in default is liable to a default fine of twenty five currency points.

(5) A provision in a company's articles is 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 or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy, to be received by the company or any other person more than forty eight hours before a meeting or adjourned meeting in order that the appointment may be effective at the meeting.

(6) Where 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 only some of the members entitled to be sent a notice of the meeting and to vote by proxy, every officer of the company who knowingly and willfully authorises or permits their issue is liable to a default fine of twenty five currency points.

(7) Subject to subsection (5), an officer shall not be liable under that subsection by reason only of the issue to a member at his or her request in writing of a form of appointment naming the proxy or of a list of persons willing to act as proxy if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(8) This section does apply to meetings of any class of members of a company as it applies to general meetings of the company.

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

(1) A provision in a company's articles is void in so far as it would have the effect—

- (a) of excluding the right to demand a poll at a general meeting on any question other than the election of the chairperson of the meeting or the adjournment of the meeting; or
- (b) of making ineffective a demand for a poll on the question which is made—

- (i) by not less than five members having the right to vote at the 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 holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than one tenth of the total sum paid up on all shares conferring that right.

(2) The instrument appointing a proxy to vote at a meeting of a company shall be taken 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.

#### **145. Voting on poll.**

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

#### **146. Representation of corporations at meetings of companies and of creditors.**

(1) A corporation, whether a company within the meaning of this Act or not, may—

- (a) if it is a member of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise the person as it thinks fit to act as its representative at any meeting of any class of members of the company; or

- (b) if it is a creditor, including a holder of debentures of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorize the person as it thinks fit to act as its representative at any meeting of any creditors of the company held under this Act or of any rules made under or in accordance with the provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorised under subsection (1) is entitled to exercise the same powers on behalf of the corporation which he or she represents as that corporation could exercise if it were an individual shareholder, creditor or holder of debentures of that other company.

#### **147. Circulation of members' resolutions and related particulars.**

(1) Subject to this section it shall be the duty of a company, on the requisition in writing of such number of members as is specified in subsection (2) and unless the company otherwise resolves at the expense of the requisitionists—

- (a) to 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) to circulate to the 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—

- (a) any number of members representing not less than one twentieth of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or

- (b) not less than one hundred members holding shares in the company on which there has been paid up an average sum, per member , of not less than two hundred currency points.

(3) Notice of any resolution referred to in subsection (1), shall be given and any statement referred to in that subsection shall be circulated, to members of the company entitled to have a 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 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 notice of meetings of the company.

(4) Subject to subsection (3), a copy of the resolution shall be served or notice of the effect of the resolution under that subsection shall be given as the case may be in the same manner and, so far as practicable, at the same time as notice of the meeting and, where it is not practicable for it to be served or given at that time, it shall be served or given as soon as practicable after that time.

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

- (a) a copy of the requisition signed by the requisitionists or two or more copies which between them contain the signatures of all the requisitionists is deposited at the registered office of the company—
  - (i) in the case of a requisition requiring notice of a resolution, not less than six weeks before the meeting; and
  - (ii) in the case of any other requisition, not less than one week before the meeting; and
- (b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect to it.

(6) Subject to subsection (5), if after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date six weeks or less after the copy has been deposited, the copy though not deposited within the time required by subsection (4) shall be taken to have been properly deposited for the indicated purposes.

(7) The company shall not be bound under this section to circulate any statement if, on the application either of the company or any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matters; and the court may order the company's costs on application under this section to be paid in a whole or in part by the requisitionists, notwithstanding that they are not parties to the application.

(8) Notwithstanding anything in the company's articles, the business which may be dealt with at an annual general meeting shall include any resolution of which notice is given in accordance with this section; and notice shall be taken to have been given notwithstanding the accidental omission in giving it, to any member.

(9) Where there is default in complying with this section, every officer of the company who is in default is liable to a fine not exceeding one thousand currency points.

#### **148. Special resolution.**

(1) A resolution shall be a special resolution when it has been passed by a majority of not less than three fourths of such members as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, at a general meeting of which notice specifying the intention to propose the resolution as a special resolution has been duly given.

(2) Subject to subsection (1), if it is agreed by a majority in number of the members having the right to attend and vote at a meeting referred to in subsection (1), being a majority together holding not less than ninety five per cent in nominal value of the shares giving that right or in the case of a company not having a share

capital, together representing not less than ninety five percent of the total voting rights at that meeting of all the members, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty one days' notice has been given.

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

(4) In computing the majority on a poll demanded on the question that a special resolution be passed, reference shall be had to the number of votes cast for and against the resolution

(5) For the purposes of this section, notice of a meeting shall be taken to be duly given and the meeting to be duly held when the notice is given and the meeting held in the manner provided by this Act or the articles.

#### **149. Resolution requiring special notice.**

(1) Where by any provisions of this Act special notice is required of a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the company not less than twenty eight days before the meeting at which it is moved.

(2) The company shall give its members notice of a resolution under subsection (1) at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable shall give them notice either through any advertisement in a newspaper of wide circulation or in any other mode allowed by the articles, not less than twenty one days before the meeting.

(3) Subject to subsection (1), if after notice of the intention to move the resolution has been given to the company, a meeting is called for a date twenty eight days or less after the notice has been given, the notice though not given within the time required by this section shall be taken to have been properly given for the specified purposes.

**150. Registration and copies of certain resolutions and agreements.**

(1) A printed copy of every resolution or agreement to which this section applies shall, within thirty days after the passing or making of the resolution or agreement, be delivered to the registrar for registration.

(2) Where articles have been registered, a printed copy of every resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.

(3) Where the articles have not been registered, a printed copy of every resolution or agreement shall be forwarded to any member at his or her request on payment of one tenth of a currency point or such less sum as the company may direct.

(4) This section applies to—

- (a) special resolutions;
- (b) resolutions which have been agreed to by all the members of a company but which if not so agreed to, would not have been effective for their purpose unless, they had been passed as special resolutions;
- (c) resolutions or agreements which have been agreed to by all the members of some class or shareholders but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner;
- (d) all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members.

(5) Where a company fails to comply with subsection (1), the company and every officer of the company who is in default is liable to a default fine of five currency points.

(6) Where a company fails to comply with subsection (2) or (3), the company and every officer of the company who is in default is liable to a default fine of twenty five currency points for each copy in respect of which default is made.

(7) For the purposes of subsections (5) and (6), a liquidator of the company shall be taken to be an officer of the company.

### **151. Resolution passed at adjourned meetings.**

Where a resolution is passed at an adjourned meeting of—

- (a) a company;
- (b) the holders of any class of shares in a company; or
- (c) the directors of a company,

the resolution shall, for all purposes be treated as having been passed on the date on which it was in fact passed and shall not be taken to have been passed on any earlier date.

### **152. Minutes of proceedings of meetings of company and of directors.**

(1) Every company shall cause minutes of all proceedings of general meetings and of all proceedings at meetings of its directors, to be entered in books kept for that purpose.

(2) Any minute referred to in subsection (1) purporting to be signed by the chairperson of the meeting at which the proceedings were held or by the chairperson of the next following general meeting or meeting of directors as the case may be shall be evidence of the proceedings.

(3) Where minutes have been made in accordance with the proceedings at any general meeting of the company or meeting of directors then, until the contrary is proved, the meeting shall be taken to have been duly held and convened and all proceedings had to have been duly had and all appointments of directors or liquidators shall be taken to be valid.

(4) Where a company fails to comply with subsection (1), the company and every officer of the company who is in default is liable to a default fine of twenty five currency points.

### **153. Inspection of minute books.**

(1) The books containing the minutes of proceedings of any general meeting of a company shall be kept at the registered office of the company and shall during business hours be open to the inspection of any member without charge.

(2) The company may in general meeting impose restrictions on inspection under subsection (1) but the restrictions shall not be such as to reduce the period of inspection to less than two hours in each day.

(3) A member shall be entitled to be furnished within fourteen days after he or she has made a request for the purpose to the company, with a copy of the minutes at a charge not exceeding one tenth of a currency point for every hundred words or a fraction of it.

(4) Where any inspection required under this section is refused or if any copy required under this section is not sent within the proper time, the company and every officer of the company who is in default is liable in respect of each offence to a fine of twenty five currency points and in case of a continuing default, to a further fine of five currency points in respect of each day the default continues.

(5) In the case of a refusal or default referred to in subsection (4), the court may, by order compel an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall be sent to the persons requiring them.

### *Accounts and Audit.*

### **154. Keeping of books of account.**

(1) Every company shall cause to be kept in the English language proper books of account 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, except that in respect of an existing company the requirement that the books of account shall be kept in the English language shall not have effect until after the expiration of a period of two years from the date of the commencement of this Act.

(2) For the purposes of this section, proper books of account shall be taken not to have been kept with respect to the matters referred to in subsection (1) if there are not kept such books as are necessary to give true and fair view of the state of the company's affairs and to explain its transactions.

(3) The books of account shall be kept at the registered office of the company or at such other place in Uganda as the directors think fit and shall at all times be open to inspection by the directors.

(4) Where any person being a director of a company fails to take all reasonable steps to secure compliance by the company with the requirements or has by his or her own willful act been the cause of any default by the company of any provision of this, he or she commits an offence and is liable on conviction to imprisonment not exceeding twelve months or to a fine not exceeding one hundred currency points or both.

(5) Subject to subsection (4)—

- (a) in any proceedings against a person in respect of an offence under this section consisting of a failure to take reasonable steps to secure compliance by the company with the requirements of this section, it shall be a defence to prove that he or she had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that those requirements were complied with and was in a position to discharge that duty; and

- (b) a person shall not be sentenced to imprisonment for an offence under subsection (4) unless in the opinion of the court, the offence was committed willfully.

**155. Profit and loss account and balance sheet.**

(1) The directors of a company shall at a date not later than eighteen months after the incorporation of the company and subsequently, once at least in every calendar year, lay before the company in general meeting a profit and loss account or in the case of a company not trading for profit, an income and expenditure account for the period in the case of the first account, since the incorporation of the company and in any other case, since the preceding account, made up to a date not earlier than the date of the meeting by more than nine months or in the case of a company carrying on business or having interests abroad, by more than twelve months.

(2) The registrar, for any special reason as he or she thinks fit to do so, may in the case of any company, extend the period of eighteen months referred to in subsection (1) and in the case of any company and with respect to any year extend the periods of nine and twelve months referred to in that subsection.

(3) The directors shall cause to be made out in every calendar year and to be laid before the company in general meeting, a balance sheet as at the date to which the profit and loss account or the income and expenditure account as the case may be, is made up.

(4) Where any person being a director of a company fails to take all reasonable steps to comply with this section, he or she commits an offence and on conviction is liable to imprisonment not exceeding five years or a fine not exceeding one thousand currency points or both.

(5) Subject to subsection (4)—

- (a) in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he or she had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the provisions were complied with and was in a position to discharge that duty; and

- (b) a person shall not be sentenced to imprisonment under subsection (4) for an offence unless in the opinion of the court dealing with the case, the offence was committed willfully.

**156. General provisions as to contents and form of accounts.**

(1) Every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of its financial year and every profit and loss account of a company shall give a true and fair view of the profit or loss of the company for the financial year.

(2) A company's balance sheet and profit and loss account shall comply with the requirements of the Fifth Schedule to this Act, so far as applicable.

(3) Except as expressly provided in the following provisions or in Part III of the Fifth Schedule to this Act, the requirements of subsection (2) and the Fifth Schedule shall be without prejudice either to the general requirements of subsection (1) or to any other requirements of this Act.

(4) The registrar may, on the application or with the consent of a company's directors, notify in relation to that company any of the requirements of this Act as to the matters to be stated in a company's balance sheet or profit and loss account, except the requirements of subsection (1) for the purpose of adapting them to the circumstances of the company.

(5) Subsections (1) and (2) do not apply to a company's profit and loss account if—

- (a) the company has subsidiaries; and
- (b) the profit and loss account is framed as a consolidated profit and loss account dealing with all or any of the company's subsidiaries as well as the company and—
  - (i) complies with the requirements of this Act relating to consolidated profit and loss accounts; and

- (ii) shows how much of the consolidated profit or loss for the financial year is dealt with in the accounts of the company.

(6) Where a person being a director of a company fails to take all reasonable steps to secure compliance as respects any accounts laid before the company in a general meeting with the provisions of this section and with the other requirements of this Act as to the matters to be stated in accounts, he or she commits an offence and is liable on conviction in respect of each offence to imprisonment not exceeding five years or to a fine not exceeding five hundred currency points or both, but subsection (6) is subject to the following—

- (a) in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he or she had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the relevant provisions or the other requirements as the case may be, were complied with and was in a position to discharge that duty; and
- (b) a person shall not be sentenced to imprisonment for any offence under subsection (6) unless in the opinion of the court dealing with the case, the offence was committed willfully.

(7) For the purposes of this Act, except where the context otherwise requires—

- (a) any reference to a balance sheet or profit and loss account shall include any notes on it or document annexed to it giving information which is required by this Act and is allowed to be given by this Act; and
- (b) any reference to a profit and loss account shall be taken in the case of a company not trading for profit as referring to its income and expenditure account and references to profit or to loss and, if the company has subsidiaries, references to a consolidated profit and loss account shall be construed accordingly.

**157. Obligation to lay group accounts before the holding company.**

(1) Where at the end of its financial year a company has subsidiaries, accounts or statements in this Act referred to as "group accounts" dealing as mentioned in this Act with the state of affairs and profit or loss of the company and the subsidiaries shall, subject to subsection (2), be laid before the company in general meeting when the company's own balance sheet and profit and loss account are laid in the general meeting.

(2) Notwithstanding anything in subsection (1)—

- (a) group accounts shall not be required where the company is at the end of its financial year the wholly owned subsidiary of another body corporate incorporated in Uganda; and
- (b) group accounts need not deal with a subsidiary of the company if the company's directors are of opinion that—
  - (i) it is impracticable or would be of no real value to members of the company in view of the insignificant amounts involved or would involve expense or delay out of proportion to the value to members of the company;
  - (ii) the result would be misleading or harmful to the business or the company or any of its subsidiaries; or
  - (iii) the business of the holding company and that of the subsidiary are so different that they cannot reasonably be treated as a single undertaking, and, if the directors are of such an opinion about each of the company's subsidiaries, group accounts shall not be required,
- (c) where the directors are of the opinion as described in paragraph (b) in relation to the company's subsidiaries then group accounts shall not be required.

(3) Subject to subsection (2) the approval of the registrar shall be required for not dealing in group accounts with a subsidiary on the ground that the result would be harmful or on the ground of the difference between the business of the holding company and that of the subsidiary.

(4) Where any person being a director of a company fails to take all reasonable steps to secure compliance as respects the company with this section, he or she commits an offence and is liable on conviction to imprisonment not exceeding two years or a fine not exceeding two hundred currency points.

(5) Notwithstanding subsection (4)—

- (a) in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the requirements were complied with and was in a position to discharge that duty; and
- (b) a person shall not be sentenced to imprisonment for an offence under this section unless in the opinion of the court dealing with the case, the offence was committed willfully.

(6) For the purposes of this section a company shall be taken to be the wholly owned subsidiary of another company if it has no members other than that other company and that company's wholly owned subsidiaries and its or their nominees.

### **158. Form of group accounts.**

(1) Subject to subsection (2), the group accounts laid before a holding company shall be consolidated accounts comprising—

- (a) a consolidated balance sheet dealing with the state of affairs of the company and all the subsidiaries to be dealt with in group account;
- (b) a consolidated profit and loss account dealing with the profit or loss of the company and those subsidiaries.

(2) Where the company's directors are of the opinion that it is better for the purpose—

- (a) of presenting the same or equivalent information about the state of affairs and profit and loss of the company and those subsidiaries; and
- (b) of so presenting it that it may be readily appreciated by the company's members,

the group accounts may be prepared in a form other than that required by subsection (1) and in particular may consist of more than one set of consolidated accounts dealing respectively with the company and one group of subsidiaries and with other groups of subsidiaries or of separate accounts dealing with each of the subsidiaries or of statements expanding the information about the subsidiaries in the company's own accounts or any combination of those forms.

(3) The group accounts may be wholly or partly incorporated in the company's own balance sheet and profit and loss account.

### **159. Contents of group accounts.**

(1) The group accounts laid before a company shall give a true and fair view of the state of affairs and profit and loss of account the company and the subsidiaries dealt with by the group accounts as a whole, so far as concerns members of the company.

(2) Where the financial year of a subsidiary does not coincide with that of the holding company, the group accounts shall, unless the registrar on the application or with the consent of the holding company's directors otherwise directs, deal with the subsidiary's state of affairs as at the end of its financial year ending with or last before that of the holding company and with the subsidiary's profit or loss for that financial year.

(3) Without prejudice to subsection (1), the group accounts, if prepared as consolidated accounts shall comply with the requirements of the Fifth Schedule to the Act, so far as applicable and if not so prepared shall give the same or equivalent information.

(4) Subject to subsection (3), the registrar may, on the application or with the consent of a company's directors modify the said requirements in relation to that company for the purpose of adapting them to the circumstances of the company.

### **160. Financial year of the holding company and subsidiary.**

(1) A holding company's directors shall ensure that except where in their opinion there are good reasons against it, the financial year of each of its subsidiaries shall coincide with the company's own financial year.

(2) Where it appears to the registrar desirable for a holding company or a holding company's subsidiary to extend its financial year so that the subsidiary's financial year may end with that of the holding company and for that purpose to postpone the submission of the relevant accounts to a general meeting from one calendar year to the next, the registrar may on the application or with the consent of the directors of the company whose financial year is to be extended direct that, in the case of that company, the submission of accounts to a general meeting, the holding of an annual general meeting or the making of an annual return shall not be required in the earlier of those calendar years.

### **161. Meaning of "holding company" and "subsidiary".**

(1) For the purpose of this Act, a company shall, subject to subsection (1), be taken to be a subsidiary of another only if—

- (a) that other company either—
  - (i) is a member of it and controls the composition of its board of directors; or
  - (ii) holds more than half in nominal value of its equity share capital; or
- (b) the first-mentioned company is a subsidiary of any company which is that other's subsidiary.

(2) For the purposes of subsection (1) the composition of a company's board of directors shall be taken to be controlled by another company only if, that other company by the exercise of some power exercisable by it without the consent or concurrence of any other person, can appoint or remove the holders of all or a majority of the directorships.

(3) For the purposes of subsection (2) that other company shall be taken to have power or appoint to a directorship with respect to which any of the following conditions is satisfied, that—

- (a) a person cannot be appointed to a directorship without the exercise in his or her favour by that other company of that power;
- (b) a person's appointment to a directorship follows necessarily from his or her appointment as director of that other company; or
- (c) the directorship is held by that other company itself or by a subsidiary of it.

(4) In determining whether one company is a subsidiary of another—

- (a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or power exercisable by it;
- (b) subject to paragraphs (c) and (d), any shares held or power exercisable—
  - (i) by any person as a nominee for that other except where that other is concerned only in fiduciary capacity; or
  - (ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity, shall be treated as held or exercisable by that other;

- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of those debentures shall be disregarded;
- (d) any shares held or exercisable by that other company or by its nominee that other company or its subsidiary not being held or exercisable as mentioned in paragraph (c) shall be treated as not held or exercisable by that other company if the ordinary business of that other or its subsidiary includes the lending of money and the shares are held or power is exercisable as described in this paragraph by way of security only for the purpose of a transaction entered into in the ordinary course of that business.

(5) For the purposes of this Act, a company shall be taken to be another's holding company only if, the other is its subsidiary.

(6) In this section, "company" includes any body corporate and "equity share capital" means, in relation to a company, its share capital excluding any part of it which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.

### **162. Signing of a balance sheet.**

(1) Every balance sheet of a company shall be signed on behalf of the board by two of the directors of the company or, if there is only one director, by that director.

(2) In the case of a banking company the balance sheet must be signed by the secretary or the manager, if any, and where there are more than three directors of the company by at least three of those directors and where there are not more than three directors by all the directors.

(3) When the total number of the directors of the company for the time being in Uganda is less than the number of directors whose signatures are required by this section, the balance sheet shall be signed by all the directors for the time being in Uganda or, if there is

only one director for the time being in Uganda, by that director but in that case there shall be subjoined to the balance sheet a statement signed by such directors or director explaining the reason for non compliance with this section.

(4) Where any copy of a balance sheet which has not been signed as required by this section is issued, circulated or published, the company and every officer of the company who is in default commits an offence and is liable on conviction to a fine not exceeding one hundred currency points.

### **163. Unqualified report.**

(1) Where the balance sheet is prepared for a financial year of the company, the auditors' report shall state whether in the auditors' opinion the report is without material qualification and that the balance sheet has been properly prepared in accordance with this Act.

(2) Where the balance sheet was not prepared for a financial year of the company, the auditors' report shall state without material qualification if in the auditors' opinion the balance sheet has been properly prepared in accordance with the provisions of this Act which would have applied if it had been so prepared.

(3) For the purposes of an auditors' report under this section the provisions of this Act shall be deemed to apply with such modifications as are necessary by reason of the fact that the balance sheet is not prepared for a financial year of the company.

(4) A qualification shall be regarded as material unless the auditors state in their report that the matter giving rise to the qualification is not material for the purpose of determining, by reference to the company's balance sheet whether at the balance sheet, date the amount of the company's net assets was not less than the aggregate of its called up share capital and undistributable reserves.

**164. Accounts and auditors' report to be annexed to the balance sheet.**

(1) The profit and loss account and, so far as not incorporated in the balance sheet or profit and loss account, any group accounts laid before the company in general meeting shall be annexed to the balance sheet and the auditors' report shall be attached to the balance sheet.

(2) An accounts so annexed under subsection (1) shall be approved by the board of directors before the balance sheet is signed in relation to it.

(3) Where a copy of a balance sheet is issued, circulated or published without having annexed to it a copy of the profit and loss account or any group accounts required by this section to be annexed or without having attached to it a copy of the auditors' report, the company and every officer of the company who is in default commits an offence and is liable on conviction to a fine not exceeding one hundred currency points.

**165. Directors' report to be attached to the balance sheet.**

(1) There shall be attached to every balance sheet laid before a company in general meeting a report by the directors with respect to the state of the company's affairs, the amount, if any which they recommend should be paid by way of dividend and the amount, if any which they propose to carry to reserves within the meaning of the Fifth Schedule to this Act.

(2) The report shall deal, so far as is material for the appreciation of the state of the company's affairs by its members and will not in the directors' opinion be harmful to the business of the company or of any of its subsidiaries with any change during the financial year in the nature of the company's business or in the company's subsidiaries or in the classes of business in which the company has an interest whether as member of another company or otherwise.

(3) Where any person being a director of a company fails to take all reasonable steps to comply with subsection (1), he or she commits an offence and is liable on conviction to imprisonment not exceeding one year or a fine not exceeding one hundred currency points.

(4) Notwithstanding subsection (3)—

- (a) in any proceedings against a person in respect of an offence under that subsection, it shall be a defence to prove that he or she had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the provisions of that subsection were complied with and was in a position to discharge that duty; and
- (b) a person shall not be liable to be sentenced to imprisonment for an offence under that subsection unless in the opinion of the court dealing with the case, the offence was committed willfully.

**166. Right to receive copies of the balance sheet and auditors' report.**

(1) A copy of every balance sheet including every document required by law to be annexed to it which is to be laid before a company in general meeting, together with a copy of the auditors' report, shall, not less than twenty-one days before the date of the meeting, be sent to every member of the company whether he or she is or is not entitled to receive notices of general meetings of the company and every holder of debentures of the company whether he or she is or is not entitled and all persons other than members or holders of debentures of the company, being persons so entitled.

(2) Subject to subsection (1)—

- (a) in the case of a company not having a share capital, that subsection shall not require the sending of a copy of the documents mentioned in that subsection to a member of the company who is not entitled to receive notices of general meetings of the company or to a holder of debentures of the company who is not so entitled;

- (b) that subsection shall not require a copy of those documents to be sent—
- (i) to a member of the company or a holder of debentures of the company, being in either case a person who is not entitled to receive notices of general meetings of the company and of whose address the company is unaware;
  - (ii) to more than one of the joint holders of any shares or debentures none of whom is entitled to receive the notices; or
  - (iii) in the case of joint holders of any shares or debentures some of whom are and some of whom are not entitled to receive such notices, to those who are not so entitled; and
- (c) if the copies of the documents are sent less than twenty-one days before the date of the meeting, they shall, notwithstanding that fact, be taken to have been duly sent if it is so agreed by all the members entitled to attend and vote at the meeting.

(3) Any member of a company whether he or she is or is not entitled to have sent to him or her copies of the company's balance sheets and any holder of debentures of the company whether he or she is or is not entitled is entitled to be furnished on demand without charge with a copy of the last balance sheet of the company including every document required by law to be annexed to it, together with a copy of the auditors' report on the balance sheet.

(4) Where there is default is made in complying with subsection (1), every officer of the company who is in default commits an offence and is liable on conviction to imprisonment not exceeding one year or a fine not exceeding one hundred currency points or both.

(5) Where any person makes a demand for any documents with which he or she is by virtue of subsection (3) entitled to be furnished, default is made in complying with the demand within seven days after the making the demand, the company and every officer of the company who is in default commits an offence and is liable on conviction to a fine not exceeding one hundred currency points, unless it is proved that that person has already made a demand for and been furnished with a copy of the document.

(6) Subsections (1) to (5) shall not have effect in relation to a balance sheet of a private company laid before it before the commencement of this Act and the right of any person to be furnished with a copy of any such balance sheet and the liability of the company in respect of a failure to satisfy that right shall be the same as they would have been if this Act had not passed.

### **167. Appointment and remuneration of auditors.**

(1) Every company shall at each annual general meeting appoint an auditor to hold office from the conclusion of that annual general meeting, until the conclusion of the next, annual general meeting.

(2) Notwithstanding subsection (1), at any annual general meeting a retiring auditor, however appointed, shall be taken to be re-appointed without any resolution being passed unless—

- (a) he or she is not qualified for reappointment;
- (b) a resolution has been passed at that meeting appointing somebody instead of him or her or providing expressly that he or she shall not be re-appointed; or
- (c) he or she has given the company notice in writing of his or her unwillingness to be reappointed.

(3) Where notice is given of an intended resolution to appoint a person in place of a retiring auditor and by reason of the death, incapacity or disqualification of that person, the resolution cannot be proceeded with, the retiring auditor shall not be taken to be automatically reappointed by virtue of subsection (2).

(4) Where at an annual general meeting no auditors are appointed or re-appointed, the registrar may appoint a person to fill the vacancy.

(5) The company shall, within one week of the registrar's power under subsection (4) becoming exercisable, give the registrar notice of that fact.

(6) Where a company fails to give notice as required by subsection (5), the company and every officer of the company who is in default is liable to a default fine of twenty five currency points.

(7) Subject to this section the first auditors of a company may be appointed by the directors at any time before the first annual general meeting and the auditors appointed shall hold office until the conclusion of that meeting.

(8) Subject to subsection (7)—

(a) the company may at a general meeting remove any auditors appointed under subsection (7) and appoint in their place any other persons who have 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 days before the date of the meeting; and

(b) if the directors fail to exercise their powers under this subsection, the company in general meeting may appoint the first auditors and upon the appointment the powers of the directors shall cease.

(9) The directors may fill any casual vacancy in the office of auditor but while any such vacancy continues, the surveying or continuing auditors, if any, may act.

(10) The remuneration of the auditors of a company—

- (a) in the case of an auditor appointed by the directors or by the registrar may be fixed by the directors or by the registrar as the case may be; or
- (b) subject to paragraph (a), shall be fixed by the company in a general meeting or in such manner as the company in a general meeting may determine.

(11) For the purposes of subsection (8), any sums paid by the company in respect of the auditors' expenses shall be taken to be included in the expression "remuneration."

### **168. Provisions as to resolution relating to appointment and removal of auditors.**

(1) Special notice shall be required for a resolution at a company's annual general meeting appointing a person as auditor other than a retiring auditor or providing expressly that a retiring auditor shall not be re-appointed.

(2) On receipt of notice of an intended resolution under subsection (1) the company shall forthwith send a copy of the notice to the retiring auditor, if any.

(3) Where notice is given of an intended resolution under subsection (2) and the retiring auditor makes with respect to the intended resolution representations in writing to the company and requests that the representation be notified to the members of the company, 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 members of the company, state that the representations have been made; and
- (b) send a copy of the representations to every member of the company to whom notice of the meeting is sent whether before or after receipt of the representations by the company, and if a copy of the representations is not sent as

required by this paragraph because it is received too late or because company has declared, the auditor may without prejudice to his or her right to be heard orally require that the representations shall be read out at the meeting.

(4) Subject to subsection (3), copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter and the court may order the company's costs on an application under this section to be paid in whole or in part by the auditor, notwithstanding that he or she is not a party to the application.

(5) Subsection (3) shall apply to a resolution to remove the first auditors by virtue of section 167(8) as it applies in relation to a resolution that a retiring auditor shall not be reappointed.

### **169. Disqualifications for appointment as auditor.**

(1) A person or firm shall not be qualified for appointment as an auditor of a company unless he or she or in the case of a firm, every partner in the firm is a member of—

- (a) one or more of the professional bodies specified in the Accountants Act; or
- (b) the Institute of Certified Public Accountants of Uganda established under the Accountants Act, or is a person registered as an associate accountant under the Accountants Act.

(2) None of the following persons shall be qualified for appointment as auditor of a company—

- (a) an officer or servant of the company;
- (b) a person who is a partner of or in the employment of an officer or servant of the company; or

(c) a body corporate;

(3) Subsection (2)(b) shall not apply in the case of a private company.

(4) References in subsection (2) to an officer or servant shall be construed as not including references to an auditor.

(5) A person shall also not be qualified for appointment as auditor of a company if he or she is, by virtue of subsection (2), disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company or would be so disqualified if the body corporate were a company.

(6) Where a person who is not qualified to act is appointed as auditor of a company that person and the company and every officer in default is liable to a default fine of twenty five currency points.

### **170. Auditors' report and right of access to books and to attend and be heard at general meetings.**

(1) The auditors shall make a report to the members on the accounts examined by them and on every balance sheet, every profit and loss account and all group accounts laid before the company in a general meeting during their tenure of office and the report shall contain statements as to the matters mentioned in the Sixth Schedule to this Act.

(2) The auditors' report shall be read before the company in general meeting and shall be open to inspection by any member.

(3) Every auditor of a company has a right of access at all times to the books and accounts and vouchers of the company and is entitled to require from the officers of the company such information and explanation as he or she thinks necessary for the performance of the duties of the auditors.

(4) The auditors of a company are 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 they attend on any part of the business of the meeting which concerns them as auditors.

### **171. Construction of references to documents annexed to accounts.**

References in this Act to a document annexed or required to be annexed to a company's accounts or any of them shall not include the directors' report or the auditors' report; except that any information which is required by this Act to be given in accounts and is allowed to be given in a statement annexed, may be given in the directors' report instead of in the accounts and, if any such information is so given, the report shall be annexed to the accounts and this Act shall apply in relation to it accordingly, except that the auditors shall report on it only so far as it gives that information.

#### *Investigation by the registrar.*

### **172. Investigation by the registrar.**

(1) Where the registrar has reasonable cause to believe that the provisions of this Act are not being complied with or where, on perusal of any document which a company is required to submit to the registrar under this Act, the registrar is of opinion that the document does not disclose a full and fair statement of the matters to which it purports to relate, the registrar may, by a written order, call on the company concerned to produce all or any of the books of the company or to furnish in writing such information or explanation as the registrar may specify in the order.

(2) Books required to be produced under subsection (1) shall be produced and the information or explanation required under that subsection shall be furnished within such time as may be specified in the order.

(3) On receipt of an order under subsection (1), it shall be the duty of all persons who are or have been officers of the company to produce the books or to furnish the information or explanation so far as lies within their power.

(4) Where any person referred to in subsection (2) refuses or neglects to produce the books or to furnish the information or explanation he or she commits an offence and is liable on conviction to imprisonment of one year or a fine not exceeding one hundred currency points in respect of each offence.

(5) Where after examination of the books or consideration of the information or explanation the registrar is of the opinion that an unsatisfactory state of affairs is disclosed or that a full and fair statement has not been disclosed the registrar shall report the circumstances of the case in writing to the court.

*Inspection.*

**173. Investigation to company's affairs on application of members.**

(1) The registrar may appoint one or more competent inspectors to investigate the affairs of a company and to report in such manner as the registrar directs—

- (a) in the case of a company having a share capital on the application either of not less than two hundred members or of members holding not less than one-tenth of the shares issued; or
- (b) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members.

(2) The application shall be supported by such evidence as the registrar may require for the purpose of showing that the applicants have good reason for requiring the investigation and the registrar may, before appointing an inspector, require the applicants to give security, of an amount not exceeding one thousand currency points, for payment of the cost of the investigation.

(3) A person aggrieved by a decision of the registrar under this section may appeal to court

**174. Investigation of a company's affairs in other cases.**

Without prejudice to his or her powers under section 173, the registrar—

- (a) shall appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as the registrar directs, if the company by special resolution declares that its affairs ought to be investigated by an inspector appointed by the registrar; and
- (b) may appoint one or more competent inspectors to investigate the affairs of a company, if it appears to the registrar that there are circumstances suggesting—
  - (i) that the company's business is being conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive of any part of its members or that it was formed for any fraudulent or unlawful purpose;
  - (ii) that persons concerned with its formation or the management of its affairs have in connection with formation or management been guilty of fraud, misfeasance or other misconduct towards it or towards the company or towards its members;
  - (iii) that its members have not been given all the information with respect to its affairs which they might reasonably expect; or
  - (iv) that it is desirable to do so.

**175. Power of inspectors to carry an investigation into the affairs of related companies.**

Where an inspector appointed under section 173 or 174 to investigate the affairs of a company thinks it necessary for the purposes of the investigation to investigate also the affairs of any other body corporate which is or has at any relevant time been the company's subsidiary or holding company or a subsidiary of its holding company or a holding company of its subsidiary, he or she shall have power so to do and shall report on the affairs of the other body corporate so far as he or she thinks the results of his or her investigation are relevant to the investigation of the affairs of the first-mentioned company.

**176. Production of documents and evidence on investigation.**

(1) It shall be the duty of all officers and agents of the company and of all officers and agents of any other body corporate whose affairs are investigated by virtue of section 175 to produce to any inspector all books and documents of or relating to the company or as the case may be the other body corporate which are in their custody or power and otherwise to give to the inspectors all assistance in connection with the investigation which they are reasonably able to give.

(2) An inspector may examine on oath the officers and agents of the company or other body corporate in relation to its business and may administer an oath accordingly.

(3) Where any officer or agent of the company or other body corporate refuses to produce to any inspector any book or document which it is his or her duty under this section to produce or refuses to answer any question which is put to him or her by an inspector with respect to the affairs of the company or other body corporate as the case may be, the inspector may certify the refusal by issuing a certificate signed by him or her to the registrar and the registrar may enquire into the case and after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, punish the offender in the same manner as if he or she had been guilty of contempt of the court.

(4) Where an inspector thinks it necessary for the purpose of his or her investigation that a person whom he or she has no power to examine on oath should be examined, he or she may apply to the court and the court may if it thinks fit order that person to attend and be examined on oath before it on any matter relevant to the investigation and on the examination—

- (a) the inspector may take part in the proceedings either personally or by advocate;
- (b) the court may put such questions to the person examined as the court thinks fit; and
- (c) the person examined shall answer all such questions as the court may put or allow to be put to him or her but may at his or her own cost employ an advocate who shall be free to put to him or her such questions as the court may deem just for the purpose of enabling him or her to explain or qualify any answers given by him or her.

(5) Notes of the examination under subsection (4) shall be taken down in writing and shall be read over to or by and signed by the person examined and may thereafter be used in evidence against him or her.

(6) Notwithstanding anything in subsection (4)(c), the court may allow the person examined under that subsection such costs as in its discretion it may think fit and any costs so allowed shall be paid as part of the expenses of the investigation.

(7) In this section any reference to officers or to agents shall include past as well as present officers or agents and for the purposes of this section, “agents,” in relation to a company or other body corporate includes the bankers and advocates of the company or other body corporate and any persons employed by the company or other body corporate as auditors whether those persons are or are not officers of the company or other body corporate.

(8) A person aggrieved by a decision of the registrar made under this section may appeal to court.

**177. Inspector's report.**

(1) An inspector may and if directed by the registrar, shall make interim reports to the registrar and on the conclusion of the investigation shall make a final report to the registrar.

(2) Any report under subsection (1) shall be written and if the registrar directs printed.

(3) The registrar shall—

- (a) forward a copy of report made by an inspector to the company;
- (b) if the registrar thinks fit, forward a copy of the report on request and on payment of the prescribed fee to any other person who is a member of the company or of any other body corporate dealt with in the report by virtue of section 173 or whose interests as a creditor of the company or any such other body corporate as referred to in section 175 as appears to the registrar to be affected; or
- (c) where any inspector is appointed under section 184, furnish, at the request of the applicants for the investigation a copy to them, and may also cause the report to be printed and published.

**178. Proceedings on an inspector's report.**

(1) Where from any report made under section 177 it appears to the registrar that any person has in relation to the company or to any other body corporate whose affairs have been investigated by virtue of section 175 committed an offence for which he or she is criminally liable, the registrar shall forward copies of the report to the Attorney General and to the Director of Public Prosecutions.

(2) Where the Director of Public Prosecutions considers that the case is one in which a prosecution ought to be instituted, he or she shall institute proceedings accordingly.

(3) All officers and agents of the company, past and present other than the defendant in the proceedings, shall give the Director of Public Prosecutions all assistance in connection with the prosecution which they are reasonably able to give.

(4) Section 176(5) applies for the purposes of this section as it applies for the purposes of section 176.

(5) Where, in the case of any body corporate liable to be wound up under this Act, it appears to the Attorney General from any such report referred to in subsection (1) that it is expedient to do so by reason of any such circumstances as are referred to in section 174(b)(i) or (ii) the Attorney General may, unless the body corporate is already being wound up by the court, present a petition for it to be so wound up if the court thinks it just and equitable that it should be wound up or a petition for an order under section 250 or both.

(6) Where from any such report referred to in subsection (1) it appears to the Attorney General that proceedings ought in the public interest to be brought by any body corporate dealt with by the report for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation of that body corporate or the management of its affairs or for the recovery of any property of the body corporate which has been misapplied or wrongfully retained, the Attorney General may bring proceedings for that purpose in the name of the body corporate.

(7) The registrar shall indemnify the body corporate against any costs or expenses incurred by it in or in connection with any proceedings brought by virtue of subsection (5).

### **179. Expenses of investigation of a company's affairs.**

(1) The expenses of and incidental to an investigation by an inspector appointed by the registrar under section 173 shall be paid by the person who applied for the investigation who may recover the expenses from the company.

(2) The expenses of and incidental to an investigation by an inspector appointed by the registrar under section 174 shall be defrayed in the first instance by the registrar but the following persons shall, to the extent mentioned, be liable to repay the registrar—

- (a) any person who is convicted on a prosecution instituted by the Director of Public Prosecutions as a result of the investigation or who is ordered to pay damages or restore any property in proceedings brought by virtue of section 178(5), may in the same proceedings be ordered to pay the said expenses to such extent as may be specified in the order;
- (b) any body corporate in whose name proceedings are brought under section 178 shall be liable to the amount or value of any sums or property recovered by it as a result of those proceedings; and
- (c) unless as a result of the investigation a prosecution is instituted by the Director of Public Prosecutions—
  - (i) any body corporate dealt with by the report, where the inspector was appointed otherwise than under section 174(b) shall be liable, except so far as the court otherwise directs; and
  - (ii) the applicants for the investigation, where the inspector was appointed under section 173 shall be liable to such extent, if any as the court directs and any amount for which a body corporate is liable by virtue of paragraph (b) shall be a first charge on the sums or property mentioned in that paragraph.

(3) The report of an inspector appointed otherwise than under section 174(b) may, if the inspector thinks fit and shall, if the registrar directs, include a recommendation as to the directors, if any which he or she thinks appropriate in the light of his or her investigation, to be given under subsection (2)(c).

(4) For the purposes of this section, any costs or expenses incurred by the registrar in or in connection with proceedings brought by virtue of section 178(7) shall be treated as expenses of the investigation giving rise to the proceedings.

(5) Any liability to repay the registrar imposed by subsection 2(a) and (b) shall, subject to satisfaction of the registrar's right to repayment, be a liability also to indemnify all persons against liability under subsection (2)(c).

(6) A person liable under subsection (2)(c) is entitled to contribution from any other person liable under that subsection according to the amount of their respective liabilities.

### **180. Inspector's report to be evidence.**

A copy of any report of any inspector appointed under sections 173 and 174, authenticated by the seal of the company whose affairs he or she has investigated shall be admissible in any legal proceedings as evidence of the opinion of the inspector in relation to any matter contained in the report.

### **181. Appointment and powers of inspectors to investigate ownership of a company.**

(1) Where it appears to the registrar that there is good reason to do so, the registrar, may appoint one or more competent inspectors to investigate and report on the membership of any company and otherwise with respect to the company for the purpose of determining the true persons who are or have been financially interested in the success or failure real or apparent of the company or able to control or materially to influence the policy of the company.

(2) The appointment of an inspector under this section may define the scope of his or her investigation whether as respects the matter or the period to which it is to extend or otherwise and in particular may limit the investigation to matters connected with particular shares or debentures.

(3) Where an application for an investigation under this section with respect to particular shares or debentures of a company is made to the registrar by members of the company and the number of applicants or the amount of the shares held by them is not less than that required for an application for the appointment of an inspector under section 173, the registrar shall appoint an inspector to conduct the investigation unless he or she is satisfied that the application is vexatious.

(4) The inspector's appointment under subsection (3) shall not exclude from the scope of his or her investigation any matter which the application seeks to have included in it, except in so far as the registrar is satisfied that it is unreasonable for that matter to be investigated.

(5) The registrar may refuse to appoint an inspector under that subsection (3) unless in any case in which he or she considers it reasonable to do so and to require the applicants give sufficient security for the payment of the costs of the investigation.

(6) Subject to the terms of an inspector's appointment, his or her powers shall extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding is or was observed or likely to be observed in practice and which is relevant to the purposes of his or her investigation.

(7) For the purposes of any investigation under this section, sections, 175 to 177 apply with the necessary modifications or references to the affairs of the company or to those of any other body corporate, except, that—

- (a) those sections apply in relation to all persons who are or have been or whom the inspector has reasonable cause to believe to be or have been, financially interested in the success or failure or the apparent success or failure of the company or any other body corporate whose membership is investigated with that of the company or able to control or materially to influence the policy of the company including persons concerned only on behalf of others as they appeal in relation to officers and agents of the company or of the other body corporate as the case may be; and

- (b) the registrar shall not be bound to furnish the company or any other person with a copy of any report by an inspector appointed under this section or with a complete copy of it if he or she is of opinion that there is good reason for not divulging the contents of the report or of parts of the report but shall keep a copy of the report or as the case may be, the parts of the report as respects which he or she is not of that opinion.

(8) The expenses of any investigation under subsection (1) shall be defrayed by the registrar and the expenses of any investigation under subsection (3) shall be defrayed by the applicants unless the registrar certifies that it is a case in which he or she might properly have acted under subsection (1).

**182. Power to require information as to persons interested in shares or debentures.**

(1) Where it appears to the registrar that there is good reason to investigate the ownership of any shares in or debentures of a company and that it is unnecessary to appoint an inspector for the purpose, he or she may require any person whom he or she has reasonable cause to believe—

- (a) to be or to have been interested in those shares or debentures; or
- (b) to act or to have acted in relation to those shares or debentures as the advocate or agent of someone interested in them,

to give him or her any information which he or she has or can reasonably be expected to obtain as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures.

(2) For the purposes of this section, a person shall be taken to have an interest in a share or debenture if—

- (a) he or she has a right to acquire or dispose of the share or debenture or any interest in them;
- (b) his or her consent is necessary for the exercise of any of the rights of other persons interested in the share or debenture; or
- (c) other persons interested in the share or debenture can be required or are accustomed to exercising their rights in accordance with his or her instructions.

(3) A person who fails to give any information required to him or her under this section or who in giving information makes any statement which he or she knows to be false commits an offence and is liable to imprisonment not exceeding one year or to a fine not exceeding one hundred currency points or both.

### **183. Power to impose restrictions on shares or debentures.**

(1) Where in connection with an investigation under sections 181 and 182 it appears to the registrar that there is difficulty in finding out the relevant facts about any shares whether issued or to be issued and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned or any of them to assist the investigation as required by this Act, the registrar may by order direct that the shares shall until further order be subject to the restrictions imposed by this section.

(2) Where any shares are directed to be subject to the restrictions imposed by this section—

- (a) any transfer of those shares or in the case of unissued shares any transfer of the right to be issued with it and any issue of it shall be void;
- (b) no voting rights shall be exercisable in respect of those shares;
- (c) no further shares shall be issued in right of those shares under any offer made to the holder of those shares; or

- (d) except in a liquidation, no payment shall be made of any sums due from the company on those shares whether in respect of capital or otherwise.

(3) Where the registrar makes an order directing that shares shall be subject to the said restrictions referred to in subsection (2), the court may, if it sees fit, direct that the shares shall cease to be subject to those restrictions.

(4) Any order, whether of the registrar or of the court directing that shares shall cease to be subject to 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 mentioned in subsection (2)(c) and (d) either in whole or in part, so far as they relate to any right acquired or offer made before the transfer.

(5) A person who—

- (a) exercises or purports to exercise any right to dispose of any shares which, to his or her knowledge, are for the time being subject to the restrictions imposed under this section 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 of the shares; or
- (c) being the holder of any such shares, fails to notify of their being subject to the restrictions any person whom he or she does not know to be aware of that fact but does know to be entitled, apart from the restrictions, to vote in respect of those shares whether as holder or proxy,

commits an offence and is liable to imprisonment not exceeding one year or a fine not exceeding one hundred currency points or both.

(6) Where shares in any company are issued in contravention of the said restrictions, the company and every officer of the company who is in default commits an offence and is liable on conviction to imprisonment of one year or to a fine not exceeding one hundred currency points.

(7) A prosecution shall not be instituted under this section except by or with the consent of the Director of Public Prosecutions.

(8) This section applies in relation to debentures as it applies in relation to shares.

#### **184. Saving for advocates and bankers.**

Nothing in this Part shall require disclosure to the court or to the registrar or to an inspector appointed by the court or the registrar—

- (a) by an advocate of any privileged communication made to him or her in that capacity, except as respects the name and address of his or her client; or
- (b) by a company's bankers as such of any information as to the affairs of any of their customers other than the company.

#### *Directors and other officers.*

#### **185. Number of directors.**

Every company other than a private company, registered after the commencement of this Act shall have at least two directors, and every company registered before that date other than a private company and every private company shall have at least one director.

#### **186. Nominee director of a single member company.**

(1) A single member shall nominate two individuals, one of whom shall become nominee director in case of death of the single member and the other shall become alternate nominee director to work as nominee director in case of non-availability of the nominee director.

- (2) The nominee director shall—
  - (a) manage the affairs of the company in case of death of the single member until the transfer of shares to legal heirs of the single member;

- (b) inform the registrar of the death of the single member, provide particulars of the legal heirs and in case of any impediment report the circumstances seeking directions within fifteen days after the death of the single member;
- (c) transfer the shares to the legal heirs of the single member; and
- (d) call the general meeting of the members to elect directors.

(3) In case of any impediment due to transfer of shares, or election of directors or any other circumstances, the registrar shall call, or direct the calling of the meeting of legal heirs, in exercise of the powers conferred by section 138 in such manner as he or she deems fit and give such directions with regard to election of directors and making alteration in the articles, if any, and such ancillary and consequential directions as he or she thinks expedient in relation to calling, holding and conducting of the meeting.

### **187. Secretary.**

(1) Every company shall have a secretary and a sole director shall not also be secretary.

(2) Anything required or authorised to be done by or to the secretary, may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by or to a deputy or assistant secretary or, if there is no assistant or deputy secretary capable of acting, by or to any officer of the company authorised generally or specially for the purpose by a resolution of the board of directors.

(3) Notwithstanding subsection (1) a single member company is not obliged to have a secretary.

**188. Prohibition of certain persons being sole director or secretary.**

A company shall not—

- (a) have as secretary to the company, a corporation the sole director of which is a sole director of the company; or
- (b) have as sole director of the company a corporation the sole director of which is secretary to the company.

**189. Avoidance of acts done by a person in dual capacity as director and secretary.**

A provision requiring or authorising a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as or in place of, the secretary.

**190. Qualifications of company secretaries.**

(1) It is the duty of the directors of a public company to take all reasonable steps to ensure that the secretary, or each joint secretary of the company is a person who appears to them to have the requisite knowledge and experience to discharge the functions of secretary of the company and who—

- (a) is an advocate of the High Court;
- (b) is a person who, by virtue of his or her holding or having held any other position or his or her being a member of any other body, appears to the directors to be capable of discharging those functions;
- (c) is a member of or is qualified to be a member of any of the bodies specified in subsection (2).

(2) The bodies referred to in subsection (1)(c) are—

- (a) the Institute of Chartered Public Accountants in Uganda; or
- (b) the Institute of Chartered Secretaries and Administrators.

**191. Validity of acts of directors and managers.**

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

**192. Restrictions on appointment or advertisement of directors.**

(1) A person shall not be capable of being appointed director of a company by the articles and shall not be named as director or proposed director of a company in a prospectus issued by or on behalf of the company or as a proposed director of an intended company in the prospectus issued in relation to that intended company or in a statement in lieu of a prospectus delivered to the registrar by or on behalf of a company, unless before the registration of the articles or the publication of the prospectus or the delivery of the statement in lieu of prospectus as the case may be that person had by himself or herself or by his or her agent authorised in writing—

- (a) signed and delivered to the registrar for registration a consent in writing to act as director; and
- (b) he or she has—
  - (i) signed the memorandum for a number of shares not less than his or her qualification, if any;
  - (ii) taken from the company and paid or agreed to pay for his or her qualification shares, if any;
  - (iii) signed and delivered to the registrar for registration an undertaking in writing to take from the company and pay for his or her qualification shares, if any; or
  - (iv) made and delivered to the registrar for registration a statutory declaration to the effect that a number of shares, not less than his or her qualification, if any, are registered in his or her name.

(2) Where a person has signed and delivered under this section an undertaking to take and pay for his or her qualification shares, he or she shall as regards those shares that be in the same position as if he or she had signed the memorandum for that number of shares.

(3) A reference in this section to the share qualification of a director or proposed director shall be construed as including only a share qualification required on appointment or within a period determined by reference to the time of appointment and references in this section to qualification shares shall be construed accordingly.

(4) On the application for registration of the memorandum and articles of a company, the applicant shall deliver to the registrar a list of the persons who have consented to be directors of the company and, if the list contains the name of any person who has not consented, the applicant commits an offence and is liable on conviction to a fine not exceeding five hundred currency points

(5) This section does not apply to—

- (a) company not having a share capital;
- (b) a private company;
- (c) a company which was a private company before becoming a public company; or
- (d) a prospectus issued by or on behalf of a company after the expiration of one year from the date on which the company was entitled to commence business.

### **193. Share qualifications of directors.**

(1) Without prejudice to the restrictions imposed by section 192, it shall be the duty of every director who is by the articles of the company required to hold a specified share qualification and who is not already qualified, to obtain his or her qualification within two months after his or her appointment or such shorter time as may be fixed by the articles.

(2) For the purpose of any provision in the articles requiring a director or manager to hold a specified share qualification, the bearer of a share warrants shall not be taken to be the holder of the shares specified in the warrant.

(3) The office of director of a company shall be vacated if the director does not within such shorter time as may be fixed by the articles, obtain his or her qualification or if after the expiration of that period or shorter time he or she ceases at any time to hold his or her qualification.

(4) A person vacating office under this section shall be incapable of being re-appointed director of the company until he or she has obtained his or her qualification.

(5) Where after the expiration of the period or shorter time any unqualified person acts as a director of the company, he or she commits an offence and is liable on conviction to a fine not exceeding fifty currency points for every day between the expiration of the period or shorter time or the day on which he or she ceased to be qualified as the case may be and the last day on which it is proved that he or she acted as a director.

#### **194. Appointment of directors to be voted on individually.**

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

(2) A resolution moved in contravention of subsection (1) is void whether or not it is objected to at the time it is moved; but—

- (a) this subsection shall not be taken as excluding the operation of section 192; and

- (b) where a resolution is moved and passed contrary to subsection (1), no provision for the automatic reappointment of retiring directors in default of another appointment shall apply.

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

(4) Nothing in this section applies to a resolution altering the company's articles.

### **195. Removal of directors.**

(1) A company may by ordinary resolution remove a director before the expiration of his or her period of office, notwithstanding anything in its articles or in any agreement between the company and the director but this subsection shall not in the case of a private company authorise the removal of a director holding office for life at the commencement of this Act whether or not subject to retirement under an age-limited by virtue of the articles or otherwise.

(2) Special notice shall be required of any resolution to remove a director under this section or to appoint somebody instead of a director so removed at the meeting at which he or she is removed.

(3) On receipt of notice of an intended resolution to remove a director under this section the company shall send a copy of the notice to the director concerned and the director whether or not he or she is a member of the company shall be entitled to be heard on the resolution at the meeting.

(4) Where notice is given of an intended resolution to remove a director under this section and the director concerned makes with respect to it representations in writing to the company in respect of the intended resolution and requests their notification to members of the company, the company shall as soon as practicable—

- (a) in any notice of the resolution given to members of the company state the fact of the representation having been made; and
- (b) send a copy of the representations to every member of the company to whom notice of the meeting is sent whether before or after receipt of the representations by the company.

(5) Where a copy of the representations is not sent as required by subsection (3) because it was received too late or because of the company's default, the director may without prejudice to his or her right to be heard orally require that the representations shall be read out at the meeting, except that copies of the representations need not be sent out and the representation need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter.

(6) The court may in the circumstances described in subsection (5) order the company's costs on an application under this section to be paid in whole or in part by the director, notwithstanding that he or she is not a party to the application.

(7) A vacancy created by the removal of a director under this section, if not filled at the meeting at which the director is removed, may be filled as a casual vacancy.

(8) A person appointed director in place of a person removed under this section shall be treated, for the purpose of determining the time at which he or she or any other director is to retire as if he or she had become director on the day on which the person in whose place he or she is appointed was last appointed a director.

(9) This section does not deprive a person removed under this section of compensation or damages payable to him or her in respect of the termination of his or her appointment as director or of any appointment terminating with that as director or as derogating from any power to remove a director which may exist apart from this section.

**196. Minimum age for appointment of directors and retirement of directors over the age limit.**

A person shall not be capable of being appointed a director of a company if at the time of appointment he or she has not attained the age of eighteen years.

**197. Duty of directors to disclose age to the company.**

(1) A person who is appointed or to his or her knowledge proposed to be appointed director of a company at a time before he or she has attained the age of eighteen years shall give notice of his or her age to the company.

(2) A person who—

- (a) fails to give notice of his or her age as required by this section; or
- (b) acts as director under any appointment which is invalid by reason of his or her age,

commits an offence and is on conviction liable to a fine not exceeding ten currency points for every day during which the failure continues or during which he or she continues to act as described in this subsection.

(3) For the purposes of subsection (2), a person who has acted as director under an appointment which is invalid or has terminated shall be taken to have continued so to act throughout the period from the date the appointment became invalid or was terminated until the last day on which he or she is shown to have acted under that appointment.

**198. Duties of directors.**

The duties of the directors shall include the following—

- (a) act in a manner that promotes the success of the business of the company;
- (b) exercise a degree of skill and care as a reasonable person would do looking after their own business;

- (c) act in good faith in the interests of the company as a whole, and this shall include—
- (i) treating all shareholders equally;
  - (ii) avoiding conflicts of interest;
  - (iii) declaring any conflicts of interest;
  - (iv) not making personal profits at the company's expense;
  - (v) not accepting benefits that will compromise him or her from third parties; and
- (d) ensure compliance with this Act and any other law.

**199. Disqualification of directors.**

(1) A person shall be disqualified from acting as a director for a period of three years if he or she fails to—

- (a) keep proper accounting records;
- (b) prepare and file accounts;
- (c) send returns to registrar;
- (d) file tax returns and pay tax; or
- (r) allows a company to trade while insolvent

(2) A person disqualified as a director shall not—

- (a) be a director of any company;
- (b) act as a director before the expiry of the disqualification period;
- (c) influence the running of a company through the directors;
- (d) be involved in the formation of a new company;
- (e) act in a way that promotes a company;

**200. Provisions as to undischarged bankrupts acting as directors.**

(1) Where a person who has been declared bankrupt or insolvent by a competent court in Uganda or elsewhere and has not received his or her discharge acts as director of or directly or indirectly takes part in or is concerned in the management of, any company except with the leave of the court, he or she commits an offence and is liable on conviction to imprisonment not exceeding two years or to a fine not exceeding one thousand and twenty currency points or both.

(2) The leave of the court for the purposes of this section shall not be given unless notice of intention to apply for it has been served on the official receiver and it shall be the duty of the official receiver, if he or she is of opinion that it is contrary to the public interest that the application should be granted, to attend on the hearing of and opposed the granting of the application.

(3) In this section—

“company” includes an unregistered company and a company incorporated outside Uganda which has an established place of business within Uganda; and

“official receiver” means the official receiver within the meaning of the Insolvency Act, 2011.

**201. Power to restrain fraudulent persons from managing companies.**

(1) Where—

(a) a person is convicted of any offence in connection with the promotion, formation or management of a company; or

(b) in the course of winding up a company it appears that a person—

(i) has committed an offence for which he or she is liable whether he or she has been convicted or not under this Act; or

- (ii) has otherwise committed, while an officer of the company, any fraud in relation to the company or of any breach of his or her duty to the company, the court may make an order that that person shall not without the leave of the court, be a director of or in any way whether directly or indirectly, be concerned or take part in the management of the company for a period not exceeding five years as may be specified in the order.

(2) A person intending to apply for the making of an order under this section by the court having jurisdiction to wind up a company shall give not less than ten days' notice of his or her intention to the person against whom the order is sought and on the hearing of the application the last mentioned person may appear and himself or herself give evidence or call witnesses.

(3) An application for the making of an order under this section by the court having jurisdiction to wind up a company may be made by the official receiver or by the liquidator of the company or by a person who is or has been a member or creditor of the company and on the hearing of any application for an order under this section by the official receiver or the liquidator or of any application for leave under this section by a person against whom an order has been made on the application of the official receiver or the liquidator, the official receiver or liquidator shall appear and call the attention of the court to any matters which seem to him or her to be relevant and may himself or herself give evidence or call witnesses.

(4) An order may be made by virtue of subsection (1)(b)(ii) notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made.

(5) Where any person acts in contravention of an order made under this section, he or she commits an offence and is liable on conviction to imprisonment not exceeding one year or to a fine not exceeding one hundred currency points or both.

- (a) a person is convicted of any offence in connection with the promotion, formation or management of a company; or
  - (b) in the course of winding up a company it appears that a person—
    - (i) has committed an offence for which he or she is liable whether he or she has been convicted or not under this Act; or
    - (ii) has otherwise committed, while an officer of the company, any fraud in relation to the company or of any breach of his or her duty to the company, the court may make an order that that person shall not without the leave of court, be a director of or in any way whether directly or indirectly, be concerned or take part in the management of the company for a period not exceeding five years as may be specified in the order.
- (6) For the purposes of subsection (1)—
- (a) “the court” in relation to the making of an order against any person by virtue of subsection (1)(a) of that subsection, includes the court before which he or she is convicted as well as any court having jurisdiction to wind up the company and in relation to the granting of leave means any court having jurisdiction to wind up the company in respect of which leave is sought;
  - (b) “officer” includes any person in accordance with whose direction or instructions the directors of the company have been accustomed to act.

## **202. Prohibition of tax-free payments to directors.**

(1) It shall not be lawful for a company to pay a director remuneration whether as director or otherwise free of income tax or otherwise calculated by reference to or varying the amount of his or her income tax or to or with the rate of income tax.

(2) Any provision contained in a company's articles or in any contract or in any resolution of a company or a company's directors, for payment to a director of remuneration as aforesaid shall have effect as if it provided for payment as a gross sum subject to income tax referred to in subsection (1), of the net sum for which it actually provides.

### **203. Prohibition of loans and guarantees to directors.**

(1) A company shall not make a loan or guarantee a loan to a person who is its director or a director of its holding company or enter into a guarantee of a loan or provide security in connection with a loan made to that person by any other person and a company shall not make a loan to an officer of the company who is not a director.

(2) Notwithstanding subsection (1), nothing in this section shall apply—

- (a) to anything done by a company which is for the time being a private company; or
- (b) subject to subsection (3), anything done to provide a person referred to in subsection (1) with funds to meet expenditure incurred or to be incurred by him or her for the purposes of the company or for the purpose of enabling him or her to properly perform his or her duties as an officer of the company;

(3) Subsection (2)(b) shall not authorise the making of any loan or entering into any guarantee or the provision of any security, except—

- (a) with the prior approval of the company given at a general meeting at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security as the case may be, are disclosed; or
- (b) on condition that, if the approval of the company is not given as described in paragraph (a) at or before the next following annual general meeting, the loan shall be repaid or the liability under the guarantee or security shall be discharged as the case may be, within six months from the conclusion of that meeting.

(4) Where the approval of the company is not given as required by a condition described in subsection (3)(b), the directors authorising the making of the loan or the entering into the guarantee or the provision of the security shall be jointly and severally liable to indemnify the company against any loss arising from the transaction.

(5) Nothing in section shall be taken to prohibit the grant of a guarantee to a member of staff of a public company other than a director of that company.

(6) For the purposes of this section, "guarantee" includes indemnity and cognate expressions are to be construed accordingly.

#### **204. Inter-company loans in same group.**

In the case of a company which is a member of a group of companies meaning a holding company and its subsidiaries, section 203 does not prohibit the company from—

- (a) making a loan to another member of that group; or
- (b) entering into a guarantee or providing any security in connection with a loan made by any person to another member of the group, by reason only that a director of one member of the group is associated with another.

#### **205. Transactions at behest of holding company.**

The following transactions are excepted from the prohibitions of section 203—

- (a) a loan by a company to its holding company or a company entering into a guarantee or providing any security in connection with a loan made by any person to its holding company; and
- (b) a company entering into a credit transaction as creditor for its holding company or entering into a guarantee or providing any security in connection with a credit transaction made by any other person for its holding company.

**206. Funding of director's expenditure on duty to company.**

(1) A company is not prohibited by section 203 from doing anything to provide a director with funds to meet expenditure incurred or to be incurred by him or her for the purposes of the company or for the purpose of enabling him or her to properly perform his or her duties as an officer of the company, nor does the section prohibit a company from doing any thing to enable a director to avoid incurring such expenditure.

(2) Subsection (1) applies only if one of the following conditions is satisfied—

- (a) the thing in question is done with the prior approval of the company given at a general meeting at which there are disclosed all the matters mentioned in subsection (4) are disclosed;
- (b) that thing is done on condition that, if the approval of the company is not so given at or before the next annual general meeting, the loan is to be repaid or any other liability arising under any such transaction discharged, within six months from the conclusion of that meeting.

(3) Subsection (1) does not authorise a relevant company to enter into any transaction if the aggregate of the relevant amounts exceeds one thousand currency points.

(4) The matters to be disclosed under subsection (2) (a) are—

- (a) the purpose of the expenditure incurred or to be incurred or which would otherwise be incurred, by the director;
- (b) the amount of the funds to be provided by the company; and
- (c) the extent of the company's liability under any transaction which is or is connected with the thing in question.

**207. Loan by money-lending company.**

(1) The prohibitions in section 203 do not apply to—

- (a) a loan made by a money-lending company to any person; or
- (b) a money-lending company entering into a guarantee in connection with any other loan.

(2) For the purposes of this section “money-lending company” means a company whose ordinary business includes the making of loans or the giving of guarantees in connection with loans.

(3) Subsection (1) applies only if the following conditions are satisfied—

- (a) the loan in question is made by the company or it enters into the guarantee in the ordinary course of the company’s business; and
- (b) the amount of the loan or the amount guaranteed is not greater and the terms of the loan or guarantee are not more favourable in the case of the person to whom the loan is made or in respect of whom the guarantee is entered into, than that or those which it is reasonable to expect that company to have offered to or in respect of a person of the same financial standing but unconnected with the company.

(4) In determining the aggregate, a company which a director does not control is taken not to be connected with him or her.

(5) The condition specified in subsection (3) (b) does not of itself prevent a company from making a loan to one of its directors or a director of its holding company—

- (a) for the purpose of facilitating the purchase, for use as that director’s only or main residence, of the whole or part of any dwelling-house together with any land to be occupied and enjoyed with it;
- (b) for the purpose of improving a dwelling-house or part of a dwelling-house so used or any land occupied and enjoyed with it; or

- (c) in substitution for any loan made by any person and falling within paragraph (a) or (b), if loans of that description are ordinarily made by the company to its employees and on terms not less favourable than those on which the transaction in question is made and the aggregate of the relevant amounts does not exceed fifty thousand currency points.

**208. Civil remedies for breach of section 203.**

(1) Where a company enters into a transaction or arrangement in contravention of section 203, the transaction or arrangement is voidable at the instance of the company unless—

- (a) restitution of any money or any other asset which is the subject matter of the arrangement or transaction is no longer possible or the company has been indemnified under subsection (2)(b) for the loss or damage suffered by it; or
- (b) any rights acquired in good faith for value and without actual notice of the contravention by a person other than the person for whom the transaction or arrangement was made would be affected by its avoidance.

(2) Where an arrangement or transaction is made by a company for a director of the company or its holding company or a person connected with such a director in contravention of section 203, that director and the person so connected and any other director of the company who authorised the transaction or arrangement whether or not it has been avoided under subsection (1) is liable—

- (a) to account to the company for any gain which he or she has made directly or indirectly by the arrangement or transaction; and
- (b) jointly and severally with any other person liable under this subsection to indemnify the company for any loss or damage resulting from the arrangement or transaction.

(3) Subsection (2) is without prejudice to any liability imposed otherwise than by that subsection but is subject to subsection (4) and (5).

(4) Where an arrangement or transaction is entered into by a company and a person connected with a director of the company or its holding company in contravention of section 203, that director is not liable under subsection (2) if he or she shows that he or she took all reasonable steps to secure the company's compliance with that section.

(5) A person connected with a director of the company as described under subsection (4) or any other director mentioned in subsection (2) is not so liable if he or she shows that, at the time the arrangement or transaction was entered into, he or she did not know the relevant circumstances constituting the contravention.

### **209. Criminal penalties for breach of section 203.**

(1) A director of a company who authorises or permits the company to enter into a transaction or arrangement knowing or having reasonable cause to believe that the company by doing so contravenes section 203 commits an offence.

(2) A relevant company which enters into a transaction or arrangement for one of its directors or for a director of its holding company in contravention of section 203 commits an offence.

(3) A person who procures a relevant company to enter into a transaction or arrangement knowing or having reasonable cause to believe that the company by doing so contravenes section 203 commits an offence.

(4) A person convicted of an offence under this section is liable on conviction to a fine not exceeding one thousand currency points or imprisonment not exceeding two years or both.

(5) A relevant company is not guilty of an offence under subsection (2) if it shows that, at the time the transaction or arrangement was entered into, it did not know the relevant circumstances.

**210. Connected and related persons.**

(1) This section has effect with respect to references in this Part to a person being connected with a director of a company and to a director being associated with or controlling a body corporate.

(2) A person is connected with a director of a company if, he or she not being himself or herself a director of the company is—

- (a) that director's spouse, child or step-child;
- (b) except where the context otherwise requires, a body corporate with which the director is associated;
- (c) a person acting in his or her capacity as trustee of any trust the beneficiaries of which include—
  - (i) the director, his or her spouse or any children; or
  - (ii) a body corporate with which he or she is associated, or of a trust whose terms confer a power on the trustees that may be exercised for the benefit of the director, his or her spouse or any children;
- (d) a person acting in his or her capacity as partner of that director or of any person who, by virtue of paragraph (a),(b) or (c) is connected with that director.

(3) In subsection (2)—

- (a) a reference to the child means a person below the age of eighteen years and includes a step child and an illegitimate child; and
- (b) paragraph (c) does not apply to a person acting in his or her capacity as trustee under an employees' share scheme or a pension scheme.

(4) A director of a company is associated with a body corporate if, he or she and the persons connected with him or her, together are—

- (a) interested in shares comprised in the equity share capital of that body corporate of a nominal value equal to at least one-fifth of that share capital; or
  - (b) entitled to exercise or control the exercise of more than one-fifth of the voting power at any general meeting of that body.
- (5) A director of a company is taken to control a body corporate only if—
- (a) he or she or any person connected with him or her is interested in any part of the equity share capital of that body or is entitled to exercise or control the exercise of any part of the voting power at any general meeting of that body; and
  - (b) that director, the persons connected with him or her and the other directors of that company, together, are interested in more than one-half of that share capital or are entitled to exercise or control the exercise of more than one-half of that voting power.
- (6) For the purposes of subsections (4) and (5)—
- (a) a body corporate with which a director is associated is not to be treated as connected with that director unless it is also connected with him or her by virtue of subsection (2)(c) or (d); and
  - (b) a trustee of a trust the beneficiaries of which include a body corporate with which a director is associated is not to be treated as connected with a director by reason only of that fact.
- (7) Subject to this section references in subsections (4) and (5) to voting power the exercise of which is controlled by a director include voting power whose exercise is controlled by a body corporate controlled by the director.

**211. Approval of the company necessary for payment by it to director for loss of office.**

A company shall not make a payment to the director of the company by way of compensation for loss of office or as consideration for or in connection with his or her retirement from office without particulars with respect to the proposed payment including the amount of the payment, being disclosed to members of the company and the proposal being approved by the company in general meeting.

**212. Approval of the company necessary for any payment in connection with transfer of its property to director for loss of office and related particulars.**

(1) A company shall not in connection with the transfer of the whole or part of the undertaking of property of a company make a payment to a director of the company by way of compensation for loss of office or as consideration for or in connection with his or her retirement from office, unless particulars with respect to the proposed payment including the amount of the payment been disclosed to the members of the company in general meeting.

(2) A payment made in contravention of subsection (1) is illegal; and where any such payment is made to a director of the company, the amount received shall be taken to have been received by him or her in trust for the company.

**213. Duty of director to disclose payment for loss of office made in connection with takeover or transfer of shares in company.**

(1) Where, in connection with the transfer to any persons of all or any of the shares in a company, being a transfer resulting from—

- (a) an offer made to the general body of shareholders;
- (b) an offer made by or on behalf of some other body corporate with a view to the company becoming its subsidiary or a subsidiary of its holding company;

- (c) an offer made by or on behalf of an individual with a view to his or her obtaining the right to exercise or control the exercise of not less than one-third of the voting power at any general meeting of the company; or
- (d) any other offer which is conditional on acceptance to a given extent, a payment is to be made to a director of the company by way of compensation for loss of office or as consideration for or in connection with his or her retirement from office,

it shall be the duty of that director to take all reasonable steps to secure that particulars with respect to the proposed payment including the amount of the payment included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(2) Where—

- (a) a director to whom subsection (1) applies fails to take reasonable steps as provided in that subsection ; or
- (b) a person who has been properly required by any such director to include the said particulars in or send them with any such notice fails to do so, he or she is liable to a fine not exceeding two hundred and fifty currency points.

(3) Where—

- (a) the requirements of subsection (1) are not complied with in relation to a payment referred to in subsection (2); or
- (b) the making of the proposed payment is not, before the transfer of any shares in accordance with the offer, approved by a meeting summoned for the purpose of the holders of the shares to which the offer relates and of other holders of shares of the same class as any of those shares,

any sum received by the director on account of the payment shall be deemed to have been received by him or her in trust for any persons who have sold their shares as a result of the offer expenses incurred by him or her in distributing that sum among those persons, shall be borne by him or her and not retained out of that sum.

(4) Where the shareholders referred to in subsection (3)(b) are not all the members of the company and no provision is made by the articles for summoning or regulating such a meeting as is mentioned in that section, the provisions of this Act and of the company's articles relating to general meetings of the company shall, for that purpose, apply to the meeting either without modification or with such modification as the registrar on the application of any person concerned may direct for the purpose of adapting them to the circumstances of the meeting.

(5) Where at a meeting summoned for the purpose of approving any payment as required by subsection (3)(b) a quorum is not present and, after the meeting has been adjourned to a later date, a quorum is again not present, the payment shall be taken for the purposes of that subsection to have been approved.

#### **214. Provisions supplementary to sections 211 to 213.**

(1) Where in proceedings for the recovery of any payment as having, by virtue of section 212 or 213 (1) and (3), been received by any person in trust, it is shown that—

- (a) the payment was made under any arrangement entered into as part of the agreement for the transfer in question or within one year before or two years after that agreement or the offer leading to the arrangement; and
- (b) the company or any person to whom the transfer was made was privy to that arrangement, the payment shall be taken, except in so far as the contrary is shown, to be one to which the sections 212 and 213(1) and (3) apply.

(2) Where in connection with a transfer as mentioned in section 212 or 213—

- (a) the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him or her is in excess of the price which could for the time being have been obtained by other holders of similar shares; or
- (b) any valuable consideration is given to the director, the excess or the money value of the consideration as the case may be, shall, for the purposes of that section, be taken to have been a payment made to him or her by way of compensation for loss of office or as consideration for or in connection with his or her retirement from office.

(3) References in section 211 or 213 to payments made to any director of company by way of compensation for loss of office or consideration for or in connection with his or her retirement from office, do not include any bona fide payment by way of damages for breach of contract or by way of pension in respect of past services and for the purposes of this section, "pension" includes any super-annuation allowances, super-annuation gratuity or similar payment.

(4) Nothing in sections 211 or 213 shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to a payment mentioned in those sections or with respect to any other similar payment made or to be made to the directors of a company.

### **215. Register of directors' shareholding and related particulars.**

(1) Every company shall keep a register showing as respects each director of the company, not being its holding company the number, description and amount of any share in or the debentures of the company or any other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company which are held by or in trust for him or her or of which he or she has any right to become a holder whether on payment or not.

(2) The register need not include shares in any body corporate which is the wholly-owned subsidiary of another body corporate and for that purpose a body corporate shall be taken to be the wholly-owned subsidiary of another if it has no members but that other and that other's wholly owned subsidiaries and its or their nominees.

(3) Where any shares or debentures fall to be or cease be recorded in the register in relation to any director by reason of a transaction entered into after the commencement of this Act and while he or she is a director, the register shall also show the date of and price or other consideration for the transaction except that where there is an interval between the agreement for any such transaction and the completion of the transaction, the date shall be that of the agreement.

(4) The nature and extent of a director's interest or right in or over any shares or debentures recorded in relation to him or her in the register shall, if he or she so requires, be indicated in the register.

(5) The company shall not, by virtue of anything done for the purposes of this section, be affected with notice of, or put upon inquiry as to, the rights of any person in relation to any shares or debentures.

(6) The register shall, subject to this section, be kept at the company's registered office and shall be open to inspection during business hours as the company may by its articles or in general meeting impose as follows—

- (a) during the period beginning fourteen days before the date of the company's annual general meeting and ending three days after the date of its conclusion, it shall be open to the inspection of any member or holder of debentures of the company; and
- (b) during that or any other period, it shall be open to the inspection of any person acting on behalf of the registrar.

(7) The company may, in a general meeting impose reasonable restrictions on inspection under subsection (6) but the restrictions shall not be such as to reduce the period of inspection to less than two hours in each day.

(8) Without prejudice to the rights of inspection conferred by subsection (7), the registrar may at any time require the production of the register or any part of it.

(9) The register shall also be produced at the commencement of the company's annual general meeting and remain open and accessible during the continuance of the meeting to any person attending the meeting.

(10) Where there is default in complying with subsection (9), the company and every officer of the company who is in default is liable to a fine not exceeding five hundred currency points.

(11) Where there is default in complying with subsection (1) or (2), or if any inspection required under this section is refused or any copy required under subsection (8) is not sent within a reasonable time, the company and every officer of the company who is in default is liable to a fine not exceeding one thousand currency points and further to a default fine of ten currency points.

(12) In the case of any such refusal, the court may by order compel an immediate inspection of the register.

(13) For the purposes of this section—

- (a) a person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be taken to be a director of the company; and
- (b) a director of a company shall be taken to hold or to have an interest or right in or over, any shares or debentures if a body corporate other than the company holds them or has that interest or right in or over them, and either—
  - (i) that body corporate or its directors are accustomed to act in accordance with his or her directions or instructions; or

- (ii) he or she is entitled to exercise or control the exercise of one-third or more of the voting power at any general meeting of that body corporate.

**216. Particulars in accounts of directors' salaries, pensions and related particulars.**

(1) In an account of a company laid before it in general meeting or in a statement annexed to those accounts, there shall, subject to and in accordance with this section, be shown so far as the information is contained in the company's books and papers or the company has the right to obtain it from the persons concerned the aggregate amount of—

- (a) amount of the directors' emoluments;
- (b) directors' or past directors' pensions; and
- (c) any compensation to a director or past directors in respect of loss of office.

(2) The amount to be shown under subsection (1)(a) shall—

- (a) include any emoluments paid to or receivable by any person in respect of his or her services as director of the company or in respect of his or her services, while director of the company as director of any subsidiary of the company or otherwise in connection with the management of the affairs of the company or any subsidiary of the company; and
- (b) distinguish between emoluments in respect of services as director, whether of the company or its subsidiary and other emoluments, and for the purposes of this section, "emoluments" in relation to a director, includes fees and percentages, any sums paid by way of expense allowance in so far as those sums are charged to income tax, any contribution paid in respect of him or her under any pension scheme and the estimated money value of any other benefits received by him or her otherwise than in cash.

- (3) The amount to be shown under subsection (1) (b) shall—
- (a) not include any pension paid or receivable under a pension scheme if the scheme is such that the contributions under the scheme are substantially adequate for the maintenance of the scheme but shall include any pension paid or receivable in respect of any such service of a director or past director of the company as are mentioned in subsection (2), whether to or by him or her, on his or her nomination or by virtue of dependence on or other connection with him or her, to or by any other person; and
  - (b) distinguish between pensions in respect of services as director whether of the company or its subsidiary and other pensions.
- (4) The amount to be shown under subsection (1)(c) shall—
- (a) include any sums paid to or receivable by a director or past director by way of compensation for the loss of office as director of the company or for the loss, while director of the company or on or in connection with his or her ceasing to be a director of the company, of any other office in connection with the management of the company's affairs or of any subsidiary of the company; and
  - (b) 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 purposes of this section reference to 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) shall—

- (a) include all relevant sums paid by or receivable from—
  - (i) the company;
  - (ii) the company's subsidiaries; and
  - (iii) any other person,

except sums to be accounted for the company or any of its subsidiaries or, by virtue of section 220, to past or present members of the company or any of its subsidiaries or any class of those members; and

- (b) 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 persons other than the company and its subsidiaries.

(6) The amounts to be shown under this section for any financial year shall be the sums receivable in respect of that year, whenever paid or in the case of sums not receivable in respect of a period, the sums paid during that year, except, that where—

- (a) any sums are not shown in the accounts for the relevant financial year on the ground that the person receiving them is liable to account for them as mentioned in subsection (5)(a) but the liability is after that wholly or partly released or is not enforced within a period of two years; or
- (b) any sums paid by way of expense allowance are charged to income tax after the end of the relevant financial year, those sums shall, to the extent to which the liability is released or not enforced or they are charged to income tax as the case may be, be shown in the first accounts in which it is practicable to show them or in a statement annexed to them and shall be distinguished from the amounts to be shown in the accounts apart from this subsection.

(7) Where it is necessary to do so for the purpose of making any distinction required by this section in any amount to be shown under this section, the directors may apportion any payments between the matters in respect of which they have been paid or are receivable in such manner as they think appropriate.

(8) Where in the case of any accounts the requirements are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report on the accounts, so far as they are reasonably able to do a statement giving the required particulars.

(9) In this section a reference to a company's subsidiary—

(a) in relation to a person who is or was, while a director of the company, a director also, by virtue of the company's nomination, direct or indirect, of any other body corporate, shall, subject to the following paragraph, include that body corporate whether or not it is or was in fact the company's subsidiary; and

(b) shall for the purposes of subsections (2) and (3) be taken as referring to a subsidiary at the time the services were rendered and for the purposes of subsection (4) be taken as referring to a subsidiary immediately before the loss of office as director of the company.

(10) For the purposes of this section—

“contribution” in relation to a pension scheme means any payment including an insurance premium, paid for the purposes of the scheme by or in respect of persons rendering services in respect of which pensions will or may become payable under the scheme, except that it does not include any payment in respect of two or more persons if the amount paid in respect of each of them is not ascertainable;

“pension” includes any superannuation allowance, superannuation gratuity or a similar payment;

“pension scheme” means a scheme of the provision of pension in respect of services as director or otherwise which is maintained in whole or in part by means of contributions.

### **217. General duty to make disclosure for purposes of sections 215 and 216.**

(1) A director of a company shall give notice to the company of such matters relating to himself or herself as may be necessary for the purposes of sections 215 and 216.

(2) A notice given for the purposes of section 215 shall be in writing and, if it is not given at a meeting of the directors, the director giving it shall take reasonable steps to ensure that it is brought up and read at the next meeting of directors after it is given.

(3) A person who makes default in complying with subsections (1) and (2) is liable to a default fine not exceeding twenty five currency points.

### **218. Disclosure by directors of interests in contracts.**

(1) Subject to this section, a director of a company who is in any way, directly or indirectly, interested in a contract or proposed contract with the company shall declare the nature of his or her interest at a meeting of the directors of the company.

(2) In the case of a proposed contract the declaration required by this section to be made by a director shall be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration or if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he or she became so interested and in a case where the director becomes interested in a contract after it is made, the declaration shall be made at the first meeting of the directors held after the director becomes so interested.

(3) For purposes of this section, a general notice given to the directors of a company by a director to the effect that he or she is a member of a specified company or firm or acts for the company in a specified capacity and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm or with himself or herself in that specified capacity shall be taken to be a sufficient declaration of interest in relation to any contract so made but the notice shall not be of effect unless either it is given at a meeting of the directors or the director takes reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.

(4) A director who fails to comply with the above provisions is liable to a fine not exceeding two hundred currency points.

(5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of a company from having any interest in contract with the company.

### **219. Substantial property transactions involving directors and related particulars.**

(1) Subject to the exceptions specified in section 220, a company shall not enter into an arrangement—

- (a) by which a director of the company or its holding company or a person connected with such a director, acquires or is to acquire one or more non-cash assets of the prescribed value from the company; or
- (b) by which the company acquires or is to acquire one or more non-cash assets of the prescribed value from that director or a person so connected, unless the arrangement is first approved by a resolution of the company in general meeting and, if the director or connected person is a director of its holding company or a person connected with the director, by a resolution in general meeting of the holding company.

(2) For the purpose of this section, a non cash asset is of the requisite value if at the time the arrangement in question is entered into its value is not less than two hundred and fifty currency points but exceeds ten percent of the company's asset value, or the value of the company's net assets determined by reference to the accounts prepared and laid under Part V in respect of the last preceding financial year in respect of which the accounts were so laid.

(3) Where no accounts have been prepared and laid as referred to in subsection (2) before the time referred to in that subsection, the company's asset value is the amount of the company's called up share capital.

(4) For the purposes of this section and sections 220 and 221, a shadow director is treated as a director.

### **220. Exceptions to section 219.**

(1) Approval is not required to be given under section 219 by any body corporate unless it is a company within the meaning of this Act or, if it is a wholly-owned subsidiary of any body corporate, wherever incorporated.

(2) Section 219(1) does not apply to an arrangement for the acquisition of a non-cash asset—

- (a) if the asset is to be acquired by a holding company from any of its wholly-owned subsidiaries or from a holding company by any of its wholly-owned subsidiaries or by one wholly-owned subsidiary of a holding company from another wholly-owned subsidiary of that same holding company; or
- (b) if the arrangement is entered into by a company which is being wound up, unless the winding up is a members' voluntary winding up.

(3) Section 219(1)(a) does not apply to an arrangement by which a person is to acquire an asset from a company of which he or she is a member, if the arrangement is made with that person in his or her character as a member.

(4) Section 219(1) does not apply to a transaction on a recognised investment exchange which is effected by a director or a person connected with him or her, through the agency of a person who in relation to the transaction acts as an independent broker.

(5) For the purposes of subsection (4) an "independent broker" means—

- (a) in relation to a transaction on behalf of a director, a person who independently of the director selects the person with whom the transaction is to be effected; and
- (b) in relation to a transaction on behalf of a person connected with a director, a person who independently of that person or the director selects the person with whom the transaction is to be effected;
- (c) "recognised" in relation to an investment exchange, means authorised under the Capital Markets Authority Act.

## **221. Liabilities arising from contravention of section 219.**

(1) An arrangement entered into by a company in contravention of section 219 and any transaction entered into under the arrangement whether by the company or any other person is voidable at the instance of the company unless one or more of the conditions specified in subsection (2).

- (2) Those conditions referred to in subsection (1) are that—
  - (a) restitution of any money or other asset which is the subject matter of the arrangement or transaction is no longer possible or the company has been indemnified by any other person for the loss or damage suffered by it;
  - (b) any rights acquired in good faith for value and without actual notice of the contravention by any person who is not a party to the arrangement or transaction would be affected by its avoidance; or

- (c) the arrangement is, within a reasonable period, affirmed by the company in general meeting and, if it is an arrangement for the transfer of an asset to or by a director of its holding company or a person who is connected with the director is so affirmed with the approval of the holding company given by a resolution in general meeting.

(3) Where an arrangement is entered into with a company by a director of the company, its holding company or a person connected with him or her in contravention of section 219, that director and the person connected and any other director of the company who authorised the arrangement or any transaction entered into under the arrangement is liable—

- (a) to account to the company for any gain which he or she has made directly or indirectly by the arrangement or transaction and
- (b) jointly and severally with any other person liable under this subsection to indemnify the company for any loss or damage resulting from the arrangement or transaction.

(4) Subsection (3) is without prejudice to any liability imposed otherwise than by that subsection and is subject to the following two subsections and the liability under subsection (3) arises whether or not the arrangement or transaction entered into has been avoided under subsection (1).

(5) Where an arrangement is entered into by a company and a person connected with a director of the company or its holding company in contravention of section 219, that director is not liable under subsection (3) if he or she shows that he or she took all reasonable steps to secure the company's compliance with that section.

(6) A person connected to the director of the company and director as mentioned in subsection (3) is not liable if he or she shows that, at the time the arrangement was entered into, he or she did not know the relevant circumstances constituting the contravention.

**222. Invalidity of certain transactions involving directors and related particulars.**

(1) This section applies where a company enters into a transaction where the parties include—

- (a) a director of the company or of its holding company; or
- (b) 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 the transaction, exceed any limitation on their powers under the company's constitution.

(2) A transaction referred to in subsection (1) is voidable at the instance of the company.

(3) Whether or not it is avoided, any such party to the transaction mentioned in subsection (1)(a) or (b) and any director of the company who authorised the transaction is liable—

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

(4) Nothing in this section 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 may arise.

(5) The transaction under subsection (1) 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;
- (b) the company is indemnified for any loss or damage resulting from the transaction;

- (c) rights acquired in good faith 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, by ordinary or special resolution or otherwise as the case may require.

(6) A person other than a director of the company is not liable under subsection (3) if he or she shows that at the time the transaction was entered into he or she did not know that the directors were exceeding their powers.

(7) Where a transaction is voidable by virtue of this section in favour of a person referred to in subsection (6), the court may, on the application of that person or of the company, make such order affirming, severing or setting aside the transaction, on such terms as appear to the court to be just.

(8) In this section—

- (a) “transaction” includes any act;
- (b) the reference in subsection (1) to limitations under the company's constitution includes limitations deriving—
  - (i) from a resolution of the company in general meeting or a meeting of any class of shareholders; or
  - (ii) from any agreement between the members of the company or of any class of shareholders.

### **223. Extension of sections 219 and 222 to spouses and children.**

(1) Section 219 applies to—

- (a) the wife or husband of a director of a company not being herself or himself a director of it; and

- (b) an infant child of a director not being himself or herself a director of the company, as it applies to the director.

(2) It is a defence for a person charged by virtue of this section with an offence under section 219 to prove that he or she had no reason to believe that his or her spouse or as the case may be, parent was a director of the company in question.

(3) For the purposes of this section—

- (a) "son" includes step-son and "daughter" includes step-daughter "parent" being construed accordingly;
- (b) a shadow director of a company is taken to be a director of it.

(4) For the purposes of section 222—

- (a) an interest of the wife or husband of a director of a company not being herself or himself a director of it in shares or debentures is to be treated as the director's interest; and
- (b) paragraph (a) applies to an interest of an infant child of a director of a company not being himself or herself a director of it in shares or debentures as it applies to the interest of a wife or husband of a director.

(5) For the purposes of section 224—

- (a) a contract, assignment or right of subscription entered into, exercised or made by or a grant made to, the wife or husband of a director of a company not being herself or himself a director of it is to be treated as having been entered into, exercised or made by or as the case may be as having been made to, the director; and

- (b) paragraph (a) applies to a contract, assignment or right of subscription entered into, exercised or made by or grant made to an infant child of a director of a company not being himself or herself a director of it as it applies to the interest of a wife or husband of a director.

(6) A director of a company shall notify the company in writing of the occurrence while he or she is a director, of either of the following—

- (a) the grant by the company to his or her spouse or to his or her infant child, of a right to subscribe for shares in or debentures of, the company;
- (b) the exercise by his or her spouse or by his or her infant child of such a right granted by the company to the wife, husband or child.

(7) In a notice given to the company under subsection (3) there shall be stated in the case of the exercise of a right, the information is required by that section to be stated by the director on the exercise of a right granted to him or her by another body corporate to subscribe for shares in or debentures of that other body corporate.

(8) An obligation imposed by subsection (3) on a director must be fulfilled by him or her before the end of five days beginning with the day following that on which the occurrence of the event giving rise to it comes to his or her knowledge; but in reckoning that period of days there is disregarded any public holiday.

(9) A person who—

- (a) fails to fulfill, within the proper period, an obligation to which he or she is subject under subsection (3); or
- (b) in purported fulfillment of an obligation, makes to a company a statement which he or she knows to be false or recklessly makes to a company a statement which is false,

commits an offence and is liable on conviction to a fine not exceeding one year or to imprisonment not exceeding one year or both.

#### **224. Contracts with sole members who are directors.**

(1) Subject to subsection (2), where a private unlimited company having only one member enters into a contract with the sole member of the company and the sole member is also a director of the company, the company shall, unless the contract is in writing, ensure that the terms of the contract are either set out in a written memorandum or are recorded in the minutes of the first meeting of the directors of the company following the making of the contract.

(2) Subsection (1) does not apply to contracts entered into in the ordinary course of the company's business.

(3) For the purposes of this section a sole member who is a shadow director is treated as a director.

(4) Where a company fails to comply with subsection (1), the company and every officer of it who is in default is liable to a fine.

(5) Subject to subsection (6), nothing in this section shall be construed as excluding the operation of any other enactment or rule of law applying to contracts between a company and a director of that company.

(6) Failure to comply with subsection (1) with respect to a contract shall not affect the validity of that contract.

#### **225. Duty of director to disclose shareholdings in own company.**

(1) A person who becomes a director of a company and at the time when he or she does so is interested in shares in or debentures of, the company or any other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company is under obligation to notify the company in writing, before the expiration of five days beginning with the day following that day—

- (a) of the subsistence of his or her interests at that time; and
- (b) of the number of shares of each class and the amount of debentures of each class of, the company or other such body corporate in which each of his or her interest subsists at that time.

(2) A director of a company is under an obligation to notify the company in writing of the occurrence, while he or she is a director, of any of the following events before the expiration of five days beginning with the day of the occurrence of the event—

- (a) any event in consequence of whose occurrence he or she becomes or ceases to be, interested in shares in or debentures of, the company or any other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company;
- (b) the entering into a contract by him or her to sell any such shares or debentures;
- (c) the assignment by him or her of a right granted to him or her by the company to subscribe for shares in or debentures of, the company;
- (d) the grant to him or her by another body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company, of a right to subscribe for shares in or debentures of, that other body corporate;
- (e) the exercise of a right granted to him or her under this paragraph and the assignment by him or her of that right.

(3) Notification of the company under subsection (2) must state the number or amount and class, of shares or debentures involved.

(4) For the purposes of this section a person is taken to have an interest in shares or debentures if—

- (a) he or she enters into a contract for purchase by him or her of the shares or debentures whether for cash or other consideration;
- (b) not being the registered holder, he or she is entitled to exercise any right conferred by the holding of the shares or debentures;

(5) In the following circumstances obligations arising from subsection (2) are to be treated as not discharged—

- (a) where relevant in the absence of inclusion in the notice of a statement of the price or other consideration to be paid or received by him or her under the contract or the lack of the price or consideration to be paid;
- (b) where relevant in the absence of inclusion in the statement of an event which consists in the grant to him or her of a right to subscribe for shares or debentures in this case the statement must clearly show, the date on which the right was granted, the period during which or the time at which the right is exercisable and the consideration for that grant if any and subsections (1) and (2) are subject to any exceptions for which provision may be made by regulations made by the Minister.

(6) Subsection (2) does not require the notification by a person of the occurrence of an event whose occurrence comes to his or her knowledge after he or she has ceased to be a director.

(7) An obligation imposed by this section is treated as not discharged unless the notice by means of which it purports to be discharged is expressed to be given in fulfillment of that obligation.

(8) This section—

- (a) applies to shadow directors as to directors; but nothing in it operates so as to impose an obligation with respect to shares in a body corporate which is the wholly-owned subsidiary of another body corporate; and

- (b) excludes proxies appointed to vote at a specified meeting of a company or of any class of its members and persons appointed by a corporation as a representative at any meeting of a company or any class of its members.

(9) A person who—

- (a) fails to discharge, within the proper period, an obligation to which he or she is subject under subsection (1) and (2); or
- (b) in purported discharge of an obligation to which he or she is so subject, knowingly or recklessly makes to the company a statement which is false,

commits an offence and is liable to imprisonment or a fine or both.

### **226. Register of directors' interests.**

(1) Every company shall keep a register for the purposes of section 225.

(2) Where a company receives information from a director given in fulfillment of an obligation imposed on him or her by that section, the company shall enter in the register, against the director's name, the information received and the date of the entry.

(3) The company shall, where it grants to a director a right to subscribe for shares in or debentures of, the company enter in the register against his or her name—

- (a) the date on which the right is granted;
- (b) the period during which or time at which, it is exercisable;
- (c) the consideration for the grant or, if there is no consideration, that fact; and

- (d) the description of shares or debentures involved and the number or amount of them and the price to be paid for them or the consideration, if otherwise than in money.

(4) Where a right to subscribe for shares in or debentures of the company in this section is exercised by a director, the company is under obligation to enter in the register against his or her name that fact identifying the right, the number or amount of shares or debentures in respect of which it is exercised and, if they were registered in his or her name, that fact; and, if not, the name or names of the person or persons in whose name or names they were registered, together, if they were registered in the names of two persons or more, with the number or amount of the shares or debentures registered in the name of each of them.

(5) For the purposes of this section, a shadow director is taken to be a director.

### **227. Sanctions for non-compliance.**

(1) Where there is default in complying with section 225(1), (2), (3) or (4), the company and every officer of it who is in default is liable to a default fine of twenty five currency points and, for continued contravention, to a daily default fine of five currency points.

(2) Where an inspection of the register required under sections 174 and 175 is refused, the company and every officer of the company who is in default is liable to a default fine of twenty five currency points and, for continued contravention, to a daily default fine of five currency points.

### **228. Register of directors and secretaries.**

(1) A company shall keep at its registered office a register of its directors and secretaries.

(2) The register of directors and secretaries shall contain the following particulars with respect to each director—

- (a) in the case of an individual, his or her present first name and surname, his or her residential and postal address, his or her nationality and, if that nationality is not his or her nationality of origin, his or her business occupation, if any, particulars of all other directorships held by him or her in the case of a company subject to section 197, the date of his or her birth; and
- (b) in the case of a corporation, its corporate name and registered or principal office and postal address.

(3) Notwithstanding subsection (2), it is not necessary for the register to contain particulars of directorships held by a director in companies of which the company is the wholly-owned subsidiary or which is the wholly-owned subsidiary or which are the wholly-owned subsidiaries either of the company or of another company of which the company is the wholly-owned subsidiary and for the purposes of this subsection—

- (a) "company" includes any body corporate incorporated in Uganda; and
- (b) a body corporate shall be taken to be the wholly-owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiary and its or their nominees.

(4) The register shall contain the following particulars with respect to the secretary or, where there are joint secretaries, with respect to each of them—

- (a) in the case of an individual, his or her present first name and surname, any former first name and surname and his or her usual residential and postal address; and

- (b) in the case of a corporation, its corporate name and registered office, except where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated instead of those particulars.

(5) The company shall, within the periods respectively mentioned in subsection (6), send to the registrar a return in the prescribed form containing the particulars specified in the register and a notification in the prescribed form of any change among its directors or in its secretary or in any of the particulars contained in the register, specifying the date of the change.

(6) The periods referred to in subsection (5) are the following—

- (a) the period within which the return is to be sent shall be fourteen days from the appointment of the first directors of the company; and
- (b) the period within which the notification of change is to be sent shall be fourteen days from the happening of the change.

(7) The register to be kept under this section shall, during business hours be open to the inspection of any member of the company without charge and of any other person on payment of one currency point or a less sum as the company may prescribe, for each inspection.

(8) A company may impose reasonable restrictions by its articles or in general meeting on inspection under subsection (7) but the restriction shall not be such as to reduce the period of inspection to less than two hours in each day.

(9) Where any inspection required under this section is refused or where there is default in complying with subsection (1), (2), (3), (4) or (6) the company and every officer of the company who is in default is liable to a default fine of twenty five currency points.

(10) In the case of a refusal, the court may, by order compel an immediate inspection of the register.

(11) For the purposes of this section—

- (a) person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be taken to be a director and officer of the company;
- (b) "first name" includes a forename;
- (c) "surname" in the case of a peer or person usually known by a title different from his or her surname, means that title; and
- (d) "former first name" and "former surname" do not include—
  - (i) in the case of any person, a former first name or surname where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years or has been changed or disused for a period of not less than twenty years; or
  - (ii) in the case of a married woman the name or surname by which she was known previous to the marriage.

**229. Particulars with respect to directors in trade catalogues, circulars and related particulars.**

(1) Every company shall, in all trade catalogues, trade circulars, show cards and business letters on or in which the company's name appears and which are issued or sent by the company to any person in any part of the world state in legible roman letters with respect to every director being a corporation, the corporate name and with respect to every director being an individual, the following particulars—

- (a) his or her present first name or the initials of that name and the present surname;
- (b) any former first names and surnames;
- (c) his or her nationality.

(2) Where special circumstances exist which render it in the opinion of the registrar expedient that exemption should be granted, the registrar may by order grant, subject to such conditions as may be specified in the order, exemption from all or any of the obligations imposed by subsection (1).

(3) Where a company defaults in complying with this section every officer of the company who is in default commits an offence and is liable on conviction for each offence to a fine not exceeding one hundred currency points and for the purposes of this subsection, where a corporation is an officer of the company, any officer of the corporation shall be taken to be an officer of the company.

(4) For the purposes of this section—

- (a) "director" includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act and "officer" shall be construed accordingly;
- (b) "initials" includes a recognised abbreviated of a first name; and
- (c) "show cards" means cards containing or exhibiting articles dealt with or samples or representations of them, and section 228 (10) shall apply as they apply for the purposes of that section.

### **230. Limited liability company may have directors with unlimited liability.**

(1) In a limited liability company the liability of the directors or managers or of the managing director, may, if so provided by the memorandum, be unlimited.

(2) In a limited liability company in which the liability of a director or manager is unlimited, the directors and any managers of the company and the member who proposes a person for election or appointment to the office of director or manager shall add to that proposal a statement that

the liability of the person holding that office will be unlimited and before the person accepts the office or acts in that office, notice in writing that his or her liability will be unlimited shall be given to him or her by the following or one of the following persons, namely, the promoters of the company, the directors of the company, any managers of the company and the secretary of the company.

(3) Where a director, a manager or proposer makes default in adding the statement required by subsection (2) or if any promoter, director, manager or secretary makes default in giving the notice, he or she shall be liable to a fine not exceeding two hundred currency points and shall also be liable for any damage which the person so elected or appointed may sustain from the default but the liability of the person elected or appointed shall not be affected by the default.

### **231. Special resolution of limited liability company making liability of directors unlimited.**

(1) A limited liability company, if so authorised by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors, managers or of any managing director.

(2) Upon the passing of the special resolution under subsection (1) the provisions of the resolution shall be as valid as if they had been originally contained in the memorandum.

### **232. Provisions as to assignment of office by directors.**

Where in the case of any company, provision is made by the articles or by any agreement entered into between any person and the company for empowering a director or manager of the company to assign his or her office as director or manager to another person, any assignment of office made under that provision shall, notwithstanding anything to the contrary contained in the that provision, be of no effect unless it is approved by a special resolution of the company.

*Avoidance of provisions in articles or contracts relieving officers from liability.*

**233. Provisions as to liability of officers and auditors.**

(1) Subject to this section, any provision whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any officer of the company or any person whether an officer of the company or not employed by the company as auditor from or indemnifying him or her against, any liability which by virtue of any rule of law would otherwise attach to him or her in respect of any negligence, default, breach of duty or breach of trust of which he or she may be guilty in relation to the company shall be void.

(2) Nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him or her while that provision was in force.

(3) A company may under a provision referred to in subsection (1), indemnify the officer or the auditor against any liability incurred by him or her in defending any proceedings whether civil or criminal in which judgment is given in his or her favour or in which he or she is acquitted or in connection with any application under section 285 in which relief is granted to him or her by the court.

*Arrangements and reconstructions.*

**234. Power to compromise with creditors and members.**

(1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them or between the company and its members or any class of them, the court may, on the application of the company or of any creditor or member of the company or where the case of a company being wound up, of the liquidator order a meeting of the creditors or class of creditors or of the members of the company or class of members as the case may be, to be summoned in such manner as the court directs.

(2) Where the majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the court, be binding on all the creditors or the class of creditors or on the members or class of members as the case may be and also on the company or in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) An order made under subsection (2) shall have no effect until a certified copy of the order has been delivered to the registrar for registration and a copy of the order shall be annexed to every copy of the memorandum of the company issued after the order has been made or in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

(4) Where a company defaults in complying with subsection (3), the company and every officer of the company who is in default is liable to a fine not exceeding ten currency points for each copy in respect of which default is made.

(5) In this section and section 235, "company" means any company liable to be wound up under this Act and "arrangement" includes a reorganisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes by both or by both methods.

*Information as to compromise with creditors and members.*

**235. Information as to compromise with creditors and members.**

(1) Where a meeting of creditors or any class of creditors or of members or any class of members is summoned under section 234, there shall—

- (a) with every notice summoning the meeting which is sent to a creditor or members, be sent also a statement explaining the effect of the compromise or arrangement and in

particular stating any material interests of the directors of the company whether as directors or as members or as creditors of the company or other and the effect on them of the compromise or arrangement in so far as it is different from the effect on the similar interests of other persons; and

- (b) in every notice summoning the meeting which is given by advertisement, be included either the statement referred to in paragraph (a) or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of the statement.

(2) Where the compromise or arrangement affects the rights of debenture-holders of the company, the statement referred to in subsection (1) shall give similar explanation as respects the trustees 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 a statement explaining the effect of the compromise or arrangement proposed can be obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making application in the manner indicated by the notice, be furnished by the company free of charge with a copy of the statement.

(4) Where a company defaults in complying with any requirement of this section, the company and every officer of the company who is in default is liable to a fine not exceeding one thousand currency points and for the purposes any liquidator of the company and any trustee of deed for securing the issue of debentures of the company.

(5) A person is not liable under subsection (4) if that person shows that the default was due to the refusal of any other person, being a director or trustee for debenture-holders, to supply the necessary particulars as to his or her interests.

(6) A director of the company and any trustee for debenture holders of the company shall give notice to the company of such matters relating to himself or herself as may be necessary for the purposes of this section.

(7) A person who makes default in complying with subsection (6) is liable to a fine not exceeding one hundred currency points.

### **236. Provisions for facilitating reconstruction and amalgamation of companies.**

(1) Where an application is made to the court under section 234 for the sanctioning of a compromise or arrangement proposed between a company and the persons mentioned 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 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 "a transferor company" is to be transferred to another company in this section referred to as "the transferee company", the court may by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters—

- (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 allotting or appropriation by the transferee company of any shares, debentures, policies or other similar interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;
- (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 directs, dissent from the compromise or arrangement;
- (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of the transferee company, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause a certified copy of the order to be delivered to the registrar for registration within seven days after the making of the order.

(4) Where there is default in complying with subsection (3), the company and every officer of the company who is in default is liable to a default fine of twenty five currency points.

(5) In this section—

“company” does not include any company other than a company within the meaning of this Act, not withstanding section 234(5);

“liabilities” includes duties; and

“property” includes rights and powers of every description.

**237. Amalgamations.**

Subject to any restrictions in their respective incorporation documents and to sections 238, 239, 240 and 241, two or more companies may amalgamate and continue as one company which may be one of the amalgamating companies or may be a new company.

**238. Authorisation of amalgamation.**

Each company which proposes to amalgamate must authorise in the manner set out in section 241—

- (a) an amalgamation proposal which complies with section 239; and
- (b) the proposed incorporation documents of the amalgamated company which complies with section 240.

**239. Amalgamation proposal.**

(1) An amalgamation proposal for authorisation under section 240 must set out the terms of the amalgamation and in particular—

- (a) the manner in which shares of each amalgamating company are to be converted into shares of the amalgamated company;
- (b) if any shares of an amalgamating company are not to be converted into shares of the amalgamated company, the consideration what the holders of those shares are to receive instead of shares of the amalgamated company;
- (c) any payment to be made to any shareholder or director of an amalgamating company, other than a payment of the kind described in paragraph (b); and
- (d) details of any arrangements necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamating company.

(2) An amalgamation proposal may specify the date on which the amalgamation is intended to become effective.

(3) Where shares of one of the amalgamating companies are held by or on behalf of another of the amalgamating companies, the amalgamation proposal must provide for the cancellation of those shares when the amalgamation becomes effective without any payment in respect of those shares and no provision may be made in the proposal for the conversion of those shares into shares of the amalgamated company.

**240. Incorporation document of amalgamated company.**

(1) The incorporation document for authorisation under section 238 must be in the prescribed form and must in particular state—

- (a) the name of the amalgamated company;
- (b) the share structure of the amalgamated company, specifying—
  - (i) the number of shares of the amalgamated company; and
  - (ii) the rights, privileges, limitations and conditions attached to each such share or class of share and its transferability, if different from fundamental rights attached to shares;
- (c) the full names, postal and residential addresses of each director of the amalgamated company;
- (d) in the case of a public company or a private company with a secretary, the full name, postal and residential address of the secretary of the amalgamated company;
- (e) the registered office of the amalgamated company;
- (f) the place where the amalgamated company's records are to be kept if not the registered office; and
- (g) the amalgamated company's accounting reference date.

(2) The incorporation document may also contain—

- (a) any restriction on the amalgamated company's capacity and powers; and
- (b) any provision permitted by this Act or otherwise relating to the internal management of the amalgamated company.

(3) If the proposed amalgamated company is to be the same as one of the amalgamating companies, the incorporation document for authorisation may comprise the incorporation document of that amalgamating company and proposed notice of change of the incorporation document.

#### **241. Manner of authorising amalgamation.**

(1) The directors of each amalgamating company must resolve that in their opinion—

- (a) the amalgamation is in the best interests of the shareholders of the company; and
- (b) the amalgamated company will be solvent immediately after the time at which the amalgamation is to become effective.

(2) The directors voting in favour of a resolution required by subsection (1) must sign a certificate that in their opinion, the conditions set out in subsection (1) are satisfied.

(3) The directors of each amalgamating company must send to each shareholder of that company not less than twenty working days before the amalgamation is to take effect—

- (a) a copy of the amalgamation proposal;
- (b) a copy of the proposed incorporation document which complies with section 240;
- (c) copies of the certificates given by each set of directors under subsection (2) and a statement of any material interests of the directors whether in that capacity or otherwise; and

- (d) any further information and explanation necessary to enable a reasonable shareholder to understand the nature and implications for the company and its shareholders of the proposed amalgamation.
- (4) The amalgamation must be authorised—
  - (a) by the shareholders of each amalgamating company by special resolution; and
  - (b) by any class of an amalgamating company, where any provision in the amalgamation proposal would if contained in an alteration to that company's incorporation document or otherwise proposed in relation to that company, require the authorisation of that class.

#### **242. Registration of amalgamation.**

(1) After an amalgamation has been authorised under section 241, the following documents must, within ten working days after the resolution passed under this Act for the purpose be delivered, duly completed, to the registrar in relation to the amalgamated company—

- (a) its incorporation document or if the amalgamated company is the same as one of the amalgamating companies, notice of change of incorporation document; and
- (b) consents in the prescribed form signed by each of the persons named as director or secretary in the incorporation document or in the notice of change of incorporation document as the case may be; and
- (c) certificates required by section 243.

(2) Subsection (1)(a) does not apply to any part of the amalgamated company's incorporation document relating to the internal management of the company.

**243. Certificates on amalgamation.**

(1) The registrar must send to the company or person from whom the documents required under section 242 were received—

- (a) if the amalgamated company is the same as one of the amalgamating companies, a certificate of amalgamation in the prescribed form, together with an amended certificate of incorporation if necessary; or
- (b) if the amalgamated company is a new company, a certificate of amalgamation in the prescribed form together with a certificate of incorporation in the prescribed form.

(2) Where an amalgamation proposal specifies a date on which the amalgamation is intended to become effective and that date is the same as or later than the date on which the registrar receives the documents required under section 242, the certificate of amalgamation and any certificate of incorporation issued by the registrar must be expressed to have effect on that date.

(3) On the date shown in a certificate of amalgamation—

- (a) the amalgamation becomes effective;
- (b) the registrar must remove the amalgamating companies other than the amalgamated company from the register;
- (c) the amalgamated company succeeds to all the property, rights and privileges of each of the amalgamating companies;
- (d) the amalgamated company succeeds to all the liabilities of each of the amalgamating companies;
- (e) proceedings pending by or against any amalgamating company may be continued by or against the amalgamated company;
- (f) any conviction, ruling order or judgment in favour of or against an amalgamating company may be enforced by or against the amalgamated company; and

- (g) the shares and rights of the shareholders in the amalgamating companies are converted into the shares and rights provided for in the incorporation document of the amalgamated company.

#### **244. Creditors' rights on amalgamation.**

Where immediately after the time when an amalgamation becomes effective, an amalgamated company becomes insolvent, any creditor of any of the amalgamating companies may recover any loss he or she has suffered by reason of the amalgamation—

- (a) if no certificate was given by the directors of that amalgamating company at the time the amalgamation was approved; or
- (b) if the certificate was given and if there were no reasonable grounds for the opinion that the amalgamated company would be solvent from the directors who signed the certificate.

#### **245. Powers of court in relation to amalgamations.**

(1) Notwithstanding anything in this Act or in the incorporation document of any company, where it is not practicable to effect an amalgamation in accordance with the procedures set out in this Act or the incorporation document of the amalgamating companies, those companies may apply to the court for approval of an amalgamation and the court may approve the proposal on such terms and subject to such conditions as it thinks fit.

(2) Within ten working days after an order is made by the court under subsection (1), the directors of each amalgamating company must deliver a copy of the order to the registrar who must take such steps if any as the order may specify.

**246. Power to acquire shares of shareholders dissenting from scheme or contract approved by majority.**

(1) Where a scheme or contract involving the transfer of shares or any class of shares in a company, in this section referred to as "the transferor company" to another company whether a company within the meaning of this Act or not, in this section referred to as "the transferee company", has, within four months after the making of the offer for the purpose by the transferee company been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved other than shares already held at the date of the offer by or by a nominee for, the transferee company or its subsidiary, the transferee company may, at any time within two months after the expiration of the four months, give notice in the prescribed manner to any dissenting share-holder that it desires to acquire his or her shares.

(2) Where the notice is given under subsection (1) the transferee company is, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the court thinks fit to order otherwise, entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company.

(3) Where shares in the transferor company of the same class or classes as the shares whose transfer is involved are already held as described in subsection (1) to a value greater than one-tenth of the aggregate of their value and that of the shares other than those already held as described in subsection (1) whose transfer is involved, subsections (1) and (2) shall not apply unless—

- (a) the transferee company offers the same terms to all holders of the shares other than those already held as referred to in subsection (1) whose transfer is involved or where these shares include shares of different classes, of each class of them; and

- (b) the holders who approve the scheme or contract, besides holding not less than nine-tenths in value of the shares other than those already whose transfer is involved, are not less than three-fourths in number of the holders of those shares.

(4) Where under a scheme or contract referred in subsection (2), shares in a company are transferred to another company or its nominee and those shares together with any other shares in the first-mentioned company held by or by a nominee for, the transferee company or its subsidiary at the date of the transfer comprise or include nine-tenths in value of the shares in the first-mentioned company or of any class of those shares, then—

- (a) the transferee company shall within one month from the date of the transfer unless on a previous transfer under the scheme or contract it has already complied with this requirement of this paragraph give notice of that fact in the prescribed manner to the holder of the remaining shares or of the remaining shares of that class as the case may be who have not assented to the scheme or contract; and
- (b) any holder may within three months from the giving of the notice to him or her require the transferee company to acquire the shares in question.

(5) Where a shareholder gives notice under subsection (4)(b) with respect to any shares, the transferee company is entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to it or on such other terms as may be agreed or as the court on the application of either the transferee company or the shareholder may order.

(6) Where a notice has been given by the transferee company under subsection (1) and the court has not, on an application made by the dissenting shareholder ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice

was given or, if an application to the court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company together with an instrument of transfer executed on behalf of the shareholder by a person appointed by the transferee company and on its own behalf by the transferee company and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire and the transferor company shall immediately register the transferee company as the holder of those shares.

(7) An instrument of transfer shall not be required for any shares for which a share warrant is for the time being outstanding.

(8) Sums received by the transferor company under this section shall be paid into a separate bank account and those sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which those sums or other consideration were respectively received.

(9) In this section "dissenting shareholder" includes a shareholder who has not assented to the scheme or contract and a shareholder who has failed or refused to transfer his or her shares to the transferee company in accordance with the scheme or contract.

### *Minorities.*

#### **247. Alternative remedy to winding up in cases of oppression.**

(1) A member of a company who complains that the affairs of the company are being conducted in a manner oppressive to some part of the members including himself or herself or in a case falling within section 178(5) may make a complaint to the registrar by petition for an order under this section.

(2) Where on any petition under subsection (1) the registrar is of the opinion—

- (a) that the company's affairs are being conducted as referred to in subsection (1); and
- (b) that to wind up the company would unfairly prejudice that part of the members but otherwise the facts would justify the petitioning for a winding up order on the ground that it was just and equitable that the company should be wound up,

the registrar may, with a view to bringing to an end the matters complained of, make such order as he or she thinks fit whether for regulating the conduct of the company's affairs in future or for the purchase of the shares of any members of the company by other members of the company or by the company and in the case of a purchase by the company, for the reduction accordingly of the company or by the company's capital, or otherwise.

(3) Where an order under this section makes any alteration in or addition to any company's memorandum or articles, then, notwithstanding anything in this Act but subject to the provisions of the order, the company concerned shall not have power without the leave of the court to make any further alteration in or addition to the memorandum or articles inconsistent with the provisions of the order; but, subject to this subsection, the alterations or addition made by the order shall be of the same effect as if duly made by resolution of the company and the provisions of this Act shall apply to the memorandum or articles as so altered or added to accordingly.

(4) A certified copy of an order under this section altering or adding to or giving leave to alter a company's memorandum or articles shall, within fourteen days after the making of the order, be delivered by the company to the registrar for registration.

(5) Where a company makes default in complying with subsection (4), the company and every officer of the company who is in default is liable to a default fine of twenty five currency points.

**248. Protection of members against prejudicial conduct.**

(1) A member of a company may apply to the court by petition for an order under this Part on the ground that the company's affairs are being or have been conducted in a manner which is unfairly prejudicial to the interests of its members generally or of some part of its members including at least himself or herself or that any actual or proposed act or omission of the company including an act or omission on its behalf is or would be so prejudicial.

(2) The provisions of this Part apply to a person who is not a member of a company but to whom shares in the company have been transferred or transmitted by operation of law as those provisions apply to a member of the company and references to a member or members are to be construed accordingly.

**249. Order on application of the registrar.**

(1) Where in the case of any company—

- (a) the registrar has received a report under section 177; and
- (b) it appears to him or her that the company's affairs are being or have been conducted in a manner which is unfairly prejudicial to the interests of its members generally or of some part of its members or that any actual or proposed act or omission of the company including an act or omission on its behalf is or would be so prejudicial,

the registrar may personally in addition to or instead of presenting a petition for the winding up of the company, apply to the court by petition for an order under this Part.

(2) In this section and so far as applicable for its purposes in section 250 "company" means any body corporate which is liable to be wound up under this Act.

**250. Provisions as to petitions and orders under this Part.**

(1) Where the court is satisfied that a petition under this Part is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.

(2) Without prejudice to the general effect of subsection (1), the court's order may—

- (a) regulate the conduct of the company's affairs in the future;
- (b) require the company to refrain from doing or continuing an act complained of by the petitioner or to do an act which the petitioner has complained it has omitted to do;
- (c) authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the court may direct;
- (d) provide for the purchase of the shares of any members of the company by other members or by the company itself and in the case of a purchase by the company itself, the reduction of the company's capital accordingly.

(3) Where an order under this Part requires the company not to make any or any specified alteration in the memorandum or articles, the company does not then have power without leave of the court to make any such alteration in breach of that requirement.

(4) Any alteration in the company's memorandum or articles made by virtue of an order under this Part is of the same effect as if duly made by resolution of the company and the provisions of this Act apply to the memorandum or articles as so altered accordingly.

(5) An office copy of an order under this Part altering or giving leave to alter a company's memorandum or articles shall, within fourteen days after the making of the order or such longer period as the court may allow, be delivered by the company to the registrar for registration and if a company makes default in complying with this subsection, the company and every officer of it who is in default is liable to a default fine and, for continued contravention, to a daily default fine of five currency points in respect of each day the default continues.

*Provisions as to establishment of place of business in Uganda***251. Application of sections 252 to 260.**

Sections 252 to 260 shall apply to all foreign companies, being companies incorporated outside Uganda which, establish a place of business in Uganda and companies incorporated outside Uganda which have, established a place of business in Uganda and continue to have a place of business in Uganda.

**252. Documents to be delivered to the registrar by foreign companies carrying on business in Uganda.**

(1) A foreign company which, establishes a place of business within Uganda shall, within thirty days after the establishment of the place of business, deliver to the registrar for registration—

- (a) a certified copy of the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the constitution of the company, and, where the instrument is not written in the English language, a certified translation of the instrument;
- (b) a list of the directors and secretary of the company containing the particulars mentioned in subsection (2);
- (c) a statement of all subsisting charges created by the company, being charges of the kinds set out in section 105(2) and not being charges comprising solely property situated outside Uganda;
- (d) the names and postal addresses of one or more persons resident in Uganda authorized to accept on behalf of the company service of process and any notices required to be served on the company;
- (e) the full address of the registered or principal office of the company.

(2) The list referred to in subsection (1) (b) shall contain the following particulars with respect to each director and secretary—

- (a) in the case of an individual, his or her present first name and surname and any former first name or surname, his or her usual postal address, his or her nationality and his or her business occupation, if any; and
- (b) in the case of a corporation, its corporate name and registered or principal office and its postal address,

except that where all the partners in a firm are joint secretaries of the company, the name and principal office of the firm may be stated instead of the particulars mentioned in this subsection.

(3) Section 228(11) (b), (c) and (d) shall apply for the purpose of the construction of references in subsection (2) to present and former first names and surnames as they apply for the purpose of the construction of those references in that section.

(4) Where a charge, being a charge which ought to have been included in the statement required by subsection (1)(c), is not so included, it shall be void as regards property in Uganda against the liquidator and any creditor of the company.

### **253. Certificate of registration and power to hold land.**

(1) On the registration of the documents specified in section 252 the registrar shall issue a certificate signed by him or her that the company has complied with that section, and that certificate shall be conclusive evidence that the company is registered as a foreign company under this Act.

(2) Upon registration of a foreign company under this Act, the provisions of this Act shall with the necessary modifications apply to the foreign company as they apply to a company incorporated under this Act.

(3) From the date of registration under this Act, a foreign company shall have the same power to hold land in Uganda subject to the Constitution, the Land Act and the Investment Code Act, as if it were a company incorporated under this Act.

**254. Returns to be delivered to the registrar by a foreign company.**

- (1) Where any alteration is made in—
- (a) the charter, statutes, or memorandum and articles of a foreign company or any instrument referred to in section 252(1)(a);
  - (b) the directors or secretary of a foreign company of the particulars contained in the list of the directors and secretary;
  - (c) the name or postal addresses of the persons authorized to accept service on behalf of a foreign company; or
  - (d) the address of the registered or principal office of a foreign company,

the company shall within sixty days after the alteration, deliver to the registrar for registration a return containing the prescribed particulars of the alteration.

- (2) Where in the case of a company to which this Part applies—
- (a) a winding up order is made by; or
  - (b) proceedings substantially similar to a voluntary winding up of the company under this Act are commenced in,

a court of the country in which the company was incorporated, the company shall within thirty days after the date of the making of the order or the commencement of the proceedings as the case may be, deliver to the registrar a return containing the prescribed particulars relating to the making of the order or the commencement of the proceedings and shall cause the prescribed advertisements in relation to them to be published.

**255. Registration of charges created by foreign companies.**

(1) Part IV shall extend to charges on property in Uganda which are created, and to charges on property in Uganda which is acquired, after the commencement of this Act, by a foreign company which has an established place of business in Uganda.

(2) Notwithstanding subsection (1), in the case of a charge executed by a foreign company out of Uganda comprising property situated both within and outside Uganda—

- (a) it shall not be necessary to produce to the registrar the instrument creating the charge if the prescribed particulars of it and a copy of it, verified in the prescribed manner, are delivered to the registrar for registration; and
- (b) the time within which those particulars and copy are to be delivered to the registrar shall be sixty days after the date of execution of the charge by the company or in the case of a deposit of title deeds the date of the deposit.

**256. Accounts of a foreign company.**

(1) Every foreign company shall, in every calendar year, make out a balance sheet and profit and loss account and, if the company is a holding company, group accounts, in such form, and containing particulars and including documents, as under this Act, subject, to any prescribed exceptions, it would, if it had been a company within the meaning of this Act, have been required to make out and lay before the company in general meeting, and deliver copies of those documents to the registrar for registration.

(2) A foreign company shall not be obliged to comply with subsection (1) if—

- (a) it was incorporated in any part of the Commonwealth;
- (b) it would, had it been incorporated in Uganda, have been exempt from section 135 by virtue of subsection (5) of that section; and

- (c) in every calendar year there is delivered to the registrar for registration a certificate signed by a director and the secretary of the company verifying the conditions required for the exemption.

(3) Where a document mentioned in subsection (1) is not written in the English language, there shall be annexed to it a certified translation thereof.

**257. Obligation to state name of foreign company, whether limited and country where incorporated.**

(1) A foreign company shall—

- (a) in every prospectus inviting subscription for its shares or debentures in Uganda state the country in which the company is incorporated;
- (b) conspicuously exhibit in legible characters on every place where it carries on business in Uganda the name of the company and the country in which the company is incorporated;
- (c) cause the name of the company and of the country in which the company is incorporated to be stated in legible letters in all billheads and letter paper and in all notices and other official publication of the company; and
- (d) if the liability of the members of the company is limited, cause notice of that fact to be stated in the English language in legible characters in every prospectus referred to in paragraph (a) and in all billheads, letter paper, notices and other official publications of the company in Uganda and to be affixed on every place where it carries on its business.

(2) A foreign company shall, in all trade catalogues, trade circulars, show cards and business letters on or in which the company's name appears and which are issued or sent by the company to any person in Uganda, state in legible letters with respect to every director being a corporation, the corporate name, and with respect to every director, being an individual, the following particulars—

- (a) his or her present first name, or the initials of that name, and present surname;
- (b) any former first names and surnames;
- (c) his or her nationality.

(3) Where special circumstances exist which render it in the opinion of the registrar expedient that the exemption should be granted, the registrar may by order grant, subject to such conditions as may be specified in the order, exemption from the obligations imposed by subsection (2).

### **258. Service on a foreign company.**

(1) Any process or notice required to be served on a foreign company shall be sufficiently served if addressed to any person whose name has been delivered to the registrar under this Part of this Act left at or sent by registered post to the address which has been so delivered.

(2) Where—

- (a) a company referred to in subsection (1) makes default in delivering to the registrar the name and address of a person resident in Uganda who is authorised to accept on behalf of the company service of process or notices; or
- (b) at any time all the persons whose names and addresses have been delivered under paragraph (a) are dead or have ceased to reside in Uganda, or refuse to accept service on behalf of the company, or for any reason cannot be served,

a document may be served on the company by leaving it at or sending it by registered post to any place of business established by the company in Uganda.

**259. Cessation of business by a foreign company and striking it off the register.**

(1) Where a foreign company ceases to have a place of business in Uganda, it shall immediately give notice in writing of the fact to the registrar for registration; and as from the date on which the notice is given, the obligation of the company to deliver any document to the registrar shall cease and the registrar shall strike the name of the company off the register.

(2) Where the registrar has reasonable cause to believe that a foreign company has ceased to have a place of business in Uganda, the registrar may send by registered post to the person authorized to accept service on behalf of the company and, if more than one, to all those persons, a letter inquiring whether the company is maintaining a place of business in Uganda.

(3) Where the registrar receives an answer to the effect that the company has ceased to have a place of business in Uganda or does not within three months receive any reply, he or she may strike the name of the company off the register.

**260. Offences and penalties**

Where a foreign company fails to comply with any of the provisions of this Part, the company and every officer or agent of the company who knowingly and willfully authorises or permits the default commits an offence and is liable on conviction to a fine not exceeding one thousand currency points, or, in the case of a continuing offence, five currency points for everyday during which the contravention continues.

**261. Interpretation of sections 252 to 259.**

For the purposes of this Part of this Act—

- (a) “certified” means certified in the prescribed manner to be a true copy or a correct translation;

- (b) "director", in relation to a company, includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;
- (c) "place of business" includes a share transfer or share registration office;
- (d) "prospectus" has the same meaning as when used in relation to a company incorporated under this Act;
- (e) "secretary" includes any person occupying the position of secretary by whatever name called.

PART VII—GENERAL PROVISIONS RELATING TO REGISTRATION

**262. Designation of registrars.**

(1) The Registrar General appointed under the Uganda Registration Services Bureau Act, shall be the registrar of companies under this Act.

(2) The Minister shall designate other officers under the Uganda Registration Services Bureau Act to assist the Registrar General in the registration of Companies under this Act.

(3) Subject to this Act, the Minister may make regulations for the purpose of regulating the discharge of the functions of the Registrar General under this Act.

(4) Every assistant registrar may, subject to the directions of the registrar, perform any act or discharge any duty which the registrar may lawfully do or is required by this Act to do and for that purpose shall have all the powers, privileges and authority of the registrar.

(5) The Minister may direct a seal to be prepared for the authentication of documents required for or connected with the registration of companies.

**263. Fees.**

(1) The fees to be paid to the registrar under this Act shall be prescribed by the Minister.

(2) All fees paid under this Act shall be paid into the Consolidated Fund.

**264. Inspection, production and evidence of documents kept by the registrar.**

(1) A person may—

- (a) inspect the documents kept by the registrar, on payment of the prescribed fee;
- (b) require a certificate of the incorporation of a company or a copy or extract of any other document or any part of any other document, to be certified by the registrar, on payment of the prescribed fee except that—
  - (i) in relation to documents delivered to the registrar with a prospectus under the rights conferred by this subsection shall be exercisable only during the fourteen days beginning with the date of the prospectus or with the permission of the registrar, and in relation to documents so delivered those rights shall be exercisable only during the fourteen days beginning with the date of the prospectus or with the permission of the registrar; and
  - (ii) the right conferred by paragraph (a) shall not extend to any copy sent to the registrar under of this Act of a statement as to the affairs of a company or of any comments of the receiver or his or her successor or a continuing receiver or manager on the statement as to the affairs of the company but only to the summary of the statement, except where the person claiming the right either is or is the agent of, a person stating himself or herself in writing to be a member or creditor of the company to which the statement relates and the right conferred this paragraph shall be similarly limited.

(2) Process for compelling the production of any documents kept by the registrar shall not issue from any court except with the leave of that court and the process if issued shall bear a statement on it that it is issued with the leave of the court.

(3) A copy of or extract from, any document kept and registered at the office of the registrar, certified to be a true copy signed by the registrar whose official position it shall not be necessary to prove shall in all legal proceedings be admissible as prima facie evidence of that document or extract as the case may be and of the matters, transactions and accounts recorded in it.

(4) The registrar shall not in any legal proceeding to which he or she is not a party, be compellable—

- (a) to produce any document the contents of which can be proved under subsection (3); or
- (b) to appear as a witness to prove the matters, transactions or accounts recorded in any such document, unless by order of the court made for special cause.

(5) A person untruthfully stating himself or herself in writing for the purposes of subsection (1)(b)(ii) to be a member or creditor of a company commits an offence and is liable on conviction to imprisonment not exceeding two years or to a fine not exceeding two hundred currency points.

### **265. Enforcement of duty of company to make returns to the registrar.**

(1) Where a company, having made default in complying with any provision of this Act which required it to file with, deliver or send to the registrar any return, account or other document or to give notice to him or her of any matter, fails to make good the default within fourteen days after the service of a notice on the company requiring it to do so, the court may, on an application made to the court by any member or creditor of the company or by the registrar, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order.

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

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any default referred to in subsection (1).

PART VIII—MISCELLANEOUS PROVISIONS WITH RESPECT TO  
INSURANCE COMPANIES AND CERTAIN SOCIETIES AND ASSOCIATIONS

**266. Certain companies to publish periodical statement.**

(1) Every company including a company incorporated outside Uganda and having a place of business in Uganda being an insurance company or a deposit, provident or benefit society, shall, before it commences business, and also on the first Monday in February and the first Tuesday in August in every year during which it carries on business, make and file with the registrar a statement in the form set out in the Seventh Schedule to this Act or as near to it as circumstances admit.

(2) A copy of the statement shall be exhibited in a conspicuous place in every office of the company or other place where the business of the company is carried on.

(3) Every member and every creditor of the company shall be entitled to a copy of the statement, on payment of a sum not exceeding one tenth of a currency point.

(4) Where there is default in complying with this section, the company and every officer of the company who is in default is liable to a default fine of twenty five currency points.

(5) This section shall not apply to any insurance company to which the provisions of the Insurance Act as to the accounts and balance sheet to be prepared annually and deposited by such company apply, if the company complies with those provisions.

**267. Certain companies taken to be insurance companies.**

For the purposes of this Act, a company which carries on the business of insurance in common with any other business or businesses shall be taken to be an insurance company.

## PART IX—VOLUNTARY WINDING UP

**268. Voluntary winding up of company**

(1) A company may by special resolution resolve to be wound up voluntarily.

(2) A voluntary winding up of a company shall be taken to commence at the time of the passing of the resolution under subsection (1).

**269. Notice of resolution for voluntary winding up.**

(1) Where a company passes a resolution for voluntary winding up, it shall, within fourteen days after passing the resolution, give notice of the resolution in the *Gazette* and in a newspaper with a wide national circulation in the official language.

(2) The resolution for voluntary winding up shall be registered with the registrar and a copy sent to the official receiver within seven days from the date of passing the resolution.

(3) Where default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine and for the purposes of this subsection the liquidator of the company shall be taken to be an officer of the company.

*Consequences of voluntary winding up.***270. Effect of voluntary winding up on the business and status of a company.**

(1) A company shall, from the commencement of voluntary liquidation, cease to carry on business, except so far as may be required for the beneficial winding up of the company.

(2) Subject to subsection (1), the corporate status and powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

*Declaration of solvency*

**271. Statutory declaration of solvency in case of a proposal for voluntary winding up.**

(1) Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors, may, at a meeting of the directors make a declaration in the prescribed form to the effect that they have made a full inquiry into the affairs of the company and that, having done so, they have formed the opinion that the company will be able to pay its debts in full within a period not exceeding twelve months from the commencement of the liquidation as may be specified in the declaration.

(2) A declaration made under subsection (1) shall have no effect for the purposes of this Act unless—

- (a) it is made within thirty days before the date of the passing of the resolution for winding up the company and is delivered to the registrar with a copy to the official receiver for registration before that date; and
- (b) it includes a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.

(3) A director of a company who makes a declaration under this section, without reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration commits an offence and shall be liable on conviction to imprisonment not exceeding twelve months or to a fine not exceeding twenty four currency points or both.

(4) Where the company is wound up in accordance with a resolution passed within the period of thirty days after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his or her opinion.

### **272. Application of Insolvency Act, 2011 to voluntary winding up of a company.**

Where a company passes a resolution for the voluntary winding up of the company in accordance with this Act, the provisions of the Insolvency Act, 2011 relating to liquidation shall, with the necessary modifications apply to the voluntary winding up of the company.

## PART X—GENERAL

### *Forms of registers etc.*

### **273. Form of registers and related particulars.**

(1) A register, index, minute book or book of account required by this Act to be kept by a company may be kept either by making entries in bound books or electronic data or by recording the matters in question in any other manner.

(2) Where a register, index, minute book or book of account referred to in subsection (1) is not kept by making entries in a bound book but by some other means, adequate precautions shall be taken for guarding against falsification and facilitating its discovery.

(3) Where there is default in complying with subsection (2), the company and every officer of the company who is in default is liable to a default fine not exceeding twenty five currency points and further to a default fine.

**274. Service of documents.**

(1) A document may be served on a company by personally serving it on an officer of the company, by sending it by registered post to the registered postal address of the company in Uganda or by sending an email to the known electronic address or by leaving it at the registered office of the company.

(2) A document may be served on the registrar by leaving it at or sending it by registered post to his or her office or in any other manner as may be prescribed by regulations.

**275. Returns and related particulars filed out of time.**

(1) Where under this Act any return, account, notice or other document or particulars is or are required to be filed, delivered, given or sent to the registrar within a specified period, the duty to file, deliver, give or send the return, account, notice or other document shall not cease on the expiration of that period but shall be a continuing duty.

(2) The registrar shall, on payment of such additional fee as may be prescribed, register any document delivered to him or her for registration notwithstanding the expiration of the period within which the document ought to have been delivered but the registration shall relieve any person from any liability he or she may have incurred by reason of his or her default in delivering that document within the specified period.

*Offences and penalties.***276. Penalty for false statements.**

Where any person in any return, report, certificate, balance sheet or other document, required by or for the purposes of any of the provisions of this Act specified in the Eighth Schedule to this Act, willfully makes a statement false in any material particular, knowing it to be false, he or she commits an offence and is liable on conviction to imprisonment not exceeding two years or a fine not exceeding two hundred currency points or both

**277. Penalty for improper use of the word "limited".**

Where any person trades or carries on business under any name or title of which "limited" or any contraction or imitation of that word is the last word, that person is, unless duly incorporated with limited liability, commits an offence and is liable on conviction to imprisonment not exceeding one year or a fine not exceeding one hundred currency points or both and in addition to a fine not exceeding ten currency points for every day upon which that name or title is used.

**278. Provision with respect to default fines and meaning of "officer in default".**

(1) Where in this Act it is provided that a company and every officer of the company who is in default is liable to a default fine, the company and every officer shall, for every day during which the default, refusal or contravention continues, be liable to a fine not exceeding such amount as is specified in the relevant provisions of this Act or, if the amount of the fine is not so specified, to a fine not exceeding ten currency points.

(2) For the purpose of any section of this Act which provides that an officer of the company who is in default is liable to a fine or penalty, "officer who is in default" means any officer of the company who knowingly and willfully authorises or permits the default, refusal or contravention mentioned in the enactment.

**279. Production and inspection of books where offence suspected.**

(1) Where on an application made to a judge of the High court in chambers by the Director of Public Prosecutions or the registrar there is shown to be reasonable cause to believe that any person has, while an officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company, an order may be made—

- (a) authorising any person named in the order to inspect the books or papers or any of them for the purpose of investigating and obtaining evidence of the offence; or

- (b) requiring the secretary of the company or such other officer of the company as may be named in the order to produce the books or papers referred to in paragraph (a) or any of them to a person named in the order at a place named in the order.

(2) Subsection (1) shall apply also in relation to any books or papers of a person carrying on the business of banking so far as they relate to the company's affairs as it applies to any books or papers of or under the control of the company, except that an order referred to in paragraph (b) of that subsection shall not be made by virtue of this subsection.

### **280. Cognisance of offences.**

(1) A court lower than a magistrate's court presided over by a Magistrate Grade 1 shall not try any offence under this Act.

(2) Subject to the powers of the Director of Public Prosecutions under article 120 of the Constitution proceedings in respect of any offence under this Act may, notwithstanding anything to the contrary contained in the Criminal Procedure Code Act, be taken by the Director of Public Prosecutions or by the registrar at any time within twelve months from the date on which evidence sufficient in the opinion of the Director of the Public Prosecutions or the registrar as the case may be, to justify the proceedings comes to the knowledge of the Director of Public Prosecutions or the registrar as the case may be; except that proceedings shall not be so taken more than three years after the commission of the offence.

(3) For purposes of subsection (2), a certificate of the Director of Public Prosecutions or the registrar as to the date on which such evidence referred to in subsection (2) came to his or her knowledge shall be conclusive evidence thereof.

### **281. Application of fines.**

(1) The registrar or court imposing any fine under this Act may direct that the whole or any part of it shall be applied in or towards payment of the costs of the proceedings or in or towards rewarding the person on whose information or at whose instance the fine is recovered and subject to any such direction all fines under this Act shall, notwithstanding anything in any other written law, be paid into the Consolidated Fund.

(2) Where a default fine is imposed on a person or company under this Act, the default fine shall be paid to the registrar.

(3) The registrar shall pay the money collected under this section into the Consolidated Fund.

### **282. Provisions relating to institution of criminal proceedings.**

(1) Nothing in this Act relating to the institution of criminal proceedings by the Director of Public Prosecutions shall be taken to preclude any person from instituting or carrying on any such proceedings.

(2) Where in this Act the Director of Public Prosecutions is permitted or required to institute or carry on any criminal or other proceedings or to make any application those proceedings may be instituted or carried on and the application may be made by the Director of Public Prosecutions or on behalf of the Director of Public Prosecutions by any person who-

- (a) has been instructed by the Director of Public Prosecutions to do so; and
- (b) is otherwise entitled to appear before the court or before a judge or magistrate in chambers by virtue of the Advocates Rules or in the case of criminal proceedings, the provisions of the Criminal Procedure Code Act relating to the appointment of public prosecutors, but where by this Act the consent of the Director of Public Prosecutions is required before any proceedings are instituted or thing done, nothing in this subsection shall be taken as permitting any person other than the Director of Public Prosecutions to give that consent.

### **283. Savings for privileged communications.**

Where proceedings are instituted under this Act against any person by the Director of Public Prosecutions or the registrar, nothing in this Act shall be taken to require any person who has acted as advocate for the defendant to disclose any privileged communication made to him or her in that capacity.

**284. Costs in actions by certain limited liability companies.**

Where a limited liability company is plaintiff in any suit or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his or her defence, require sufficient security to be given for those costs and may stay all proceedings until the security is given.

**285. Power of court to grant relief in certain cases.**

(1) Where in any proceeding for negligence, default, breach of duty or breach of trust against an officer of a company or a person employed by a company as auditor whether he or she is or is not an officer of the company, it appears to the court hearing the case that that officer or person is or may be liable in respect of the negligence, default, breach of duty or breach of trust but that he or she has acted honestly and reasonably and that, having regard to all the circumstances of the case including those connected with his or her appointment, he or she ought fairly to be excused for the negligence, default, breach of duty or breach of trust, the court may relieve him or her either wholly or partly from his or her liability on such terms as the court may think fit.

(2) Where any such officer or person referred to in subsection (1) has reason to apprehend that any claim will or might be made against him or her in respect of any negligence, default, breach of duty or breach of trust, he or she may apply to the court for relief and the court on any such application shall have the same power to relieve him or her as under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

**286. Power to enforce orders.**

Orders made by the High Court under this Act may be enforced in the same manner as orders made in any other suit by that court.

**287. Hearing before exercise of registrar's discretion.**

Where any discretion or other powers given to the registrar by this Act or any rules made under it, the registrar shall not exercise that power adversely to the applicant without giving the applicant an opportunity of being heard.

**288. Mode of giving evidence in proceedings before the registrar.**

(1) In any proceeding under this Act before the registrar, the evidence shall be given by statutory declaration in the absence of directions to the contrary, but, in any case in which the registrar thinks it right so to do, he or she may take evidence *viva voce* in lieu of or in addition to evidence by declaration. Any such statutory declaration may in the case of appeal be used before the court in lieu of evidence by affidavit, but if so used shall have all the incidents and consequences of evidence by affidavit.

(2) In case any part of the evidence is taken *viva voce*, the registrar shall, in respect of requiring the attendance of witnesses and taking evidence on oath, be in the same position in all respects as a magistrate.

**289. Power of registrar to award costs.**

(1) In all proceedings before the registrar under this Act, the registrar shall have power to award to any party such costs as the registrar may consider reasonable, and to direct how and by what parties they are to be paid, and any of such order may, by leave of the court be enforced in the same manner as a judgment or order of the court to the same effect.

(2) The Chief Justice may, from time to time, make rules in regard to the amount of and generally as to costs to be awarded under this section.

**290. Costs of registrar in proceedings before court.**

In all proceedings before the court under this Act the costs of the registrar shall be in the discretion of the court, but the registrar shall not be ordered to pay the costs of any other of the parties.

**291. Court's power to review registrar's decision.**

The court, in dealing with any question of the rectification of the register shall have power to review any decision of the registrar relating to the entry in question or the correction sought to be made.

**292. Discretion of court in appeals.**

In any appeal from a decision of the registrar to the court under this Act, the court shall have and exercise the same discretionary powers as under this Act are conferred upon the registrar.

**293. Procedure in cases of option to apply to court or registrar.**

Where under any of the provisions of this Act a person has an option to make an application to the court or to the registrar and the application is made to the registrar, the registrar may, at any stage of the proceedings, refer the application to the court, or he or she may, after hearing the parties, determine the question between them, subject to appeal to the court.

**294. Regulations.**

(1) The Minister may by statutory instrument, make regulations for giving full effect to this Act and in particular for making provision for any matter required to be prescribed or provided for by the Minister under this Act.

(2) Without prejudice to the general effect of subsection (1), the Minister may make regulations under that subsection—

- (a) to alter Table A and the Form in the Seventh Schedule to this Act;
- (b) to alter or add to Table B, C, D and E in the Third Schedule to this Act and the Forms to the Fourth Schedule to this Act;
- (c) to alter or add to the requirements of this Act as to matters to be stated in a company's balance sheet, profit and loss accounts and group accounts in particular the requirements of the Fifth Schedule of this Act;

- (d) regulating the procedure for the use of paperless transactions with regard to securities.

(3) Regulations made by virtue of subsection (2)(c) shall not impose requirements more onerous than the requirements existing before the making of the regulations unless the regulations have been laid before Parliament and approved Parliament by resolution.

(4) Regulations made under this section may impose in respect of a contravention of the regulations a penalty not exceeding two hundred and fifty currency points and may impose an additional fine not exceeding ten currency points in respect of each day on which the contravention continues.

### **295. Power of Minister to amend First Schedule.**

The Minister may by statutory instrument, with the approval of Cabinet amend the First Schedule.

### **296. Savings for certain rules.**

(1) Notwithstanding the provisions of this Act, the Companies (High Court) Fees Rules made under the repealed Companies Act shall remain in force after the commencement of this Act until revoked in the manner prescribed in subsection.

(2) The rules referred to in subsection (1) shall be read with and considered part of this Act, except in so far as they may be inconsistent with this Act.

(3) The Minister may make rules revoking the rules referred to in this section.

### **297. Omitted dates not to prejudice vested rights.**

For the avoidance of doubt, the omission from this Act of any dates previously appearing in the repealed Act shall not prejudice the rights of any person whose rights depended on the existence of those dates.

### **298. Repeal and savings.**

(1) The Companies Act in force immediately before the commencement of this Act is repealed.

(2) This Act shall not affect any prosecution by a liquidator instituted or ordered by the court to be instituted under the repealed Companies Act directing how any costs and expenses properly incurred by a liquidator in any such prosecution are to be defrayed as it would have had if this Act had not been enacted.

(3) A document referring to the repealed Companies Act shall be construed as referring to the corresponding provision of this Act.

(4) A person appointed to any office under or by virtue of the repealed Companies Act shall be taken to have been appointed to that office under or by virtue of this Act.

(5) A register kept under the repealed Companies Act shall be taken to be part of the register to be kept under the corresponding provisions of this Act.

(6) All funds and accounts constituted under this Act shall be taken to be in continuation of the corresponding funds and accounts constituted under the repealed Companies Act.

(7) Nothing in this Act shall affect the incorporation of any company registered under the repealed Companies Act;

(8) Where on the coming into force of this Act the articles of any company carrying on business in Uganda require any matter or thing to be done by the passing of an extraordinary resolution that matter or thing shall, on and after the coming into force be taken to have been lawfully and sufficiently done by the passing of special resolution.

(9) Where any offence, being an offence for the continuance of which a penalty was provided has, been committed under the repealed Companies Act, proceedings may be taken under this Act in respect of the continuance of the offence after the coming into force of this Act in the same manner as if the offence has been committed under the corresponding provisions of this Act.

(10) The mention of particular matters in this section shall be without prejudice to the general application of the provisions of the Interpretation Act which relate to the effect of repeals.



