

COMPANIES ACT, 2013

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COMPANIES ACT, 2013

AN ACT to revise the law relating to incorporation, management and dissolution companies and for connected matters.

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ENACTED by the President and the National Assembly.

CHAPTER I - PRELIMINARY

1. Short title

(1) This Act may be cited as the Companies Act, 2013.

(2) This Act shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

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;

“affairs”, in relation to a company or other body corporate, means the relationship among the company or body corporate, its affiliates and the shareholders, directors and officers, but does not include a business carried on by the company or other body corporate;

“agent” does not include a legal practitioner acting as counsel for a person;

“affiliate” means an affiliated company or affiliated body corporate within the meaning of section 3(1) of this Act;

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

“associate”, when used to indicate a relationship with a person, means-

- (a) a company or body corporate in which that person beneficially owns or controls, directly or indirectly, shares or debentures convertible into shares, that carry more than twenty *per cent* of the voting rights-
 - (i) under all circumstances,
 - (ii) by reason of the occurrence of an event that has occurred and is continuing, or
 - (iii) by reason of a currently exercisable option or right to purchase those shares or those convertible debentures;
- (b) a partner of that person acting on behalf of the partnership;
- (c) a trust or estate in which that person has a substantial beneficial interest or in respect of which he or she serves as a trustee or in a similar capacity; or
- (d) a relative of that person if that relative has the same residence as that person;

“auditor” includes a partnership of auditors;

“beneficial interest” or “beneficial ownership” includes ownership through a trustee, legal

representative, agent or other intermediary;

“body corporate” includes a company wherever or however incorporated, other than a corporation sole;

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

“circulating capital” means a portion of the subscribed capital of a company intended to be used by being temporarily parted with and circulated in business, in the form of money, goods and other assets, and which, or the proceeds of which, are intended to return to the company with an increment, and are intended to be used again and again, and to always return with some accretion;

“company” means a body corporate that is incorporated or continued under this Act;

“contributory”-

- (a) means every person liable to contribute to the assets of a company in the event of its being wound up; and
- (b) for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are deemed to be a contributories, includes any person alleged to be a contributory;

“Court” means the High Court of The Gambia;

“corporate instrument” includes a statute, letters patent, memorandum of association, articles of association, certificate of incorporation, certificate of continuance or other instrument by which a body corporate is incorporated or continued or that governs or regulates the affairs of a body corporate;

“debenture” means a written acknowledgement of indebtedness by a company, setting out the terms

and conditions of the indebtedness, and includes debenture stock and a bond or other instrument evidencing an obligation or guarantee, whether secured or not;

“director” includes a person occupying the position of director by whatever name called, and includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

“dividend” means a proportion of the distributed profits of a company which may be-

- (a) a fixed annual percentage, as in the case of preference shares; or
- (b) variable according to the prosperity or other circumstances of the company, as in the case of equity shares;

“document” includes summons, notice, order and other legal process, and a register;

“equity share” means a share, other than a preference share, and “equity share capital” shall be construed accordingly;

“fixed capital” means that capital which a company retains in the form of assets-

- (a) on which the subscribed capital or other sum has been expended; and
- (b) which, either themselves produce income, independent of any further action by the company, or being retained by the company, are made use of to produce income or gain profits;

“former Act” means the repealed Companies Act;

“goods” means moveable property that are tangible, including crops, livestock, minerals that have been extracted in any form, whether solid, liquid or gaseous but does not include financial property;

“legal practitioner” has the meaning given to it by the Legal Practitioners Act;

[Cap 7 :01]

“legal representative” in relation to a company, shareholder, debenture holder or other person, means a person who stands in place of and represents the company, shareholder, debenture holder or other person, and includes a trustee, executor, administrator, assignee or receiver of the company, shareholder, debenture holder or other person;

“member” includes the heir, executor, administrator or other personal representative, as the case may be, of the member;

“memorandum” means the memorandum of association of a company as originally framed or as altered in pursuance of an enactment;

“Minister” means the Minister responsible for Legal affairs;

“non-cash asset” means any property or interest in property, other than cash and, for this purpose, cash includes foreign currency;

“officer”, in relation to a body corporate, means-

- (a) the chairperson, deputy chairperson, president or vice-president of the board of directors;
- (b) the managing director, general manager, comptroller, secretary or treasurer; or
- (c) any other person who performs for the body corporate functions similar to those normally performed by the holder of an office specified in paragraph (a) or (b) and who is appointed by the board of directors

to perform those functions;

“official receiver” means the officer by whatever name called or known charged with control of affairs in bankruptcy;

“ordinary resolution” means a resolution passed by a majority of the votes cast by the shareholders who voted in respect of that resolution;

“personal representative”, where customary law is applicable, includes a successor appointed in respect of a deceased contributory;

“preference share” means a share, by whatever name designated, which does not entitle its holder to any right to participate beyond a specified amount in any distribution whether by way of dividend or on redemption, in a winding-up, or otherwise;

“prospectus” means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company and includes any document which, except to the extent that it offers securities for a consideration other than cash, is a prospectus;

“record” includes a register, book or other record that is required to be kept by a company or other body corporate;

“redeemable share” means a share issued by a company which the company-

- (a) can purchase or redeem on demand of the company; or
- (b) is required by its articles of association to purchase or redeem at a specific time or on demand of a shareholder;

“Registrar” means the Registrar of Companies;

“securities” include shares, debentures, debenture stocks, bonds, notes, other than promissory notes and units under a unit trust scheme;

“security interest” means an interest in or charge on the property of a company, by way of mortgage, bond, lien, pledge or other means, that is created or taken to secure the payment of an obligation of the company;

“share” means an interest in a company’s share capital of a member who is entitled to a share in the capital or income of the company, and, except where a distinction between stocks and shares is expressed or implied, includes stock;

“shareholder”, in relation to a company, includes-

- (a) a member of a company described in Part V of Chapter II of this Act;
- (b) the personal representative of a deceased shareholder;
- (c) the official trustee under the Insolvency Act;
[cap. 94.06]
- (d) a person in whose favour a transfer of shares has been executed but whose name has not been entered in the register of members, or, if two or more transfers of those shares have been executed, the person in whose favour the most recent transfer has been made;

“special resolution” means a resolution of which at least twenty-one days’ notice is given which is-

- (a) passed by a majority of not less than seventy-five *per cent* of the votes cast by the shareholders who voted in respect of the resolution; or
- (b) signed by all the shareholders entitled to vote on the resolution;

“stock exchange” means a market where shares or bonds are traded;

“Single Window Registry” means the Single Window Registry established under the Business Registration Act, 2013;

“unregistered company” includes any partnership, association or company , other than -

- (a) a company or an existing company registered under this Act; and
- (b) a partnership, association or company which consists of less than eight members and is not a foreign partnership, association or company.

3. Corporate relationships

(1) For the purposes of this Act-

- (a) one body corporate is affiliated with another body corporate if one of them is the subsidiary of the other, or both are subsidiaries of the same body corporate, or each of them is controlled by the same person;
- (b) if two bodies corporate are affiliated with the same body corporate at the same time, they are affiliated with each other;
- (c) a body corporate is controlled by a person if any shares of the body corporate carrying voting rights sufficient to elect a majority of the directors of the body corporate are, except by way of security only, held, directly or indirectly, by or on behalf of that person;
- (d) a body corporate is the holding body corporate of another body corporate if that other body corporate is its subsidiary;

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- (e) a body corporate is the subsidiary of another body corporate if it is controlled by that other body corporate;
 - (f) a share or debenture of a body corporate is part of a distribution to the public, when, in respect of the share or debenture-
 - (i) there has been, under the laws of The Gambia or any other jurisdiction, a filing of a prospectus, statement in lieu of prospectus, registration statement, stock ex-change take-over bid circular or similar instrument, or
 - (ii) the share or debenture is listed for trading on a stock exchange,
 - (g) a share or debenture of a body corporate is deemed to be part of a distribution to the public where the share or debenture has been issued and a filing referred to in paragraph (f)(i) would be required if the share or debenture were being issued currently;
 - (h) the shares or debentures of a company that are issued, on a conversion of other shares or debentures of a company, or in exchange for any other share or debenture, is part of a distribution to the public if any of those other shares or debentures were part of a distribution to the public;
 - (i) a statement is included in a prospectus or in a statement in lieu of a prospectus if it is included in a report or memorandum appearing on the face of it or it is incorporated in it by reference or issued with it;
 - (j) a statement included in a prospectus or a statement in lieu of a prospectus is deemed to be untrue if it is misleading in the form and context in which it is included;

- (k) a reference to an offer or offering of shares or debentures for subscription or purchase is deemed to include an offer of shares or debentures by way of barter or otherwise;
 - (l) a reference to holders of shares is a reference to persons who are share-holders in respect of the shares, and a reference to holding shares shall be construed accordingly; and
 - (m) shares shall be considered as having been issued if a person is a shareholder in respect of them.
- (2) Sub-section (1) of this section does not require that an offer or invitation be treated as being-
- (a) made to the public if the offer or invitation can properly be regarded, in all the circumstances, as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons, other than those receiving the offer or invitation; or
 - (b) a domestic concern of the persons making and receiving the offer or invitation.
- (3) A provision in the articles of association of a company that prohibits invitations to the public to subscribe for shares or debentures does not prohibit the making of an invitation to the shareholders, debenture holders or employees of the company.

4. Prohibition

- (1) A company, an association, a partnership, society or any other group consisting of more than twenty persons shall not be formed for the purpose of carrying on a trade or business for gain unless it is incorporated under this Act or formed under some other enactment.

- (2) This section does not apply to –
- (a) a co-operative society registered under the provisions of any enactment in force in The Gambia; or
 - (b) a partnership for the purpose of carrying on practice –
 - (i) as legal practitioners by persons, each of whom is a legal practitioner, or
 - (ii) as accountants by persons, each of whom is entitled by law to practise as an accountant.

(3) If at any time the number of members of a company, association, partnership, society or other group exceeds twenty in contravention of this section and it carries on business for more than fourteen days while the contravention continues, every person who is a member of the company, association, partnership, society group, during the time that it is so carries on business after those fourteen days, commits an offence and is liable on conviction to a fine of ten thousand dalasis and to a further fine of one hundred dalasis for every day during which the default continues.

CHAPTER II - FORMATION AND OPERATION OF COMPANIES

PART I - FORMATION OF COMPANY

SUB-PART 1- INCORPORATION AND TYPES OF COMPANIES

5. Right to form a company

As from the commencement of this Act, any two or more persons may form and incorporate a company by complying with the requirements of this Act in respect of registration of the company.

6. Capacity of individual to form company

(1) Subject to sub-section (2) of this section, an individual shall not join in the formation of a company under this Act if –

- (a) he or she is under the age of eighteen years;
- (b) he or she is of unsound mind and has been so certified by a medical practitioner in The Gambia or elsewhere;
- (c) he or she is an undischarged bankrupt; or
- (d) he or she is disqualified under this Act from being a director of a company.

(2) A person is not disqualified under sub-section (1)(a), if two other persons not disqualified under that sub-section have subscribed to the memorandum.

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

7. Types of companies

(1) An incorporated company may be a company –

- (a) having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act referred to as “a company limited by shares”);
- (b) having the liability of its members limited by the memorandum to such amount as the members may, respectively, undertake to contribute to the assets of the company in the event of its being wound up (in this Act referred to as “a company limited by guarantee”); or
- (c) not having any limitation on the liability of

its members (in this Act referred to as “an unlimited company”).

(2) A company of any of the types specified in sub-section (1) of this section may either be a private company or a public company.

8. Private company

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

(2) A private company shall by its articles restrict the transfer of its shares.

(3) The total number of members of a private company shall not exceed fifty, excluding persons who-

- (a) are *bona fide* in the employment of the company; or
- (b) were while in that employment, and have continued after the determination of that employment to be,

members of the company.

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

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

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

9. Consequences of default in complying with conditions constituting a private company

(1) Subject to sub-section (2) of this section,

where default is made in complying with any of the provisions of section 8 in respect of a private company, the company shall cease to be entitled to the privileges and exemptions conferred on private companies by or under this Act and this Act shall apply to the company as if it were not a private company.

(2) If a Court, on the application of the company or any other interested person, is satisfied that the failure to comply with the provisions of section 8 of this Act was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, the court may, on such terms and conditions as may seem to it to be just and expedient, order that the company be relieved from the consequences mentioned in sub-section (1) of this section.

10. Public company

A company, other than a private company, is a public company and its memorandum shall state that it is a public company.

11. Unlimited company to have share capital

(1) As from the commencement of this Act, an unlimited company shall be registered with a share capital.

(2) Where an existing unlimited company is not registered with a share capital, it shall, not later than the appointed day, alter its memorandum so that it becomes an unlimited company having share capital not below the minimum share capital permitted under section 78.

12. Company limited by guarantee

(1) Where a company is to be formed for promoting commerce, art, science, religion, sports, culture, education, research, charity or other similar objects, and the income and property of the company are to be applied solely towards the promotion of its objects and no portion of the income or property is

to be paid or transferred directly or indirectly to the members of the company except as permitted by this Act, the company shall be registered as a company limited by guarantee.

(2) As from the commencement of this Act, a company limited by guarantee shall not be registered with a share capital.

(3) An existing company limited by guarantee and having a share capital shall, not later than the appointed day, alter its memorandum so that it becomes a company limited by guarantee and not having a share capital.

(4) A provision in the memorandum or articles or in any resolution of a company limited by guarantee purporting to-

- (a) give a person a right to participate in the divisible profits of the company otherwise than as a member; or
- (b) divide the company's undertaking into shares of interests,

is void.

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

(6) If a company limited by guarantee carries on business for the purpose of distributing profits-

- (a) all officers and members of the company who are aware that it is so carrying on business are jointly and severally liable for the payment and discharge of all the debts and liabilities of the company incurred in carrying on the business; and
- (b) the company, and every officer and member referred to in paragraph (a), commits an offence and is liable on

conviction to a fine of twenty thousand dalasis and to a further fine not exceeding five hundred dalasis for every day during which it carries on the business.

(7) The total liability of the members of a company limited by guarantee to contribute to the assets of the company in the event of its being wound up shall not at any time be less than ten thousand dalasis.

(8) Subject to compliance with sub-section (7), the articles of association of a company limited by guarantee may provide that members can retire or be excluded from membership of the company.

(9) If, in breach of sub-section (7), the total liability of the members of any company limited by guarantee is at any time less than ten thousand dalasis, every director and member of the company who is aware of the breach commits an offence and is liable on conviction to a fine of ten thousand dalasis and to a further fine fifty dalasis for every day during which the default continues.

(10) If, on the winding-up of a company limited by guarantee, there remains after the discharge of all its debts and liabilities any property of the company, the property shall not be distributed among the members but shall be-

- (a) transferred to some other company limited by guarantee having objects similar to the objects of the company; or
- (b) applied to some charitable object and such other company or charity shall be determined by the members prior to the dissolution of the company.

SUB - PART II - MEMORANDUM OF ASSOCIATION

13. Requirements with respect to the memorandum of a company

(1) The memorandum of a company shall state-

-
- (a) the name of the company;
 - (b) that the registered office of the company shall be situated in The Gambia;
 - (c) the restriction, if any, on the powers of the company;
 - (d) that the company is a private or public company, as the case may be; and
 - (e) that the liability of its members is limited by shares or by guarantee or is unlimited, as the case may be.
- (2) Unless the company's memorandum specifically restricts the objects of the company, its objects are unrestricted.
- (3) If the company has a share capital –
- (a) the memorandum shall also state the amount of authorized share capital with which the company proposes to be registered, and the division of the share capital into shares of a fixed amount;
 - (b) the subscribers of the memorandum shall take among themselves a total number of shares of a value of not less than twenty-five *per cent* of the authorized share capital; and
 - (c) each subscriber shall write opposite to his or her name the number of shares he or she has taken.
- (4) A subscriber of the memorandum who holds the whole or any part of the shares subscribed by him or her in trust for any other person shall disclose in the memorandum that fact and the name of the beneficiary.
- (5) The memorandum of a company limited by guarantee shall also state that-

- (a) the income and property of the company shall be applied solely towards the promotion of its objects, and that no portion of the income or property is to be paid or transferred directly or indirectly to the members of the company except as permitted by or under this Act; and
 - (b) each member undertakes to contribute to the assets of the company if it is wound up while he or she is a member or within one year after he or she ceases to be a member, a payment of-
 - (i) the debts and liabilities of the company, and
 - (ii) the costs of winding up,
 - (iii) such amount as may be required not exceeding a specified amount and the total of which shall not be less than ten thousand dalasis.
- (6) The memorandum shall be signed by each subscriber in the presence of at least one witness who shall attest the signature.

14. Form of memorandum

Subject to the provisions of section 13, the form of a memorandum of association of-

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

may be as specified in Tables B, C and D, respectively, in the First Schedule to this Act, or as near that form as possible.

SUB- PART – III - NAME OF COMPANY**15. Name as stated in the memorandum**

- (1) The name of a private company limited by shares shall end with the word “Limited”.
- (2) The name of a public company limited by shares shall end with the words “Public Limited Company”.
- (3) The name of the company limited by guarantee shall end with the words “(Limited by Guarantee)” in brackets.
- (4) The name of an unlimited company shall end with the word “unlimited”.
- (5) A company may use the abbreviations “Ltd” “PLC” and “Ult” for the words “Limited”, “Public Limited Company” “(Limited by Guarantee)” and “Unlimited” respectively, in the name of the company.

16. Prohibited and restricted names

- (1) A company shall not be registered under this Act by a name which -
 - (a) is identical with that by which a company in existence is already registered, or so nearly resembles that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the Registrar requires;
 - (b) contains the words “Chambers of Commerce” unless it is a company limited by guarantee;
 - (c) in the opinion of the Registrar is capable of misleading as to the nature or extent of its activities or is undesirable, offensive or otherwise contrary to public policy; or
 - (d) in the opinion of the Registrar would violate any existing trade mark or business

name registered in The Gambia, unless the consent of the owner of the trade mark or business name has been obtained.

(2) Except with the consent of the Registrar, a company shall not be registered by a name which-

- (a) includes the word "National", "State" "Government", "The Gambia", or any word which in the opinion of the Registrar suggests, or is calculated to suggest, that it enjoys the patronage of the Government of The Gambia or any Department of Government;
- (b) contains the word "Municipal", or "Chartered" or in the opinion of the Registrar suggests, or is calculated to suggest, connection with any municipality or other local authority;
- (c) contains the word "Co-operative" or the words "Building Society"; or
- (d) contains the word "Group" or "Holding".

17. Change of name of a company

(1) If a company, through inadvertence or otherwise, on its first registration or on its registration by a new name, is registered under a name identical with that by which a company in existence is previously registered, or so nearly resembling it as to be likely to deceive, the first-mentioned company may, with the approval of the Registrar, change its name.

(2) If the Registrar directs the change of a name within six months of a company being registered under a name under sub-section (1) of this section, the company concerned shall change its name within a period of six weeks from the date of the direction or such longer period as the Registrar may allow.

(3) A company which makes default in complying with a direction under sub-section (2) of this section commits an offence and is liable on conviction to a fine of twenty-five dalasis for every day during which the default continues.

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

(5) An approval is not required where the only change in the name of a company is the substitution of the words "Public Limited Company" for the word "Limited" or vice versa on the conversion of a private company into a public company or a public company into a private company in accordance with the provisions of this Act.

(6) Nothing in this Act precludes the Registrar from requiring a company to change its name if it is discovered that the name conflicts with an existing trade mark or business name registered in The Gambia prior to the registration of the company and the consent of the owner of the trade mark or business name was not obtained.

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

(8) The change of name does not affect any right or obligation of the company, or render defective any legal proceedings by or against the company, and any legal proceedings that could have been continued or commenced against it or by it in its former name may be continued or commenced against or by it in its new name.

(9) The Registrar shall publish in the *Gazette* an alteration made in the name of a company under this section.

(10) A certificate or publication in the *Gazette* under this section is evidence of the alteration to which it

relates.

18. Reservation of name

(1) A name reservation shall be made in accordance with the Single Window business Registration Act, 2013.

SUB-PART IV- ARTICLES OF ASSOCIATION

19. Articles for the regulating of companies

A company applying for registration shall deliver, to the Registrar, with its memorandum of association, the articles of association signed by the subscribers to the memorandum of association, and prescribing the regulations for the company.

20. Form and content of articles

(1) The form and contents of the articles of a public company having a share capital, a private company having a share capital, a company limited by guarantee and an unlimited company may be as in Parts I, II, III and IV, respectively, of Table A in the First Schedule, with such additions, omissions or alteration as may be required in the circumstances.

(2) In the case of a company limited by guarantee, the articles shall state the number of members with which the company proposes to be registered for the purpose of enabling the Registrar to determine the fees payable on registration.

(3) The article shall be –

- (a) divided into paragraphs numbered consecutively; and
- (b) signed by each subscriber of the memorandum.

SUB – PART V REGISTRATION OF COMPANIES

21. Documents of incorporation

(1) As from the commencement of this Act, a

company shall be formed in the manner set out in this section.

- (2) There shall be delivered to the Registrar –
- (a) the memorandum and articles complying with the provision of this Part; and
 - (b) the notice of the address, not being a postal box or private mail bag, of the registered office of the company and the head office, if different from the registered office;
 - (c) the consent of the persons who are to be the first directors of the company;
 - (e) any other document required by the Registrar to satisfy the requirements of any law relating to the formation of a company.

22. Registration

- (1) The Registrar shall register the memorandum and articles, unless –
- (a) they do not comply with the provisions of this Act;
 - (b) the business which the company is to carry on, or the objects, if stated, for which it is formed, or any of them, are illegal;
 - (c) any of the subscribers to the memorandum is incompetent or disqualified in accordance with section 6 of this Act; or
 - (d) the proposed name conflicts with an existing company, trade mark or business name registered in The Gambia.
- (2) A person, aggrieved by the decision of the Registrar under sub-section (1), may give notice to

the Registrar requiring him or her to apply to the court for directions, and the Registrar shall, within twenty-one days of the receipt of the notice, apply to the court for the directions.

(3) The Registrar may, in order to satisfy himself or herself as provided in sub-section (1) (c) of this section, by instrument in writing, require a person subscribing to the memorandum to make and lodge with the Registrar, a statutory declaration to the effect that he or she is not disqualified under section 6 of this Act from joining in forming a company.

(4) Steps to be taken under this Act to incorporate a company shall not include any invitation to subscribe for shares or otherwise however on the basis of a prospectus.

(5) The Registrar shall, on registering the memorandum and articles, certify under the seal of his or her office—

- (a) that the company is incorporated;
- (b) in the case of a limited company, that the liability of the members is limited by shares or by guarantee;
- (c) in the case of an unlimited company, that the liability of the members is unlimited; and
- (d) in the case of an unlimited company, that the liability of the members is unlimited; and
- (e) that the company is a private or a public company, as the case may be.

23. Effect of registration

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

contained in the memorandum-

- (a) capable of exercising all the powers and functions of an incorporated company, including the power to hold land, and
- (b) having perpetual succession and a common seal,

but with such liability on the part of the members to contribute to the company in the event of its being wound up as is mentioned in this Act.

SUB-PART VI - CAPACITY AND POWERS OF COMPANIES

24. Powers of companies

Except to the extent that the company's memorandum or any enactment otherwise provides, a company has, for the furtherance of its authorized business or objects, all the powers of a natural person of full capacity.

25. Effect of *ultra vires* acts

(1) A company shall not, where its objects are restricted, carry on any business not authorized by its memorandum and shall not exceed the powers conferred on it by its memorandum or this Act.

(2) A breach of sub-section (1) of this section may be asserted in any proceedings under sections 294 to 305 of this Act or under sub-section (4) of this section.

(3) Notwithstanding the provisions of sub-section (1) of this section, an act of a company and a conveyance or transfer of property to or by a company is not invalid because the act, conveyance or transfer was not done or made for the furtherance of any of the authorized business of the company or that the company was otherwise exceeding its objects or powers.

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

the court may prohibit, by injunction, the doing of an act or the conveyance or transfer of property in breach of sub-section (1) of this section.

(5) If the transactions sought to be prohibited in any proceeding under sub-section (4) of this section are being, or are to be performed or made pursuant to a contract to which the company is a party, the court may-

- (a) if it deems it equitable and if all the parties to the contract are parties to the proceedings, set aside and prohibit the performance of the contract; and
- (b) to the company or to the other parties to the contract compensation for any loss or damage sustained by them by reason of the setting aside or prohibition of the performance of the contract, but compensation shall not be allowed for loss of anticipated profits to be derived from the performance of the contract.

26. Effect of reliance on restrictions in the memorandum

(1) Where there is provision in the memorandum restricting the powers and capacity of the company to carry on its authorized business or object, the restriction may be relied on and have effect only for the purpose of proceedings-

- (a) against the company by a director or member of the company, or, where the company has issued debentures secured by a floating charge over all or any of the

company's property, by the holder of any of the debentures or the trustee for the holders of the debentures;

- (b) by the company or a member of the company against the present or former officer of the company for failure to observe the restriction;
- (c) by the Registrar or a member of the company to wind up the company;
- (d) for the purpose of restraining the company or other person from acting in breach of the memorandum or directing the company or person to comply with the memorandum.

(2) A person shall not, in proceedings referred to in sub-section (1)a, (b) or (c), of this section, rely on a restriction of the power or capacity of the company contained in the memorandum in any case where he or she voted in favour of, or otherwise expressly or by conduct agreed to the doing of an act by the company or the conveyance by or to, the company of property which, it is alleged in the proceedings, was or would be contrary to the restriction.

27. Effect of memorandum and articles

(1) Subject to the provisions of this Act, the memorandum and articles, when registered, shall have the effect of a contract under seal between the company and its members and officers and between the members and officers themselves by which they agree to observe and perform the provisions of the memorandum and articles, as altered, from time to time, in so far as they relate to the company, members, or officers.

(2) Any money payable by a member to the company under the memorandum or articles is a debt due from him or her to the company and is of the nature of a specialty debt.

(3) Where the memorandum or articles empower a person to appoint or remove a director or other

officer of the company, the power is enforceable by that person, notwithstanding that he or she is not a member or officer of the company.

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

28. Member's right to copies of memorandum etc

(1) A company shall, on being so required by a member, send to him or her a copy of the memorandum and of the articles, if any, and a copy of any enactment which alters the memorandum, subject to payment, of such sum **as shall be prescribed**.

(2) If a company makes default in complying with this section, the company and every officer of the company who is in default commits an offence and is liable on conviction for each offence to a fine.

29. Copies of memorandum issued to embody alterations

(1) A company that alters its memorandum shall incorporate the alteration in every copy of the memorandum issued after the date of the alteration.

(2) A company that issues a memorandum in contravention of sub-section (1) of this section commits an offence and is liable on conviction to a fine, and every officer of the company who is in default is also liable to the same penalty.

SUB-PART VII – ALTERATION OF MEMORANDUM AND ARTICLES**30. Alteration of conditions of memorandum**

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

(2) Only those provisions which are required by section 13 of this Act or by any other specific provision contained in this Act, to be stated in the memorandum of the company concerned are deemed to be conditions contained in its memorandum.

31. Alteration of memorandum general

(1) The name of the company shall not be altered except with the consent of the Registrar in accordance with section 17 of this Act.

(2) If the objects of a company are restricted the objects for which it is established may be altered in accordance with the provisions of section 32 of this Act.

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

(4) The share capital of a company may be altered in accordance with the provisions of sections 78 to 90 of this Act but not otherwise.

(5) Subject to section 35 of this Act, any other provision of the memorandum may be altered in accordance with section 32 of this Act, or as otherwise provided in this Act.

32. Mode of alteration of business or objects

(1) A company may, at a meeting of which notice in writing has been duly given to all members (whether or not otherwise entitled thereto), by special

resolution, alter the provisions of its memorandum with respect to the business or objects of the company.

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

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

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

(c) by the holders of not less than fifteen per cent of the company's debentures entitling the holders to object to alterations of its objects, provided the debentures are secured by a floating charge.

(4) A person has consented to or voted in favour of an alteration shall be part of an application made under sub-section (3) of this section.

(5) An application under this section-

(a) shall be made not later than twenty-eight days after the date on which the resolution altering the company's business or objects was passed; and

(b) 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.

(6) On an application under this section, the court may-

(a) make an order confirming the alteration

either wholly or in part and on such terms and conditions as it thinks fit;

- (b) adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members; and
- (c) give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement, for any purchase under paragraph (b) of this sub-section, provided that no part of the capital of the company shall be expended in any purchase.

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

(8) Where a company passes a resolution altering its business or objects, and -

- (a) application is thereafter made to the court for its confirmation under this section, the company shall forthwith give notice to the Registrar of the making of the application, and thereafter there shall be delivered to the Registrar within fifteen days from the date of its making-
 - (i) a certified true copy of the order, in the case of refusal to confirm the resolution, and
 - (ii) a certified true copy of the order, in the case of confirmation of the resolution together with a printed copy of the memorandum as altered by the resolution;
- (b) no application is made for confirmation,

the company shall, within fifteen days from the end of the period for making an application, deliver to the Registrar a copy of the resolution passed.

(9) If the Registrar-

- (a) is satisfied with the application, the company shall forthwith deliver to the Registrar a printed copy of the memorandum as altered by the resolution;
- (b) is not satisfied with the application, he or she shall give notice in writing to the company of its decision and an appeal from its decision shall thereafter lie to the court at the suit of any person aggrieved, if made within twenty-one days from the date of the receipt by the company of the notice of the rejection, or within such extended time as the court may allow.

(10) The court may at any time extend the time for the delivery of documents to the Registrar under paragraph (a) of sub-section (8) of this section for such period as the court may think proper.

(11) If a company makes default in giving notice or delivering a document to the Registrar as required by sub-section (8) of this section, the company and every officer of the company who is in default commits an offence and is liable on conviction to a daily default fine of ten thousand dalasis.

(12) The validity of an alteration of the provision of a company's memorandum with respect to the business or objects of the company shall not be questioned on the ground that it was not authorised by sub-section (1) of this section, except in proceedings taken for that purpose (whether under this section or otherwise) before the expiration of twenty-one days after the date of the resolution in that behalf.

(13) Where proceedings are taken otherwise than under this section, sub-sections (8),(9),(10) of this

section shall apply in relation to those proceedings as if-

- (a) they had been taken under this section;
- (b) an order declaring the alteration invalid were an order cancelling it; and
- (c) any order dismissing the proceedings were an order confirming the alteration.

(14) In this section “member” includes a person financially interested in the company.

33. Power to alter provisions in the in the memorandum in certain cases

(1) Subject to section 30 of this Act and of this section and of any part of this Act (which preserves the rights of minorities in certain cases) a provision in a company’s memorandum which might lawfully have been in the articles instead of in the memorandum may be altered by the company by special resolution.

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

(3) This section shall not apply where the memorandum itself provides for or prohibits the alteration of all or any of the said provisions, and shall not authorised any variation or abrogation of the special rights of any class of members.

(4) Sub-sections (3),(4),(5),(6),(8),(9),(10) and (11) of section 32 of this Act (which relate to mode of alteration of business or objects), also 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.

34. Alterations of articles

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

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

35. Limitation of liability to contribute to share capital if memorandum, etc altered

Except to the extent to which he or she agrees in writing at any time to be bound thereby, and anything to the contrary in the memorandum or articles notwithstanding, a member of a company is not bound by any alteration made in the memorandum or articles of the company requiring him or her on or after the date of the alteration to -

- (a) take or subscribe for more shares than he or she held at the date on which he or she became a member;
- (b) increase his or her liability to contribute to the share capital of the company; or
- (c) pay money by any other means to the company.

PART II - RE-REGISTRATION OF COMPANIES

36. Re-registration of private company as public

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

- (a) a special resolution that it should be so re-registered is passed; and
- (b) an application for re-registration is delivered to the Registrar, together with the

documents prescribed in sub-section (3) of this section.

- (2) The special resolution 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 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 are requisite in the circumstances.
- (3) An application for re-registration, in the prescribed form and signed by at least one director and the secretary of the company, shall be delivered to the Registrar accompanied by the following documents-
- (a) a printed copy of the memorandum and articles as altered in pursuance of the resolution;
 - (b) a copy of a written statement by the directors and the secretary certified on oath by them, and showing that the paid up capital of the company as at the date of the application is not less than twenty-five *per cent* of the authorised share capital as at that date;
 - (c) a copy of the balance sheet of the company as at the date of the resolution or the proceeding six months, whichever is later;
 - (d) a statutory declaration in the prescribed form by a director and the secretary of the company -
 - (i) that the special resolution required

under this section has been passed,

(iii) that the company's net assets are not less than the aggregate of the paid up share capital and un-distributable reserves, and

(e) a copy of any prospectus or statement in lieu of prospectus published by the company, within the last twelve months.

(4) If the Registrar is satisfied that a company has complied with the provisions of this section and ought to be re-registered as a public company, he or she shall -

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

(5) On the issue to a company of the certificate of incorporation under this section -

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

(6) The certificate shall be *prima facie* evidence that -

- (a) the requirements of this Act in respect of re-registration and of matters precedent and incidental thereto have been complied with; and

(b) the company is a public company.

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

37.Re-registration of company limited by share as unlimited

(1) A company which is registered as limited by shares may be re-registered as unlimited in pursuance of an application in that behalf complying with the requirements of this section.

(2) A company shall be precluded from re-registering under this section if it is limited by virtue of re-registration under section 38 of this Act.

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

(4) An application under this section shall be in the prescribed form and be signed by a director and the secretary of the company, and be delivered to the Registrar, together with the documents specified in sub-section (6) of this section.

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

(6) The documents to be lodged with the Registrar are -

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

- (i) that the persons by whom or on whose behalf the form of assent is subscribed constitute the whole membership of the company,
- (ii) if any of the members has not subscribed that form himself or herself, that the directors have taken all reasonable steps to satisfy themselves that each person who subscribed to it on behalf of a member was lawfully empowered to do so; and
- (c) a printed copy of the memorandum and the articles incorporating the alterations set out in the application.

(7) If the Registrar is satisfied that the company ought to be registered under this section as an unlimited company, he or she shall retain the application and other documents delivered with it under this section and -

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

(8) On the issue of the certificate -

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

38. Re-registration of unlimited as limited by shares

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

(2) A company shall-

- (a) not under this section be re-registered as a public company or company limited by guarantee; and
- (b) be precluded from re-registering under this section if it is unlimited by virtue of re-registration under section 37 of this Act.

(3) The special resolution shall state the proposed authorised share capital and provide for the making of the alterations-

- (a) in the memorandum as are necessary to bring it into conformity with the requirements of this Act with respect to the memorandum of a company so limited; and
- (b) in the articles as are requisite in the circumstances.

(4) An application in the prescribed form for the company to be re-registered as limited signed by a director and the secretary of the company shall be delivered to the Registrar together with the necessary documents, not earlier than the day on which the resolution was filed under section 228 of this Act.

(5) The documents to be delivered to the Registrar shall be a printed copy of the memorandum as altered in pursuance of the resolution.

(6) If the Registrar is satisfied that the company

ought to be re-registered under this section as a company limited by shares, he or she shall-

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

(7) On the issue of the certificate -

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

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

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

39. 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) of this section that it should be so

re-registered is passed and has not been cancelled by the court under this section;

- (b) an application for the purpose in the prescribed form and signed by a director and 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; and
 - (c) the period during which an application for the cancellation of the resolution under this section may be made has expired without the application having been made; or
 - (d) where an application has been made, the application has been withdrawn or an order has been made confirming the resolution and a copy of that order has been delivered to the Registrar.
- (2) The special resolution shall-
- (a) alter the company's memorandum so that it states that the company is a private company; and
 - (b) make such other alterations in the company's memorandum and articles as are requisite in the circumstances.
- (3) Where a special resolution is passed, an application may be made to the court for the cancellation of the resolution by -
- (a) the holders of not less in the aggregate than five *per cent* in the nominal value of the company's issued share capital, or any class thereof; or
 - (b) not less than five *per cent* of the company's members who did not consent to or vote in favour of the resolution.
- (4) The application shall be made within twenty-eight days after the passing of the resolution and

the applicant shall forthwith give notice of the application in the prescribed form to the Registrar and to the company.

(5) On the hearing of the application, the court-

- (a) shall make an order either cancelling or confirming the resolution; and
- (b) may make all such orders or give such directions as it may think expedient in the circumstances.

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

(7) If a company fails to deliver to the Registrar a certified true copy of the orders as required in subsection (6) of this section, the company and any officer of the company who is in default, commits an offence and is liable on conviction to a fine of one thousand dalasis and, for continued contravention, to a daily default fine of one hundred dalasis.

(8) The Registrar shall, if satisfied that a company ought to be re-registered under this section-

- (a) retain and register the application and other documents delivered to it under this section; and
- (b) issue the company with a certificate of incorporation as a private company.

(9) On the issue of the certificate -

- (a) the company shall become a private company; and
- (b) the alteration in the memorandum and articles set out in the resolution shall take effect accordingly.

(10) The certificate shall be *prima facie* evidence that -

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

PART III - PROMOTERS

40. Persons promoting a company

(1) A person who-

- (a) undertakes to take part in forming a company with reference to a given project and to set it going and who takes the necessary steps to accomplish that purpose; or
- (b) with regard to a proposed or newly formed company, undertakes a part in raising capital for it,

is *prima facie* deemed a promoter of the company.

(2) A person who acts in a professional capacity for persons engaged in procuring the formation of the company is not deemed to be a promoter.

41. Duties and liabilities of a promoter

(1) A promoter stands in a fiduciary relation-ship to the company and shall-

- (a) observe the utmost good faith towards the company in any transaction with it or on its behalf; and
- (b) compensate the company for any loss suffered by reason of his or her failure to do so.

(2) A promoter who acquires any property or information on behalf of the company in the performance of his or her fiduciary duty shall account to the company for the property and for any profit which he or she may have made from the use of the property or information.

(3) A transaction between a promoter and the company may be rescinded by the company unless, after full disclosure of all material facts known to the promoter, the transaction was entered into or ratified on behalf of the company by -

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

(4) A period of limitation shall not apply to any proceedings brought by the company to enforce any of its rights under this section, but in any such proceedings, the court may relieve a promoter in whole or in part, and on such terms as it thinks fit, from liability under this section if in all the circumstances, including lapse of time, the court thinks it equitable to do so.

PART IV - ACTS BY OR ON BEHALF OF THE COMPANY

SUB-PART 1 - EXERCISE OF COMPANY'S POWERS

42. Division of powers between general meeting and board of directors

(1) A company shall act through-

- (a) its members in general meeting;
- (b) its board of directors; or

-
- (c) officers or agents, appointed by, or under authority derived from, the members in general meeting or the board of directors.
- (2) Subject to the provisions of this Act, the respective powers of the members in general meeting and the board of directors shall be determined by the company's articles.
- (3) Except as otherwise provided in the company's articles, the business of the company shall be managed by the board of directors who may exercise all such powers of the company as are not, by this Act or the articles, required to be exercised by the members in general meeting.
- (4) Unless the articles otherwise provide, the board of directors, when acting within the powers conferred upon them by this Act or the articles, shall not be bound to obey the directions or instructions of the members in general meeting, provided that the directors act in good faith and with due diligence.
- (5) Notwithstanding the provisions of sub-section (3) of this section, the member, in general meeting may-
- (a) act in any matter, if the members of the board of directors are disqualified or are unable to act because of a deadlock on the board or otherwise;
 - (b) institute legal proceedings in the name and on behalf of the company, if the board of directors refuse or neglect to do so;
 - (c) ratify or confirm any action taken by the board of directors; and
 - (d) make recommendations to the board of directors regarding action to be taken by the board.
- (6) An alteration of the articles shall not invalidate a prior act of the board of directors which would have

been valid if that alteration had not been made.

43. Delegation to committees and managing directors

Unless otherwise provided in this Act or in the articles, the board of directors may-

- (a) exercise its powers through committees consisting of such members of the board as it thinks fit; or
- (b) from time to time, appoint one or more of the board to the office of managing director and may delegate all or any of its powers to the managing director.

SUB-PART 2 - LIABILITY FOR ACTS OF THE COMPANY

44. Acts of general meeting, board of directors, or of managing directors

(1) Subject to this section, an act of the members in general meeting, of the board of directors, or of a managing director while carrying on in the usual way, the business of the company shall be treated as the act of the company itself and the company is criminally and civilly liable for the act to the same extent as if it were a natural person.

(2) A company shall not incur civil liability to a person if –

- (a) he or she had actual knowledge, at the time of the transaction in question, that the general meeting, board of directors, or managing director, as the case may be, had no power to act in the matter or had acted in an irregular manner; or
- (b) having regard to his or her position with, or relationship to, the company, he or she ought to have known of the absence of such power or of the irregularity;

(3) If in fact a business is being carried on by a company, the company shall not escape liability for acts undertaken in connection with that business merely because the business in question was not among the business authorised by the company's memorandum.

45. Acts of Officers or Agents

(1) Except as provided in section 44 of this Act, the acts of an officer or agent of a company shall not be deemed to be acts of the company, unless the company -

- (a) acting through its members in general meeting, board of directors, or managing director, had expressly or impliedly authorised the officer or agent to act in the matter; or
- (b) acting as mentioned in paragraph (a) of this sub-section, had represented the officer or agent as having its authority to act in the matter, in which case, the company is civilly liable to any person who entered into the transaction in reliance on the representation, unless-
 - (i) the person had actual knowledge that the officer or agent had no authority, or
 - (ii) having regard to his or her position with, or relationship to, the company, he or she ought to have known of the absence of authority.

(2) The authority of an officer or agent of the company may be conferred prior to an action by him or her or by subsequent ratification, and knowledge of the action, by the officer or agent, and acquiescence in the action by all the members of the company or by the directors for the time being or by the managing director for the time being, is equivalent to ratification by the members in general meeting, board of directors, or managing director,

as the case may be.

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

46. When provision exempting, etc. officer from liability to the company is void

(1) A provision, whether contained in the articles of the company or in any contract with a company or otherwise which-

- (a) exempts an officer of the company or any person (whether an officer of the company or not) employed by the company as auditor from, or
- (b) indemnifies him or her against,

any liability which by virtue of any law, would otherwise attach to him or her in respect of any negligence, default, or breach of trust of which he or she may be guilty in relation to the company, is void.

(2) Notwithstanding the provisions of sub-section (1) of this section -

- (a) a person shall not be deprived 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 as mentioned in that sub-section was in force; and
- (b) a company may, in pursuance of the provision as mentioned in sub-section (1) of this section, indemnify the officer or auditor against any liability incurred by him or her in defending any proceedings whether civil or criminal-
 - (i) in which judgment is given in his or her favour or in which he or she is

acquitted, or

- (ii) in connection with any application under section 617 of this Act, in which relief is granted to him or her by the court.

SUB-PART 3 - CONSTRUCTIVE NOTICE OF REGISTERED DOCUMENTS

47. Abolition of constructive notice of registered documents

Except as provided in this Act regarding the particulars in the register of charges, a person is not deemed to have knowledge of the contents of the memorandum and articles of a company or of any other particulars, documents, or the contents of documents merely because

- (a) the particulars or documents are registered by the Registrar;
- (b) referred to in any particulars or documents so registered; or
- (c) are available for inspection at an office of the company.

48. Presumptions of regularity

(1) Subject to sub-section (2), a person having dealings with a company or with someone deriving title under the company is entitled to make the following assumptions and the company and those deriving title from it are stopped from denying their truth that-

- (a) the company's memorandum and articles have been duly complied with;
- (b) every person described in the particulars filed with the Registrar pursuant to sections 21 of this Act as a director, managing director or secretary of the company, or represented by the company, acting through its members in

general meeting, board of directors, or managing directors, as an officer or agent of the company, has been duly appointed and has authority to exercise the powers and perform the duties customarily exercised or performed by-

- (i) a director, managing director, or secretary of a company carrying on business of the type carried on by the company, or
 - (ii) an officer or agent of the type concerned;
- (c) the secretary of the company, and every other officer or agent of the company having authority to issue documents or certified copy of documents on behalf of the company has authority to warrant the genuineness of the documents or the accuracy of the copies so issued; and
- (d) a document has been duly sealed by the company, if it bears what purports to be the seal of the company attested by what purports to be the signatures of two persons who, in accordance with paragraph (b) of this sub-section, can be assumed to be a director and the secretary of the company.
- (2) A person is not entitled to-
- (a) make assumptions as specified sub-section (1) of this section, if he or she had actual knowledge to the contrary or if, having regard to his or her position with or relationship to the company, he or she ought to have known the contrary;
 - (b) assume that any one or more of the directors of the company have been appointed to act as a committee of the board of directors or that an officer or agent of the company has the company's

authority merely because the company's articles provide that authority to act in the matter may be delegated to a committee or to an officer or agent.

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

Where in accordance with sections 44 to 48 of this Act, a company would be liable to a third party for the acts of an officer or agent, the company shall, except where there is collusion between the officer or agent and the third party, be liable, notwithstanding that the officer or agent has acted fraudulently or forged a document purporting to be sealed by or signed on behalf of the company.

SUB-PART 4 – COMPANY'S CONTRACTS

50. Form of contract

(1) A contract which if made between individuals would be-

- (a) required by law to be in writing under seal, or which could be varied, or discharged only by writing under seal, may be made, varied or discharged, as the case may be, in the name or on behalf of the company in writing under the common seal of the company;
- (b) required by law to be in writing, signed by the parties to be charged therewith, or which could be varied or discharged only by writing or written evidence signed by the parties to be charged, may be made, varied or discharged, as the case may be, in writing signed in the name or on behalf of the company; and
- (c) valid although made by parole only and not reduced into writing or which could be varied or discharged by parole, may be made, varied or discharged, as the case may be, by parole in the name or on behalf of the company.

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

51. Pre-incorporation contracts

(1) Except as provided in this section, a person who enters into a written contract in the name of or on behalf of a company before it comes into existence is personally bound by the contract and is entitled to the benefits of the contract.

(2) A company may, within a reasonable time after its incorporation, by an action or conduct signifying the intention to be bound by it, adopt a written contract made, in its name or on its behalf, before it was incorporated.

(3) Where a company adopts a contract under sub-section (2) of this contract-

- (a) the company is bound by the contract and is entitled to the benefits of the contract as if the company had been in existence at the date of the contract and had been a party to it; and
- (b) a person who purported to act in the name of the company or on its behalf ceases, except as provided in sub-section (4) of this section, to be bound by or entitled to the benefits of the contract.

(4) Except as provided in sub-section (5), whether or not a written contract made before the incorporation of the company is adopted by the company, a party to the contract may apply to the court for an order-

- (a) fixing obligations under the contract as joint or joint and several; or

(b) apportioning liability between the company and a person who purported to act in the name of the company or on its behalf.

(5) Where an application is made under sub-section (4), the court may make such order as it thinks fit.

(6) If expressly so provided in a written contract, a person who purported to act for or on behalf of a company before it was incorporated is not bound by the contract or entitled to the benefits of the contract.

52. Bills of exchange and promissory notes

(1) A bill of exchange or promissory note is deemed to have been made, accepted or endorsed, on behalf of a company, if-

- (a) it is made, or expressed to be made, accepted, or endorsed in the name of; or
- (b) expressed to be made, accepted or endorsed on behalf or an account of,

of the company by a person acting under its authority.

(2) A company and its successors are bound if the company is, in accordance with sections 44 to 46 of this Act, liable for the acts of those who made, accepted or endorsed, the bill of exchange or promissory note in its name or on its behalf or account.

(3) A signature by a director or the secretary on behalf of the company, is not deemed to be a signature by procuration for the purposes of the Bills of Exchange Act 1882.

53. Common seal of the company

(1) A company may have a common seal the use of which shall be regulated by the articles.

(2) Where a seal is required to be affixed to any document under this Act and such document may be communicated by electronic means, the requirement for sealing is satisfied if the document indicates that it is required to be under seal and the document includes the advanced electronic signature of the person by whom it is required to be sealed.

54. Official seal for use abroad

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

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

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

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

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

SUB-PART 5 – AUTHENTICATION AND SERVICE OF DOCUMENTS**55. Powers of attorney**

(1) A company may, by writing under seal, empower a person, either generally or in respect of any specified matter, as its attorney, to execute deeds on its behalf in any place within or outside The Gambia.

(2) A deed signed by a person empowered as provided in sub-section (1) of this section shall bind the company and have the same effect as it would have if it were under the company's common seal.

56. 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, unless otherwise so required under this Act.

57. Service of documents on companies

A court process shall be served on a company in the manner provided by the Rules of Court, and any other document may be served on a company by leaving it at, or sending it by post to, the registered office or head office of the company.

PART V - MEMBERSHIP OF THE COMPANY**SUB-PART 1 – PRELIMINARY****58. Definition of member**

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

(2) Every other person who agrees in writing to become a member of a company, and whose name

is entered in its register of members, is a member of the company.

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

59. Capacity to be a member

(1) As from the commencement of this Act, an individual is not capable of becoming a member of a company if -

(a) he or she is of unsound mind and had been so found by a court in The Gambia or elsewhere; or

(b) he or she is an undischarged bankrupt.

(2) A person under the age of eighteen years shall not be counted for the purpose of determining the legal minimum number of members of a company.

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

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

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

60. Right of member to attend meetings and vote

(1) Notwithstanding any provision in the articles, a member has a right to attend a general meeting of the company and to speak and vote on any resolution before the meeting.

(2) The articles may provide that a member shall not be entitled to attend and vote, unless all calls or other sums payable by him or her in respect of shares in the company have been paid.

61. Personation of member

If a person falsely and deceitfully personates a member of a company and thereby obtains or endeavours to obtain any benefit due to the member, he or she commits an offence and is liable on conviction to a fine of not more than one hundred thousand dalasis or imprisonment for a term of not more than seven years.

SUB-PART 2 - REGISTER OF MEMBERS**62. Register of members**

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

- (a) the names and addresses of the members;
- (b) in the case of the company having a share capital, a statement of the shares and class of shares, if any, held by each member, distinguishing each share by its number so long as the share has a number, and of the amount paid or agreed to be considered as paid on the shares of each member;
- (c) the date on which each person was registered as a member; and
- (d) the date on which any person ceased to be a member.

(2) Where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the register shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares specified in paragraph (b) of sub-section (1) of this section.

(3) The entry, required under paragraph (a), (b) of sub-section (1) of this section, shall be made within twenty-eight days of the conclusion of the agreement with the company to become a member or, in the case of a subscriber of the memo-randum, within twenty-eight days of the registration of the company.

(4) The entry required under paragraph (d) of sub-section (1) of this section shall be made-

- (a) within twenty-eight days of the date on which the person concerned ceased to be a member; or,
- (b) if he or she ceased to be a member otherwise than as a result of action by the company, within twenty-eight days of production to the company of evidence satisfactory to the company of the occurrence of the event whereby he or she ceased to be a member.

(5) Where a company makes default in complying with the provisions of this section, the company and every officer of the company who is in default commits an offence and is liable on conviction to a fine of five thousand dalasis and a fine of one hundred dalasis for each day during which the default continues.

(6) A liability incurred by a company from the making or deletion of an entry in its register of members, or from a failure to make or delete any such entry, is not enforceable after the expiration of twenty years from the date on which the entry was made or deleted or, in the case of a failure, from the date on which the failure first occurred.

63. Location of Register

(1) The register of members shall be kept at the registered office of the company, except that where-

- (a) the work of making it up the register is done at another office of the company, it may be kept at that other office; and
- (b) the company arranges with some other person to undertake the making up of the register on its behalf, may be kept at the office of that other person at which the work is done,

but the register of a company registered in The Gambia, shall not be kept at a place outside The Gambia.

(2) A company shall send notice to the Registrar of the place where the register is kept and of any change of that place.

(3) A company is not bound to send notice to the Registrar under this sub-section where the register-

- (a) has, at all times since it came into existence; or
- (b) in the case of a register in existence at the commencement of this Act, at all time since then, been kept at the registered office of the company.

(4) If a company fails to comply with sub-section (2) for twenty-eight days, the company and every one of its officers who is in default commits an offence and is liable on conviction to a fine of five thousand dalasis and, for continued contravention, to a daily default fine of five hundred dalasis.

64. Index of members to be kept

(1) A company having more than fifty members shall-

- (a) 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
 - (b) within fourteen days after the date on which any alteration is made in the register of members, make any necessary alteration in the index.
- (2) The index shall, 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, at all times, be kept at the same place as the register of members.
- (4) If default is made in complying with the provisions of this section, the company and every officer of the company who is in default commits an offence and is liable to a fine of one thousand dalasis.

65. Entry of trusts prohibited

Notice of any trust, express, implied or constructive shall be entered on the register of members or be receivable by the Registrar.

66. Inspection of register and index

- (1) Except when the register of members is closed under the provisions of this Act, the register and the index of members' names shall, subject to such reasonable restrictions as the company in general meeting may impose, be open during business hours, for not less than two hours in each day, to the inspection-
- (a) of any member of the company without charge; and
 - (b) of any other person, with the permission of the company on payment of ten dalasis or such other sum as the company may

prescribe for each inspection.

(2) A member, or any other person, may require a copy of the register, or of any part of the register, on payment of five dalasis, or such other sum as the company may prescribe, for every hundred words or fractional part thereof required to be copied.

(3) The company shall cause any copy required by any person under sub-section (1) of this section to be sent to that person within a period of ten days commencing on the day next after the day on which the requirement is received by the company.

(4) If, in the case of a member, an inspection required under this section is refused or a copy required under this section is not sent within the prescribed period, the company and every officer of the company who is in default commits an offence and is liable in respect of each offence to a fine of fifty dalasis.

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

67. Consequences of failure by agents' default to keep register

Where, by virtue of paragraph (b) of sub-section (1) of section 63 of this Act, the register of members is kept at the office of some person other than the company, and by reason of his or her default, the company fails to comply with section 63, 64 or 66 of this Act, or with any requirements of this Act as to the production of the register-

- (a) that other person is liable to the same penalties as if he or she were an officer of the company who was in default; and
- (b) the power of the court section 66 (5) of this Act shall extend to the making of orders

against that other person and his or her officers and servants.

68. Power to close register

A company may, on giving notice by advertisement in a daily newspaper circulating in The Gambia, close the register of members or any part of the register for any time or times not exceeding on the whole thirty days in each year.

69. Power of court to rectify register

(1) If-

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

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

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

(3) On an application under this section, the court may-

- (a) decide any question relating to the title of a person who is a 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, or between members and alleged members on the one hand and the company on the other hand; and
- (b) generally may decide any question necessary or expedient to be decided for

rectification of the register.

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

70. Register to be evidence

The register of members is *prima facie* evidence of matters which are by this Act directed or authorised to be inserted in it.

SUB-PART 3 - LIABILITY OF MEMBERS

71. Liability of members

(1) Prior to the winding-up of a company, a member of the company with shares shall be liable to contribute the balance, if any, of the amount payable in respect of the shares held by him or her in accordance with-

- (a) the terms of the agreement under which the shares were issued; or
- (b) a call validly made by the company pursuant to its articles.

(2) Where-

- (a) contribution has become due and payable by reason of a call validly made by the company pursuant to the articles; or
- (b) under the terms of any agreement with the company, a member has undertaken personal liability to make future payments in respect of shares issued to him or her,

the liability of the member shall continue, notwithstanding that the shares held by him or her are subsequently transferred or forfeited under a provision to that effect in the articles, but his or her liability shall cease if and when the company receives payment in full of all moneys due in

respect of the shares.

(3) Subject to sub-sections (1) and (2), a present or past member is not liable to contribute to the assets of the company, except the company is being wound up.

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

- (a) a past member is not be liable to contribute, if he or she has ceased to be a member for a period of at least one year before the commencement of the winding-up;
- (b) a past member is not be liable to contribute, unless it appears to the court that the present members are unable to satisfy the contributions required to be made by them in pursuance of this section;
- (c) in the case of a company limited by shares, no contribution is required from any present or past member exceeding the amount, if any, unpaid on the shares in respect of which he or she is liable as a present or past member;
- (d) in the case of a company limited by guarantee, no contribution is required from any present or past member, exceeding the amount undertaken to be contributed by him or her to the assets of the company in the event of its being wound up; and
- (e) any sum due from the company to a present or past member, in his or her capacity as member, by way of dividends or otherwise shall not be set-off against the amount for

which he or she is liable to contribute in accordance with this section but the sum due shall be taken into account for the purposes of final adjustment of the rights of the present and past members amongst themselves.

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

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

72. Liability for company debts where membership is below legal minimum

If a company carries on business without having at least two members and does so for more than six months, every director or officer of the company during the time that it so carries on business after those six months who knows that it is carrying on business with only one or no member is liable jointly and severally with the company for the debts of the company contracted during that period.

SUB-PART 4 - DISCLOSURE OF BENEFICIAL INTEREST IN SHARES

73. Power of company to require disclosure

(1) Notwithstanding the provisions of section 74 of this Act, a public company may, by notice in writing, require a member of the company, within such reasonable time as is specified in the notice -

- (a) to indicate in writing the capacity in which he or she holds any shares in the company; and
- (b) if he or she holds shares otherwise than as beneficial owner, to indicate in writing the particulars of the identity of persons

interested in the shares in question and whether persons interested in the same shares are parties to any agreement or arrangement relating to the exercise of any rights conferred by the holding of the shares.

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

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

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

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

(4) Subject to sub-section (5), a person who -

- (a) fails to comply with a notice under this section; or

- (b) in purported compliance with a notice, makes a statement which he or she knows to be false in a material particular or recklessly makes a statement which is false in a material particular,

commits an offence and is liable on conviction to a fine of twenty-five dalasis for every day during which the default continues or imprisonment for a term of six months.

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

74. Obligation of disclosure by substantial shareholder in public company

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

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

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

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

(5) A person who fails to comply with the provisions of this section is liable to a fine of fifty dalasis for every day during which the default continues.

75. Person ceasing to be a substantial shareholder to notify company

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

(2) A person required to give notice under subsection (1) of this section shall do so within fourteen days after he or she becomes aware that he or she has ceased to be a substantial share-holder.

76. Register of interests in shares

(1) A public company shall keep a register in which it shall enter –

- (a) in alphabetical order, the names of persons from whom it has received a notice under section 74 of this Act; and
- (b) against each name so entered, the information given in the notice and where it receives a notice under section 74 of this Act, the information given in that notice.

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

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

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

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

(6) If default is made in complying with this section, the company and every officer of the company who is in default commit an offence and is liable on conviction to a fine of five hundred dalasis and a daily fine of ten dalasis.

77. Registration of interests to be disclosed

The matter relating to beneficial interests in shares required by section 73 of this Act shall be entered in chronological order in a different part of the register of interests.

CHAPTER II – SHARE CAPITAL, SHARES AND DEBENTURES

PART I - SHARE CAPITAL

SUB-PART 1 - AUTHORISED SHARE CAPITAL

78. Authorised share capital

(1) Where, after the commencement of this Act, a memorandum delivered to the Registrar under section 21 of this Act states that the association to be registered is to be registered with shares, not less than twenty-five *per cent* of that capital shall be taken by the subscribers of the memorandum.

(2) Where a company is registered with shares, its issued capital shall not at any time be less than twenty-five *per cent* of the authorised share capital.

(3) A company to which sub-section (1) or (2)

applies, that fails to comply with the applicable subsection, commits an offence and is liable on conviction to a fine of two thousand five hundred dalasis and every officer who is in default is liable to a fine of fifty dalasis for every day during which the default continues.

SUB-PART 2 - ALTERATION OF SHARE CAPITAL

79. Alteration of share capital by consolidation Etc.

(1) A company having a share capital may, in general meeting and not otherwise alter the conditions of its memorandum as follows-

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

(2) A cancellation of shares made in pursuance of this section is not deemed to be a reduction of share capital within the meaning of this Act.

80. Notice required where shares and stock consolidated etc.

- (1) If a company having share capital has –
- (a) consolidated and divided its share capital into shares of larger amount than its existing shares;
 - (b) converted any shares into stock;
 - (c) re-converted stock into shares;
 - (d) subdivided its shares or any of them; or
 - (e) cancelled any shares, otherwise than in connection with a reduction of share capital under section 84 of this Act,

it shall, within one month after so doing, give notice of it to the Registrar specifying, as the case may be, the shares consolidated, divided, converted, subdivided, cancelled, or the stock re-converted.

- (2) 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 fine of fifty dalasis for every day during which the default continues.

81. Increase of share capital and notice of increase

- (1) A company having share capital, whether or not the shares have been converted into stock, may, in general meeting and not otherwise, increase its share capital by new shares of such amount as it thinks expedient.
- (2) A company that has increased its share, capital shall, within fifteen days after the passing of the resolution authorizing the increase, give to the Registrar, notice of the increase and the Registrar shall record the increase.
- (3) Where, in connection with the increase of shares, any approval is required to be obtained

under an enactment, other than this Act, the Registrar may on application by a company extend the time within which to give notice of the increase to the Registrar.

(4) The notice to be given under this section shall-

- (a) include any particulars prescribed with respect to the classes of shares affected and the condition subject to which the new shares have been or are to be issued; and
- (b) be accompanied by a printed copy of the resolution authorizing the increase.

(5) If default is made in complying with the provisions of this section, the company in default commits an offence and is liable on conviction to a fine of five hundred dalasis for every day during which the default continues.

82. Increase of paid up capital on increase of shares

Where a company passes a resolution increasing its authorised share capital, the increase shall not take effect, unless –

- (a) within six months of giving notice of the increase to the Registrar, not less than twenty-five *per cent* of the share capital, including the increase, has been issued; and
- (b) the directors have delivered to the Registrar a statutory declaration verifying that fact.

SUB-PART 3 - REDUCTION OF SHARE CAPITAL

83. Power for un-limited company to provide reserve share capital on re-registration

If an unlimited company resolves to be registered as a limited company under this Act, it may-

- (a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the conditions that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up;
- (b) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

84. Restriction on reduction of issued share capital

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

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

85. Special resolution for reduction of share capital

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

(2) In particular, and without prejudice to subsection (1) of this section, the company 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 unrepresentative 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 company's wants.

(3) The company may, if it is and so far as is, necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(4) A special resolution under this section is referred to as "a resolution for reducing share capital".

86. Application to court for order of confirmation

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

(2) If the proposed reduction of share capital involves –

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

sub-sections (3), (4) and (5) shall have effect.

(3) 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 of capital.

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

- (a) shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims;
 - (b) may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction of capital.
- (5) If a creditor entered on the list whose debt or claim is not discharged or has not been determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his or her debt or claim by appropriating (as the court may direct) the following amount if the company—
- (a) admits the full amount of the debt or claim or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;
 - (b) 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 enquiry and adjudication as if the company were being wound up by the court.
- (6) If a proposed reduction of share capital involves the diminution of a liability in respect of unpaid share capital or the payment to a share-holder of a paid up share capital, the court may, direct that sub-sections (3) to (5) shall not apply as regards any class or any classes of creditors if, having regard to any special circumstances of the case, it thinks it proper to do so.

87. Court order confirming reduction

- (1) The court may, if satisfied –
- (a) with respect to every creditor of the

company who under section 85 of this Act is entitled to object to the reduction of capital, that–

- (i) his or her consent to the reduction has been obtained, or
- (ii) his or her debt or claim has been discharged or has determined, or has been secured; and

- (b) that the share capital does not by this reduction fall below the authorised minimum share capital,

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

(2) Where the court so orders, it may also, make an order requiring the company to publish (as the court directs) the reasons for the reduction of capital or such other information in regard to it as the court thinks expedient with a view to giving proper information to the public and (if the court thinks fit) the causes which led to the reduction.

88. Registration of order and minutes of reduction

(1) The Registrar shall, on receipt of a copy of the order of the court confirming the reduction of the company's share capital, and of minutes of the meeting of the company (approved by the court) showing, with respect to the company's share capital as altered by the order –

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

- (2) On the registration of the order and minutes, the resolution for reducing share capital as confirmed by the order so registered shall take effect.
- (3) A notice of the registration shall be published in such manner as the court may direct.
- (4) The Registrar shall certify the registration of the order and minute, and the certificate –
 - (a) may be signed either by the Registrar or authenticated by his or her official seal; or
 - (b) is prima facie evidence that all the requirements of this Act with respect to the reduction of share capital have been complied with, and that the company's share capital is as stated in the minutes.
- (5) The minutes when registered is deemed to be substituted for the corresponding part of the company's memorandum, and valid and alterable as if it had been originally contained in it.
- (6) The substitution of the minutes for part of the company's memorandum is deemed an alteration of the memorandum.

89. liability of members on reduced shares

- (1) Where a company's share capital is reduced, a present or past member of the company is not liable in respect of any share to call or contribution exceeding in amount the difference, if any, between the amount of the share as fixed by the minute and the amount paid on the share or the reduced amount, if any, which is deemed to have been paid on it, as the case may be.
- (2) Sub-sections (3) and (4) apply if-
 - (a) a creditor, entitled in respect of a debt or claim to object to the reduction of share capital, by reason of his or her ignorance of the proceedings of reduction of share capital, or if their nature and effect with

respect to his or her claim, is not entered on the list of creditors; and

- (b) after the reduction of capital, the company is unable, within the meaning of section 400 of this Act, to pay the amount of its debt or claim.

(3) A person who was a member of a company at the date of the registration of the order for reduction and minutes is liable to contribute for the payment of the debt or claim in question an amount not exceeding that which he or she would have been liable to contribute if the company had commenced to be wound up on the day before that date.

(4) If a company is wound up, the court, on application of the creditor in question and proof of ignorance referred to in sub-section (2)(a), may, if it thinks fit, settle, accordingly, a list of persons so liable to contribute, make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

(5) Nothing in this section affects the rights of the contributories among themselves.

90. Penalty for concealing name of creditor etc.

An officer of a company who wilfully –

- (a) wilfully conceals the name of a creditor entitled to object to the reduction of capital;
- (b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or
- (c) aids, abets or is privy to any concealment or misrepresentation as is mentioned in paragraph (a) or (b) of this sub-section,

commits an offence and is liable on conviction to a fine of five thousand dalasis.

**SUB-PART 4 - MISCELLANEOUS MATTERS
RELATING TO CAPITAL.**

91. Duty of directors on serious loss of capital

(1) Where the net assets of a public company are half or less of its called up share capital, the directors shall, not later than thirty days from the earliest day on which that fact is known to a director of the company, duly convene an extra ordinary general meeting of the company for a date, not later than sixty days from that day, for the purpose of considering whether any, and if so, what steps should be taken to deal with the situation.

(2) If there is a failure to convene an extraordinary general meeting as required by sub-section (1), each of the directors of the company who –

- (a) knowingly and wilfully authorizes or permits the failure; or
- (b) after the expiry of the period during which that meeting should have been convened, knowingly and wilfully authorizes or permits the failure to continue,

commits an offence and is liable on conviction to a fine of five thousand dalasis.

(3) Nothing in this section authorizes the consideration, at a meeting convened in pursuance of sub-section (1), of any matter which could not have been considered at that meeting apart from this section.

92. Power to pay interest out of capital in certain cases

(1) Where shares of a company are issued for the purposes 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 long period, the company may pay interest on so much of that share capital as is for the time being paid up for the period, subject to the conditions and restrictions mentioned in sub-section

(2) of this section, and may charge the same to capital as part of the cost of construction of the work or building or the provision of plant.

(3) A payment made under sub-section (1) is subject to the following conditions and restrictions-

- (a) the 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 be made without the previous sanction of the Registrar;
- (c) before sanctioning the payment the Registrar, may, at the expense of the company, appoint a person to inquire and report to it 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 such period as may be determined by the Registrar, which shall in no case extend beyond the close of six months 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 the current bank rate; 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.

PART II - SHARES

SUB-PART 1 - Nature of shares

93. Rights and liabilities attached to Shares

Subject to the provisions of this Act, the rights and liabilities attaching to the shares of a company—

- (a) are dependent on the terms of issue and of the company's articles; and
- (b) include, notwithstanding anything to the contrary in the terms or the articles, the right to attend any general meeting of the company and vote at the meeting.

94. Shares as transferrable property

The shares or other interests of a member in a company are property transferable in the manner provided in the articles of the company.

95. Prohibition of non-voting and weighted shares

(1) Unless otherwise provided by any other enactment —

- (a) shares issued by a company after the date of commencement of this Act, carry the right on a poll at a general meeting of the company to one vote in respect of each share, and a company shall not, by its articles or otherwise, authorize the issue of shares which carry more than one vote in respect of each share or which do not carry any right to vote; and
- (b) where, at the commencement of this Act, any share of a company carries more than one vote or does not carry any vote at a general meeting of the company, the share is deemed, as from the appointed day, to carry one vote only.

(2) Where a company fails to comply with any of the provisions of this section, the company and any officer in default commits an offence and is liable on conviction to a daily default fine of five hundred dalasis and any resolution passed in contravention of this section is void.

(3) Nothing in this section affects a right attached to a preference share under section 122 of this Act.

SUB-PART 2 - ISSUE OF SHARES

96. Power of companies to issue shares

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

97. Issue of classes of shares

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

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

98. Issue with rights Attached

Without prejudice to any special rights previously conferred on the holders of any shares or class of shares, shares in a company may be issued with such preferred, deferred or other special rights or such restrictions, whether with regard to dividend, return of capital or otherwise, as the company may, from time to time, determine by ordinary resolution.

99. Issue of shares at a premium

(1) The shares of a company may be issued at a premium.

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

(3) Notwithstanding anything to the contrary in sub-section (2), the share premium account may be applied by the company-

- (a) in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares;
- (b) in writing off –
 - (i) the preliminary expenses of the company; or
 - (ii) the expenses of, or the commission paid or discount allowed on, any issue of shares of the company; or
- (c) in providing for the premium payable on redemption of any redeemable share of the company.

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

100. Issue of shares at a discount

(1) Subject to the provisions of this section, for a company may issue at a discount shares in the company of a class of shares already issued if-

- (a) the issue of the shares at a discount is authorised by resolution passed in general meeting of the company, and thereafter is sanctioned by the court;
- (b) the resolution specifies the maximum rate of discount at which the shares are to be issued; and
- (c) the shares to be issued at a discount are issued within the month after the date on which the issue is sanctioned by the court or within such extended time as the court may allow.

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

(3) A prospectus relating to the issue of the shares, shall contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the prospectus.

(4) If default is made in complying with sub-section (3) of this section, the company and every officer of the company who is in default commit an offence and are liable on conviction to a fine of fifty dalasis for everyday during which the default continues.

101. Issue of redeemable preference shares

Subject to the provisions of section 137 of this Act, a company limited by shares may, if so authorised by its articles, issue preference shares which shall,

or at the option of the company be liable to, be redeemed.

102. Validation of improperly issued shares

(1) Where a company has purported to issue or allot shares and the creation, issue or allotment of those shares was invalid by reason of any provision of this Act or any other enactment or of the articles of the company or otherwise; or that terms of issue or allotment were inconsistent with or unauthorized by any such provision of this Act, other enactment or articles, the court may-

- (a) on application made by the company or a holder or mortgagee of those shares or by a creditor of the company; and
- (b) on being satisfied that in all the circumstances it is just and equitable to do so,

validate the issue or allotment of those shares or confirm the terms of the issue and allotment, as the case may be.

(2) In every case where the court validates an issue or allotment of shares or confirms the terms of an issue or allotment in accordance with sub-section (1), it shall, on payment of the prescribed fees, make an order which shall be proof of the validation or confirmation.

(3) On the issue of an order under sub-section (2), the shares are deemed to have been issued or allotted on the relevant terms of issue or allotment.

SUB-PART 3 - ALLOTMENT OF SHARES

103. Authority to allot shares

The power to allot shares is vested in the company which may delegate it to the directors, subject to any conditions or directions that may be imposed in the articles or, from time, to time by the company in general meeting.

104. Method of application and allotment

(1) An application for an allotment of issued shares of a company shall—

- (a) in the case of a private company or a public company where the issue of shares is not public, be submitted to the company a written application signed by the person wishing to purchase shares and indicating the number of shares required; and
- (b) in the case of a public company, where the issue of shares is public, be returned to the company in the form prescribed in the company's articles, duly completed and signed by the person wishing to purchase shares.

(2) On receipt of an application, a company shall, where it wholly or partially accepts the application, make an allotment to the applicant and, within forty-two days after allotment, notify the applicant of the fact of allotment and the number of shares allotted to him or her.

(3) An applicant under this section has the right, at any time before allotment, to withdraw his or her application by written notice to the company.

105. Allotment as acceptance of contract

An allotment of shares made and notified to an applicant in accordance with section 104 of this Act is an acceptance by the company of the offer by the applicant to purchase its shares and the contract takes effect on the date on which the allotment is made by the company.

106. Payment on Allotment

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

107. Effect of irregular allotment

(1) An allotment made by a company to an applicant before the holding of the statutory meeting, in contravention of the provisions of this Act, is avoidable

- (a) at the instance of the applicant-
 - (i) within one month after the holding of the statutory meeting of the company and not later, or
 - (ii) where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment, and not later;
- (b) and notwithstanding that the company is in the course of being wound up.

(2) If a director of a company knowingly contravenes, permits or authorizes the contravention of any of the provisions of this Act with respect to allotment, he or she is liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby.

(3) Proceedings to recover any loss, damages or costs under sub-section (2) shall not be commenced after the expiration of two years from the date of the allotment.

108. Returns as to allotment

(1) Whenever a company limited by shares makes an allotment of its shares, the company shall within one month 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 description of the allottees, and the amount, if any, paid or due and

payable on each share; and

- (b) in the case of shares allotted as fully or partly paid up otherwise than in cash-
 - (i) a contract in writing constituting the title of the allottee to the allotment, together with any contract of state, or for services or other consideration in respect of which that allotment was made, all contracts being duly stamped,
 - (ii) a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted, and
 - (iii) particulars of the valuation of the consideration in accordance with section 116 of this Act, if any.

(2) If default is made in complying with this section, every officer of the company who is in default commits an offence and is liable on conviction to a fine of five hundred dalasis for every day during which the default continues.

(3) In the case of default in delivering to the Registrar within one month after the allotment any document required to be delivered by this section, the company or any officer liable for the default, may apply to the court for relief, and the court may, if satisfied that-

- (a) the omission to deliver the document was accidental or due to inadvertence; or
- (b) it is just and equitable to grant relief,

make an order extending the time for the delivery of the document for such period as the court may think proper.

SUB-PART 4 - COMMISSIONS AND DISCOUNT**109. Prohibition of payment of commissions, discounts out of shares and capital**

(1) Except as provided in section 100 of this Act, a company shall not apply any of its shares or capital money, directly or indirectly in payment of any commission, discount or allowance to any person in consideration of his or her-

- (a) subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company; or
- (b) procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company,

whether the shares or capital money are 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 is paid out of the nominal purchase money or contract price or otherwise.

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

(3) A vendor, promoter, or other person who receives payment in money or shares from a company has and is 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.

110. Commission in certain cases

(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 subscription, whether absolute or conditional, for any shares in the company if -

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- (a) the payment of the commission is authorized by the articles;
 - (b) the commission paid or agreed to be paid does not exceed ten *per cent* of the price at which the shares are issued or the amount or rate authorized by the articles, whichever is the less;
 - (c) in the case of shares offered to the public for subscription, the amount or rate *per cent* of the commission paid or agreed to be paid is disclosed in the prospectus; or
 - (d) in the case of shares not offered to the public for subscription, the amount or rate *per cent* of the commission paid or agreed to be paid-
 - (i) is disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus, and delivered, before the payment of the commission, to the Registrar for registration, and
 - (ii) where a circular or notice, not being a prospectus inviting subscription for the shares is issued, is disclosed in that circular or notice; and
 - (e) the number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in the manner specified in paragraphs (c) and (d) paragraph (c) and (9) of this sub-section.
- (2) If default is made in delivering to the Registrar any document required to be delivered to the commission under this section, the company and every officer in default commits an offence and shall be liable on conviction to a fine of five thousand dalasis.

111. Statement in balance sheet as to commission

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

(2) If default is made in complying with this section, the company and every officer of the company in default commit an offence and is liable on conviction to a fine of five hundred dalasis for every day during which the default continues.

SUB-PART 5 - CALL ON AND PAYMENT FOR SHARES.**112. Call on shares**

(1) Subject to the terms of the issue of the shares and of the articles, the directors may, from time to time, make calls on the members in respect of any moneys unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment of the shares made payable at fixed times.

(2) No call shall exceed one fourth of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call, and each member shall, subject to receiving at least fourteen days notice specifying the time or times and place, of payment, pay to the company at the time or times and place so specified the amount called on his or her shares, so however that a call may be revoked or postponed as the directors may determine.

(3) A call is deemed to have been made at the time when the resolution of the directors authorising the call was passed, and may be required to be paid by instalments.

(4) The joint holders of a share shall be jointly and severally liable to pay all calls in respect of the share.

(5) If a sum called in respect of a share is not paid before or on the day appointed for payment, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment to the time of actual payment at such rate not exceeding the current bank rate, per annum, as the directors may determine, but the directors may waive payment of the interest wholly or in part.

(6) Any sum which by the terms of issue of share becomes payable on allotment or at any fix date, whether on account of the nominal value of the share or by way of premium shall, for the purposes of these provisions, be deemed to be a call duly made and payable on the date on which, by the terms of issue the sum becomes payable, and in case of non-payment, all the relevant provisions of this Act as to payment of interest and expenses, forfeiture or otherwise shall apply as if the sum had become payable by virtue of a call duly made and notified.

(7) The directors -

- (a) may if they think fit, receive from any member willing to advance payment, all or any part of the moneys uncalled and unpaid on shares held by him or her; and
- (b) on all or any of the moneys so advanced, may, until the sum would not for such advance, become payable, pay interest at such rate not exceeding the current bank rate *per annum* as may be agreed on between the directors and the member paying the sum in advance unless the company in general meeting shall otherwise direct.

113. Reserve liability of company having share capital

(1) A company limited by shares may by special resolution determine that any portion of its share capital which has not already been called up is not

capable of being called up except in the event and for the purposes of the company being wound up.

(2) On the passing of a special resolution under sub-section (1) of this section, that portion of its share capital is not be capable of being called up, except in the event and for the purposes specified in this section.

114. Payment of shares

Subject to sections 115 and 116 of this Act, the shares of a company and any premium on them shall be paid up in cash, or where the articles so permit, by a valuable consideration other than cash.

115. Meaning of payment in cash

(1) Shares are not deemed to have been paid for in cash except to the extent that the company has actually received cash for them at the time of, or subsequently to, the agreement to issue the shares.

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

116. Payment other than in cash

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

(2) The valuer is entitled to require from the officers of the company such information and explanation as he or she thinks necessary to enable him or her

carry out the valuation or make the report under sub-section (1).

(3) The company shall, not more than three days after the receipt by it of the valuer's report, send a copy of the report to the proposed purchaser of shares, and indicate to the proposed purchaser whether or not it intends to accept the consideration as payment or part-payment for its shares.

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

(5) A valuer who, in his or her report or otherwise, knowingly or recklessly makes a statement which is misleading, false or deceptive in a material particular commits an offence and is liable on conviction to a fine of twenty thousand dalasis or imprisonment for a term of twelve months, or to both the imprisonment and fine.

(6) In this section "valuer" means an auditor, a valuer, a surveyor or an accountant, not being a person in the employment of the company or an agent or associate of the company or any of its directors or officers.

117. Power to pay different amounts on shares

A company may, to the extent to which it is so authorized by its articles -

- (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; and

- (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.

SUB-PART 6 - LIEN AND FORFEITURE OF SHARES

118. Lien on share

- (1) A company has a first and paramount lien—
 - (a) on every share, not being a fully paid share, for all moneys, whether currently pay-able or not) called or payable at a fixed time in respect of that share; and
 - (b) on all shares other than fully paid shares standing registered in the name of a single person for all moneys presently payable by him or her or his or her estate to the company,

but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this sub-section.

- (2) A company's lien, if any, on a share extends to all dividends payable on it.
- (3) A company may sell, in such manner as the directors thinks fit, any shares on which the company has a lien, but no sale shall be made—
 - (a) unless a sum in respect of which the lien exists is currently payable; or
 - (b) until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is currently payable, has been given to the registered holder for the time being of the shares, or the person entitled to them by reason of the holder's death or bankruptcy.

(4) For the purpose of giving effect to a sale under this section, the directors may authorise some person to transfer the shares sold to the purchaser of the shares, and the purchaser shall be registered as the holder of the shares comprised in the transfer.

(5) The purchaser is not bound to see to the application of the purchase money, and his or her title to the shares is not affected by any irregularity or invalidity in the proceedings in reference to the sale.

119. Forfeiture of shares

(1) If a member fails to pay a call or instalment of a call on the day appointed for payment, the directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on the member requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

(2) The notice shall-

- (a) name a further day, not earlier than the expiration of fourteen days from the date of service of the notice on or before which the payment required by the notice is to be made; and
- (b) state that in the event of non-payment at or before the time appointed, the shares in respect of which the call was made is liable to be forfeited.

(3) If the requirements of notice as is mentioned in sub-section, (1) and (2) are not complied with, any share, in respect of which notice had been given, may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

(4) A forfeited share may be sold or otherwise disposed of, on such terms and in such manner, as the directors think fit, and at any time before a sale

or disposition, the forfeiture may be cancelled on such terms as the directors think fit.

(5) A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were payable by him or her to the company in respect of the shares, but his or her liability shall cease if and when the company receives payment in full of all moneys payable in respect of the shares.

(6) A statutory declaration that the declarant is a director or the secretary of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, is prima facie evidence of the facts stated in it as against all persons claiming to be entitled to the shares.

(7) A company may receive the consideration, if any, given for the shares on any sale or disposition of the shares and may execute a transfer of the shares in favour of the person to whom the share sold or disposed of. shall-

- (a) be registered as the holder of the share; and
- (b) not be bound to see to the application of the purchase money, if any, and his or her title to the share is affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

(8) A person in whose favour a transfer is executed under sub-section (7).

(9) The provisions of this section as to forfeiture apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if the sum had been payable by virtue of a call duly made and notified.

SUB-PART 7 - CLASSES OF SHARES**120. Power to vary rights**

(1) If at any time the share capital of a company is divided into different classes of shares under section 97 of this Act, the rights attached to any class, unless otherwise provided by the terms of issue of the shares of that class, may, whether or not a company is being wound up, be varied-

- (a) with the consent, in writing, of the holders of three-quarters of the issued shares of that class; or
- (b) with the sanction of a special resolution passed as a separate general meeting of the holders of the shares of the class.

(2) The provisions of this Act relating to general meetings shall apply to every separate general meeting as is mentioned in sub-section (1) of this section, so however that-

- (a) the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class; and
- (b) any holder of shares of the class present in person or by proxy may demand a poll.

(3) The rights conferred on the holders of the shares of any class issued with preferred or other rights are not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking *pari passu* with them.

121. Application for cancellation or variation

(1) Where in pursuance of section 120 of this Act, the rights attached to any 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 and, where an application is made, the variation shall not have effect, unless and until it is confirmed by the court.

(2) An application to the court under this section-

- (a) shall, in a proper case, be made within twenty-one days after the date on which the consent was given or the resolution was passed, as the case may be; and
- (b) may be made on behalf of the shareholders entitled to make the application or by such one or more of their number as they may appoint in writing for the purpose.

(3) If on application, the court, after hearing the applicant and any other persons applying to it be heard and appearing to be interested in the application, is satisfied that the variation would unfairly prejudice the shareholders of the class represented by the applicant, the court, having regard to all the circumstances of the case, may disallow the variation, and shall, if not satisfied, confirm the variation.

(4) The decision of the court on an application under this section is final.

(5) A company shall, within fifteen days after the making of an order by the court on an application to it under this section, forward a copy of the order to the Registrar and if default is made in complying with the provisions of this sub-section, the company and every officer of the company who is in default commit an offence and is liable on conviction to a fine of five hundred dalasis for every day during which the default continues.

(6) In this section, "variation" includes abrogation, and cognate expressions shall be constructed accordingly.

122. Rights of a preference share to more than one vote

(1) Notwithstanding section 95 of this Act, the articles may provide that preference shares issued after the commencement of this Act shall carry the rights to attend general meetings and, on a poll at the meetings, to more than one vote per share in the following circumstances, but not otherwise-

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

(2) Notwithstanding the provisions of section 95 of this Act, a special resolution of a company increasing the number of shares of any class may validly resolve that an existing class of preference shares shall carry the right to such votes additional to one vote per share as is necessary in order to preserve the existing ratio which the votes exercisable by the holders of the preference shares at a general meeting of the company bear to the total votes exercisable at the meeting.

(3) For the purposes of sub-section (2), a dividend is deemed to be due on the date appointed in the articles for the payment of the dividend for any year or other period, or if no date is appointed, on the day immediately following the expiration of the year

or other period, and whether or not such dividend has been earned or declared.

123. Construction of class rights

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

- (a) unless the contrary intention appears, no dividend shall not be payable on any shares, unless the company shall resolve to declare such dividend;
- (b) unless the contrary intention appears, a fixed preferential dividend payable on any class of shares is cumulative, that is to say, a dividend shall not be payable on any share ranking subsequent to them until all the arrears of the fixed dividend have been paid;
- (c) unless the contrary intention appears, in a winding up, arrears of any cumulative preferential dividend, whether earned or declared or not are payable up to the date of actual payment in the wind-up;
- (d) if any class of shares is expressed to have a right to a preferential dividend, then, unless the contrary intention appears, the class has no further right to participate in dividends;
- (e) if any class of shares is expressed to have preferential rights to payment out of the assets of the company in the event of winding up, then, unless the contrary intention appears, that class has no further right to participate in the distribution of assets in the winding up;
- (f) in determining the rights of the various classes to share in the distribution of the company's property on a winding up, regard shall not be paid, unless the

contrary intention appears, to whether or not the property represents accumulated profits or surplus which would have been available for dividend while the company remained a going concern;

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

SUB-PART 8 - NUMBERING OF SHARES

124. Shares to be numbered

(1) A 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 of its issued shares of a particular class, are fully paid up and rank *pari passu* for all purposes, none of those shares need thereafter have a distinguishing number provided 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.

SUB-PART 9 - SHARE CERTIFICATES

125. Issue of share certificates

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

(2) A person whose name is entered as a member in the register of members is entitled without payment to receive, within three months of allotment or lodgement of transfer or within such other period as the conditions of issue provide-

- (a) one certificate for all his or her shares; or
- (b) several certificates each for one or more of

his or her share,

on payment of such fee as the directors shall, from time to time, determine.

(3) A certificate issued by a company shall-

(a) be under the company's seal; and

(b) specify the shares to which it relates and the amount paid up on them.

(4) A company is not bound, in the case of shares held jointly by several persons, to issue more than one certificate, and delivery of a certificate for shares to one of several joint holders is sufficient delivery to all the holders.

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

(6) If a company, on which a notice has been served requiring it to make good any default in complying with the provisions of sub-section (1), fails to make good the default within ten days after the service of the notice, the court may, on the application of the person entitled to have the certificate delivered to him or her, 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.

(7) An order made under sub-section (6) 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.

(8) If default is made in complying with this section, the company and every officer of the company who is in default commit an offence and is liable on conviction to a fine of five hundred dalasis for every day during which the default continues.

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

126. Effect of share certificate

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

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

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

127. Probate, etc. as evidence of grant

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

128. Abolition of share warrants

(1) As from the date of commencement of this Act, a company shall not issue share warrants.

(2) A company shall, within a period of thirty days from the date of commencement of this Act, cancel any share warrants previously issued by it which are still valid on that date and enter in its register of

members the names and relevant particulars of the bearers of the share warrants.

(3) A person whose name is entered in a company's register of members by virtue of sub-section (2) of this section, is deemed to be a member of the company with effect from the date on which the share warrant thereby cancelled, was issued.

SUB-PART 10 - CONVERSION OF SHARES INTO STOCK

129. Conversion of share into stock

(1) The provisions of this section shall apply with respect to the conversion of all or any of the shares of a company into stock and the recon-version of the stock into shares under the provisions of section 79 of this Act.

(2) The conversion of any paid-up shares into stock and the recon version of any stock into paid-up shares shall be by ordinary resolution of the company at a general meeting.

(3) The holders of stock may transfer the stock, or any part of it in the same manner, and subject to the same conditions, as and subject to which the shares from which the stock arose might, previous to the conversion, have been transferred, or as near to it as circumstances admit.

(4) The directors may, from time to time, fix the minimum amount of stock transferable under sub-section (3), so however that the minimum amount shall not exceed the nominal amount of the shares from which the stock arose.

(5) The holders of stock shall, according to the amount of stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meeting of the company and other matters as if they held the shares from which the stock arose.

(6) A privilege or an advantage, except participation in the dividends and profit of the company and in

the assets on winding-up shall not be conferred under sub-section (5) by an amount of stock which would not, if existing in shares, have conferred that privilege or advantage.

(7) The articles of the company that are applicable to paid-up shares shall apply to stock, and the words “shares” and “shareholder” in those articles include “stock” and “stockholder” respectively.

SUB-PART XI – TRANSFER AND TRANSMISSION

130. Transfer of Shares

(1) The transfer of a company's share shall be by instrument of transfer and, except as expressly provided in the articles, transfer of shares shall be without restrictions.

(2) Notwithstanding anything in the articles of a company, a company shall not register a transfer of shares, unless a proper instrument of transfer has been delivered to the company.

(3) Nothing in this section shall prejudice the power of the company to register, as share-holder, a person to whom the right to any share in the company has been transmitted by operation of law.

(4) The instrument of transfer of a share shall be executed by or on behalf of the transferor and transferee, and the transferor is deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect of the share.

(5) Subject to such of the restrictions of a company's articles as may be applicable, any member may transfer all or any of his or her shares by instrument in writing in any usual or common form or any other form which the directors may approve.

131. Entry in register of transfers

(1) On the application of the transferor of a share or an interest in a company, the company shall enter

in its register of members, the name of the transferee in the same conditions as if the application for the entry were made by the transferee.

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

(3) The company may refuse to register the transfer of a share, other than a fully paid share, to a person of whom they do not approve, and may also refuse to register the transfer of a share on which a company has a lien.

(4) The company may refuse to recognize any instrument of transfer unless -

- (a) a fee as the company may, from time to time, determine is paid to the company in respect of the instrument; and
- (b) the instrument of transfer is accompanied by the certificate of the shares to which it relates and such other evidence, as the directors may reasonably require, to show the right of the transferor to make the transfer; and
- (c) the instrument of transfer is in respect of only one class of shares.

132. Notice of refusal to register

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

(2) If default is made in complying with this section, the company and every officer of the company who is in default commit an offence and is liable on conviction to a fine of two thousand dalasis.

133. 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.

134. Transmission of shares

(1) In case of the death of a member, the survivor or survivors, where the deceased was a joint holder, or the legal personal representative of the deceased, where he or she was a sole holder, are the only persons recognized by the company as having any title to his or her interest in the shares; but nothing in this section releases the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him or her with other persons.

(2) A person who becomes entitled to a share in consequence of the death or bankruptcy of a member may, on such evidence being produced as may, from time to time, properly be required by the directors and subject as hereafter provided in this section, elect-

- (a) be registered himself or herself as holder of the share; or
- (b) have some person nominated by him or her registered as the transferee of the share,

but the company shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by that member before his or her death or bankruptcy, as the case may be.

(3) If a person who becomes entitled to a share elects to-

-
- (a) be registered himself or herself, the person shall deliver or send to the company a notice in writing signed by him or her stating that he or she so elects; and
 - (b) have another person registered, he or she shall testify his or her election by executing to that person a transfer of the share.
- (4) All limitations, restriction and provisions of this Act and the company's articles relating to the rights to transfer and the registration of transfers of share, are applicable to any such notice or transfer as mentioned in sub-section (3) as if-
- (a) the death or bankruptcy of the member had not occurred; and
 - (b) the notice or transfer were a transfer signed by that member.
- (5) A person who becomes entitled to a share by reason of the death or bankruptcy of the holder, is entitled to the same dividends and other advantages to which the person would be entitled if he or she were the registered holder of the share, except that he or she is not, unless the articles otherwise provide, before being registered as a member in respect of the share, be entitled in respect of the share to exercise any right conferred by membership in relation to meetings of the company.
- (6) The directors may at any time give notice requiring a person specified in sub-section (5) to elect either to be registered himself or herself or to transfer the share, and if the notice is not complied with within ninety days, the directors may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with.

135. Protection of beneficiaries

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

(2) Notwithstanding the provisions of section 65 of this Act, the company shall enter on the register of members, the fact that the notice referred to in sub-section (1) has been served and shall not register any transfer or make any payment or return in respect of the shares contrary to the terms of the notice until the expiration of forty-two days notice to the claimant of the proposed transfer or payment.

(3) A company that defaults in complying with this section, shall compensate any person injured by the default.

136. Certification of transfer

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

(2) A company to which a request is made under sub-section (1), may recognize the instrument of transfer by endorsing on it the words "certificate lodged" or words to the like effect.

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

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

(5) In of this section -

- (a) an instrument of transfer is deemed to be recognized if it bears the words "certificate lodged" or words to the like effect;
- (b) the recognition of an instrument of transfer shall be deemed to be made by a company if -
 - (i) the person issuing the instrument is a person authorized to issue certificated instruments of transfer on the company's behalf, and
 - (ii) the recognition is signed by a person authorized to recognize transfers of shares on the company's behalf or by any officer or servant of the company or of a body corporate so authorized; and
- (c) a recognition is deemed 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 any person other than him or her or a person authorized to use the signature or initials for the purpose of transfers on the company's behalf.

SUB-PART 12 - TRANSACTIONS BY COMPANY IN RESPECT OF ITS OWN SHARES**137. Redemption of redeemable preference shares**

(1) The provisions of this section apply to the redemption by a company of any redeemable preference shares issued by it under section 101 of this Act.

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

- (a) profits of the company which would otherwise be available for dividend; or
- (b) the proceeds of a fresh issue of shares made for the purposes of the redemption.

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

(4) Where shares are redeemed, otherwise than out of the proceeds of a fresh issue, there shall be transferred, out of profits which would otherwise have been available for the dividend, 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.

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

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

(7) Where, in pursuance of this section, a company has redeemed or is about to redeem any preference shares, it 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 purposes of any enactment relating to stamp duty, be deemed to be increased by the issue of shares in pursuance of this sub-section.

(8) 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 deemed to have been issued in pursuance of this sub-section (70 of this section, unless the old shares are redeemed within one month after the issue of the new shares.

(9) The capital redemption reserve fund may, notwithstanding anything in this section, 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.

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

(1) Subject to the provisions of this section, where a person -

- (a) is acquiring or is proposing to acquire shares in a company, the company or any of its subsidiaries may give financial assistance directly or indirectly for the purpose of that acquisition before or at the same time as the acquisition takes place; and
- (b) has acquired shares in a company and a liability has been incurred by that or any other person, for the purposes of the acquisition, the company or any of its subsidiaries may give financial assistance directly or indirectly for the purpose of reducing or discharging the liability so

incurred.

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

- (a) the lending of money by the company in the ordinary course of its business, where the lending of money is part of the ordinary business of a company;
- (b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of, or subscription for, fully-paid shares in the company or its holding company, being a purchase 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 of office in the company;
- (c) the giving by a company of loans to persons, other than directors, *bona fide* in the employment of the company with a view to enabling those persons to purchase or subscribe for fully-paid shares in the company or its holding company, to be held by themselves by way of beneficial ownership; or
- (d) any act or transaction otherwise authorized by law.

(3) If a company acts in contravention of this section, 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 five thousand dalasis.

(4) In this section, financial assistance includes a gift, guarantee, security or indemnity, loan, any form of credit and any financial assistance given by a company, the net assets of which are thereby reduced to a material extent or which has no net assets.

139. Special restriction for public companies

(1) In the case of a public company, section 138(2) of this Act authorizes the giving of financial assistance only if the company has net assets which are not thereby reduced or, to the extent that those assets are thereby reduced, if the assistance is provided out of distributable profits.

(2) In this section-

“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

“liabilities” includes any amount retained as reasonably necessary for the purposes 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.

140. Relaxation of section 138 for private companies

(1) Section 138 of this Act does not prohibit a private company from giving financial assistance in a case where the acquisition of shares in question is or was an acquisition of shares in the company or, if it is a subsidiary of another private company, in that other company if the following provisions of this section, and sections 141 to 143 of this Act are complied with as respects the giving of that assistance.

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

(3) This section does not permit financial assistance to be given by a subsidiary, in a case where the acquisition of shares in question is or was an acquisition of shares in its holding company, if it is also a subsidiary of a public company which is itself a subsidiary of that holding company.

(4) Unless the company proposing to give the financial assistance is a wholly-owned subsidiary, the giving of assistance under this section must be approved by a special resolution of the company in 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 a case where a company which is a wholly-owned subsidiary) shall also approve, by special resolution in 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 in the prescribed form complying with section 141 of this Act.

141. Statutory declaration under section 138

(1) A statutory declaration made by a company's directors under section 140(6) of this Act shall contain such particulars of the financial assistance to be given and of the business of the company of which they are directors, as may be prescribed, and shall identify the person to whom the assistance is to be given.

(2) The declaration shall state that the directors have formed the opinion, as regards the company's initial situation immediately following the date on which the assistance is proposed to be given, that there will be no ground on which it could then be found to be unable to pay its debts, and-

- (a) if it is intended to commence the winding up of the company within twelve months of that date, that the company will be able to pay its debts in full within twelve months of the commencement of the winding up; or
- (b) in any other case, that the company will be able to pay its debts as they fall due during the year immediately following that date.

(3) In forming their opinion for purposes of sub-section (2) of this section, the directors shall take into account the same liabilities including contingent and prospective liabilities as would be relevant under the provisions of this Act, on winding up by the court to the question whether the company is unable to pay its debts.

(4) The directors' statutory declaration shall have annexed to it a report addressed to them by their company's auditors stating that -

- (a) they have enquired into the state of affairs of the company; and
- (b) they are not aware of anything to indicate that the opinion expressed by the directors in the declaration as to any of the matters mentioned in sub-section(2) of this section is unreasonable in all the circumstances.

(5) The statutory declaration and auditors' report shall be delivered to the Registrar-

- (a) together with a copy of any special resolution passed by the company under section 138 of this Act and delivered to the Registrar; or
- (b) where no resolution is required to be passed,

within fifteen days after the making of the declaration.

(6) If a company fails to comply with sub-section (5) of this section, the company and every officer of the company who is in default is liable to a fine of twenty thousand dalasis and, for continued contravention, to a daily default fine of one hundred dalasis.

(7) A director of a company who makes a statutory declaration under section 138 of this Act without having reasonable grounds for the opinion expressed in it commits an offence and is liable on conviction to a fine of twenty thousand dalasis or imprisonment for a term of six months, or to both the fine and imprisonment.

142. Special resolution under section 138

(1) A special resolution required by section 138 of this Act to be passed by a company approving the giving of financial assistance must be passed on the date on which the directors of that company made the statutory declaration required by that section in connection with the giving of that assistance, or within the week immediately following that date.

(2) Where a resolution has been passed, an application may be made to the court for the cancellation of the resolution -

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

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

(3) Sub-sections (3) to (8) of section 39 of this Act apply to applications under this section as to applications under section 39.

(4) A special resolution passed by a company is not effective for purposes of section 138 -

- (a) unless the declaration made in compliance with sub-section (6) of that section by the directors of the company, together with the auditors' report annexed to it, is available for inspection by members of the company at the meeting at which the resolution is passed;
- (b) if it is cancelled by the court on an application under this section.

143. Time for giving financial assistance under section 138

(1) This section applies as to time before and after which financial assistance may be given by a company in pursuance of section 138 of this Act.

(2) Where a special resolution is required by section 138 of this Act to be passed approving the giving of financial assistance, the assistance shall not be given before the expiry of the period of four weeks beginning with -

- (a) the date on which the special resolution is passed; or
- (b) where more than one resolution is passed, the date on which the last of them is passed,

unless, as respects that resolution or, if more than one, each of them, every member of the company which passed the resolution who is entitled to vote at general meetings of the company voted in favour of the resolution.

(3) If the application for the cancellation of a resolution is made under section 142 of this Act, the

financial assistance shall not be given before the final determination of the application unless the court otherwise orders.

(4) The financial assistance shall not be given after the expiry of the period of eight weeks beginning with -

- (a) the date on which the directors of the company proposing to give the assistance made their statutory declaration under section 138 of this Act, or
- (b) where the company is a subsidiary and both its directors and the directors of any of its holding companies made a declaration, the date on which the earliest of the declaration is made,

unless the court, on an application under section 142 of this Act, otherwise orders.

144. Acquisition by accompany of its own shares

(1) Subject to sub-section (2) and its articles, a company may not purchase or otherwise acquire shares issued by it.

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

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

(e) complying with a court order.

(3) A company may accept, from any shareholder, a share in the company surrendered to it as a gift, but shall not extinguish or reduce a liability in respect of an amount unpaid on the share, except in accordance with section 85 of this Act.

145. Conditions for purchase by accompany of its own shares

Notwithstanding any provision in the articles, a company shall not purchase any of its own shares, except on compliance with the following conditions, that is -

- (a) shares shall only be purchased out of profits of the company which would otherwise be available for dividend or the proceeds of a fresh issue of shares made for the purpose of the purchase;
- (b) redeemable shares shall not be purchased at a price greater than the lowest price at which they are redeemable or shall be redeemable at the next date thereafter at which they are due or liable to be redeemed; and
- (c) no purchase shall be made in breach of section 146 of this Act.

146. Limit on number of shares acquired

A transaction shall not be entered into by or on behalf of a company whereby the total number of its shares, or of its shares of any one class, held by persons, other than the company or its nominees, becomes less than eighty-five per cent of the total number of shares, or of shares of that class, which have been issued.

(2) Redeemable shares shall be disregarded for the purposes of this section, and where, after shares of any class have been issued, the number of those shares has been reduced, this section shall

apply as if the number originally issued, including shares of that class cancelled before the reduction took effect, has been the number as so reduced.

147. Enforceability of contract to acquire shares

(1) A contract with a company providing for the acquisition by the company of shares in the company is specifically enforceable against the company, except to the extent that the company cannot perform the contract without thereby being in breach of the provisions of section 144 of this Act.

(2) In an action brought on a contract referred to in sub-section (1), the company has the burden of proving that performance of the contract is prevented by the provisions of section 144 of this Act.

148. Re-issue of shares acquired

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

149. Acquisition of Shares of hold-ing company

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

(2) A subsidiary which, at the commencement of this Act, is a holder of shares of its holding company, or a subsidiary which acquired shares in its holding company before it became a subsidiary of that holding company, may continue to hold such shares but, subject to sub-section (1) of this section, shall have no right to vote at meetings of the holding company or any class of shareholders of

the holding company and shall not acquire any future shares in it except on a capitalization issue.

PART III - DEBENTURES

SUB-PART 1 – PRELIMINARY

150. Interpretation of this Part

In this Part-

"event of default" means an event specified in a trust deed on the occurrence of which

- (a) a security interest constituted by the trust deed becomes enforceable; or
- (b) the principal, interest and other moneys payable there under become, or can be declared to be, payable before maturity,

but the event is not an event of default until all conditions prescribed in the trust deed in connection with that event for the giving of notice or the lapse of time or otherwise have been satisfied;

"trustee" means a person appointed as trustee under the terms of a trust deed to which a company is a party, and includes a successor trustee; and

"trust deed" means any deed, indenture or other instrument, including any supplement or amendment thereto, made by a company after its incorporation or continuance under this Act-

- (a) under which the company issues debentures; and
- (b) in which a person is appointed as trustee for the holders of the debentures issued there under.

151. Application of Part

This Part applies to a trust deed if the debentures issued or to be issued under the trust deed are part of a distribution to the public.

SUB-PART 2 - TRUSTEE

152. Conflict of interest

(1) A person shall not be appointed as trustee if there is material conflict of interest between his or her role as trustee and his or her role in any other capacity.

(2) There is a material conflict of interest for the purpose of sub-section (1) where a person is an officer or employee, or a shareholder of the company issuing the debentures.

(3) Within ninety days after a trustee becomes aware that a material conflict of interest exists in his or her case, he or she shall-

- (a) eliminate the conflict of interest; or
- (b) resign from office.

(4) A trust deed, any debentures issued under the trust deed and a security interest effected thereby are valid notwithstanding a material conflict of interest of the trustee.

(5) If a trustee is appointed contrary to sub-section (1) of this section or continues as a trustee contrary to sub-section (3), any interested person may apply to the court for an order that the trustee be replaced.

(6) The court may, on application made under sub-section (5), make an order on such terms as it thinks fit.

153. List of debenture holders

(1) A holder of debentures issued under a trust deed may on payment to the trustee of a

reasonable fee, require the trustee to furnish, within fifteen days after delivering to the trustee the statutory declaration referred to in sub-section (4), a list setting out-

- (a) the names and addresses of the registered holders of the outstanding debentures of the issuer;
- (b) the principal amount of outstanding debentures owned by each debenture holder; and
- (c) the aggregate principal amount of debentures outstanding,

as shown in the records maintained by the trustee on the day that the statutory declaration is delivered to him or her.

(2) Where a debenture holder and a trustee fail to agree on the reasonable fee to be paid to the trustee under sub-section (1), they shall refer the matter to the Registrar for determination and the Registrar's decision shall be final.

(3) On the demands of a trustee, the issuer of debentures shall furnish the trustee with the information required to enable the trustee to comply with sub-section (1).

(4) If the person requiring the trustee to furnish a list under sub-section (1) is a body corporate, the statutory declaration required under that sub-section shall be made by a director or officer of the body corporate.

(5) The statutory declaration required under sub-section (1) shall state-

- (a) the name and address of the person requiring the trustee to furnish the list, and, if the person is a body corporate, its address for service; and
- (b) that the list will not be used except as

permitted under sub-section (6).

(6) A list obtained under this section shall not be used by any person except in connection with-

- (a) an effort to influence the voting of the debenture holder;
- (b) an offer to acquire debentures; or
- (c) any other matter relating to the debentures or the affairs of the issuer or guarantor of the debentures.

154. Evidence of compliance

An issuer or a guarantor of debentures issued or to be issued under a trust deed shall, before-

- (a) the issue, certification and delivery of debentures under the trust deed;
- (b) the release, or release and substitution, of property that is subject to a security interest constituted by the trust deed; or
- (c) the satisfaction and discharge of the trust deed,

furnish the trustee with evidence of compliance with the conditions in the trust deed.

155. Contents of evidence

Evidence of compliance as required by section 154 of this Act shall consist of-

- (a) a statutory declaration or certificate made by a director or an officer of the issuer or guarantor of the debentures stating that the conditions referred to in that section have been complied with; and
- (b) if the trust deed requires compliance

with conditions that are subject to review by a legal practitioner, his or her opinion that those conditions have been complied with, and

- (c) if the trust deed requires compliance with conditions that are subject to review by an auditor or accountant, an opinion or report of the auditor of the issuer or guarantor, or such other accountant as the trustee may select, that those conditions have been complied with

156. Further evidence

The evidence of compliance referred to in section 154 of this Act shall include a statement by the person giving the evidence-

- (a) declaring that he or she has read and understands the conditions of the trust deed described in section 154 of this Act;
- (b) describing the nature and scope of the examination or investigation on which he or she based the certificate, statement or opinion, and
- (c) declaring that he or she has made such examination or investigation as he or she believes necessary to enable him or her to make the statements or give the opinion contained or expressed in the statement.

157. Evidence relating to conditions

On the demand of a trustee, the issuer or guarantor of debentures issued under a trust deed shall furnish the trustee with evidence in such form as the trustee may require as to compliance with a condition of the trust deed relating to an action required or permitted to be taken by the issuer or guarantor under the trust deed.

158. Certificate of compliance

At least once in every twelve months period beginning on the date of the trust deed and at any other time on the demand of a trustee, the issuer or guarantor of debentures issued under the trust deed shall furnish the trustee with a certificate that the issuer or guarantor has complied with all requirements contained in the trust deed that, if not complied with, would, with the giving of notice, lapse of time or otherwise, constitute an event of default, or, if there has been failure to so comply, giving particulars of that failure.

159. Notice of default

Within thirty days after a trustee under a trust deed becomes aware of an event of default under the deed, he or she shall give to the holder of any debentures issued under the trust deed notice of the event of default arising under the trust deed and continuing at the time the notice is given, unless the trustee reasonably believes that it is in the best interests of the debenture holder to withhold that notice and in writing so informs the issuer and guarantor.

160. Redemption of debenture

(1) Debentures issued, pledged or deposited by a company are not redeemed by reason only that the amount in respect of which the debentures are issued, pledged or deposited is repaid.

(2) Debentures issued by a company and purchased, redeemed or otherwise acquired by the company may be cancelled, or, subject to any applicable trust deed or other agreement, may be re-issued, pledged or deposited to secure an obligation of the company then existing or thereafter incurred and any acquisition and re-issue, pledge or deposit is not a cancellation of the debenture.

161. Duty of care of trustee

A trustee under a trust deed shall, in exercising his or her powers and discharging his or her duties-

- (a) act honestly and in good faith with a view to the best interests of the holders of the debentures issued under the trust deed; and
- (b) exercise the care, diligence and skill of a reasonable prudent trustee.

162. Reliance on statement

Notwithstanding section 161 of this Act, a trustee is not liable if he or she relies in good faith on statements contained in a statutory declaration, certificate, opinion or report that complies with this Act or the trust deed.

163. No exculpation from duty of care

No term of a trust deed or of an agreement between a trustee and the holders of debentures issued there under, or between the trustee and the issuers or guarantor, operates to relieve a trustee from the duties imposed upon him or her by section 161 of this Act.

164. Rights of trustees

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

-
- (2) A debenture holder may-
- (a) sue the company that issued the debentures he or she holds for payment of any amount payable to him or her in respect of the debentures, or
 - (b) sue the trustee of the trust covering the debentures he or she holds for compensation for any breach of the duties that the trustee owes him or her.
- (3) In an action under sub-section (2) it is not necessary for a debenture holder of the same class, or, if the action is brought against the company, the trustee under the covering trust deed, to be joined as a party.
- (4) Subject to sub-section (5), this section applies notwithstanding anything contained in a debenture, trust deed or other instrument.
- (5) A provision in a debenture or trust deed is valid and binding on all the debenture-holders of the class concerned to the extent that, by a resolution supported by the votes of the holders of at least three-quarters in value of the debentures of that class in respect of which votes are cast on the resolution, the provision enables a meeting of the debenture-holders to-
- (a) release a trustee from liability for a breach of his or her duties to the debenture-holders that he or she has already committed or generally from liability for all the breaches, without necessarily specifying them, on his or her ceasing to be a trustee;
 - (b) consent to the alteration or abrogation of any of the rights, powers or remedies of the debenture holders and the trustee under the trust deed covering their debentures, except the powers and remedies under section 180 of this Act; or

- (c) consent to the substitution of debentures of a different class issued by the company or any other company or body corporate of the debentures of the debenture holders, to consent to the cancellation of the debentures in consideration of the issue to the debenture holders of shares credited and fully paid in the company or any other body corporate.

SUB-PART 3 - DEBENTURE TRUST DEEDS

165. Need for trust deed

(1) A public company shall, before issuing any of its debentures, execute a trust deed in respect of the debentures and procure the execution thereof by a trustee.

(2) A trust deed shall not cover more than one class of debentures, whether or not the trust deed is required by this section to be executed.

(3) Where a trust deed is required by this section to be executed in respect of any debentures issued by a public company but a trust deed has not been executed, the court may, on the application of a holder of any debenture issued by the company-

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

166. Kinds of debentures

(1) Debentures belong to different classes if different rights attach to them in respect of-

- (a) the rate of interest or the dates for payment of interest;
- (b) the dates when, or the instalments by which, the principal of the debentures will be repaid, unless-
 - (i) the difference is solely that the class of debentures will be repaid during a stated period of time, and
 - (ii) particular debentures will be repaid at different dates during that period according to selections made by the company or by drawings, ballot or other-wise;
- (c) a right to subscribe for or convert the debentures into other shares or other debentures of the company or any other body corporate; or
- (d) the powers of the debenture holders to realise any security interest.

(2) In addition to the provisions of sub-section (1), debentures also belong to different classes if they do not rank equally for payment when-

- (a) any security interest is realised; or
- (b) the company is wound up,

that is to say, if, in those circumstances, the security interest or the proceeds there-of, or assets available to satisfy the debentures, is or are not to be applied in satisfying the debentures strictly in proportion to the amount of principal, premiums and arrears of interest to which the holders of debentures are respectively entitled.

167. Cover of trust deed

A debenture is covered by a trust deed if the debenture holder is entitled-

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

168. Exception

Sections 165 to 169 of this Act do not apply to debentures issued before the coming into force of this Act or to debentures, forming part of a class of debentures, some of which were issued before this Act came into force.

169. Contents of trust deed

(1) A trust deed shall state-

- (a) the maximum sum that the company can raise by issuing debentures of each specific issue;
- (b) the maximum discount that can be allowed on the issue or reissue of the debentures, and the maximum premium at which the debentures can be made redeemable;
- (c) the nature of the assets over which a security interest is created by the trust deed in favour of the trustee for the benefit of the debenture holders equally, and, except where the interest is a floating charge or a general floating charge, the identity of the assets subject to it;
- (d) the nature of the assets over which a security interest has been, or will be, created in favour of a person, other than

the trustee, for the benefit of the debenture holders equally, and, except where the interest is a floating charge or a general floating charge, the identity of the assets subject to it;

- (e) whether the company has created or will have to create any security interest for the benefit of some, but not all, of the holders of debentures issued under the trust deed;
- (f) any prohibition or restriction on the power of the company to issue debentures or to create any security interest on any of its assets ranking in priority to, or equally with, the debentures issued under the trust deed;
- (g) whether the company will have power to acquire debentures issued under the trust deed before the date for their redemption and to re-issue the debentures;
- (h) the dates on which interest on the debentures issued under the trust deed will be paid, and the manner in which payment will be made;
- (i) the dates on which the principal of the debentures issued under the trust deed will be repaid, and, unless the whole principal is to be repaid to all the debenture holders at the same time, the manner in which redemption will be effected, whether by the payment of equal instalments of principal in respect of each debenture or by the selection of debentures for redemption by the company, or by drawing, ballot or otherwise;
- (j) in the case of convertible debentures, the dates and terms on which the debentures can be converted into shares and the amounts that will be credited as paid on those shares, and the dates and terms on

which the debenture holders can exercise any right to subscribe for shares in right of the debentures held by them;

- (k) the circumstances in which the debenture holders will be entitled to realise any security interest vested in the trustee or any other person for their benefit, other than the circumstances in which they are entitled to do so by this Act;
- (l) the power of the company and the trustee to call meetings of the debenture holders, and the rights of debenture holders to require the company or the trustee to call meetings of the debenture holders;
- (m) whether the rights of debenture holders can be altered or abrogated, and, if so, the conditions that are to be fulfilled, and the procedures that are to be followed, to effect an alteration or an abrogation; and
- (n) the amount or rate of remuneration to be paid to the trustee and the period for which it will be paid, and whether it will be paid in priority to the principal, interest and costs in respect of debentures issued under the trust deed.

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

(3) Sub-section (2) does not apply if-

- (a) the debenture is the only debenture of the class to which it belongs that has been or that can be issued; and
- (b) the rights of the debenture holder cannot

be altered or abrogated without his or her consent.

(4) This section does not apply to a trust deed or debentures executed or issued before the coming into force of this Act.

SUB-PART 4 - CREATION OF DEBENTURES AND DEBENTURE STOCK

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

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

171. Documents of title to debentures or certificate of debenture stock

(1) A company shall, within sixty day after the allotment of any of its debentures, or after the registration of the transfer of any debenture, deliver to the registered holder of the debenture, the debenture or a certificate of the debenture stock under the common seal of the company.

(2) If a debenture or debenture stock certificate is defaced, lost or destroyed, the company, at the request of the registered holder of the debenture, shall issue a certified copy of the debenture or renew the debenture stock certificate on payment of the prescribed fee and on such terms as to evidence and indemnity and the payment of the company's out-of-pocket expenses of investigating evidence as the company may reasonably require.

(3) If default is made in complying with this section-

- (a) the company and any officer of the company who is in default is liable to a fine; and

- (b) the court may, on application by any person entitled to have the debentures or debenture stock certificate delivered to him or her-
 - (i) order the company to so deliver the debenture or debenture stock certificate, and
 - (ii) require the company and any officer of the company to bear all the costs of and incidental to the application.

172. Effect of statements

(1) A statement made in a debenture or debenture stock certificate is *prima facie* evidence of the title to the debenture of the person named therein as the registered holder and of the amounts secured thereby.

(2) If a person changes his or her position to his or her detriment in reliance, in good faith, on the continued accuracy of a statements made in the debenture or debenture stock certificate, the company-

- (a) is stopped in favour of the person from denying the continued accuracy of the statements; and
- (b) shall compensate the person for any loss suffered by him or her in reliance the statement and which he or she would not have suffered had the statement been or continued to be accurate.

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

173. Enforcement of contracts relating to Debentures Enforcement of contracts relating to debentures

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

SUB-PART 5 - TYPES OF DEBENTURES**174. Perpetual debentures**

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

175. Convertible debentures

A debenture may be issued on the terms that, in lieu of redemption or repayment, they may, at the option of the holder or the company, be converted into shares in the company on such terms as may be stated in the debenture.

176. Secured or Naked debentures

(1) A debenture may be secured by a charge over the company's property or be unsecured by any charge.

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

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

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

(5) Where a debenture is secured by a charge, the provisions of section 186 of this Act relating to registration of particulars of charges apply.

177. Redeemable debentures

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

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

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

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

the company has, and is deemed always to have had, power to re-issue the debenture, either by re-issuing the same debenture or by issuing any other debenture in its place.

(2) On a re-issue of a redeemed debenture, the person entitled to the debenture, has, and is deemed always to have had, the same priorities as if the debenture 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 are not deemed to have been redeemed by reason only of the account of the company having ceased to be in debit, whilst the debentures remained so deposited.

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

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

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

179. Meetings of debenture holders

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

(2) Whether or not the debenture or trust deed contain the provisions referred to in sub-section (1), the Registrar may at any time direct a meeting of the debenture holders of any class to be held and conducted in such manner as the Registrar thinks fit to consider ancillary or consequential direction as he or she thinks fit.

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

SUB-PART 6 - REALISATION OF SECURITY

180. Equity realization

(1) A debenture holder is entitled to realise any security interest vested in him or her or in any other person for his or her benefit, if-

- (a) the company fails to pay, within one month after it becomes due-
 - (i) any instalment of interest,
 - (ii) the whole or part of the principal, or
 - (iii) any premium, owing under the debenture or the trust deed covering the debenture;
- (b) the company fails to fulfil any of the obligations imposed on it by the debenture or the trust deed;
- (c) any circumstances occur that by the terms of the debenture or trust deed entitle the holders of the debenture to realise their security interest; or

(d) the company goes into liquidation.

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

- (a) a creditor of the company issues a process of execution against any of its assets or commences proceedings for winding up of the company by order of a court of competent jurisdiction;
- (b) the company ceases to pay its debts as they all due;
- (c) the company ceases to carry on business;
- (d) the company incurs, after the issue of debentures of the class concerned, losses or diminution in the value of its assets that in the aggregate amount to more than one-half of the total amount owing in respect of
 - (i) debentures of the class held by the debenture holder who seeks to enforce their security interest, and
 - (ii) debentures whose holders rank before him or her for payment of principal or interest, or
- (e) any circumstances occur that entitle debenture holders who rank for payment of principal or interest in priority to the debenture secured by the general floating charge to realise their security interest.

(3) At any time after a class of debenture holders becomes entitled to realise its security interest, a receiver of any asset subject to the security interest or in favour of the class of debenture holders or the trustee of the covering trust deed or any other person may be appointed by-

-
- (a) the trustee;
 - (b) the holders of debentures in respect of which there is owing more than half of the total amount owing in respect of all the debentures of the same class; or
 - (c) the court, on the application of a trustee or debenture holder of the class concerned.
- (4) A receiver appointed pursuant to sub-section (3) has, subject to any order made by the court, power-
- (a) to take possession of the assets that are subject to the security interest and to sell those assets; and
 - (b) if the security interest extends to that property, to-
 - (i) collect debts owed to the company,
 - (ii) enforce claims vested in the company,
 - (iii) compromise, settle and enter into arrangements in respect of claims by or against the company,
 - (iv) carry on the company's business with a view to selling it on the most favourable terms,
 - (v) grant or accept leases of land and licences in respect of patents, designs, copyright, or trade, service or collective marks, and
 - (vi) recover capital unpaid on the company's issued shares.
- (5) The remedies given by this section are in addition to, and not in substitution for, any other powers and remedies conferred on the trustees

under the trust deed or the debenture holders by the debentures or the trust deed.

(6) A power of remedy that is expressed in any instrument to be exercisable if a debenture holder becomes entitled to realise his or her security interest, is exercisable on the occurrence of any of the events specified in sub-section (1) of this section, or, in the case of a general floating charge, in sub-sections (1) and (2) of this section, but a manager of the business or of any of the assets of a company shall not be appointed for the benefit of a debenture holder, unless a receiver has also been appointed and has not ceased to act.

(7) This section applies to debentures issued before and after the commencement into of this Act.

(8) A provision in an instrument is not valid if it purports to exclude or restrict the remedies given by this section.

SUB-PART 7 - FIXED AND FLOATING CHARGES

181. Meaning of floating and fixed charges

(1) A floating charge is an equitable charge over the whole or a specified part of the company's undertakings and assets, including cash and uncalled capital of the company both present and future.

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

- (a) the security becomes enforceable and its holder, pursuant to a power in that behalf in the debenture or the deed securing the same, appoints a receiver or manager or enters into possession of the assets;
- (b) the court appoints a receiver or manager of the assets on the application of the holder; or
- (c) the company goes into liquidation.

(3) On the happening of any of the events mentioned in sub-section (1), the charge is deemed to crystallise and to become a fixed equitable charge on such of the company's assets as are subject to the charge, and if a receiver or manager is withdrawn with the consent of the chargee, or the chargee withdraws from possession, before the charge has been fully discharge, the charge is thereupon deemed to cease to a fixed charge and again to become a floating charge.

182. Priority of fixed over floating charge

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

183. Powers of the court

(1) Whenever a fixed or floating charge becomes enforceable, the court may appoint a receiver and, in case of a floating charge, a receiver and manager of the assets subject to the charge.

(2) In the case of a floating charge, the court may, notwithstanding that the charge has not become enforceable, appoint a receiver or manager if satisfied that the security of the debenture holder is in jeopardy.

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

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

184. Advertisement of appointment of receiver and manager

Where a receiver or a receiver and manager is appointed by the court, advertisement to this effect shall be made by the receiver or the receiver and manager in the *Gazette* and in two daily newspapers widely read in The Gambia.

185. Preferential payment to debenture holders in certain cases

(1) Where-

- (a) a receiver is appointed on behalf of the holders of the debentures of a registered company secured by a floating charge; or
- (b) possession is taken by, or on behalf of those debenture holders of any property comprising or subject to the charge; and
- (c) the company is not at the time in the process of being wound up,

the debt, which, in every winding up are to be paid under the provisions relating to preferential payments in Chapter X of this Act, in priority to all other debts, shall be paid out of any assets coming to the hands of the receiver or other person taking possession as referred to in this sub-section in priority to any claim for principal or interest in respect of the debentures.

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

- (a) section 481 of this Act shall be construed as if, the provision for payment of accrued holiday remuneration becoming payable on the termination of employment before or by the effect of the winding-up order or resolution, were a provision for payment of the remuneration becoming payable on the termi-

nation of employment before or by the effect of appointment of the receiver or possession being taken as referred to in sub-section (1) of this section; and

- (b) the periods of time mentioned therein shall be reckoned from the date of the appointment of the receiver or of possession being taken as referred to in sub-section (1) of this section, as the case may be, and if the date occurred before the commencement of this Act, the provisions relating to preferential payments which would have applied but for this Act, is deemed to remain in full force.

(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.

SUB-PART 8 - REGISTRATION OF CHARGES

186. Registration of charges

(1) Subject to the provisions of this Part where a charge to which this section applies is created by a company, the company shall, within twenty-eight days after the creation of the charge, lodge with the Registrar-

- (a) a statement of the charge; and
- (b) any instrument by which the charge is created or evidenced; or
- (c) a copy of the instrument together with a statutory declaration verifying the execution of the charge and also verifying the copy as being a true copy of the instrument.

(2) If sub-section (1) is not complied with in relation to the charge, the charge is void as far as it purported to create a security interest.

(3) Nothing in sub-section (1) affects any contract or obligation for repayment of the money secured

by a charge that is void under sub-section (2) and the money received under the charge becomes immediately payable.

(4) This section applies to all charges created by a company, except-

- (a) any pledge of, or possessory lien on, or any security interest in goods;
- (b) any charge by way of pledge, deposit or trust receipt, or bills of lading, dock warrants or other documents of title to goods, or of bills of exchange, promissory notes, or other negotiable securities for money; and
- (c) any charge over moveable assets as defined by the Security Interest in Moveable Property Act, 2013.

187. Contents of charge statements

(1) Subject to sub-sections (2) and (3), the statement referred to in section 186 of this Act shall contain the following particulars-

- (a) the date of the creation of the charge;
- (b) the nature of the charge;
- (c) the amount secured by the charge, or the maximum sum deemed to be secured by the charge in accordance with section 191 of this Act;
- (d) short particulars of the property charged;
- (e) the persons entitled to the charge; and
- (f) in the case of a floating charge, the nature of any restriction on the power of the company to grant further charges ranking in priority to, or equally with, the charge thereby created.

(2) Where a company creates 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 equally, it is sufficient if there is lodged with the Registrar for registration, within twenty-eight days after the execution of the instrument containing the charges, or, if there is no instrument, after the execution of the first debenture of the series, a statement containing-

- (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 any covering instrument by which the security interest is created or defined;
- (c) the name of any trustee for the debenture holders; and
- (d) the particulars specified in paragraphs (b), (d) and (f) of sub-section (1) of this section.

(3) The statement referred to in sub-section (2) shall be accompanied by-

- (a) the instrument containing the charge or a copy of that instrument and a statutory declaration verifying the execution of the instrument and verifying the copy to be a true copy; and
- (b) there is no instrument, by a copy of one of the debentures of the series and a statutory declaration verifying the copy to be a true copy.

188. Certified copy of instrument

For the purposes of sub-section (1) of section 186 and sub-section (3) of section 187 of this Act, a certified copy of an instrument or debenture is a copy of the instrument or debenture that has endorsed on it a certificate that-

- (a) states that the instrument or debenture is a true and complete copy of the original; and
- (b) is under seal of the company or under the hand of some person interested in the instrument or debenture otherwise than on behalf of the company.

189. Later charges

When a charge requiring registration under sections 186 to 188 of this Act-

- (a) is created before the lapse of thirty days after the creation of a prior unregistered charge that comprises all or any part of the property comprised in the prior charge; and
- (b) is given as security for the same debt that is secured by the prior charge or, any part of that debt,

then, to the extent to which the subsequent charge is a security for the same debt or part of that debt and so far as respects the property comprised in the prior charge, the subsequent charge does not operate and is not valid, unless it was given in good faith for the purpose of correcting some material error in the prior charge or under other proper circumstances and not for the purpose of avoiding or evading the provisions of this Chapter.

190. Effect on enactments

Sections 186 to 189 of this Act do not affect any other enactment relating to the registration of charges.

191. Fluctuating charges

(1) When a charge, the particulars of which require registration under section 186, is expressed to secure all sums due or to become due or some other fluctuating amount, the particulars required under paragraph (c) of sub-section (1) of section 187 shall state the maximum sum that is deemed to be secured by the charge, which shall be the maximum covered by the stamp duty paid thereon, and the charge is, subject to sub-section (2), void, so far as any security interest is created by the charge, as respects any excess over the stated maximum.

(2) Where, in respect of a charge on the property of a company of a kind referred to in sub-section (1) -

- (a) any additional stamp duty is later paid on the charge, and
- (b) at any time after that, but before the commencement of the winding up of the company, amended particulars of the charge stating the increased maximum sum deemed to be secured by the charge, together with the original instrument by which the charge was created or evidenced, are lodged with the Registrar for registration,

then as from the date of lodgement, the charge, if otherwise valid, is effective to the extent of the increased maximum sum, except as regards any person who, before the date on which the charge was so lodged, had acquired any proprietary rights in, or a fixed or floating charge on, the property that is subject to the charge.

192. Charge on acquisition of property

(1) Where a company acquires a property that is subject to a charge of any kind that would, if it had been created by the company after the acquisition of the property, have been required to be registered

under this Chapter, the company shall within twenty-eight days after the date on which the acquisition is completed, lodge with the Registrar for registration-

- (a) a statement of the particulars required by section 187 of this Act and of the date of the acquisition of the property; and
- (b) the instrument by which the charge was created or is evidenced or a copy of the instrument, accompanied by a statutory declaration as required by section 186 and certified as provided in section 188 of this Act.

(2) A failure to comply with sub-section (1) does not affect the validity of the charge concerned.

193. Responsibility for lodging documents and particulars

(1) The documents and particulars required to be lodged for registration may-

- (a) in the case of a requirement under section 186 of this Act, be lodged by the company concerned or by any person interested in the documents; and
- (b) in the case of a requirement under section 192 of this Act, be lodged by the company concerned.

(2) A person, not being the company concerned, who lodges documents or particulars for registration pursuant to sub-section (1)(a) may recover from the company concerned the amount of any fees properly payable on the registration if he or she meets the requirements of sections 186 to 189 of this Act.

194. Register of charges

(1) The Registrar shall keep a register of all the charges lodged for registration under this Part and

enter in the register, with respect to those charges, the following particulars-

- (a) in a case to which sub-section (2) of section 186 applies, such particulars as are required to be contained in a statement lodged under that sub-section;
- (b) in the case of a requirement under section 192 of this Act, be lodged by the company concerned; and
- (c) in any other case, such particulars as are required by section 187 of this Act to be contained in a statement lodged under that section.

(2) The Registrar shall issue a certificate of every registration, stating the amount secured by the charge, or, in a case referred to in section 191 of this Act, the maximum amount secured by the charge, and the certificate is conclusive proof that the requirements as to registration have been complied with.

195. Endorsement on debenture

(1) A company shall endorse on every debenture issued by it-

- (a) a copy of the certificate of registration of a charge related to the debenture; or
- (b) a statement that the registration of a charge related to the debenture has been effected and the date of the registration.

(2) Sub-section (1) does not apply to a debenture issued by a company before the charge was created in relation to the debenture.

196. Satisfaction and payment

(1) Where, with respect to any registered charge-

- (a) the debt for which the charge was given

has been paid or satisfied in whole or in part; or

- (b) the property or undertaking charged, or any part thereof, has been released from the charge, or has ceased to form part of the company's property or undertaking,

the company may lodge with the Registrar a memorandum of satisfaction, in whole or in part, or a memorandum of the fact that the property or undertaking, or any part thereof, has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be.

(2) Subject to sub-section (3), the Registrar shall enter in the register, particulars of a memorandum lodged with him or her under sub-section (1).

(3) The memorandum shall be supported by evidence sufficient to satisfy the Registrar of the payment, satisfaction, release or cessation referred to in sub-section (1).

197. Rectification of error

The court may, on the application of the company or any person interested, and on such terms and conditions as seem to the court to be just and expedient, order that the time for registration of a charge be extended or that an omission or a misstatement be rectified if it is satisfied that the omission to register the charge within the time required, or that the omission or misstatement of any particular information with respect to the charge or in a memorandum-

- (a) was accidental or due to inadvertence or to some other sufficient cause;
- (b) is not of a nature to affect adversely the position of creditors or shareholders; or
- (c) that, on other grounds, it is just and

equitable to grant relief.

198. Retention of copy

(1) A company shall retain, at its registered office, a copy of every instrument creating a charge that requires registration under this Part but, in the case of a series of debentures, the retention of a copy of one debenture of the series is sufficient for the purposes of this sub-section.

(2) A company shall record 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 the names of the persons entitled thereto.

199. Inspection of copies

The copies of instruments retained by the company pursuant to section 198 of this Act shall be kept open for the inspection of creditors and shareholders of the company, free of charge.

200. Registration of receiver

(1) A person who-

- (a) obtains an order for the appointment of a receiver of any of the property of a company; or
- (b) appoints a receiver of any of the property of a company or enters into possession of any property of a company under any powers contained in any charge,

shall, within ten days from the date of the order, appointment or entry into possession give notice of his or her action to the Registrar.

(2) The Registrar shall, on receiving a notice under sub-section (1), enter the fact in the register of the particulars of charges relating to the company.

- (3) When a person who has-
- (a) has been appointed a receiver of the property of a company ceases to act as receiver; or
 - (c) has entered into possession of any property of a company goes out of possession of that property,

he or she shall, within ten days of his or her having done so, give notice of his or her so doing to the Registrar.

(4) The Registrar shall, on receiving a notice under sub-section (3), enter the notice in the register of the particulars of charges relating to the company.

201. Application of this Part to foreign company

This Part applies to charges created or acquired after the coming into force of this Act by an foreign company, on property in The Gambia in like manner and with like consequences as if the foreign company were a company under this Act, whether or not the foreign company is registered.

CHAPTER IV - MEETINGS AND PROCEEDINGS OF COMPANIES

PART I – TYPES OF MEETINGS

SUB-PART 1 - STATUTORY MEETING

202. Statutory meeting

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

(2) The directors shall, at least twenty-one days before the day on which the statutory meeting is held, forward to every member of the company a copy of the statutory report.

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

- (a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating, in the case of shares partly paid up, the extent to which they are so paid up, and in either case, the consideration for which they have been allotted;
- (b) the total amount of cash received by the company in respect of all the shares allotted and distinguished as specified in paragraph (a) of this sub-section;
- (c) the names, addresses and descriptions of the directors, auditors, managers, if any, and secretary of the company;
- (d) the particulars of any pre-incorporation contract, together with the particulars of any modification or proposed modification of the contract;
- (e) any underwriting contract that has not been carried out and the reasons for not doing so;
- (f) the arrear if any, due on calls from every director; and
- (g) the particulars of any commission or brokerage paid in connection with the issue or sale of shares or debentures to any director or to the manager.

(4) The statutory report shall also contain an abstract of the receipts of the company and of the payments made from them up to a date within seven days of the date of the report, exhibiting, under distinctive headings-

- (a) the receipts of the company from shares

and debentures and other sources;

- (b) the payments made from the receipts and particulars concerning the balance remaining in hand; and
- (c) an account or estimate of the preliminary expenses of the company.

(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 the shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors of the company.

(6) The directors shall, after forwarding the statutory report to every member of the company, cause a copy of the statutory report, certified as required by this section, to be delivered to the Registrar for registration forthwith.

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

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

(9) A member who wishes a resolution to be passed on any matter arising out of the statutory report shall give further twenty-one days notices from the date on which the statutory report was received to the company, of his or her intention to propose the resolution.

(10) The statutory meeting may adjourn, from time to time, and at an adjourned meeting a 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 has the same powers as an original meeting.

203. Non-compliance and penalty.

Without prejudice to the provisions of section 400 of this Act, if a company fails to comply with the requirements of section 202 of this Act, the company and any officer in default commits an offence and is liable to a fine of five hundred dalasis for every day during which the default continues.

SUB-PART 2 - GENERAL MEETING

204. Annual general meeting

(1) A company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as an annual general meeting in the notices calling it.

(2) An annual general meeting shall be held within fifteen months of the date of last annual general meeting, provided that-

- (a) if a company holds its first annual general meeting within eighteen months of its incorporation it need not hold it in that year or in the following year; and
- (b) except for the first annual general meeting, the Registrar may extend the time within which an annual general meeting shall be held, by a period not exceeding three months.

(3) If default is made in holding a meeting of a company in accordance with this section, the Registrar may, on the application of any member of the company call, or direct the calling of, a general meeting of the company call, 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.

(4) The directions that may be given under sub-section (3) of this section shall include a direction that one member of the company present in person or by proxy may apply to the court for an order to take a decision which shall bind all the members.

(5) A general meeting held in pursuance of sub-section (3) shall, subject to any directions of the Registrar, be deemed to be an annual general meeting of the company, but, where a meeting to be held is not held in the year in which the default in holding the company's annual general meeting occurred, the meeting so held, shall not be treated as the annual general meeting for the year in which it is held unless at that meeting the company resolves that it shall be so treated.

(6) Where a company resolves that a meeting shall be treated as its annual general meeting, a copy of the resolution shall, within fifteen days after its passage, be filed with the Registrar.

(7) If default is made-

- (a) in holding a meeting of the company in accordance with sub-section (1), or in complying with any directions of the Registrar under sub-section (3), the company and every officer of the company who is in default commits an offence and is liable to a fine of ten thousand dalasis; and
- (b) in complying with sub-section (6), the company and every officer of the company who are in default is liable to a fine of ten thousand dalasis.

205. Businesses transacted at annual general meeting

A business transacted at annual general meetings

is deemed special business, except-

- (a) the declaration of a dividend;
- (b) the presentation of the financial statements and the reports of the directors and auditors;
- (c) the election of directors in the place of those retiring, the appointment; and
- (d) the fixing of the remuneration of the auditors and the appointment of the members of the audit committee under section 351 of this Act which shall be deemed ordinary business.

SUB-PART 3 - EXTRA-ORDINARY GENERAL MEETING

206. Extra-ordinary general meeting

(1) The board of directors may convene an extraordinary general meeting whenever it deems fit, and if at any time there are not within The Gambia sufficient directors capable of acting to form a quorum, any director may convene an extraordinary general meeting.

(2) An extraordinary general meeting of a company may be requisitioned-

- (a) by any member or members of the company holding, at the date of the requisition, not less than one-tenth of the paid-up capital of the company, as at the date of the deposit carrying the right of voting; or
- (b) in the case of a company not having a share capital, by members of the company representing not less than one-tenth of the total voting rights to all the members having at the said date a right to vote at general meetings of the company.

(3) The directors shall, on receipt of the requisition, forthwith proceed duly to convene an extraordinary general meeting of the company, notwithstanding anything in its articles.

(4) The requisition-

- (a) shall state the objects of the meeting and be signed by the requisitioner or requisitionists and deposited at the registered office of the company; and
- (b) may consist of several documents in like form each signed by one or more requisitionists.

(5) If the directors do not, within twenty-one days from the date of the deposit of the requisition, proceed duly to convene a meeting, the requisitionists, or any one or more of them representing more than one-half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of three months from that date.

(6) A meeting convened under this section by a requisitioner or requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

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

(8) For the purpose of this section, the directors are, in the case of a meeting at which a resolution is to be proposed as a special resolution, deemed not to have duly convened the meeting if they do not give such notice as is required by section 208 of this Act.

(9) A business transacted at an extraordinary general meeting is deemed to be special business.

207. Place of meeting

All statutory and annual general meetings of a public company shall be held in The Gambia.

PART II - NOTICE OF MEETINGS

208. Length of notice for calling meetings

(1) The notice required for all types of general meetings from the commencement of this Act shall be twenty-one days from the date on which the notice was sent out.

(2) A general meeting of a company is, notwithstanding that it is called by a shorter notice than that specified in sub-section (1), deemed to have been duly called if it is so agreed, in the case of-

- (a) a meeting called as the annual general meeting, by all the members entitled to attend and vote at the meeting; and
- (b) any other general meeting, by a majority in number of the members, having a right to attend and vote at the meeting, being a majority together-
 - (i) 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
 - (ii) 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 the members.

209. Contents of notice

(1) The notice of a meeting shall specify the place, date and time of the meeting and the general nature of the business to be transacted at the meeting in sufficient detail to enable those to whom it is given to decide whether to attend or not, and where the meeting is to consider a special resolution, shall set out the terms of the resolution.

(2) In the case of notice of an annual general meeting, a statement that the purpose is to transact the ordinary business of an annual general meeting is deemed to be a sufficient specification that the business is for-

- (a) the declaration of dividends;
- (b) presentation of the financial statements, reports of the directors and auditors;
- (c) the election of directors in the place of those retiring;
- (d) the fixing of the remuneration of the auditors; and
- (e) if the requirements of sections 353 and 354 of this Act are duly complied with, the removal and election of auditors and directors.

(3) A business shall not transacted at a general meeting, unless notice of it has been duly given.

(4) An error or omission in a notice with respect to the place, date, time or general nature of the business of a meeting does not invalidate the meeting, unless the officer of the company responsible for the error or omission acted in bad faith and failed to exercise due care and diligence.

(5) Where an error or omission is accidental, the officer responsible shall effect the necessary correction either before or during the meeting.

210. Persons entitled to notice.

(1) The following persons are entitled to receive notice of a general meeting-

- (a) every member;
- (b) every person on whom the ownership of a share devolves by reason of his or her being a legal representative, receiver or a trustee in bankruptcy of a member;
- (c) every director of the company;
- (d) every auditor for the time being of the company; and
- (e) the secretary of the company.

(2) No person, other than those mentioned in subsection (1), is entitled to receive notices of general meetings.

211. Service of notice

(1) A notice may be given by the company to any member, either personally or by sending it by post to him or her or to his or her registered address, or, if he or she has no registered address within The Gambia, to the address, if any, supplied by him or her to the company for the giving of notice to him or her.

(2) Where a notice is sent by post, service of the notice is deemed to-

- (a) be effected by properly addressing, pre-paying, and posting, a letter containing the notice;
- (b) have been effected, in the case of a notice of a meeting, at the expiration of seven days after the letter containing the same is posted; and
- (c) be effected, in any other case, at the time

at which the letter would be delivered in the ordinary course of post.

(3) A notice may be given by the company to the joint holders of shares by giving the notice to the joint holder first named in the register of members in respect of the share.

(4) A notice may be given by the company to the persons entitled to share in consequence of the death or bankruptcy of a member-

- (a) by sending it through the post in a pre-paid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, within The Gambia supplied for the purpose by the person claiming to be so entitled; or
- (b) until an address has been so supplied under paragraph (a) of this sub-section, by giving the notice in any manner in which the notice might have been given if the death or bankruptcy had not occurred.

(5) In this section, "registered address" means, in the case of a member, any address supplied by him or her to the company for the giving of notice to him or her.

212. Failure to give notice

(1) A failure to give notice of any meeting to a person entitled to receive it invalidates the meeting, unless the failure is an accidental omission on the part of the person or persons giving the notice.

(2) A failure to give notice to a person entitled to receive it due to a misrepresentation or misinterpretation of the provisions of this Act, or of the articles, does not amount to an accidental omission for the purposes of sub-section (1).

213. Additional notice

In addition to the notice required to be given to those entitled to receive it in accordance with the provisions of this Act, a public company shall, at least twenty-one days before a general meeting, advertise a notice of the meeting in at least two daily newspapers with wide circulation in The Gambia.

214. Power of court to order meetings

(1) If for any reason it is impracticable to-

- (a) call a meeting of a company or of the board of directors in any manner in which a meeting of that company or board may be called; or
- (b) conduct a meeting of the company or board in the manner prescribed by the articles or this Act,

the court may, either of its own motion or on the application of any director of the company or of a member or members of the company holding not less than one-tenth of the total voting rights of all the members, order a meeting of the company or board, as the case may be, to be called, held and conducted in such manner as the court thinks fit, and may, where an order is made, give such ancillary or consequential directions as it thinks expedient.

(2) The directions that may be given under subsection (1) shall include a direction that-

- (a) a member or the members of the company present in person or by proxy and holding one-tenth of the total voting rights of all the member, in the case of a meeting of the company; and
- (b) one director, in the case of the Board,

may apply to the court for an order to take a

decision which shall bind all the member, provided that the member or director shall notify the company that he or she intends to take the action.

(3) A meeting called, held and conducted in accordance with an order under sub-section (1), is for all purposes be deemed to be a meeting of the company or of the board of directors duly called, held and conducted.

PART III - VOTING

215. Procedure of voting

(1) At a general meeting of the company, a resolution put to the vote shall be decided on a show of hands, unless a poll is demanded by-

- (a) the chairperson, where he or she is a shareholder or a proxy;
- (b) at least three members present in person or by proxy;
- (c) any member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or
- (d) a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

(2) Unless a poll is so demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company, are conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, the resolution.

216. Right to demand poll.

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

- (a) 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) making ineffective a demand, for a poll on any such question, made by any of the persons mentioned in section 205 of this Act.

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

(3) Notwithstanding section 215 of this Act and sub-sections (1) and (2), there is no right to demand a poll on the election of members of the audit committee under section 351 of this Act.

217. Voting on a poll

(1) On a poll 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.

(2) Except as provided in sub-section (4), if a poll is duly demanded, it shall be taken in such manner as the chairperson directs, and the result of the poll is deemed to be the resolution of the meeting at which the poll was demanded.

(3) In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or

at which the poll is demanded, shall be entitled to a second or casting vote.

(4) A poll demanded on the election of a chairperson or on a question of adjournment shall be taken forthwith, and on any other question, shall be taken at such time as the chairperson of the meeting directs, and any business other than that on which a poll has been demanded may be proceeded with pending the taking of the poll.

218. Right of attendance at general meeting.

(1) Subject to section 219 of this Act, a member has a right to attend any general meeting of the company in accordance with the provisions of section 60 of this Act.

(2) In the case of joint holders of shares, the vote of the senior joint holder who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders, and, for this purpose, seniority shall be determined by the order in which the names stand in the register of members.

(3) A member of unsound mind, or in respect of whom an order has been made by a court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his or her committee, receiver, curator bonis, or other person in the nature of a committee, receiver or curator bonis appointed by that court, and the committee, receiver, curator bonis or other person may vote by proxy.

219. Attendance at meeting.

A person who is entitled to receive notice of a general meeting of the company is entitled to attend the meeting as provided by section 218 of this Act.

220. Objections as to qualification to vote.

An objections shall not be raised to the qualification of a voter except at the meeting or adjourned meeting at which the vote objected to is given or

tendered and every vote not disallowed at the meeting is valid for all purposes, and any objection made in due time shall be referred to the chairperson of the meeting, whose decision shall be final and conclusive.

221. 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 appointment to attend and vote instead of a member also has the same right as the member to speak at the meeting:

(2) Unless the articles otherwise provide, sub-section (1) does not apply in the case of a company not having a share capital.

(3) There shall appear in a notice calling a meeting of a company having a share capital, with reasonable prominence, a statement that-

(a) a member entitled to attend and vote is entitled to appoint a proxy or, where that is allowed, two or more proxies, to attend and vote instead of him or her; and

(b) a proxy need not be a member of the company.

(4) If default is made in complying with sub-section (3) as respects any meeting, every officer of the company who is in default commits an offence and is liable on conviction to a fine of twenty thousand dalasis.

(5) A provision contained 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, 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) If, for the purpose of a meeting of a company, invitations to appoint a person, or one of a number of persons specified in the invitations, as proxy, are issued at the company's expense to some only of the members entitled to be sent notice of the meeting and to vote by proxy at the meeting, every officer of the company who knowingly and wilfully authorises or permits the issue of the invitations as aforesaid commits an offence and is liable on conviction to a fine of five thousand dalasis.

(7) An officer is not liable under sub-section (6) 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) A vote given in accordance with the terms of an instrument of proxy is valid, notwithstanding-

- (a) the previous death or insanity of the principal;
- (b) the revocation of the proxy or of the authority under which the proxy was executed; or
- (c) the transfer of the share in respect of which the proxy is given,

if no intimation in writing of the death, insanity, revocation or transfer as aforesaid has been received by the company before the commencement of the meeting or adjourned meeting at which the proxy is used.

(9) The instrument appointing a proxy shall be in writing-

- (a) under the hand of the appointer or of his or her attorney duly authorised in writing; or

- (b) if the appointer is a corporation, either under seal, or under the hand of an officer or attorney duly authorised.
- (10) The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a certified copy of that power or authority shall be deposited at the registered office or head office of the company or at such other place within The Gambia as is specified for that purpose in the notice convening the meeting-
- (a) not less than forty-eight hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote; or
 - (b) in the case of a poll, not less than twenty four hours before the time appointed for the taking of the poll,.
- (11) An instrument of proxy shall not be treated as valid if there is a default under sub-section (10).
- (12) This section applies to meetings of any class of members of a company as it applies to general meetings of the company.

222. Corporation representation at meeting of companies, etc.

- (1) A corporation, whether a company within the meaning of this Act or not, may, if it is –
- (a) a member of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company;
 - (b) a creditor, including a debenture holder, of another corporation, being a company within the meaning of this Act, by

resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any rules made under this Act, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorised, as provided in sub-section (1) of this section, is entitled to exercise the same powers on behalf of the corporation which he or she represents as the corporation might exercise if it were an individual shareholder, creditor or holder of debentures of that other company.

223. Quorum

(1) Unless otherwise provided in the articles, no business shall be transacted at any general meeting, unless a quorum of members is present at the time when the meeting proceeds to business.

(2) Unless otherwise provided in the articles, the quorum for the meeting of a company shall be one third of the total number of members of the company or twenty-five members, whichever is less, present in person or by proxy.

(3) Where the number of members referred to in sub-section (2) is not a multiple of three, then the number nearest to one-third, and where the number of members is six or less, the quorum shall be two members.

(4) For the purpose of determining a quorum, all members or their proxies shall be counted.

(5) Where there is a quorum at the beginning, but no quorum later due to some shareholders leaving for what appears to the chairperson to be sufficient reasons, the meeting shall be adjourned a date not later than two weeks from the date of the adjourned meeting, and if there is no quorum still at the adjourned meeting, the members present shall then

be the quorum and their decision shall bind all shareholders and where only one member is present, he or she may seek direction of the court to take a decision.

(6) Where a member or members withdraw from the meeting for what appears to the chairperson to be insufficient reasons and for purpose of reducing the quorum, and in fact the quorum is no longer present, the meeting may continue with the number present, and their decision shall bind all the shareholders and where only one member is present, he or she may seek direction of the court to take a decision.

PART IV - RESOLUTIONS

224. Resolutions

(1) A resolution is an ordinary resolution when it has been passed by a simple majority of votes cast by such members of the company as, being entitled to do so, vote in person or by proxy at a general meeting.

(2) Subject to sub-section (3), a resolution is a special resolution when it has been passed by not less than three-fourths of the votes cast by such members of the company as, being entitled to do so, vote in person or by proxy at a general meeting of which twenty one days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given.

(3) If it is so agreed by a majority in number of the members having the right to attend and vote at a meeting referred to in sub-section (2), being a majority-

- (a) together holding not less than ninety five *per cent* in nominal value of the shares giving that right; or
- (b) 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 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.

(4) At a 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, conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(5) In computing the majority of 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.

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

(7) A company may, by its articles, provide that any matter not required by the articles or by this Act to be passed by a special resolution shall be passed by an ordinary resolution.

225. Written resolutions

(1) A written resolution signed by all the members if a private company entitled to attend and vote is as valid and effective as if passed at a general meeting.

(2) Subject to the provisions of sub-section (1) of this section, all resolutions shall be passed at general meetings and shall not be effective unless so passed.

226. Circulation of members' resolution.

(1) Subject to the provisions of this section, a company shall, on the requisition in writing of such

number of members as is specified in this section and, unless the company otherwise resolves) at the expense of the requisitionist-

- (a) give, to members of the company entitled to receive notice of the next annual general meeting, notice of any resolution submitted by a member which may properly be moved and is intended to be moved at that meeting; and
 - (b) circulate, to members entitled to have notice of any general meeting sent to them, any statement of not more than one thousand words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting, and where the statement has more than one thousand words, circulate a summary of it.
- (2) The number of members necessary for a requisition under sub-section (1) is -
- (a) any one or more members representing not less than one-twentieth of the total voting rights of all the members having, at the date of the requisition, a right to vote at the meeting to which the requisition relates; or
 - (b) not less than one hundred members holding shares in the company on which there has been paid up an average sum, per member, of not less than five thousand dalasis.
- (3) Notice of a resolution shall be given, and a statement shall be circulated, to members of the company entitled to have notice of the meeting sent to them, by serving a copy of the resolution or statement on each member in any manner permitted for service of notice of the meeting, and notice of the resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner

permitted for giving notice of meetings of the company.

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

(5) A company is not be bound under this section to give notice of a resolution or to circulate a 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 thereto.

(6) 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 this sub-section, is deemed to have been properly deposited for the purposes thereof.

(7) A company is also not be bound under this section to circulate a statement if, on the application of the company or of any 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, in which case the court may order the company's costs on an application under this section to be paid in whole or in part by the requisitioners, notwithstanding that the requisitioners are not party to the application.

(8) Notwithstanding anything in the company's articles, the business which may be dealt with at an annual general meeting includes any resolution of which notice is given in accordance with this section and for the purposes of this sub-section, notice is deemed to have been so given, notwithstanding the accidental omission in giving it to one or more members.

(9) In the event of any default in complying with the provisions of this section, every officer of the company who is in default commits an offence and is liable on conviction to a fine of five thousand dalasis.

227. Resolutions requiring special notice

(1) Where by a provision contained in this Act, special notice is required of a resolution, the resolution is not effective unless-

- (a) 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 to be moved; and
- (b) the company gives its members notice of the resolution 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 by advertisement in a newspaper having wide circulation in The Gambia or in any other mode allowed by the articles, not less than twenty-one days before the meeting.

(2) If, after notice of the intention to move a 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, is deemed to have been properly given.

228. Registration of certain resolutions and agreements

(1) Subject to sub-section (8) (b) of section 32 of this Act, a printed copy of every resolution or agreement to which this section applies shall, within fifteen days after the passing or making of the resolution or agreement, as the case may be, be forwarded to the Registrar.

(2) Where, pursuant to the provisions of sections 30 to 34 of this Act, a company, by special resolution, alters the provisions of its memorandum and the Registrar is satisfied that the alteration is not in compliance with the applicable provisions of those sections, he or she-

(a) may refuse to file a copy of the resolution in his or her records; and

(b) shall notify the company accordingly.

(3) A person aggrieved by the Registrar's refusal under sub-section (2) may appeal to the court within twenty-one days from the receipt of the notification.

(4) A copy of every resolution or agreement as is mentioned in sub-section (1) 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.

(5) 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 agreed to, would not have been effective for their purpose, unless, as the case may be, they had been passed as

special resolutions; or

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

(6) If a company fails to comply with sub-section (1) or (4), the company and every officer of the company who is in default commits an offence and is liable on conviction, in the case of-

- (a) sub-section (1), to a fine of five thousand dalasis; and
- (b) sub-section (4), to a fine of fifty dalasis for each copy in respect of which default is made.

(7) For the purposes of sub-section (6), a liquidator of the company is deemed to be an officer of the company

229. Effect of resolutions 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 deemed to have been passed on any earlier date.

PART V - MISCELLANEOUS MATTERS RELATING TO MEETINGS AND PROCEEDINGS

230. Adjournment.

(1) A chairperson-

- (a) may, with the consent of a meeting at which a quorum is present; and
- (b) shall if so directed by the meeting,

adjourn the meeting from, time to time and from place to place, but no business shall be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(2) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting, but otherwise it shall not be necessary to give any notice of an adjournment or of a business to be transacted at an adjourned meeting.

(3) If, within one hour from the time appointed for the meeting, a quorum is not present, the meeting if convened on the requisition of members shall not hold, but in any other case, it shall stand adjourned to the same day in the next week, or to such other day as the chairman and in his or her absence, the directors may direct.

(4) If a meeting stands adjourned under sub-section (3) of this section, any two or more members present at the place and time to which it so stands adjourned shall form a quorum and their decision shall bind all shareholders, and where only one member is present, he or she may seek the direction of the court to take decision.

231. Powers and duties of the chairperson of the general meeting

(1) The chairperson of the board of directors shall preside as chairperson at every general meeting of the company, or if there is no chairperson, or if he or she is not present within one hour after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be chairperson of the meeting

(2) If at any meeting no director is willing to act as chairperson or if no director is present within one hour after the time appointed for holding the meeting, the members present shall choose one of their number to be chairperson of the meeting.

(3) The duties and powers of the chairperson includes the duty to -

- (a) preserve order and the power to take such measures as are reasonably necessary to do so;
- (b) ensure that proceedings are conducted in a regular manner;
- (c) ensure that the true intention of the meeting is carried out in resolving any issue that arises before it;
- (d) ensure that all questions that arise are promptly decided; and
- (e) act *bona fide* in the interest of the company.

(4) The chairperson shall cast his or her vote *bona fide* in the interest of the company as a whole, provided that if he or she is also a shareholder, he or she may cast it in his or her own interest.

(5) The chairperson has power to adjourn a meeting in accordance with section 230 (1) of this Act.

232. Minutes of proceedings and effects

- (1) A company shall cause minutes -
- (a) of all proceedings of general meetings.
 - (b) all proceedings at meetings of its directors;
and
 - (c) of the meetings of managers,

to be entered in books kept for that purpose.

(2) The minute if purporting to be signed by the chairperson of the meeting at which the proceedings were held, or by the chairperson of the next succeeding meeting, is *prima facie* evidence of the proceedings.

(3) Where minutes have been made, in accordance with the provisions of this section, of the proceedings at a general meeting of the company or meeting of directors or managers, then, until the contrary is proved, the meeting is deemed to have been duly held and convened, and all proceedings had at the meeting to have been duly had, and all appointments of directors, managers or liquidators are deemed to be valid.

(4) If a company fails to comply with the provisions of sub-section (1), the company and every officer of the company who is in default commits an offence and is liable on conviction to a fine of five thousand dalasis.

233. Inspection of minute books and copies

(1) The books containing the minutes of proceedings of any general meeting of a company held on or after the commencement of this Act, shall be kept at the registered office of the company, and shall during business hours, subject to such reasonable restrictions as the company may by its articles or in general meeting impose but so that no less than six hours in each day be allowed for inspection, be open to inspection by members without charge.

(2) A member is entitled to be furnished within seven days after receipt of his or her request in that behalf to the company, with a copy of the minutes certified by the secretary at a charge not exceeding five dalasis for every hundred words.

(3) If an inspection required under this section is refused or if a copy required under this section is not sent within the proper time, the company and every officer of the company who is in default commits an offence and is liable on conviction in respect of each offence to a fine of five thousand dalasis.

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

234. Class meetings

The provisions of this Part apply to any class meetings except where expressly excluded by this Act.

CHAPTER VI - DIRECTORS AND SECRETARY OF THE COMPANY

235. Directors

(1) In this Act “directors” means the persons who are appointed to direct and manage the business of a company.

(2) A person, not being an appointed director of a company-

- (a) who holds himself or herself out or knowingly allows himself or herself to be held out as a director of that company, or
- (b) on whose directions or instructions the appointed directors are accustomed to act, is subject to the same duties and liabilities as if he were an appointed director of the

company.

(3) Nothing contained in sub-section (2) of this section is deemed to derogate from the duties and liabilities of the appointed directors, including the duty not to act on the directions or instructions of any other person.

(4) In this section, a person is deemed to hold himself or herself out, or to be held out, as a director of a company, if he or she is described as director of the company irrespective of whether the description is qualified or otherwise.

(5) If a person, not being an appointed director of a company, holds himself or herself out, or knowingly allows himself or herself to be held out, as a director of a company, or if the company holds out that person, or knowingly allows that person to hold himself or herself out, as a director of the company, that person or the company, as the case may be, commits an offence.

(6) A person who, or a company that, commits an offence under sub-section (5) is liable on conviction to a fine not exceeding thirty thousand dalasis or a term of imprisonment not exceeding three years.

236. Number of directors

(1) A company incorporated-

- (a) after the coming into force of this Act shall have at least two directors; and
- (b) prior to the coming into force of this Act shall, within six months of the coming into force of this Act, have at least two directors.

(2) Notwithstanding sub-section (1), a private company shall have at least one director.

(3) Subject to sub-section (2), where the number of directors of a company is less than two contrary to sub-section (1) and the company continues to carry on business, the company and every officer of the

company commits an offence and is liable on conviction to a fine of one thousand dalasis for every day during which the company carries on business from the date the number of directors is reduced to less than two.

(4) An officer, who knows that a company is carrying on business with fewer than two directors is jointly and severally liable for the debts and liabilities of the company incurred during the period of contravention of this section.

(5) A person other than an individual, shall not be a director of a company.

(6) Subject to this Act, the number of directors of a company shall be fixed by, or in accordance with, the company's articles.

(7) Within fifteen days after a change is made among its directors, a company shall send to the Registrar a notice in the prescribed form setting out the change, and the Registrar shall file the notice.

(8) An interested person, or the Registrar, may apply to the court for an order to require a company to comply with sub-section (1), and the court may so order and make any further order it thinks fit.

237. Secretary

(1) A company shall have a secretary and may have one or more assistant secretaries who, or each of whom-

(a) shall be appointed by the directors, or if provision is made in the articles for the company for the appointment, then in accordance with that provision; and

(b) may be an individual, a corporation or a firm.

(2) If a company carries on business for more than a month without a secretary, 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 two hundred dalasis for every day during which the company carries on business at the end of one month during which the company remained without a secretary.

(3) A secretary does not owe fiduciary duties to the company, but where the secretary is acting as its agent, he or she owes fiduciary duties to it, and is then liable to the company where he or she-

- (a) makes secret profits;
- (b) lets his or her duties conflict with his or her personal interests; or
- (c) uses confidential information which he or she obtained from the company for his or her benefit.

(4) The duties of a secretary include the following-

- (a) attending the meeting of the company, the board of directors and its committees, rendering all necessary secretarial services in respect of the meeting and advising on compliance by the meetings with the applicable rules and regulations;
- (b) maintaining the registers and other records required to be maintained by the company under this Act;
- (c) rendering proper returns and giving notification to the Registrar required under this Act; and
- (d) carrying out such administrative and other secretarial duties as directed by the director, or the company.

(5) The secretary shall not, without the authority of the board, exercise any powers vested in the directors.

238. Acts of secretary

A thing required or authorized to be done by or in relation to the secretary, may, if the office is vacant, or if for any other reason the secretary is not capable of acting, be done-

- (a) by or in relation to an assistant secretary; or
- (b) if there is no assistant or deputy secretary capable of acting, by or in relation to an officer of the company authorized generally or specially in that behalf by the directors of the company.

239. Acts done by person in dual capacity

A provision requiring or authorizing a thing to be done by or in relation to a director and the secretary is not satisfied by its being done by or in relation to the same person acting both as director and as, or in the place of, the secretary.

240. Validity of acts of directors

An act of a director or officer of a company is valid notwithstanding any defect in his or her qualification or appointment.

241. Appointment of directors

(1) A person shall not be appointed a director of a company unless he or she gives his or her consent in writing to the appointment.

(2) Subject to this section and sections 242 and 243 of this Act, the appointment of directors shall be regulated by the company's articles and except otherwise provided in the articles-

- (a) the following rules apply to the retirement and appointment of directors of a public company-
 - (i) at the first general meeting of the company all the directors shall retire

- from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office;
- (ii) the directors to retire in every year are those who have been longest in office since their last election, but, as between persons who became directors on the same day, those to retire are, unless they otherwise agree among themselves, to be determined by lot,
 - (iii) a director appointed to the office of managing director shall not, while holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors,
 - (iv) a retiring director is eligible for re-election,
 - (v) the company may, at the annual general meeting at which a director retires as specified in this section, fill the vacated office by electing a person to the office, and in default, the retiring director is, if offering himself or herself for re-election, deemed to have been re-elected, unless at the meeting it is expressly resolved not to fill the vacated office or unless a resolution for the re-election of the director had been put to the meeting and lost,
 - (vi) no person, other than a director retiring at the meeting, is, unless recommended by the directors, eligible for election to the office of director at any general meeting unless not less than three or more than twenty-eight days before the date

appointed for the meeting there has been left at the registered office of the company notice in writing signed by a member entitled to attend and vote at the meeting of his or her intention to propose the person for election, and also notice in writing signed by that person of his or her willingness to be elected, and

(vii) on any increase or decrease in the number of directors, the company may by ordinary resolution determine in what rotation the increased or decreased number is to retire from office; and

(b) the appointment and removal of directors of a private company are, subject to sections 236 and 241 to 246 of this Act, to be regulated by the articles.

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

(4) A resolution moved in contravention of this section is void, whether or not its being so moved was objected to at the time.

(5) For the purposes of this section, a resolution approving appointments or nominating persons for appointment are to be treated as a resolution for appointment.

(6) Sub-sections (3), (4) and (5) do not apply where the company's articles provide for cumulative voting.

(7) The articles of a company may provide for the appointment of a director or directors by any class of shareholders, debenture holders or creditors.

(8) Notwithstanding the provisions of the article, a causal vacancy in the number of directors may be filled by-

- (a) the continuing directors, irrespective of the fact that their number may have been reduced below that fixed as the necessary quorum of directors; or
- (b) by an ordinary resolution of the company in a general meeting.

(9) Where the directors exercise their power to fill a vacancy under sub-section (4), they shall observe the rules in section 275 of this Act and shall not appoint a person to be a director, unless they have taken reasonable steps to satisfy themselves that he or she is a person of integrity and suitable to be a director of the company.

(10) Where the causal vacancy filled is one which, under the company's articles, should be filled by an appointment by any class of shareholders, debenture holders or creditors, the director appointed by the continuing directors or by an ordinary resolution of the company in a general meeting, as the case may be, shall cease to hold office as soon as any other director is appointed in accordance with the articles.

242. Disqualification of director

(1) A person is not qualified to be a director of a company if he or she-

- (a) is less than 18 years of age;
- (b) is of unsound mind and has been so found by a court in The Gambia or elsewhere; or
- (c) has the status of a bankrupt or an insolvent.

(2) If any of the persons specified in paragraph (a) or (c) of sub-section (1) acts as a director of a

company or knowingly allows himself or herself to be appointed a director, he or she commits an offence.

(3) A person who commits an offence under sub-section (2) is liable on conviction to a fine not exceeding thirty thousand dalasis or imprisonment for a term not exceeding six months.

(4) Where a company appoints a person as director in contravention of this section, the company, together with every director of the company who is in default is liable to a fine not exceeding ten thousand dalasis.

(5) A company's articles may add to the list of disqualified persons in sub-section (1), classes of persons who are incompetent to be directors of the company.

243. Director's share qualifications

Unless the articles of a company otherwise provide, a director of the company need not hold shares issued by the company.

244. Termination of office of director

(1) A director of a company ceases to hold office when he or she-

- (a) dies or resigns;
- (b) is removed from office in accordance with section 245 of this Act; or
- (c) becomes disqualified under section 242 of this Act.

(2) The resignation of a director of a company becomes effective at the time his or her written resignation is sent to the company or at the time specified in the resignation, whichever is later.

245. Removal of directors

(1) Subject to paragraph (g) of section 248 of this Act, the shareholders of a company may-

- (a) by ordinary resolution at a special meeting; or
- (b) by ordinary resolution at a special meeting, remove a director from office.

(2) Where the holders of a class or series of shares of a company have an exclusive right to elect or appoint one or more directors, a director so elected or appointed may only be removed by an ordinary resolution at a meeting of the shareholders of that class or series of shares.

(3) Subject to paragraphs (b) to (e) of section 249 of this Act, a vacancy created by the removal of a director may be filled at the meeting of the shareholders at which the director is removed, or, if the vacancy is not so filled, it may be filled pursuant to section 241 of this Act.

246. Right to notice

(1) A director of a company is entitled to receive notice of, and to attend and be heard at every meeting of shareholders.

(2) A director who-

- (a) resigns or receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing him or her from office; or
- (b) receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed or elected to fill the office of director, whether because of his or her resignation or removal, or because his or her term of office has expired or is about to expire,

may submit to the company a written statement giving the reasons for his or her resignation or the reasons why he or she opposes any proposed action or resolution.

(3) The company shall send a copy of the statement referred to in sub-section (2) to the Registrar and to every shareholder entitled to receive notice of a meeting referred to in sub-section (1).

(4) A company or person acting on its behalf does not incur any liability by reason only of circulating a director's statement in compliance with sub-section (3) of this section.

247. Alternative directors

(1) A meeting of the shareholders of a company may, by ordinary resolution-

- (a) elect a person to act as a director in the alternative to a director of the company; or
- (b) authorize the directors to appoint such alternative directors as are necessary for the proper discharge of the affairs of the company.

(2) An alternative director has all the rights and powers of the director for whom he or she is elected or appointed in the alternative, except that he or she is not entitled to attend and vote at any meeting of the directors otherwise than in the absence of that other director.

248. Cumulative voting

Where the articles of a company provide for cumulative voting-

- (a) the articles shall require a fixed number, and not a minimum and maximum number of directors;
- (b) a shareholder who is entitled to vote at an election of directors-

-
- (i) has the right to cast a number of votes equal to the number of votes attached to the shares held by him or her, multiplied by the number of directors to be elected, and
 - (ii) may cast all his or her votes in favour of one candidate, or distribute them among the candidates in any manner;
 - (c) a separate vote of shareholders shall be taken with respect to each candidate nominated for director, unless a resolution is passed unanimously permitting two or more persons to be elected by a single resolution;
 - (d) if a shareholder votes for more than one candidate without specifying the distribution of his or her votes among the candidate, he or she distributes his or her votes equally among the candidates for whom he or she votes;
 - (e) if the number of candidates nominated for directors exceeds the number of positions to be filled, the candidates who receive the least number of votes shall be eliminated until the number of candidates remaining equals the number of positions to be filled;
 - (f) a director ceases to hold office at the close of the first annual meeting of shareholders following his or her election;
 - (g) a director shall not be removed from office if the votes cast against his or her removal would be sufficient to elect him or her and those votes could be voted cumulatively at the election at which the same total number of votes were cast and the number of directors required by

the articles were then elected;

- (h) the number of directors required by the articles shall not be decreased if the votes cast against the motion to decrease would be sufficient at an election at which the same total number of votes were cast and the number of directors required by the articles were then being elected.

249. Restraining fraudulent persons from managing companies

(1) Where-

- (a) a person is convicted, whether in The Gambia or elsewhere of an offence involving fraud or dishonesty or an offence in connection with the promotion, formation or management of a body corporate;
- (b) a person is adjudicated a bankrupt or an insolvent, whether in The Gambia or elsewhere; or
- (c) it appears that a person has committed a criminal offence, whether convicted or not, in relation to a body corporate or of a fraud or breach of duty in relation to a body corporate,

the court, on its own motion or on the application of any of the persons referred to in sub-section (2) of this section, may order that that person shall not, without the leave of the court, be a director of or in any way, whether directly or indirectly, be concerned or take part in the management of a company or act as auditor, receiver or liquidator of a company for such periods as may be specified in the order.

(2) An application for an order under this section may be made by the Registrar, or by the Official Trustee or Administrator under the Insolvency Act,

or by any person who is or has been a member or creditor of the company or by the liquidator of a body corporate.

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(3) A person intending to apply for an order under this section shall give not less than twenty-eight days written notice of his or her intention to the person against whom the order is sought, and to the Registrar if the application is made by some person other than the Registrar.

(4) On the hearing of an application under this section, the applicant, the person against whom the order is sought, the Registrar, the Official Trustee and the Administrator may appear, and give evidence and call witnesses and draw the attention of the court to any relevant matters.

(5) A person against whom an order is made under this section who intends to apply for leave to act as a director or in the management of a company shall give at least twenty-eight days written notice of his or her intention to the Registrar, and the Registrar, the Official Trustee, the Administrator, and any person on whose application the order was made or who appeared on the hearing at which the order was made, may appear and give evidence and call witnesses and draw the attention of the court to any relevant matters.

(6) Where an order is made or leave is granted under this section, the court making the order or granting leave shall forward a copy to the Registrar who shall cause a summary of the order or leave granted to be published in the *Gazette*.

(7) The Registrar shall maintain a register of orders made under this section and shall enter in the register particulars of each order and any leave granted and the register shall be open to the inspection of any person on payment of the prescribed fee for each inspection.

(8) A person who contravenes a provision of this section, commits an offence and is liable on conviction to a fine not exceeding fifty thousand

dalasis or imprisonment for a term not exceeding three years.

250. Residence of directors

(1) At least one director of every company shall at all times be ordinarily resident in The Gambia.

(2) Where a wilful breach of this section occurs, the company and every director of the company who is in default is liable to a fine not exceeding five thousand dalasis.

(3) Subject to sub-sections (4) and (5), the rights of the company concerned under or arising out of a contract made during a period when no director of the company is ordinarily resident in The Gambia is not enforceable by action or other legal proceedings.

(4) The company may apply to the court for relief against the disability imposed by sub-section (3) and the court may, on being satisfied that it is just and equitable to grant relief, grant such relief either generally or as respect any particulars contract and on such conditions as the court may impose.

(5) Where a person commences an action against the company to enforce his or her rights in respect of a contract, the company may enforce in that action by way of counterclaim, set off or otherwise, such rights as it may have against that person in respect of the contract.

(6) Nothing contained in this section prejudices the rights of a party as against the company, or any other person in respect of a contract entered into with the company.

251. Executive directors

Unless the company's articles otherwise provide-

- (a) a director may hold any other office or place of profit under the company, other than the office of auditor, in conjunction

with the office of director;

- (b) the directors may, from time to time, appoint one or more of their number to such other office, for such period and on such terms as they may, determine and, subject to the terms of any particular case, may revoke the appointment;
- (c) subject to compliance with section 253 of this Act, the holder of the office may be remunerated by way of salary, commission, share of profits, participation in pension and retirement schemes, or partly in one way and partly in another, as the directors may determine; and
- (d) in exercising their powers under this Act, the directors shall observe the rules laid down in section 275 of this Act and, in particular, in determining the amount of remuneration, shall satisfy themselves that the amount of the remuneration is reasonably related to the value of the services of the holder of the office.

252. Appointment of managing director

(1) The directors of a company may appoint from their number a managing director or a committee of directors and delegate to the managing director or committee the powers of the directors on such terms and with such restriction as they think fit.

(2) Notwithstanding sub-section (1), a managing director or a committee of directors of a company shall not-

- (a) fill a vacancy among the directors or in the office of auditors;
- (b) issue shares except in the number and on the terms authorized by the directors;
- (c) declare dividends;

- (d) pay a commission to a person for purchasing or agreeing to purchase shares of the company, or procuring or agreeing to procure purchasers for those shares;
- (e) approve a management proxy circular;
- (f) approve any financial statements; and
- (g) adopt, amend or repeal by-laws.

(3) The appointment of a managing director shall be automatically determined if the holder of the office ceases for any cause to be a director and, unless the agreement entered into in any particular case provides otherwise, the determination shall not constitute a breach of contract with the company.

253. Remuneration

(1) Subject to sub-section (2) and to its articles or by-laws, or any unanimous shareholder agreement, the directors of a company may fix the remuneration of the directors, officers and employees of the company.

(2) Where the directors fix remuneration under sub-section (1), they shall submit them for approval by ordinary resolution of the company.

254. Restrictions for issuing of loans by company

(1) When circumstances prejudicial to a company exist, the company or any company with which it is affiliated shall not, except as permitted by section 255 of this section, directly or indirectly, give financial assistance by means of a loan, guarantee or otherwise to-

- (a) a shareholder, director, officer or employee of the company or affiliated company, or an associate of any of them, for any purpose; or

- (b) a person for the purpose of, or in connection with, a purchase of a share issued or to be issued by the company or a company with which it is affiliated.

(2) Circumstances prejudicial to the company exist in respect of financial assistance mentioned in subsection (1) when there are reasonable grounds for believing that-

- (a) the company is unable or would, after giving the financial assistance, be unable to pay its liabilities as they become due; or
- (b) the realizable value of the company's assets, excluding the amount of any financial assistance in the form of a loan and in the form of assets pledged or encumbered to secure a guarantee, would, after giving the financial assistance, be less than the aggregate of the company's liabilities and stated capital of all classes.

255. Permitted loans

A company may give financial assistance to a person by means of a loan, guarantee or otherwise-

- (a) in the ordinary course of business, if the lending of money is part of the ordinary business of the company;
- (b) on account of expenditures incurred or to be incurred on behalf of the company;
- (c) to a holding body corporate, if the company is a wholly-owned subsidiary of the holding body corporate;
- (d) to a subsidiary body corporate of the company; and
- (e) to employees of the company or any of its affiliates-

- (i) to enable or assist them to purchase or erect residential accommodation for their own occupation,
- (ii) in accordance with a plan for the purchase of shares of the company or any of its affiliates to be held by a trustee, or
- (iii) to enable or assist them to improve their education or skills, or to meet reasonable medical expenses.

256. Payments to directors for loss office or on transfer of the company's undertaking

(1) A company shall not make, to a director or former director of the company or an associated company, any payment-

- (a) by way of compensation for loss of office in the company or an associated company; or
- (b) as consideration for or in connection with his or her retirement from office,

without particulars with respect to the proposed payment, including the amount to be paid, being disclosed to the members of the company and the proposal being approved by an ordinary resolution of the company.

(2) A payment shall not be made, whether by the company or otherwise, to a director or former director of a company in connection with the transfer for the whole or any part of the undertaking or property of the company or an associated company, whether the payment is expressed to be way of compensation for loss of office or otherwise, unless particulars with respect to the proposed payment, including the amount to be paid, have been disclosed to the members of the company and the proposal approved by an ordinary resolution of the company.

(3) Where a payment is made to a director or former director of a company or an associated company in contravention of sub-sections (1) and (2), the payment received is deemed to have been received in trust for the company.

257. Payments to directors in connection with takeover bids.

(1) Where an offer is made for the acquisition of any shares of a company on the terms that the shares are available for acceptance by-

- (a) all the shareholders of the company or all the holders of shares of the class to which the offer relates; or
- (b) the holders of shares which, together with any shares already owned beneficially by the person making the offer or by a body corporate in which he or she is the

controlling share-holder, confer the right to exercise or control the exercise of not less than one-third of the voting power at a general meeting of the company,

and in connection with the offer it is proposed that a shall be made or payment has been made to a director or former director of the company or an associated company, over and above the receipt by him or her in respect of any shares in the company held by him or her of the same price as may be receivable by other holders of the shares of the same class, that director shall take all reasonable steps to secure that particulars of the payment are included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(2) A director or other person is liable to a fine not exceeding five thousand dalasis if, in the case of-

- (a) the director, he or she fails to take reasonable steps as required under sub-section (1) of this section; and
- (b) the other person who has been properly required by a director to include in or send with a notice the particulars of payment as required under sub-section (1) of this section, he or she fails to do so.

(3) Unless-

- (a) the requirements of sub-section (1) are complied with; and
- (b) the making of the payment is, before the transfer of any shares in pursuance of the offer, approved by an ordinary resolution-
 - (i) agreed to by all the holders of the shares to which the offer relates, or
 - (ii) passed at a meeting, summoned for the purpose by notice complying with sub-section (7) of this section,

of holders of the shares at which neither the director concerned nor the holders of any shares in which he or she is beneficially interested, either directly or indirectly, voted on the resolution,

the payment, referred to in sub-section (1), shall be distributed in the manner provided by sub-section (4).

(4) Subject to sub-sections (5) and (6), where a payment is to be distributed in accordance with the provisions of sub-section (3) -

- (a) the person making or proposing to make the payment; and
- (b) the director or former director to whom it is made or proposed to be made,

are jointly and severally liable to distribute the payment among the persons who have sold their shares as a result of the offer in proportion to the number of shares sold by them, and if the director or former director receives any payment he or she shall hold that payment on trust for those persons.

(5) The expenses incurred in distributing a payment under this section shall be borne by the persons liable to make the distribution and not retained out of the payment.

(6) If, in proceedings instituted prior to the expiration of three months from the first transfer of any shares in pursuance of an offer under this section, the court awards or approves the payment of damages to a director or former director for breach of a valid service agreement, the amount of the damages, but not of any cost or expenses incurred in connection with the proceedings, shall be paid to or retained by the director or former director out of the payment and only the balance remaining, if any, is distributable as required by this section.

(7) The notice of a general meeting summoned for the purposes of sub-section (3) -

- (a) shall be convened, held and conducted as nearly as may be in accordance with the provisions of this Act and the company's articles relating to general meetings of the company; and
- (b) state that, if the resolution approving the payment is not passed, the payment will be distributable among the persons who have sold their shares in pursuance of the offer except to the extent that the court may award or approve the payment to the director or former director concerned of damages for breach of a valid service agreement.

(8) An offer referred to in sub-section (1) shall not be made conditional on approval of a payment or proposed payment to a director or former director and, if an offer is expressed to be made subject to a condition, the condition is void.

(9) For the purposes of paragraph (b) of sub-section (1) -

- (a) when the offer is made by a body corporate, shares are deemed to be owned beneficially by the body corporate if they are owned beneficially by it or by any of its associated companies or by its controlling shareholders; and
- (b) a person is deemed to be a controlling shareholder of a body corporate if-
 - (i) the body corporate or its directors are accustomed to act in accordance with the directions or instruction of that person or his or her nominee, or
 - (ii) at a general meeting of the body corporate, that person is entitled

to exercise or control the exercise of one-third or more of the voting power.

258. Supplemental provisions to sections 256 and 257

(1) For the purposes of sections 256 and 257 of this Act and of this section, "payment" includes a benefit or advantage whether in cash or in kind.

(2) Sections 256 and 257 of this Act do not render unlawful, or apply to the payment of, damages awarded or approved by a competent court for breach of a valid service agreement or the *bona fide* payment of a pension or superannuating benefit in respect of past services in accordance with a valid service agreement.

(3) For the purposes of sub-section (4) of section 257 of this Act and of sub-section (2) of this section, a service agreement-

- (a) is not deemed to be valid if it was entered into in contemplation of a transfer as is referred to in sub-section (2) of section 256 of this Act or of an offer as is referred to in sub-section (1) of section 257 of this Act; and
- (b) unless the contrary is proved, is deemed to have been entered into in contemplation of the transfer or offer if it is made within one year before or contemporaneously with, or at any time after the date of the agreement to transfer or the making of the offer.

(4) For the purposes of sections 256 and 257 of this Act, if-

- (a) a payment, not being remuneration payable in accordance with section 253 of this Act, is received by a director or former director within a period of one year before, or two years after the date of the

agreement to make such transfer as is referred to in sub-section (2) of section 256 of this Act, or of the date of making such an offer as is referred to in sub-section (1) of section 257; and

- (b) the company or the person to whom the transfer or by whom the offer was made was privy to the making of the payment,

the payment is deemed to have been received by him or her in connection with the transfer or offer, unless he or she proves that the payment would have been received by him or her whether or not the transfer or offer was made.

259. Indemnifying directors

(1) Except in respect of an action by or on behalf of a company or body corporate to obtain a judgment in its favour, a company may indemnify-

- (a) a director or an officer of the company;
- (b) a former director or former officer of the company; or
- (c) a person who acts or acted at the company's request as a director or officer of a body corporate of which the company is or was a shareholder or creditor,

and his or her legal representative, against all costs, charges and expenses (including an amount paid to settle an action or satisfy a judgment) reasonably incurred by him or her in respect of any civil, criminal or administrative action or proceeding to which he or she is made a party by reason of being, or having been, a director or officer of that company or body corporate.

(2) Sub-section (1) of this section does not apply unless the director or officer to be so indemnified-

- (a) acted honestly and in good faith with a view to the best interests of the company;

and

- (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, had reasonable grounds for believing that his or her conduct was unlawful.

260. Indemnifying persons for derivative action

A company may, with the approval of the court, indemnify a person referred to in section 259 of this Act in respect of an action-

- (a) by or on behalf of the company or body corporate to obtain a judgment in its favour; and
- (b) to which he or she is made a party by reason of being or having been a director or an officer of the company or body corporate,

against all costs, charges and expenses reasonably incurred by him or her in connection with the action, if he or she fulfils the conditions set out in sub-section (2) of section 259 of this Act.

261. Right to indemnity

Notwithstanding anything in sections 259 and 260 of this Act, a person described in section 259 is entitled to indemnity from the company in respect of all costs, charges and expenses reasonably incurred by him or her in connection with the defence of any civil, criminal or administrative action or proceeding to which he or she is made a party by reason of being, or having been, a director or officer of the company or body corporate, if the person seeking indemnity-

- (a) was substantially successful on the merits in his or her defence of the action or proceeding;

- (b) qualified in accordance with the standards set out in section 259 or 260 of this Act; and
- (c) is fairly and reasonably entitled to indemnity.

262. Insurance of directors

A company may purchase and maintain insurance for the benefit of any person referred to in section 259 of this Act against any liability incurred by him or her in his or her capacity as a director or officer of the company.

263. Court approval of indemnity

(1) A company or person referred to in section 259 of this Act may apply to the court for an order approving an indemnity under section 260 or 261 of this Act and the court may so order and make any further order it thinks fit.

(2) A company or person making an application under sub-section (1) of this section shall give the Registrar notice of the application, and the Registrar may appear and be heard in the matter.

(3) On an application under sub-section (1) of this section, the court may order notice to be given to any interested person and that person may appear and be heard in the matter.

264. Register of directors and secretaries

(1) A company shall keep at its registered office a register of its directors and secretaries which shall contain, in respect of each director-

- (a) in the case of an individual-
 - (i) a statement of his or her present forename and surname, any former forename or surname, his or her usual residential address and his or her business occupation (if

any),

- (ii) particulars of other directorships held by him or her,
- (iii) who is, or who is to perform the function of, managing director, a statement to that effect; and

(b) in the case of a corporation, its corporate or firm name and registered or principal officers.

(2) The register kept by a particular company need not contain, pursuant to paragraph (b) of subsection (1), particulars of directorships held by a director in a company of which the particular company is a wholly owned subsidiary.

(3) The register shall contain, with respect to the secretary and each assistant secretary-

- (a) in the case of an individual, a statement of his or her present forename and surname, any former forename or surname, and his or her usual residential address;
- (b) in the case of a corporation, a statement of its corporate name and registered or principal office; and
- (c) in the case of a firm, a statement of the name and principal office of the firm.

(4) The company shall, within a period of fourteen days from the occurrence of any change -

- (a) among its directors or in its secretary, or
- (b) in the particulars contained in the register,

send to the Registrar a notification in the prescribed form of the change and of the date on which it occurred, and a notification of a person having become a director or secretary, or one of joint

secretaries, of the company shall contain a consent, signed by that person, to act in the relevant capacity.

(5) The register shall be open to the inspection of any member of the company without charge and of any other person on payment of such fee as may be prescribed.

(6) A company shall also keep a register showing as respects each director of the company (not being its holding company) the number, description and amount of any shares in or debentures of the company or any body corporate, being-

- (a) the company's subsidiary or holding company; or
- (b) 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 the holder (whether on payment or not).

(7) The register kept under sub-section (6) need not include shares in any body corporate which is the wholly-owned subsidiary of another body corporate, and for this purpose, a body corporate is deemed to be the wholly owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees.

(8) Where shares or debentures fall to be or cease to be recorded in the register in relation to any director by reason of a transaction entered into after the commencement of this Act and while he or she is a director, the register shall also show the date of, and price or other consideration for, the transaction provided that where there is an interval between the agreement for the transaction, and its completion, the date shall be that of the agreement.

(9) 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.

(10) The company shall not, by virtue of anything done for the purposes of this section, be affected with notice of, or put on inquiry as to the rights of any person in relation to any shares or debentures.

(11) The register referred to in sub-section (6) shall, subject to the provisions of this section, be kept at the company's registered or head office and shall be open to inspection during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day is allowed for inspection) as follows -

- (a) during the period following 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.

(12) In computing the fourteen days and the three days mentioned in sub-section (11), any day which is a Saturday or Sunday or a public holiday shall be disregarded.

(13) Without prejudice to the rights conferred by sub-section (11), the Registrar may, at any time, request for the production to him or her of a copy of the register, or any part of the register.

(14) 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.

(15) If default is made in complying with sub-section (1), (4), (6) or (8), or if any inspection required

under this section is refused, or any copy required there under is not sent within a reasonable time, the company and every officer of the company who is in default commits an offence and is liable on conviction to a fine of five thousand dalasis.

(16) If an inspection required under this section is refused, the court may, by order compel an immediate inspection of the register.

(17) For the purposes of this section-

- (a) any person in accordance with whose directions or instructions, the directors of a company are accustomed to Act are deemed to be a director of the company; and
- (b) a director of a company is deemed to hold or to have any interest or right in or over, any shares or debentures if a permanent representative of the body corporate, other than the company, holds them or has that interest or right in or over them, and either-
 - (i) that permanent representative is accustomed to act in accordance with 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.

265. Directors' meetings and organizational matters

(1) Unless the articles or by-laws of a company otherwise provide, the directors of the company may meet at any place, and on such notice as the by-laws require.

(2) Subject to the articles, a majority of the number

of directors or minimum number of directors required by the articles constitutes a quorum at a meeting of directors, and, notwithstanding any vacancy among the directors, a quorum of directors may exercise all the powers of the directors.

(3) A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of directors, and any director, being a member of a committee established under section 268 of this Act may, and the secretary on the requisition of any such director shall, at any time summon a meeting of the committee.

(4) After the issue of a certificate of incorporation of a company, a meeting of the directors of the company shall be held at which the directors may-

- (a) adopt forms of share certificate and corporate records-
- (b) make bye-laws;
- (c) authorize the issue of shares;
- (d) appoint officers;
- (e) appoint officers;
- (f) appoint an auditor to hold office until the first annual meeting of the shareholders;
- (g) make banking arrangements; or
- (h) transact any other business.

(5) A subscriber or a director may call a meeting of directors referred to in sub-section (1) by giving by post not less than seven clear days' notice of the meeting to each director and stating in the notice the time and place of the meeting.

(6) Sub-section (1) does not apply to a company to which a certificate of amalgamation has been issued under section 545 of this Act.

266. Notice and waiver

(1) It is not necessary to give notice of a meeting of directors or of a committee of directors to any director, for the time being absent from The Gambia, unless the director who is absent from The Gambia provides an address to which a notice of a meeting of directors or of a committee of directors may be sent.

(2) A notice of a meeting of the directors of a company may specify any matter that is to be dealt with at the meeting, but, unless the articles of the company otherwise provide, the notice need not specify the purpose of or the business to be transacted at the meeting.

(3) A director may, in any manner, waive a notice of a meeting of directors, and attendance of a director at a meeting of directors is a waiver of notice of the meeting by the director except when he or she attends the meeting for the express purpose of objecting to the transaction of a business on the ground that the meeting is not lawfully called.

(4) Notice of an adjourned meeting of directors need not be given if the time and place of the adjourned meeting is announced at the original meeting.

267. Telephone participation

(1) Subject to the articles of a company, a director may, if all the directors of the company consent, participate in a meeting of directors of the company or of a committee of the directors by means of such telephone or other communication facilities as permit all person participating in the meeting to hear one another.

(2) A director who participates in a meeting of directors by such means as are described in subsection (1), is, for the purposes of this Act, present at the meeting.

268. Establishment of committees

(1) The directors of a company may, in the discharge of their functions, establish committees consisting of such member or members of their body as they think fit, and may delegate any of their powers to those committees.

(2) A committee established under sub-section (1) shall, in the exercise of the powers delegated to it, conform to any regulations that may be imposed on it by the directors.

(3) The quorum necessary for the transaction of business of a committee of directors shall be fixed by the directors.

269. Election of chairman

(1) The directors or a committee of directors of a company may elect a chairperson of their meetings and determine the period for which he or she is to hold office, but where a chairperson is not elected, or where at a meeting the chairperson is not present within five minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be chairperson of the meeting.

(2) A question arising at a meeting of the directors or a committee of directors shall be decided by a majority of votes and where there is an equality of votes the chairperson shall have a casting vote.

(3) Voting by proxy at meetings of directors or committees of directors shall not be permitted.

270. Effect of directors' resolution

(1) When a resolution in writing is signed by all the directors entitled to vote on that resolution at a meeting of directors or committee of directors-

- (a) the resolution is as valid as if it had been passed at a meeting of directors or a committee of directors; and

- (b) the resolution satisfies all the requirements of this Act relating to meetings of directors or committees of directors.

(2) A copy of every resolution referred to in sub-section (1) shall be kept with the minutes of the proceedings of the directors or committee of directors.

271. Dissenting to resolution

(1) A director who is present at a meeting of the directors or of a committee of directors consents to a resolution passed or action taken at that meeting, unless he or she-

- (a) requests that his or her dissent be or his or her dissent is entered in the minutes of the meeting;
- (b) sends his or her written dissent to the secretary of the meeting before the meeting is adjourned; or
- (c) sends his or her dissent by registered post or delivers it to the registered office of the company immediately after the meeting is adjourned.

(2) A director who votes for, or consents to, a resolution may not dissent under sub-section (1).

(3) A director who was not present at a meeting, at which a resolution was passed or an action was taken, is presumed to have consented to the resolution thereto unless, within seven days after the director becomes aware of the resolution, he or she

- (a) causes his or her dissent to be placed with the minutes of the meeting; or
- (b) sends his or her dissent by registered post or delivers it to the registered office of the company.

272. Minutes of directors' meetings

(1) A company shall cause minutes of the proceedings of meetings of its directors and any committee of directors to be entered in a book kept for that purpose.

(2) Where minutes of a meeting are signed by the chairperson of the meeting at which the proceedings took place or of the next succeeding meeting, those minutes shall be *prima facie* evidence of the proceedings.

(3) Where minutes of a meeting are recorded in accordance with this section then, until the contrary is proved, the meeting are deemed to be duly convened, held and conducted and all appointments of directors are deemed to be valid.

(4) Where a company fails to comply with subsection (1), the company together every officer of the company who is in default is liable to a fine not exceeding five thousand dalasis.

273. Restricted powers of directors

If the powers of a director of a company to manage the business and affairs of the company are in whole or in part restricted by the articles of the company, the directors have all the rights, powers and duties of the director to the extent that the articles do not restrict those powers, but the directors are thereby relieved of their duties and liabilities to the extent that the articles restrict their powers.

274. Bye-law powers

(1) Unless the articles, or unanimous shareholder agreement otherwise provide, the directors of a company may, by resolution, make, amend, or repeal any bye-laws for the regulation of the business or affairs of the company.

(2) The directors of a company shall submit a bye-

law, or any amendment or repeal of a bye-law made under sub-section (1) of this section to the shareholders of the company at the next meeting of shareholders after the making, amendment or repeal of the bye-law, and the shareholders may, by ordinary resolution, confirm, amend or reject the bye-law, amendment or repeal.

(3) A bye-law or any amendment or repeal of a bye-law-

- (a) is effective from the date of the resolution of the directors making, amending or repealing the bye-law until the bye-law, amendment or repeal-
 - (i) is confirmed, amended or rejected by the shareholders pursuant to sub-section (2) of this section, or
 - (ii) ceases to be effective pursuant to sub-section (4) of this section; and
- (b) if confirmed or amended by the shareholders, continues in effect in the form in which it was confirmed or amended.

(4) When a bye-law, or an amendment or a repeal of a bye-law is not submitted to the shareholders as required by sub-section (2), or is rejected by the shareholders, the bye-law, amendment or repeal ceases to be effective.

(5) When a bye-law, or an amendment or a repeal of a bye-law is not submitted to the shareholders as required by sub-section (2), or is rejected by the shareholders, the bye-law, amendment or repeal ceases to be effective.

275. Duty of care

(1) A director or an officer of a company in exercising his or her powers and discharging his or her duties shall-

- (a) act honestly and in good faith with a view

to the best interests of the company; and

- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) In determining what the best interests of a company, a director shall have regard to the interests of the company's employees in general as well as to the interests of its shareholders.

(3) The duty imposed by this section on the directors of a company-

- (a) is owed by them to the company alone; and
- (b) is enforceable in the same way as any other fiduciary duty owed to a company by its directors.

(4) Information about the business or affairs of a company shall not be disclosed by a director or officer of the company except-

- (a) for the purposes of the exercise or performance of his or her functions as a director or officer;
- (b) for the purposes of any legal proceedings;
- (c) pursuant to the requirements of an enactment; or
- (d) when authorized by the company to do so.

(5) A director or an officer of a company shall comply with this Act and with the articles and bye-laws of the company, and any unanimous shareholder agreement relating to the company.

(6) Subject to a shareholder agreement which restricts the powers of the directors to manage the business and affairs of the company, no provision in a contract, the articles of a company, its bye-laws

or any resolution, relieves a director or officer of the company from the duty to act in accordance with this Act or relieves him or her from liability for a breach of this Act.

(7) The failure to take reasonable care in accordance with the provisions of this section is ground for an action for negligence and breach of duty.

(8) A director is individually responsible for the actions of the board in which he or she participated, and the absence from the board's deliberations, unless justified, does not relieve a director of the responsibility.

(9) The same standard of care in relation to the director's duties to the company is required for both executive and non-executive directors, and additional liability and benefit may arise under the master and servant law in case of an executive director if there is an express or implied contract to that effect.

(10) The directors are trustees of the company's moneys, properties and their powers and as such shall-

- (a) account for all the moneys over which they exercise control and refund any moneys improperly paid away; and
- (b) exercise their powers honestly in the interest of the company and all the shareholders, and not in their own or sectional interests.

(11) A director may, when acting within his or her authority and the power of the company, be regarded as an agent of the company under Part IV of Chapter II of this Act.

276. Conflicts of duty and interest and prohibition of secret profit.

(1) Notwithstanding any provision in the company's articles, a director shall not, without the consent of

the company in accordance with section 277 of this Act, place himself or herself in a position in which his or her duty to the company conflicts or may conflict with his or her personal interests or his or her duties to other persons

(2) A director shall not, in particular, without the consent referred to in sub-section (1) of this section-

- (a) use, for his or her own advantage, any money or property of the company or any confidential information or special knowledge obtained by him or her in his or her capacity of director;
- (b) be interested directly or indirectly, otherwise than merely as a shareholder or debenture holder in a public company, in any business which competes with that of the company; or
- (c) be personally interested, directly or indirectly, in any contract or other transaction entered into by the company except as provided by section 278 of this Act.

(3) A director shall not accept a bribe, a gift, or commission either in cash or kind from any person or a share in the profit of that person in respect of any transaction involving his or her company in order to introduce his or her company to deal with the person.

(4) Where the gift is made after the transaction has been completed in a form of unsolicited gift as a sign of gratitude, the director may be allowed to keep the gift, provided he or she declares it before the board and that fact shall also appear in the minutes book of the director.

(5) In all cases concerning secret benefits, the plea that the company benefited or that the gift was accepted in good faith shall be no defence.

277. Consent of company

(1) For the purposes of section 276, the company is not deemed to have consented unless, after full disclosure of all material facts, including the nature and extent of any interests of the directors, the transaction concerned has been specifically authorized by an ordinary resolution of the company which either have been-

- (a) agreed to by all the members of the company entitled to attend and vote at a general meeting; or
- (b) passed at a general meeting at which neither the director concerned nor the holders of any shares in which he or she is beneficially interested, either directly or indirectly, have voted as members on such resolution.

(2) Subject to sub-section (3), consent in accordance with sub-section (1), may be given either before or after the occurrence of the transaction to which it relates.

(3) A resolution of the company ratifying a transaction or series of related transactions which have already taken place is not effective for the purposes of sub-section (1) of this section, unless it was passed not later than fifteen months after the date when the transaction or first of those transactions took place.

278. Interest in contracts

- (1) A director or officer of a company who-
- (a) is a party to a material contract or proposed material contract with the company, or
 - (b) is director or an officer of a body, or has a material interest in a body, that is a party to a material contract or proposed material contract with the company,

shall disclose in writing to the company or request, to have entered in the minutes of meetings of directors, the nature and extent of his or her interest.

(2) The disclosure required by sub-section (1) shall be made, in the case of-

(a) a director of a company-

- (i) at the meeting at which a proposed contract is first considered;
- (ii) where the director was not then interested in a proposed contract, at the first meeting after he or she becomes so interested,
- (iii) where the director becomes interested after a contract is made, at the first meeting after he or she becomes so interested, or
- (iv) where a person who is interested in a contract later becomes a director of the company, at the first meeting after he or she becomes a director; and

(b) an officer of a company who is not a director-

- (i) after he or she becomes aware that the contract or proposed contract is to be considered, or has been considered, forthwith at a meeting of directors of the company,
- (ii) where the officer becomes interested after a contract is made, forthwith after he or she becomes so interested, or
- (iii) where a person who is interested in a contract later becomes an officer of the company, forthwith

after he or she becomes an officer.

(3) If a contract is one that, in the ordinary course of the company's business, would not require approval by the directors or share-holders of the company, a director or officer of the company shall-

- (a) disclose in writing to the company; or
- (b) request to have entered in the minutes of meetings of director,

the nature and extent of his or her interest forthwith after the director or officer becomes aware of the contract or proposed contract.

(4) A director referred to in sub-section (1) of this section may vote on a resolution to approve a contract that he or she has an interest in, if the contract-

- (a) is an arrangement by way of security for money loaned to, or obligations undertaken by, him or her for the benefit of the company or an affiliate of the company;
- (b) is a contract that relates primarily to his or her remuneration as director, officer, employee or agent of the company or an affiliate of the company;
- (c) is a contract for indemnity or insurance under sections 259 and 260 of this Act;
- (d) is a contract with an affiliate of the company; or
- (e) is a contract other than one referred to in paragraphs (a) to (d) of this sub-section.

(6) In the case of a contract described in paragraph (e) of sub-section (5) of this section resolution is not valid, unless notice of the nature and extent of the director's interest in the contract is declared and disclosed in reasonable detail to the shareholders of

the company and the resolution is approved by less than two-thirds of the votes.

279. Interest declaration

For the purpose of section 278 of this Act, a general notice to the directors of a company by a director or an officer of the company declaring that he or she is a director or officer of, or has a material interest in, another body, and is to be regarded as interested in any contract with that body is a sufficient declaration of interest in relation to the contract.

280. Avoidance of nullity

A contract between a company and one or more of its directors or officers, or between a company and another body of which a director or officer of the company is a director or officer, or in which he or she has a material interest, is neither void nor avoidable by reason of-

- (a) that relationship; or
- (b) a director with an interest in the contract is present at, or is counted to determined the presence of a quorum at, a meeting of directors or a committee of directors that authorized the contract,

if the director or officer disclosed his or her interest in accordance with sub-section (2), (3) or (4) of section 278 or section 279 of this Act, as the case may be, and the contract was approved by the directors or the shareholders and was reasonable and fair to the company at the time it was approved.

281. Setting aside contract

When a director or officer of a company fails to disclose, in accordance with section 278 or 279 of this Act, his or her interest in a contract made by the company, the court may, on the application of the company or a shareholder of the company set aside the contract on such terms as the court thinks fit.

282. Designation of offices

Subject to this Act and to the articles or bye-laws of a company or any unanimous share-holder agreement-

- (a) the directors of the company may designate the offices of the company, appoint as officers persons of full capacity, specify their duties and delegate to them powers to manage the business and affairs of the company, except powers to do anything referred to in sub-section (2) of section 252 of this section;
- (b) a director may be appointed to any office of the company; and
- (c) two or more offices of the company may be held by the same person.

283. Directors' borrowing powers

(1) Unless the articles or bye-laws of, or any unanimous shareholder agreement relating to, the company otherwise provide, the directors of the company may, without authorization of the shareholders-

- (a) borrow money on the credit of the company;
- (b) issue, re-issue, sell or pledge debentures of the company;
- (c) subject to section 254 of this Act, give a guarantee on behalf of the company to secure performance of an obligation of any person; and
- (d) mortgage, charge, pledge, or otherwise, create to secure any obligation of the company or any other person, a security interest in all or any property of the company that is owned or subsequently acquired by the company.

(2) Notwithstanding sub-section (2) of section 252 and paragraph (a) of section 281 of this Act, unless the articles or bye-laws of, or any unanimous shareholder agreement relating to, a company otherwise provide, the directors of the company may by resolution delegate the powers mentioned in sub-section (1) of this section to a director, a committee of directors or any officer of the company.

284. Liability for breach of duty under sections 275 or 276

Where a director commits a breach of his or her duties under section 275 or 276 of this Act-

- (a) the director together with any other person who knowingly participated in the breach is liable to compensate the company for any loss it suffers as a result of the breach;
- (b) the director shall account to the company for any profit made by him or her as a result of the breach; and
- (c) a contract or other transaction entered into between the director and the company in breach of those duties may be rescinded by the company.

285. Liability for share issue

Directors who vote for or consent to a resolution authorizing the issue of a share for a consideration other than money are jointly and severally liable to the company to make good any amount by which the consideration received is less than the fair equivalent of the money that the company would have received if the share had been issued for money on the date of the resolution.

286. Liability for other acts.

(1) Directors who vote for, or consent to, a resolution authorising-

- (a) a purchase, redemption or other acquisition of shares;
- (b) a commission;
- (c) a payment of a dividend;
- (d) financial assistance; or
- (e) a payment of an indemnity contrary to sections 301 or 546 to 555,

are jointly and severally liable to restore to the company any amounts so distributed or paid and not otherwise recovered by the company.

(2) An action to enforce a liability imposed under this section or to section 285 of this Act may not be commenced after two years from the date of a resolution authorising the action complained of.

287. Contribution for judgment

director who has satisfied a judgment founded on a liability under section 285 or 286 of this Act is entitled to contribution from the other directors who voted for or consented to the lawful act on which the judgment was founded.

288. Enforcement of contract

A contract made by a company contrary to section 254 of this Act may be enforced by the company or by a lender for value in good faith without notice of the contravention.

289. Recovery by action

(1) A director who is liable under section 286 of this Act may apply to the court for an order compelling a shareholder or other recipient to pay or deliver to the director any money or property that was paid or distributed to the shareholder or other recipient contrary to this Act.

(2) In connection with an application under subsection (1) of this section, the court may, if it is satisfied that it is equitable to do so-

- (a) order a shareholder or other recipient to pay or deliver to a director any money or property that was paid or distributed to the shareholder or other recipient contrary to this Act;
- (b) order a company to return or issue shares to a person from whom the company has purchased, redeemed or otherwise acquired shares; or
- (c) make any further order it thinks fit.

290. Defence to liability

A director of is not liable-

- (a) under section 285 of this Act, if he or she did not know and could not reasonably have known that the share was issued for a consideration less than the fair equivalent of the money that the company would have received if the share had been issued for money; and
- (b) under section 275 or 286 of this Act, if he or she relies in good faith on-
 - (i) financial statements of the company represented to him or her by an officer of the company, or
 - (ii) a report of a legal practitioner, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by him or her.

291. Duties of director in connection with sales or purchases of the company's securities

(1) If a director in his or her capacity as a director-

- (a) acquires any special information which may substantially affect the value of the shares or debentures of the company or any associated company; or
- (b) sells those shares or debentures without disclosing such information to the seller or purchaser thereof,

the purchase or sale is avoidable at the option of the seller or purchaser within twelve months after the date of the agreement to sell or buy.

(2) For the purposes of this section, any shares or debentures bought or sold is deemed to have been bought or sold by a director if his or her interest in the shares or debentures is such as to require recording in relation to him or her in any register to be maintained in accordance with this Act, unless it is proved that the sale or purchase was not made-

- (a) by him or her on his or her instructions or advice; or
- (b) on the instructions or advice of any other person to whom he or she had imparted any special information affecting the value of the shares or debentures obtained by him or her in his or her capacity of director.

(3) This section does not prejudice the right of the company to proceed against a director for breach of section 276 of this Act.

292. Prohibition of assignment of office

A provision in the articles or an agreement purporting to empower a director or other officer to assign his or her office to another person and a

purported assignment of the office is void.

293. Substantial property transactions involving directors, etc

(1) Subject to the exceptions provided by sub-section (1) of this section, a company shall not enter into an arrangement by which -

- (a) a director of the company or its holding company, or a person connected with the director, acquires or is to acquire one or more non-cash assets of the requisite value from the company; or
- (b) the company acquires or is to acquire one or more non-cash assets of the requisite value from the 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 sub-section (1), 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 twenty thousand dalasis but (subject to that) exceeds one hundred thousand dalasis or twenty *per cent* of the company's asset value, that is-

- (a) except in a case falling within paragraph (b) of this sub-section, the value of the company's net assets determined by reference to the accounts prepared and laid under Chapter VII of this Act in respect of the last preceding year in respect of which the accounts were so laid; and
- (b) where no accounts have been so prepared and laid before that time, the

amount of the company's called-up share capital.

(3) For purposes of this section, a shadow director shall be treated as a director.

(4) An approval is not required to be given under this section by a body corporate unless it is a company within a meaning of this Act, or if it is a wholly-owned subsidiary of a body corporate.

(5) This section does not apply to an arrangement for the acquisition of a non-cash asset if -

(a) 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) the arrangement is entered into by a company which is being wound-up, unless the winding-up is a member's voluntary winding-up.

(6) Sub-section (1) (a) does not apply to an arrangement whereby 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 capacity as a member.

(7) An arrangement entered into by a company in contravention of this section and any transaction entered into in pursuance of the arrangement, whether by the company or any other person, is avoidable at the instance of the company, unless one or more of the conditions specified in sub-section (8) is satisfied.

(8) The conditions are that -

(a) restitution of any money or other asset which is the subject matter of the arran-

gement or transaction is no longer possible or the company has been indemnified in pursuance of this section by any other person for the loss or damage suffered by it; or

- (b) any right acquired *bona fide* for value and without actual notice of the contravention by any person who is 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 assets 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.

(9) If an arrangement is entered into with a company by a director of the company or its holding company or a person connected with him or her in contravention of this section, that director and the person so connected, and any other director of the company who authorises the arrangement or any transaction entered into in pursuance of such an arrangement, commits an offence and are liable -

- (a) to account to the company for any gain which they have made directly or indirectly by the arrangement or transaction; and
- (b) jointly and severally with any other person liable under this sub-section to indemnify the company for any loss or damage resulting from the arrangement or transaction.

(10) Sub-section (9) shall be without prejudice to any liability imposed otherwise than by that sub-section, and is subject to sub-sections (11) and (12), and the liability under sub-section (9) arises whether or not the arrangement or transaction entered into has been avoided in pursuance of sub-

section (7).

(11) If 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 this section, that director is not liable under sub-section (9) if he or she shows that he or she took all reasonable steps to secure the company's compliance with this section.

(12) In any case, a person so connected and any other director as is mentioned in sub-section (9) shall not be so 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.

(13) 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 or husband, child or step-child, including illegitimate 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, children or step 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 any children or step-children, or the body corporate; or
- (d) a person acting in his or her capacity as partner of that director or of any person who, by virtue of paragraphs (a), (b) or (c)

of this sub-section, is connected with that director.

CHAPTER VI - PROTECTION OF MINORITY AGAINST ILLEGAL AND OPPRESSIVE CONDUCT

PART I - ACTION BY OR AGAINST THE COMPANY

294. Interpretation of this Part

For the purposes of this Part-

“complainant” means-

- (a) a shareholder or debenture holder, or a former holder of a share or debenture of a company or any of its affiliates;
- (b) a director or an officer or former director or officer of a company or any of its affiliates;
- (c) the Registrar; or
- (d) any other person who, in the discretion of the court, is a proper person to make an application under this Part;

“member” includes-

- (a) the personal representative of a deceased member; and
- (b) a person to whom shares have been transferred or transmitted by operation of law.

295. Only company may sue for wrong or ratify irregular conduct

Subject to the provisions of this Act, where an irregularity has been committed in the course of a company's affairs or any wrong has been done to the company, only the company can sue to remedy that wrong and only the company can ratify the irregular conduct.

296. Protection of minority: injunction and declaration in certain cases

Without prejudice to the rights of members under this Part or any other provisions of this Act, the court, on the application of the any member, may by injunction or declaration restrain the company from the following -

- (a) entering into any transaction which is illegal or *ultra vires*;
- (b) purporting to do by ordinary resolution any act which by its articles or this Act requires to be done by special resolution;
- (c) any act or omission affecting the applicant's individual rights as a member;
- (d) committing fraud on either the company or the minority shareholders; and
- (e) from doing any particular act, where-
 - (i) the directors fail to take appropriate action to redress the wrong done,
 - (ii) a company meeting cannot be called in time to be of practical use in redressing a wrong done to the company or to minority shareholders, and
 - (iii) the directors are likely to derive a profit or benefit, or have profited or benefited from the negligence or from their breach of duty.

297. Personal and representative action

(1) Where a member institutes a personal action to enforce a right due to him or her personally, he or she is not entitled to any damages but to a declaration or injunction to restrain the company or the directors from doing a particular act.

(2) Where a member institutes a representative action on behalf of himself or herself and other affected members to enforce any rights due to them, he or she is not entitled to any damages but to a declaration or injunction to restrain the company or directors from doing a particular act.

(3) Where a member institutes an action under this section, the court may award cost to him or her personally whether or not his or her action succeeds.

(4) In any proceedings by a member under section 296 of this Act, the court may, if it thinks fit order that the member shall give security for cost.

298. Derivative actions

(1) Subject to sub-section (2), a complainant may, for the purpose of prosecuting, defending or discontinuing an action on behalf of a company, apply to the court for leave to bring an action in the name and on behalf of the company or any of its subsidiaries, or intervene in an action to which the company or any of its subsidiaries is a party.

(2) An action shall not be brought, and an intervention in an action shall not be made under sub-section (1) unless the court is satisfied that-

- (a) the complainant has given reasonable notice to the directors of the company or its subsidiary of his or her intention to apply to the court under that sub-section if the directors of the company or its subsidiary do not bring, diligently or defend, or discontinue, the action;
- (b) the complainant is acting in good faith; and
- (c) it appears to be in the interests of the company or its subsidiary that the action be brought, prosecuted, defended or discontinued.

299. Powers of the court to make orders

In connection with an action brought or intervened in under section 298 of this Act, , the court may at any time, make any order it thinks fit, including, an order-

- (a) authorising the complainant, the Registrar or any other person to control the conduct of the action;
- (b) giving directions for the conduct of the action;
- (c) directing that any amount adjudged payable by a defendant in the action be paid, in whole or in part, directly to former and present share-holders or debenture holders of the company or its subsidiary, instead of to the company or its subsidiary; or
- (d) requiring the company or its subsidiary to pay reasonable legal fees incurred by the complainant in connection with the action.

300. No security for cost

A complainant is not required to give security for costs in any application made or action brought or intervened in under section 298 of this Act.

301. Power of court to restrain oppression

(1) A complainant may apply to the court for an order under this section.

(2) If, on an application under sub-section (1), the court is satisfied that in respect of a company or any of its affiliates-

- (a) an act or omission of the company or any of its affiliates effects a result;
- (b) the business or affairs of the company or any of its affiliates are or have been carried on or conducted in a manner; or

- (c) the powers of the directors of the company or any of its affiliates are or have been exercised in a manner,

that is oppressive or unfairly prejudicial to, or that unfairly disregards the interests of, any share-holder or debenture holder, creditors, director or officer of the company, the court may make an order to rectify the matters complained of.

(3) The court may, in connection with an application under this section, make any interim or final order it thinks fit, including an order-

- (a) restraining the conduct complained of;
- (b) appointing a receiver or receiver-manager;
- (c) to regulate a company's affairs by amending its articles or bye-laws, or creating or amending a unanimous shareholder agreement;
- (d) directing an issue or exchange of shares or debentures;
- (e) appointing directors in place of, or in addition to, all or any of the directors then in office;
- (f) directing a company, subject to sub-section (6), or any other person, to purchase shares or debentures of a holder thereof;
- (g) directing a company, subject to sub-section (6) or any other person, to purchase shares or debentures of a holder thereof;
- (h) varying or setting aside a transaction or contract to which a company is a party, and compensating the company or any other party to the transaction or contract;
- (i) requiring a company, within a time

specified by the court, to produce to the court or an interested person financial statements in the form required by this Act or an accounting in such other form as the court may determine;

- (j) compensating an aggrieved person;
 - (k) directing rectification of the registers or other records of a company under section 304 of this Act;
 - (l) winding up and dissolving the company;
 - (m) directing an investigation of the company under this Act to be made; or
 - (n) requiring the trial of any issue.
- (4) If an order made under this section directs the amendment of the articles or bye-laws of a company, no other amendment to the articles or bye-laws shall be made without the consent of the court, until the court otherwise orders.
- (5) A shareholder is not entitled to dissent if an amendment to the articles is effected under this section.
- (6) A company shall not make a payment to a shareholder under paragraph (f) or (g) of subsection (3) if there are reasonable grounds for believing that-
- (a) the company is unable or would, after the payment, be unable to pay its liabilities as they become due; or
 - (b) the realisable value of the company's assets would thereby be less than the aggregate of its liabilities.
- (7) An applicant under this section may apply in the alternative for an order that the company be wound up by the court under Part III of Chapter IX of this Act.

302. Staying action

(1) An application made or an action brought or intervened in under this Part may not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to the company or its subsidiary has been or might be approved by the shareholders of the company or its subsidiary, but evidence of approval by the shareholders may be taken into account by the court in making an order under section 300 or 301 of this Act.

(2) An application made or an action brought or intervened in under this Part shall not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the court given on such terms as the court thinks fit, and if the court determines that the interests of a complainant could be substantially affected by the stay, discontinuance, settlement or dismissal, the court may order any party to the application or action to give notice to the complainant.

303. Interim costs

In an application made or an action brought or intervened in under this Part, the court may at any time order the company or its subsidiary to pay to the complainant interim costs, including legal fees and disbursements, but the complainant may be held accountable for those interim costs on the final disposition of the application or action.

304. Rectification of records

(1) If the name of a person is alleged to be or to have been wrongly entered or retained in, or wrongly deleted or omitted from, the registers or other records of a company, the company, a shareholder or debenture holder of the company, or any aggrieved person, may apply to the court for an order that the registers or records of the company be rectified.

(2) An applicant under this section shall give the Registrar notice of the application, and the Registrar is entitled to appear and be heard in person or by a legal practitioner.

(3) The court may, in connection with an application under this section, make any order it thinks fit, including an order-

- (a) requiring the registers or other records of the company to be rectified;
- (b) restraining the company from calling or holding a meeting of share-holders, or paying a dividend before the rectification;
- (c) determining the right of a party to the proceedings to have his or her name entered or retained in, or deleted or omitted from, the registers or records of the company, whether-
 - (i) the issue arises between two or more shareholders or debenture holders or alleged shareholders or alleged debenture holders, or
 - (ii) the company and any shareholders or debenture holders or alleged shareholders or alleged debenture holders; and
- (d) compensating a party who has incurred a loss.

305. Application

An application for relief on the ground that the affairs of a company are being conducted in an illegal or oppressive manner may be made to the court by petition.

PART II - INVESTIGATION OF COMPANIES AND THEIR AFFAIRS

306. Investigation of a company on its own application or that of its members

(1) The Registrar may, with the approval of the Minister, appoint one or more competent inspectors to investigate the affairs of a company and report on them in such a manner as he or she may direct.

(2) The appointment may be made -

- (a) in the case of a company having a share capital, on the application of members holding not less than one-quarter of the class of shares issued;
- (b) in the case of a company not having a share capital, on the application of not less than one-quarter in number of the persons on the company's register of members; and
- (c) in any other case, on application of the company.

(3) The application shall be supported by such evidence as the Registrar may require for the purpose of showing that the applicant or applicants have good reason for requiring the investigation.

307. Other investigations of company

(1) The Registrar shall, with the approval of the Minister, appoint one or more competent inspectors to investigate the affairs of a company and report on them in such manner as he or she directs, if the court by order declares that the affairs of the company ought to be so investigated.

(2) The Registrar may make such an appointment if it appears to it that there are circumstances suggesting that-

- (a) the company's affairs were being or have been conducted with intent to defraud its

creditors or the creditors of any other person, or in a manner which is unfairly prejudicial to some part of its members;

- (b) any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial, or that the company was formed for a fraudulent or an unlawful purpose;
- (c) persons concerned with the company's formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members; or
- (d) the company's members have not been given all the information with respect to its affairs which they might reasonably expect.

(3) Sub-sections (1) and (2) are without prejudice to the powers of the Registrar under section 314 of this Act, and the power conferred by sub-section (2) shall be exercisable with respect to a body corporate, notwithstanding that it is in course of being voluntarily wound up.

(4) Reference in sub-section (2) to a company's members includes -

- (a) the personal representatives of a deceased member; and
- (b) any person to whom shares have been transferred or transmitted by operation of law.

308. Inspectors' powers during investigation

(1) If an inspector appointed under section 306 or 307 of this Act to investigate the affairs of a company thinks it necessary for the purposes of his or her investigation to investigate also the affairs of another body corporate which is or at any relevant

time has been the company's subsidiary or holding company or a subsidiary of its holding company or a holding company of its subsidiary, he or she shall report on the affairs of the other body corporate so far as he or she thinks that the results of his or her investigation of its affairs are relevant to the investigation of the affairs of the company first mentioned above.

(2) An inspector appointed under section 306 or 307 of this Act may at any time in the course of his or her investigation, without the necessity of making an interim report, inform the Registrar of matters coming to his or her knowledge as a result of the investigation tending to show that an offence has been committed.

309. Inspectors' powers during investigation

(1) When an inspector is appointed under section 306 or 307 of this Act, it is the duty of every officer and agent of the company, and of every officer and agent of any other body corporate whose affairs are investigated under section 308 of this Act -

- (a) to produce, to the inspector, all books and documents of or relating to the company or, as the case may be, the other body corporate which are in their custody or power;
- (b) to attend before the inspector when required to do so; and
- (c) otherwise, to give the inspector all assistance in connection with the investigation which they are reasonably able to give.

(2) If the inspector considers that a person, other than an officer or agent of the company or other body corporate, is or may be in possession of information concerning its affairs, he or she may require that person to-

- (a) produce to him or her any books or

documents in his or her custody or power relating to the company or other body corporate;

- (b) attend before him or her and otherwise to give him or her all assistance in connection with the investigation which he or she is reasonably able to give,

and it is that person's duty to comply with the requirement.

(3) An inspector may examine on oath the officers and agents of the company or other body corporate, and such person as is mentioned under in subsection (1), in relation to the affairs of the company or other body corporate, and administer an oath accordingly.

(4) In this section-

- (a) a reference to officers or to agents includes past and present, officers or agent as the case may be; and
- (b) "agents," in relation to a company or other body corporate, includes it bankers and solicitors and persons employed by it as auditors, whether those persons are or are not officers of the company or other body corporate.

(5) An answer given by a person to a question put to him or her in exercise of powers conferred by this section, whether as it has effect in relation to an investigation under any of sections 306 to 308 of this Act as applied by any other section in this Act, may be used in evidence against him or her.

310. Power of inspector to call for director's bank accounts

(1) If an inspector has reasonable grounds for believing that a present or past director of the company or other body corporate whose affairs he or she is investigating maintains or has maintained

a bank account of any description whether alone or jointly with another person and whether in The Gambia or elsewhere, into or out of which there has been paid -

- (a) the emoluments or part of the emoluments of his or her office as a director particulars of which have not been disclosed in the financial statements of the company or other body corporate for any financial year, contrary to the provisions of Part V of the Third Schedule to this Act in relation to particulars in accounts of directors;
- (b) any money which has resulted from or been used in the financing of an undisclosed transaction, arrangement or agreement; or
- (c) any money which has been in any way connected with an act or omission or series of acts or omissions, which, on the part of that director, constituted misconduct, whether fraudulent or not towards the company or body corporate or its members,

the inspector may require the director to produce to him or her all documents in the director's possession, or under his or her control, relating to that bank account.

(2) For purposes of sub-section (1) (b), an "undisclosed" transaction arrangement or agreement is one the particulars of which have not been disclosed in the financial statement of any company or in a statement annexed thereto for any financial year, including the disclosure of contracts between companies and their directors.

311. Obstruction of inspector to be treated as contempt of court.

(1) When an inspector is appointed under section 306 or 307 of this Act to investigate the affairs of a

company, the provisions of this section applies in the case of-

- (a) an officer or agent of the company;
- (b) an officer or agent of another body corporate whose affairs are investigated under section 308 of this Act; and
- (c) any such person as is mentioned in section 309 (2) of this Act.

(2) Sub-section (4) of section 309 of this Act applies with regard to references in sub-section (1) of this section to an officer or agent.

(3) If any such person as is mentioned in section 309 (2) of this Act -

- (a) refuses to produce any book or document which it is his or her duty under section 309 or 310 of this Act to produce;
- (b) refuses to attend before the inspector when required to do so; or
- (c) refuses to answer any question put to him or her by the inspector with respect to the affairs of the company or other body corporate, as the case may be,

the inspector may certify the refusal in writing to the court.

(4) The court may-

- (a) on receiving a certification under sub-section (3), enquire into the case; and
- (b) after hearing any witnesses who may be produced against or on behalf of the alleged offender and any statement which may be offered in defence,

punish the offender in like manner as if he or she had been guilty of contempt of the court.

312. Inspectors report

(1) The inspector may, and if so directed by the Registrar, shall make to the Registrar-

- (a) interim reports; and
- (b) on the conclusion of his or her investigation to a final report, which shall be written or printed, as the Registrar may direct.

(2) The Registrar may direct that a copy of the inspector's report be forwarded to the company at its registered or head office.

(3) Where an inspector is appointed under section 306 of this Act in pursuance of an order of the court, the Registrar shall furnish to the court a copy of any reports made to him or her.

(4) The Registrar may also, if it thinks fit -

- (a) furnish a copy on request and on payment of the prescribed fee to-
 - (i) any member of the company or other body corporate which is the subject of the report,
 - (ii) any person whose conduct is referred to in the report,
 - (iii) the auditors of the company or body corporate,
 - (iv) the person who requested for the investigation,
 - (v) any other person whose financial interests appear to the Registrar to be affected by the matters dealt with in the report, whether as

creditors of the company or body corporate, or otherwise; and

- (b) cause the report to be printed and published.

313. Power to bring civil proceedings on company's behalf

(1) If, from any report made under section 312 of this Act, it appears to the Registrar, that any civil proceedings ought, in the public interest, to be brought by the company or anybody corporate, the Registrar may himself or herself bring the proceedings in the name and on behalf of the company or the body corporate.

(2) The Registrar shall indemnify the body corporate against any costs or expenses incurred by it in or in connection with proceedings brought under this section, and any costs or expenses so incurred shall, if not otherwise recoverable, be defrayed out of the Consolidated Fund.

314. Criminal proceedings and other proceedings by the Attorney General of The Gambia

(1) If, from any report made under section 312 of this Act it appears that any person has, in relation to the company or anybody corporate whose affairs have been investigated by virtue of section 308 of this Act, committed an offence for which he or she is criminally liable, the report shall be referred to the Attorney General.

(2) If the Attorney General considers that the case referred to him or her is one in which a prosecution ought to be instituted, he or she shall direct action accordingly, and it is the duty of all officers and agents of the company or other body corporate, as the case may be, other than the defendant in the proceedings, to give all assistance in connection with the prosecution which they are reasonably able to give.

(3) If, from any report made under section 312 of this Act, it appears to the Registrar that proceedings ought, in the public interest, to be brought by the body corporate dealt with by the report for the recovery of-

- (a) 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
- (b) any property of the body corporate which has been misapplied or wrongfully retained,

he or she may refer the case to the Attorney General for his or her opinion as to the bringing of proceedings for that purpose in the name of the body corporate.

(4) If proceedings are brought under sub-section (3) of this section, it is the duty of all officers and agents of the company or other body corporate, as the case may be, other than the defendant in the proceedings, to give the Attorney General all assistance in connection with the proceedings which they are reasonably able to give.

(5) The costs and expenses incurred by a body corporate in or in connection with any proceedings brought by it under sub-section (3) shall, if not otherwise recoverable, be defrayed out of the Consolidated Fund.

315. Power of the Registrar to present winding-up petition

If, in the case of anybody corporate liable to be wound up under this Act, it appears to the Registrar, from a report made by an inspector under section 312 of this Act, that it is expedient in the public interest that the body should be wound up, the Registrar may, unless the body is already wound up by the court, present a petition for it to be so wound up if the court thinks it just and equitable to do so.

316. Expenses of investigation

(1) The expenses incidental to an investigation by an inspector appointed by the Registrar under the foregoing provisions of this Part, shall be defrayed in the first instance out of the Consolidated Fund, but the following persons are, to the extent mentioned, liable to make repayment -

- (a) any person who-
 - (i) is convicted on a prosecution instituted, as a result of the investigation by the Attorney General, or
 - (ii) is ordered to pay damages or restore any property in proceedings brought by virtue of sub-section (3) of section 314 of this Act,

may in the same proceedings be ordered to pay the expenses to such extent as are specified in the order;

- (b) anybody corporate in whose name proceedings are brought under the foregoing provision of this Part is liable to the extent of the amount or value of any sums or property recovered by it as a result of those proceedings; and
- (c) unless, as the result of the investigation, a prosecution is instituted by the Attorney General, the applicants for the investigation, where the inspector was appointed under section 306 of this Act are liable to such extent, if any, as the Registrar may direct.

(2) An amount for which a body corporate is liable, by virtue of paragraph (b) of sub-section (1), shall be a first charge on the sums or property mentioned in that paragraph.

(3) For the purpose of this section, any cost or expense incurred by the Registrar, in or in connection with the proceedings brought by virtue of sub-section (2) of section 313 of this Act, shall be treated as expenses of the investigation giving rise to the proceedings.

(4) Expenses to be defrayed by the Registrar under this section shall, so far as not recovered under this section, be paid out of the Consolidated Fund.

317. Inspector's report to be used as evidence in legal proceedings

(1) A copy of a report of an inspector appointed under sections 306 and 308 of this Act, certified by the Registrar to be a true copy, is admissible in any legal proceedings as evidence of the opinion of the inspector in relation to a matter contained in the report.

(2) A document purporting to be such a certificate as is mentioned in sub-section (1) shall be received in evidence and be deemed to be such a certificate, unless the contrary is proved.

318. Appointment, etc. of inspectors to investigate ownership of a company

(1) Where it appears to the Registrar, that there is good reason so to do, he or she may, with approval of the Minister, 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-

- (a) are or have been financially interested in the success or failure, real or apparent of the company; or
- (b) are able to control or materially to influence the policy of are company.

(2) The appointment of an inspector under this section may-

- (a) 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
- (b) in particular, limit 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 paragraphs (a) and (b) of sub-section (2) of section 306 of this Act -

- (a) the Registrar shall with the approval of the Minister, appoint an inspector to conduct the investigation unless he or she is satisfied that the application is vexatious; and
- (b) the inspector's appointment shall not exclude, from the scope of his or her investigation, any matter which the application seeks to include except insofar as the Registrar is satisfied that it is reasonable for the matter to be investigated.

(4) Subject to the terms of an inspector's appointment, his or her powers extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding-

- (a) is, was, or is likely to be, observed in practice; and
- (b) is relevant to the purposes of his or her investigation.

319. Provisions applicable to investigation

(1) For the purposes of an investigation under section 318 of this Act, the provisions of sections 308 to 312 of this Act apply with the necessary modifications to references to the affairs of the company or to those of any body corporate, so however, that -

(a) those sections apply in relation to all persons who-

(i) 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

(ii) are able to control or materially to influence the policy of the company or other body corporate,

including persons concerned only on behalf of others, as they apply in relation to officers and agents of the company or of the other body corporate, as the case may be; and

(b) the Registrar is not bound to furnish the company or any other person with a copy a part of any report by an inspector appointed under section 318 of this Act or with a complete copy of the report if he or she is of the opinion that there is good reason for not divulging the contents of the report or of part of the report, but shall keep a copy of the report or, as the case may be, the part of the report, as regards which he or she is not of that opinion.

(2) The expense of any investigation under section 318 of this Act shall be defrayed out of the

Consolidated Fund.

320. Power to require information

(1) Where it is made to appear, 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 not necessary to appoint an inspector for the purpose, the Registrar may require any person who 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 have acted in relation to those shares or debentures as a legal practitioner or an agent of some one interested therein,

to give to the Registrar any information, which the person has or might reasonably be expected to obtain, as to the present and past interest in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures.

(2) For the purposes of this section, a person is deemed to have an interest in a share or debenture if-

- (a) he or she has any right to acquire or dispose of the share or debenture or any interest therein or to vote in respect the share or debenture;
- (b) his or her consent is necessary for the exercise of any of the rights of other persons interested therein; or
- (c) other persons interested in the share or debenture can be required or are accustomed to exercise their rights in accordance with his or her instructions.

(3) A person who fails to give information required of him or her under this section, or who, in giving the information-

- (a) makes any statement which he or she knows to be false in a material particular; or
- (b) recklessly makes any statement which is false in a material particular,

commits an offence and is liable on conviction to a fine of five thousand dalasis or imprisonment for a term of six months, or to both the fine and imprisonment.

321. Power to Impose restrictions on shares etc.

(1) Where in connection with an investigation under section 318 or 320 of this Act, it appears to the Registrar that there is difficulty in finding out the relevant facts about any share whether issued or to be issued, and that the difficulty is due wholly or mainly to the unwilling-ness of the persons concerned or any of them to assist the investigation as required by this Act, the Registrar may in writing direct that the shares shall until further notice be subject to the restrictions imposed by this section.

(2) So long as any shares are directed to be subject to the restrictions imposed by this section -

- (a) any transfer of those shares or, in case of unissued shares, any transfer of the right to be issue with those shares and any issue of those shares, is void;
- (b) no voting rights shall be exercisable in respect of those shares;
- (c) no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder of those shares;
- (d) except in a liquidation, no payment shall be made of any sums due from the company on those shares, whether in respect of

capital or otherwise.

(3) Where the Registrar directs shares to be subject to restrictions under this section, or refuse to direct that shares shall cease to be subject to restrictions, a person aggrieved by the direction or refusal may appeal to the court, and the court may, if it sees fit, direct that the shares shall cease to be subject to the restrictions.

(4) A direction or an order of the court that shares shall cease to be subject to restrictions under this section, expressed to be made with a view to permitting a transfer of those shares, may continue the restrictions mentioned in paragraphs (c) and (d) of sub-section (2) of this section, either in whole or in part, so far as they relate to a right acquired or an 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 restrictions under this section;
- (b) votes in respect of any shares whether as holder or proxy, or appoints a proxy to vote in respect of the shares; or
- (c) being the holder of any shares, fails to notify that they are subject to restriction,

commits an offence and is liable on conviction to a fine of five thousand dalasis or imprisonment for a term of six months, or to both the fine and imprisonment.

(6) Where shares in any company are issued in contravention of the restrictions, the company and every officer of the company who is in default commits an offence and is liable on conviction to a fine of five thousand dalasis.

(7) A prosecution shall not be instituted under this section except by or with the consent of the

Attorney General.

(8) This section applies in relation to debentures as it applies in relation to shares.

322. Savings for Legal practitioners and bankers

Nothing in the foregoing provisions of this Part of this Act requires disclosure to the Registrar or to an inspector appointed by him or her, by-

- (a) a legal practitioner, of any privileged communication made to him or her in that capacity, except as regards the name and address of his or her client; or
- (d) a company's bankers as such, of any information as to the affairs of any of their customers other than the company.

CHAPTER VII - FINANCIAL STATEMENTS AND AUDIT

PART I – FINANCIAL STATEMENTS

SUB-PART 1 - ACCOUNTING RECORDS

323. Companies to keep accounting records

(1) A company shall cause accounting records to be kept in accordance with this section.

(2) The accounting records shall be sufficient to show and explain the transactions of the company and shall be such as to -

- (a) disclose with reasonable accuracy, at any time, the financial position of the company; and
- (b) enable the directors to ensure that any financial statements prepared under this Chapter comply with the requirements of this Act as to the form and content of the company's statements.

- (3) The accounting records shall in particular, contain –
- (a) entries from day-to-day of all sums of money received and expended by the company, and the matters in respect of which the receipt and expenditure took place; and
 - (b) a record of the assets and liabilities of the company.
- (4) If the business of the company involves dealing in goods, the accounting records shall contain –
- (a) statements of stocks held by the company at the end of each year of the company;
 - (b) all statements of stock takings from which any such statement of stock as is mentioned in paragraph (a) of this subsection has been or is to be prepared; and
 - (c) except in the case of goods sold by way of ordinary retail trade, statements of all goods sold and purchased, showing the goods and the buyers and sellers in sufficient detail to enable all of them to be identified.

324. Place and duration of records

- (1) The accounting records of a company shall be kept at its registered office or such other place in The Gambia as the directors think fit, and shall at all times be open to inspection by the officers of the company.
- (2) Subject to any direction with respect to the disposal of records given under winding-up rules, accounting records which a company is required by section 323 of this Act to keep shall be preserved by the company for a period of six years from the date on which they were made.

325. Penalties for non-compliance with sections 323 and 334

(1) If a company fails to comply with a provision of section 323 or 324 (1) of this Act, every officer of the company who is in default commits an offence, unless the officer shows that he or she acted honestly and that, in the circumstances in which the business of the company was carried on, the default was excusable.

(2) An officer of a company who fails to take all reasonable steps, for securing compliance by the company with section 324 of this Act, or intentionally causes any default by the company under that section commits an offence.

(3) A person who commits an offence under this section is liable on conviction to a fine of one hundred thousand dalasis or imprisonment for a term not exceeding one year, or to both the fine and imprisonment.

326. Directors' duty to prepare annual accounts

(1) In the case of every company, the directors of a company shall, in respect of each year of the company, prepare financial statements for the year.

(2) Subject to sub-section (3), the financial statements required under sub-section (1) of this section include –

- (a) statement of the accounting policies;
- (b) the balance sheet as at the last day of the year;
- (c) a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the year;
- (d) notes on the accounts;
- (e) the auditors' reports;

- (f) the directors' report
 - (g) a cash flow statement;
 - (h) a value added statement for the year;
 - (i) comparative figures of the previous year; and
 - (j) in the case of a holding company, the group financial statements.
- (3) The directors shall, at their first meeting after the incorporation of the company-
- (a) determine to what date in each year financial statements shall be made up; and
 - (b) give notice of the date to the Registrar within fourteen days of the determination.
- (4) The director of a holding company shall ensure that, except where in their opinion there are good reasons against it, the year of each of its subsidiaries shall coincide with the year of the company.

SUB-PART 2 - DIRECTORS' REPORTS

327. Directors' report

- (1) The directors shall, in the case of a company, prepare in respect of each year, a report –
- (a) containing a fair view of the development of the business of the company and

its subsidiaries during the year and of their position at the end of the year; and

- (b) stating the amount, if any, which they recommend should be paid as dividend and the amount, if any, which they propose to carry to reserves.

(2) The directors' report shall state-

- (a) the names of the persons who, at any time during the year, were directors of the company; and
- (b) the principal activities of the company and its subsidiaries in the course of the year and any significant change in those activities in the year.

(3) The directors' report shall also state the matters, and give the particulars, required by Part I of the Fifth Schedule to this Act.

(4) Part II of the Fifth Schedule to this Act applies as regards the matters to be stated in the directors' report the directors in the circumstances specified in the Schedule.

(5) Part III of the Fifth Schedule to this Act applies as regards the matters to be stated in the directors' report relative to the employment, training and advancement of disabled persons, the health, safety and welfare at work of the employees of the company and the involvement of employees in the affairs, policy and performance of the company.

(6) Where there is a failure to comply with the requirements of this Act as to the matters to be stated, and the particulars to be given, in the directors' report, every person who was a director of the company immediately before the end of the period prescribed for laying and delivering financial statements commits an offence and is liable on conviction to a fine of five hundred thousand dalasis or imprisonment for a term of not more than two years.

(7) In proceedings for an offence under sub-section (6), it is a defence for the person to prove that he or she took all reasonable steps for securing compliance with the requirements in question.

(8) The directors' report shall be approved by the board of directors and signed on behalf of the board by a director or the secretary of the company.

(9) Every copy of the directors' report which is laid before the company in general meeting, or which is otherwise circulated, published or issued, shall state the name of the person who signed it on behalf of the board.

(10) The copy of the directors' report which is delivered to the Registrar shall be signed on behalf of the board by a director or the secretary of the company.

(11) If a copy of the directors' report-

- (a) is laid before the company, or otherwise circulated, published or issued, without the report having been signed as required by this section or without the required statement of the signatory's name being included; or
- (b) is delivered to the Registrar without being signed as required by this section,

the company, and every officers of the company in default, commits an offence and is liable on conviction to a fine of three hundred thousand dalasis.

SUB-PART 3 – FINANCIAL STATEMENTS

328. Persons entitled to receive financial statements as of right.

(1) A company's balance sheet and every copy of it which is laid before the company in general meeting or delivered to the Registrar shall be signed on

behalf of the board by two of the directors of the company.

(2) If a copy of the balance sheet –

- (a) is laid before the company or delivered to the Registrar without being signed as required by this section; or
- (b) not being a copy so laid or delivered, is issued, circulated or published in a case where the balance sheet has not been signed as so required or where (the balance sheet having been so signed) the copy does not include a copy of the signatures or signature as the case may be,

the company and every officers of the company who is in default commits an offence and is liable on conviction to a fine of one hundred thousand dalasis.

(3) A company's profit and loss account and, so far as not incorporated in its individual balance sheet or profit and loss account, any group accounts of a holding company shall be annexed to the balance sheet, and the auditors' report and the directors' report shall also be attached to the balance sheet.

(4) The balance sheet and the profit and loss account annexed to it shall be approved by the board of directors and signed on their behalf by two directors authorized to do so.

329. Persons entitled to receive financial statement as of right

(1) A copy of a company's financial statements for the year shall, not less than twenty-one days before the date of the meeting at which they are to be laid in accordance with section 337 of this Act, be sent to each of the following persons –

- (a) every member of the company, whether or not entitled to receive notice of general

meetings;

- (b) every holder of the company's debentures, whether or not so entitled; and
- (c) all persons, other than members and debenture holders, being persons so entitled.

(2) In the case of a company not having a share capital, sub-section (1) does not require a copy of the financial statements to be sent to a member of the company who is not entitled to receive notices of general meeting of the company, or to a holder of the company's debenture who is not so entitled.

(3) Sub-section (1) does not require copies of the financial statements to be sent to –

- (a) a member of the company or a debenture holder, being in either case a person who is not entitled to receive notices of general meeting and of whose address the company is unaware;
- (b) more than one of the joint holders of any shares or debentures none of whom are entitled to receive notices of general meeting; or
- (c) those who are not so entitled in the case of joint holders of shares or debentures some of whom are not entitled to receive notices of general meeting.

(4) If copies of the financial statements are sent less than twenty-one days before the date of the meeting, it shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by all the members entitled to attend and vote at the meeting.

(5) If default is made in complying with sub-section (1) of this section, the company and every officer of the company who is in default commits an offence and is liable on conviction to a fine of one hundred

thousand dalasis.

330. Directors' duty to lay and deliver financial statements

(1) In respect of each year, the directors shall, at a date not later than eighteen months after incorporation of the company and subsequently once at least in every year, lay before the company in general meeting copies of the financial statements of the company made up to a date not exceeding nine months previous to the date of the meeting.

(2) The auditors' report shall be read before the company in general meeting, and be open to the inspection of any member of the company.

(3) In respect of each year, the directors shall deliver with the annual return to the Registrar a copy of the balance sheet, the profit and loss account and the notes on the statements which were laid before the general meeting as required by this section.

(4) In the case of an unlimited company, the directors shall not be required by sub-section (3) of this section to deliver a copy of the accounts if the company-

- (a) has at no time during the accounting reference period been, to its knowledge, the subsidiary of a company that was then limited, and there have at no such time, to its knowledge, been held or been exercisable, by or on behalf of two or more companies that were then limited, shares or powers which, if they had been held or been exercisable by one of them, would have made the company its subsidiary; and
- (b) has, at no such time, been the holding company of a company which was then limited.

(5) References in this section to a company that was limited at a particular time are to a body

corporate, under whatever law incorporated the liability of whose members was at that time limited.

331. Penalty for non-compliance with section 337

(1) If in a year any of the requirements of section 330 (1) or (3) of this Act is not complied with by any company, every person who immediately before the end of that period was a director of the company commits, in respect of each of those sub-sections which is not so complied with, an offence and is liable to a daily default fine of-

- (a) one thousand dalasis in the case of a small company, a company limited by guarantee or an unlimited company; and
- (b) five thousand dalasis, in the case of any other company.

(2) If a person is charged with an offence in respect of any of the requirements of sub-section (1) or (3) of section 330 of this Act, it is a defence for the person to prove that he or she took all reasonable steps for securing that those requirements are complied with before the end of the period allowed for laying and delivering accounts.

(3) In proceedings under this section with respect to a requirement to lay a copy of a document before a company in general meeting, or to deliver a copy of a document to the Registrar, it is not a defence to prove that the document in question was not in fact prepared as required by this Part.

332. Default order in case of non-compliance

(1) If –

- (a) in respect of a year, any of the requirements of sub-sections (1) and (3) of section 330 of this Act has not been complied with by a company before the end of the period allowed for laying and delivering financial statements; and
- (b) the directors of the company fail to make good the default within fourteen days after the service of a notice on them requiring compliance,

the court may, on application by any member or creditor of the company or by the Registrar, make an order directing the directors, or any of them to make good the default within such time as may be specified in the order.

(2) The court's order may provide that all costs of and incidental to the application shall be borne by the directors.

(3) Nothing in this section affects the provisions of section 331 of this Act.

333. Penalty for lying or delivering defective financial statements

(1) If any financial statements of a company, other than its group financial statement, of which a copy is laid before the shareholders in general meeting or delivered to the Registrar do not comply with the requirement of this Act as to the matters to be included in, or in a note to, those financial statements, every person who at the time when the copy is so laid or delivered is a director of the company commits an offence and is liable to a fine of fifty thousand dalasis.

(2) If any group financial statements of which a copy is laid before a company in a general meeting or delivered to the Commission do not comply with section 330 (4) and (5) or section 331 of this Act and with the other requirements of this Act as to the matters to be included in or in a note to those financial statements, every person who at the time when the copy was so laid or delivered was a director of the company commits an offence and is liable to a fine of fifty thousand dalasis.

(3) In proceedings against a person for an offence under this section, it is a defence for the person to prove that he or she took all reasonable steps for securing compliance with the requirements in question.

334. Shareholders right to obtain copies of financial statements

(1) A member of a company, whether or not he or she is entitled to have sent to him or her copies of the company's financial statements, and any holder of the company's debentures, whether or not so entitled is entitled to be furnished, on demand and without charge, with a copy of the company's last financial statements.

(2) If, when a person makes a demand for a document with which he or she is entitled by this section to be furnished, default is made in complying with the demand within seven days after its making, the company and every officer of the company who is in default commits an offence and is liable to a daily default fine of five thousand dalasis, unless it is proved that the person has already made a demand for, and been furnished with a copy of the document

SUB-PART 4 - MODIFIED FINANCIAL STATEMENTS**335. Entitlement to deliver financial statements in modified form**

(1) In certain cases, the directors of a company may, in accordance with Part I of the Sixth Schedule to this Act, deliver modified financial statements in respect of a year as a small company.

(2) For the purposes of sections 336 to 338 of this Act and the Sixth Schedule to this Act, “deliver” means deliver to the Registrar.

336. Qualification of a small company

(1) A company qualifies as a small company in a year if for that year the following conditions are satisfied –

- (a) it is a private company having a share capital;
- (b) the amount of its turnover for that year is not more than two million dalasis or such amount as may be prescribed by the Registrar;
- (c) its net assets value is not more than one million dalasis or such amount as may be fixed by the Registrar;
- (d) none of its members is a Government or a Government corporation or agency or its nominee; and
- (e) the directors between them hold not less than fifty-one *per cent* of its equity share capital.

(2) In applying sub-section (1) to a period which is a company's year but not in fact a year, the maximum figures for turnover in paragraph (b) of

that sub-section shall be proportionately adjusted.

337. Modified individual financial statements

(1) The directors of a company may, subject to section 338 of this Act where the company has subsidiaries deliver individual financial statements modified as for a small company in the cases specified in sub-sections (2) and (3) and Part I of the Sixth Schedule to this Act shall apply with respect to the delivery of financial statements so modified.

(2) The directors may, in respect of the company's first year, deliver financial statements modified as for a small company, if in that year it qualifies as a small company.

(3) The directors may, in respect of a company's year subsequent to the first, deliver financial statements modified as for a small company –

- (a) if the company qualifies as a small company and it also so qualified in the preceding year;
- (b) although not qualifying in that year as a small company, if in the preceding year it so qualified and the directors were entitled to deliver financial statements so modified in respect of that year;
- (c) if, in that year, the company qualifies as a small company and the directors were entitled under paragraph (b) of this sub-section to deliver financial statements so modified for the preceding year, although the company did not in that year qualify as a small company.

338. Modified financial statements of holding company

(1) This section applies to a holding company where in respect of a year in which it is required to prepare group financial statements for the company and its subsidiaries.

(2) The directors of the holding company may not under section 337 of this Act deliver financial statements modified as for a small company, unless the group, (that is, the holding company and its subsidiaries together) is in that year a small group, and the group is small if it would so qualify under section 336 of this Act (applying that section, if it were all one company).

(3) The figures to be taken into account in determining whether the group is small are the group account figures, where the group financial statements -

- (a) are prepared as consolidated financial statements, the figures for turnover and balance sheet total; and
- (b) are not prepared as consolidated financial statements, the corresponding figures given in the group financial statements, with such adjustment as would have been made if the statements had been prepared in consolidated form,

aggregated in either case with the relevant figures for the subsidiaries (if any) omitted from the group accounts (excepting those for any subsidiary omitted under section 323 (3) (a) of this Act on the ground of impracticability).

(4) In the case of each subsidiary omitted from the group financial statements, the figures relevant as regards turnover and balance sheet total are those which are included in the financial statements of that subsidiary prepared in respect of its relevant year (with such adjustment as would have been made if those figures had been included in group

financial statements prepared in consolidated form).

(5) For the purposes of sub-section (4) of this section, the relevant year of the subsidiary is, if its year

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(a) ends with that of the holding company to which the group financial statements relate, that year; and

(b) does not end with that of the holding company to which the group financial statements relate, the subsidiary's year ending last before the end of the year of the holding company.

(6) If the directors are entitled to deliver modified financial statements, they may also deliver modified group financial statements, and the group financial statements –

(a) if consolidated, may be in accordance with Part II of the Seventh Schedule (while otherwise comprising or corresponding with group financial statements prepared under section 323 of this Act); and

(b) if not consolidated, may be such as (together with any notes) give the same or equivalent information as required by paragraph (a) of this sub-section.

(7) Part III of the Seventh Schedule to this Act applies to modified group financial statements whether consolidated or not.

SUB-PART 5 - PUBLICATION OF FINANCIAL STATEMENTS

339. Publication by a company of full individual or group financial statements

(1) This section applies to the publication by a company of full individual or group financial statements, that is, the statements required by section 330 of this Act to be laid before the company in general meeting and delivered to the

Registrar, including the directors' report, unless dispensed with under paragraph 3 of the Sixth Schedule to this Act, but does not apply to interim financial statements.

(2) If a company publishes individual financial statements (modified or otherwise) for a year, it shall publish with them the relevant auditors' report.

(3) If a company which is required to prepare group financial statements for a year, publishes individual financial statements for that year, it shall also publish with them its group financial statements (which may be modified financial statements, but only if the individual financial statements are modified).

(4) If a company publishes group financial statements (modified or not) otherwise than together with its individual financial statements, it shall publish with them the relevant auditors' report.

(5) References in this section to the relevant auditors' report are to the auditors' report under section 344 of this Act or in the case of modified financial statements (individual group), the auditors' special report under paragraph 10 of the Sixth Schedule to this Act.

(6) A company which contravenes a provision of this section and any officer of the company who is in default commits an offence and liable to a daily default fine of five thousand dalasis.

340. Publication of abridged financial statements

(1) This section shall apply to the publication by a company of abridged financial statements, that is, any balance sheet or profit and loss account relating to a year of the company or purporting to deal with that year otherwise than as part of full financial statements (individual or group) to which section 339 of this Act applies.

(2) The reference in sub-section (1) to a balance sheet or profit and loss account, in relation to financial statements published by a holding company, includes an account in any form purporting to be a balance sheet or profit and loss account for the group consisting of the holding company and its subsidiaries.

(3) If the company publishes abridged financial statements, it shall publish with those statements, a statement indicating -

- (a) that the statements are not full financial statements;
- (b) whether full individual or full group financial statements according as the abridged statements, deal solely with the company's own affairs or with the affairs of the company and any subsidiaries, have been delivered to the Registrar or, in the case of an unlimited company exempted under sub-section (4) of section 330 of this Act from the requirement to deliver financial statements, that the company is so exempted;
- (c) whether the company's auditors have made a report under section 344 of this Act on the company's financial statements for any year with which the abridged financial statements purport to deal; and
- (d) whether any report so made was unqualified (meaning that it was a report, without qualification, to the effect that in the opinion of the person making it, the company's financial statements had been properly prepared).

(4) Where a company publishes abridged financial statements, it shall not publish with those statements any such report of the auditors as is mentioned in sub-section (3) (c).

(5) A company which contravenes a provision of this section, and any officer of the company who is in default commits an offence and is liable to a daily default fine of five thousand dalasis.

SUB-PART 6 - SUPPLEMENTARY

341. Power to alter accounting requirements

The Minister may, after consultation with the Council of the Gambia Institute of Chartered Accountants, by regulations –

- (a) add to the classes of documents to be–
 - (i) comprised in a company's financial statements for a year to be laid before the company in general meeting as required by section 330 of this Act, or
 - (ii) delivered to the Registrar under that section, and make provision as to the matters to be included in any document to be added to either class;
- (b) modify the requirements of this Act as to the matters to be stated in a document of any of those class; or
- (c) reduce the classes of documents to be delivered to the Registrar under section 335 of this Act.

PART II – AUDIT

342. Appointment of auditors

(1) A company shall, at each annual general meeting, appoint an auditor or auditors to audit the financial statements of the company and to hold office from the conclusion of that, until the conclusion of the next, annual general meeting.

(2) At an annual general meeting, a retiring auditor, however appointed, shall be re-appointed without

any resolution being passed unless -

- (a) he or she is not qualified for re-appointment;
- (b) a resolution has been passed at that meeting appointing some other person 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 re-appointed.

(3) Where notice is given of an intended resolution to appoint some person or persons in place of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or of all those persons, as the case may be, the resolution cannot be proceeded with, the retiring auditor shall not be automatically re-appointed by virtue of sub-section (2).

(4) Where, at an annual general meeting, auditors are not appointed or re-appointed, the directors may appoint a person or persons to fill the vacancy.

(5) The company shall, within seven days of the power of the directors under sub-section (4) becoming exercisable, give notice of that fact to the Registrar, and if a company fails to give notice as required by this sub-section, the company and every officer of the company who is in default commits an offence and is liable to a fine of five hundred dalasis for every day during which the default continues.

(6) Except as provided in sub-section (7), the first auditors of a company may be appointed by the directors at any time before the company is entitled to commence business and auditors so appointed shall hold office until the conclusion of the next annual general meeting.

(7) The company may-

- (a) at a general meeting remove any auditors appointed under sub-section (6) and appoint in their place any other person who has 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 sub-section (6), the company may appoint, in a general meeting convened for that purpose, the first auditors and thereupon the powers of the directors shall cease.

(8) The directors may fill any casual vacancy in the office of auditor but while a vacancy continues, the surviving or continuing auditor or auditors, if any, may act.

343. Qualification of auditors

(1) A person is not qualified for appointment as an auditor of a company for the purpose of this Act, unless he or she is a member of a body of accountants in The Gambia established by the Financial Reporting Act 2013.

(2) None of the following persons is qualified for appointment as an 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,

and for this purpose an auditor of a company is not regarded as an officer or a servant of the company.

(3) A person is also not qualified for appointment as an auditor of a company if he or she is, under sub-section (6), disqualified for appointment as an auditor of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company.

(4) Notwithstanding sub-sections (1), (2) and (3), a firm is qualified for appointment as auditor of a company if, but only if, all the partners are qualified for appointment as auditors of the company.

(5) A person shall not act as an auditor of a company at a time when the person knows that he or she is disqualified for appointment to that office and if an auditor of a company to his or her knowledge becomes so disqualified during his or her term of office, he or she shall-

- (a) thereupon vacate his or her office; and
- (b) give notice in writing to the company that he or she has vacated it by reason of that disqualification.

(6) A person who acts-

- (a) as auditor in contravention of sub-section (5), of this section; or
- (b) fails, without reasonable excuse, to give notice of vacating his or her office as required by that sub-section,

commits an offence and is liable on conviction to a fine of fifty thousand and, for continued contravention, to a daily default fine of one thousand dalasis.

344. Auditors' report

(1) The auditors of a company shall make a report to its members on the accounts examined by them, and on every balance sheet and profit and loss

account, and on all group financial statements copies of which are to be laid before the company in a general meeting during the auditors' tenure of office.

(2) In addition to the report made under sub-section (1), the auditor shall, in the case of a public company, also make a report to an audit committee to be established by the public company.

(3) The audit committee referred to in sub-section (2), shall-

(a) consist of an equal number of directors and representatives of the shareholders of the company (subject to a maximum number of six members); and

(b) examine the auditors report and make recommendations thereon to the annual general meeting as it may think fit.

(4) A member of the audit committee is not entitled to remuneration and is subject to re-election annually.

(5) A member may nominate a shareholder as a member of the audit committee by giving notice in writing of the nomination to the secretary of the company at least twenty-one days before the annual general meeting.

(6) Subject to such other additional functions and powers that the company's articles may stipulate, the objectives and functions of the audit committee are to –

(a) ascertain whether the accounting and reporting policies of the company are in accordance with legal requirements and agreed ethical practices;

(b) review the scope and planning of audit requirements;

(c) review the findings on management

matters in conjunction with the foreign auditor and departmental responses on the findings;

- (d) keep under review the effectiveness of the company's system of accounting and internal control;
- (e) make recommendations to the board of directors in regard to the appointment, removal and remuneration of the foreign auditors of the company; and
- (f) authorize the internal auditor to carry out investigations into any activities of the company which may be of interest or concern to the committee.

345. Auditors' duties and powers

(1) It is the duty of the company's auditors, in preparing their report, to carry out such examination as will enable them to form an opinion as to whether

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- (a) proper accounting records have been kept by the company and proper return adequate for their audit, have been received from branches not visited by them;
 - (b) the company's balance sheet and, if not consolidated, its profits and loss account are in agreement with the accounting records and returns.
- (2) If the auditors are of opinion that proper accounting records have not been received from branches not visited by them, or if the balance sheet and, if not consolidated the profit and loss account are not in agreement with the accounting records and returns, the auditors shall state that fact in their report.
- (3) An auditor of a company has a right of access at all time to the company's books, accounts and

vouchers, and is entitled to request from the company's office such information and explanations as he or she thinks necessary for the performance of the auditor's duties.

(4) If the requirements of Parts V and VI of the Third Schedule and Parts I to III of the Fourth Schedule to this Act are not complied with in the accounts, it is the' duty of the auditors to include in their report, so far as they are reasonably able to do so, a statement giving the required particulars.

(5) It is the duty of the auditors to consider whether the information given in the directors' report for the year for which the accounts are prepared is consistent with those accounts, and if they are of opinion that it is not, they shall state that fact in their report.

346. Remuneration of auditors

(1) The remuneration of the auditors of a company-

- (a) may, in the case of an auditor appointed by the directors be fixed by the directors; or
- (b) shall, subject to the foregoing para-graph, be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

(2) For the purposes of sub-section (1), "remuneration" includes sums paid by the company in respect of the auditors' expenses.

347. Removal of auditors

(1) A company may by ordinary resolution remove an auditor before the expiration of his or her term of office, notwithstanding anything in any agreement between the company and the auditor.

(2) Where a resolution removing an auditor is passed at a general meeting of a company, the company shall, within fourteen days of the passing of the resolution, give notice of that fact in the prescribed form to the Registrar and if a company fails to give the notice required by this sub-section, the company and every officer of the company who is in default commits an offence and is liable to a daily default fine of five hundred dalasis.

(3) Nothing in this section is to taken as depriving a person removed under it of compensation or damages payable to him or her in respect of the termination of his or her appointment as auditor or of any appointment terminating with that as auditor.

348. Auditors' right to attend company's meetings

(1) A company's auditors 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 a member of the company is entitled to receive and to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditor.

(2) An auditor of a company who has been removed is entitled to—

- (a) attend the general meeting at which his or her term of office would otherwise have expired;
- (b) attend any general meeting at which it is proposed to fill the vacancy caused by his or her removal;
- (c) receive all notices of, and other communications relating to, a meeting specified in paragraph (a) or (b) of this sub-section, which any member of the company is entitled to receive; and
- (d) be heard at any such meeting which he

or she attends on any part of the business of the meeting which concerns him or her as former auditor of the company.

349. Supplementary provisions relating to auditors

(1) A special notice is required for a resolution at a general meeting of a company-

- (a) appointing as auditor a person, other than a retiring auditor;
- (b) filling a casual vacancy in the office of auditor;
- (c) re-appointing as auditor a retiring auditor who was appointed by the directors to fill a casual vacancy; or
- (d) removing an auditor before the expiration of his or her term of office.

(2) On receipt of notice of an intended resolution as is mentioned in sub-section (1), the company shall forthwith send a copy of the resolution –

- (a) to the person proposed to be appointed or removed, as the case may be;
- (b) in a case within sub-section (1)(a) of this section, to the retiring auditors; and
- (c) where, in the case within sub-section (1)(b) or (c) of this section, the casual vacancy was caused by the resignation of an auditor, to the auditor who resigned.

(3) Where notice is given of a resolution as is mentioned in sub-section (1)(a) or (d) and the retiring auditor or, as the case may be, the auditor proposed to be removed makes to the company in writing with respect to the intended resolution, representations not exceeding a reasonable length,

and requests their notification to 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 the fact of the representations having been made; and
- (b) send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent.

(4) If a copy of the representations is not sent out as required by sub-section (3) because they were received too late or because of the company's default, 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.

(5) 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 claiming to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter.

(6) The court may order the company's costs on an application under sub-section (5) to be paid in whole or in part by the auditor, notwithstanding that he or she is not a party to the application.

350. Resignation of auditors

(1) An auditor of a company may resign his or her office by delivering a notice in writing to that effect at the company's registered office, and the notice shall operate to bring his or her term of office to an end on the date on which the notice is delivered, or on such later date as may be specified in it.

(2) An auditor's notice of resignation is not effective unless it contains–

- (a) a statement of any circumstances connected with his or her resignation which he or she considers should be brought to the notice of the members or creditors of the company; or
- (b) a statement to the effect that there are no circumstances as are mentioned in paragraph (a) of this sub-section.

(3) Where a notice under this section is delivered at a company's registered office, the company shall, within fourteen days of delivery, send a copy of the notice –

- (a) to the Registrar; and
- (b) if the notice contained a statement under sub-section 2 (b), to every person who under section 336 of this Act is entitled to be sent copies of the financial statements.

(4) The company or any person claiming to be aggrieved may, within fourteen days of the receipt by the company of a notice containing a statement under sub-section (2) (b), apply to the court for an order under sub-section (5).

(5) If on an application under sub-section (4), the court is satisfied that the auditor is using the notice to secure needless publicity for defamatory matter, it may-

- (a) by order, direct that copies of the notice need not be sent out;
- (b) further order the company's costs on the application to be paid in whole or in part by the auditor, notwithstanding that he or she is not a party to the application.

(6) The company shall, within fourteen days of the court's decision, send to the persons mentioned in sub-section (3) if the court –

- (a) makes an order under sub-section (5), a statement setting out the effect of the order;
- (b) does not make an order, a copy of the notice containing the statement under sub-section (2) (b).

(7) If default is made in complying with the provisions of sub-section (3) or (6), the company and every officer of the court who is in default commits an offence and is liable to a daily default fine of five hundred dalasis.

351. Right of resigning auditor to requisition company meeting

(1) Where an auditor's notice of resignation contains a statement under section 350 (2)(b) of this Act, there may be deposited with the notice a requisition signed by the auditor calling on the directors of the company forthwith duly to convene an extra-ordinary general meeting of the company for the purpose of receiving and considering such explanation of the circumstances connected with his or her resignation as he or she may wish to place before the meeting.

(2) Where an auditor's notice of resignation contains a statement under section 350 (2)(b) of this Act, the auditor may request the company to circulate to its members before –

- (a) the general meeting at which his or her term of office would otherwise have expired; or
- (b) any general meeting at which it is proposed to fill the vacancy caused by his or her resignation or convened on his or her requisition,

a statement in writing, not exceeding a reasonable length, of the circumstances connected with his or her resignation.

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- (3) If a resigning auditor requests the circulation of a statement by virtue of sub-section (2), the company shall, unless the statement is received by it too late for it to comply –
- (a) in any notice of the meeting given to members of the company, state the fact of the statement having been made; and
 - (b) send a copy of the statement to every member of the company to whom notice of the meeting is or has been sent.
- (4) If the directors do not, within twenty-one days from the date of the deposit of a requisition under this section, proceed duly to convene a meeting for a day not more than twenty-eight days after the date on which the notice convening the meeting is given, every director who fails to take all reasonable steps to secure that a meeting is convened as mentioned in this sub-section commits an offence and is liable to a fine of five thousand dalasis.
- (5) If a copy of the statement mentioned in sub-section (2) is not sent out as required by sub-section (3) because it was received too late or because of the company's default, the auditor may, without prejudice to his or her right to be heard orally, require that the statement shall be read out at the meeting.
- (6) Copies of a statement need not be sent out and the statement 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.
- (7) The court may, on an application under sub-section (6), order the company's costs on to be paid in a whole or in part by the auditor, notwithstanding that he or she is not a party to the application.

(8) An auditor who has resigned his or her office is entitled to

- (a) attend any such meeting as is mentioned in sub-section (2)(a) or (b);
- (b) receive all notices of and other communications relating to the meeting which any member of the company is entitled to receive; and
- (c) be heard at any such meeting which he or she attends on any part of the business of the meeting that concerns him or her as former auditor of the company.

352. Powers of auditors in relation to subsidiaries

(1) Where a company has a subsidiary, then-

- (a) if the subsidiary is a body corporate incorporated in The Gambia it is the duty of the subsidiary and its auditors to give the auditors of the holding company such information and explanation as those auditors may reasonably require for the purposes of their duties as auditors of the holding company;
- (b) in any other case, it is the duty of the holding company, if required by its auditors to do so, to take all such steps as are reasonably open to it to obtain from the subsidiary such information and explanation as are mentioned in this sub-section.

(2) If a subsidiary or holding company fails to comply with the provisions of sub-section (1), the subsidiary or holding company and every office of the company who is in default commits an offence and liable to a fine.

(3) An auditor who, without reasonable excuse, fails to comply with paragraph (a) of sub-section (1),

commits an offence and is liable to a fine.

353. Liability of auditors for negligence

(1) A company's auditor shall in the performance of his or her duties, exercise all such care, diligence and skill as is reasonably necessary in each particular circumstance.

(2) Where a company suffers loss or damage as a result of the failure of its auditor to discharge the fiduciary duty imposed on him or her by sub-section (1), the auditor is liable for negligence and the directors may institute an action for negligence against him or her in the court.

(3) If the directors fail to institute an action against the auditor under sub-section (2), any member may do so after the expiration of thirty days notice to the company of his or her intention to institute the action.

354. False statements to auditors

(1) An officer of a company commits an offence if he or she knowingly or recklessly make to a company's auditors a statement, whether written or oral, which –

- (a) conveys or purports to convey any information or explanation which the auditors require, or are entitled to require, as auditors of the company; and
- (b) is misleading, false or deceptive in a material particular.

(2) A person who commits an offence under this section is liable to a fine of two hundred thousand dalasis or imprisonment for a term of one year, or to both the fine and imprisonment.

CHAPTER VIII - ANNUAL RETURNS

355. Annual return by company limited by shares or guarantee

(1) A company shall, at least once in every year, make and deliver to the Registrar an annual return in the form, and containing the matters specified in sections 356, 357 or 358 of this Act as may be applicable.

(2) Notwithstanding sub-section (1), a company need not make a return under this section either in the year of its incorporation or, if it is not required under this Act to hold an annual general meeting during the following year, in that year.

356. Annual return by company having shares other than small company

(1) The annual return by a company having shares other than a small company shall-

- (a) contain, 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 Eighth Schedule of this Act; and
- (b) be in the form set out in Part II of the Eighth Schedule or as near to it as circumstances admit.

(2) Where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the list referred to in paragraph 5 of Part I of the Eighth Schedule to this Act shall 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.

(3) 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 the said paragraph 5 of the Eighth Schedule to this Act, give only such of the particulars required by that paragraph as relate to-

- (a) persons ceasing to be or becoming members since the date of the last return; and
- (b) shares transferred since that date in the amount of stock held by a member.

357. Annual return by small Company

The annual return by a small company shall contain the matters specified in Part I of the Ninth Schedule to this Act and the return shall be in the form set out in Part II of that Schedule or as near to it as circumstances admit.

358. Annual return by company limited by guarantee

(1) The annual return by a company limited by guarantee shall be in the form prescribed in the Tenth Schedule to this Act or as near to it as circumstances admit.

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

359. Time for completion of annual return

A company shall complete the annual return within thirty days after the annual general meeting for the year, whether or not that meeting is the first or only ordinary general meeting, of the company in that year, and the company shall forthwith forward to the Registrar a copy signed by a director and by the secretary of the company.

360. Documents to be annexed to annual return

(1) Subject to section 362 of this Act, a company shall annex to the annual return -

- (a) a written copy, certified by a director and by the secretary of the company to be a true copy, of every balance sheet and profit and loss account laid before the company in general meeting held in the year to which the return relates, including every document required by law to be annexed to the balance sheet; and
- (b) a copy certified as specified under paragraph (a) of this sub-section, of the report of the auditors on, and of the report of the directors accompanying, each balance sheet.

(2) If a balance sheet as is mentioned in sub-section (1) or a document required by law to be annexed does not comply with the requirement of the law as in force at the date of the audit with respect to the form of balance sheets or documents aforesaid, as the case may be, a company shall make 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 comply with the requirements, and the fact that the copy has been so amended shall be stated on it.

361. Certificates by private company and small company in annual return

(1) A private company shall send, with the annual return required by section 356, 357 or 358 of this Act, a certificate signed both by a director and by the secretary of the company-

- (a) that the company has not, since the date of the last return, or, in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company; and

(b) where the annual return discloses the fact that the number of members of the company exceeds fifty, that the excess consists wholly of persons who under this Act are not included in reckoning the number of fifty.

(2) A small company shall, in addition to the certificate required under sub-section (1), send with the annual return a certificate signed by a director and the secretary that -

- (a) it is a private company limited by shares;
- (b) the amount of its turn-over for that year is not more than two million dalasis or such amount as may be fixed by the Registrar;
- (c) its net assets value is not more than one million dalasis or such amount as may be prescribed by the Registrar;
- (d) none of its member is a Government, a Government agent or nominee; and
- (e) the directors among them hold not less than fifty-one *per cent* of the equity share capital of the company.

362. Exception in certain cases of unlimited companies and small companies from requirements of section 367

(1) An unlimited company shall be exempted from the requirements imposed by section 354 of this Act as to documents to be annexed under this Act to the annual return if, but only if, at no time during the period to which the return relates-

- (a) has it been, to its knowledge, the subsidiary of a company that was then limited;
- (b) have there been, to its knowledge, held

or exercisable by or on behalf of two or more companies that were limited, shares or powers which, had they been held or exercisable by one of them, would have made the company its subsidiary; and

- (c) has it been the holding company of a company that was then limited.

(2) A small company shall also be exempted from the requirements imposed by section 360 of this Act, provided that it complies with the provision of section 336 of this Act.

363. Penalty for non-compliance with sections 362 to 368

(1) If a company required to comply with any of the provisions of sections 355 to 361 of this Act fails to do so, the company together with every director or officer of the company who is in default commits an offence and is liable on conviction to a fine of-

- (a) one hundred thousand dalasis, in the case of a public company; and
- (b) five hundred thousand dalasis, in the case of a private company.

(2) For the purposes of sub-section (1), "officer" includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

CHAPTER IX - DIVIDENDS AND PROFITS

364. Declaration of dividends and payment of interim dividend

(1) A company may, in general meeting, declare dividends in respect of any year or other period only on the recommendation of the directors.

(2) The company may, from time to time, pay to the members such interim dividends as appear to the

directors to be justified by the profits of the company.

(3) The general meeting has the power to decrease the amount of dividend recommended by the directors, but has no power to increase the recommended amount.

(4) Where the recommendation of the directors of a company with respect to the declaration of a dividend is varied in accordance with sub-section (3) by the company in general meeting, a statement to that effect shall be included in the relevant annual return.

(5) Subject to the provisions of this Act, dividends are payable to the shareholders only out of the distributable profits of the company.

365. Distributable profits

Subject to the company being able to pay its debts as they fall due, the company may pay dividends out of the following profits -

- (a) profits arising from the use of the company's property although it is a wasting assets;
- (b) revenue reserves;
- (c) realized profit on a fixed asset sold, but where more than one asset is sold, the net realized profit on the assets sold.

366. Restriction on declaration and payment of dividends

A company shall not declare or pay dividend if there are reasonable grounds for believing that the company is or would be, after the payment, unable to pay its liabilities as they become due.

367. Unclaimed dividends

(1) Where dividends are returned to the company unclaimed, the company shall send a list of the names of the persons entitled with the notice of the next annual general meeting to the members.

(2) After the expiration of three months of the notice mentioned in sub-section (1), the company may invest the unclaimed dividend for its own benefit in an investment outside the company and no interest shall accrue on the dividends against the company.

(3) Where dividends have been sent to members and there is an omission to send to some members due to the fault of the company, the dividends shall earn interest at the current bank rate from three months after the date on which they ought to have been posted.

(4) For the purpose of liability, the date of posting the dividend warrant is deemed to be the date of payment and proof of whether it has been sent is a question of fact.

368. Reserve and capitalisation

(1) The directors may, before recommending any dividend-

(a) set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit; and

(b) also without placing the same to reserve, carry forward any profits which they may

think prudent not to distribute.

(2) The company in general meeting may, on the recommendation of the directors, resolve that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the company's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution.

(3) The amount referred to in sub-section (2) may be set free for distribution among the members who would have been entitled to dividends in the same proportions on condition that the same be not paid in cash but be applied either-

- (a) in or towards paying up any amounts for the time being unpaid on any shares held by those members, respectively; or
- (b) paying up in full unissued shares or debentures of the company to be allotted and distributed to creditors as fully paid up.

(4) The company may decide by a resolution what part of the amount is to be distributed in cash or in shares and the directors shall give effect to the resolution.

(5) A share premium account and a capital redemption reserve fund may, for the purposes of this sub-section, only be applied in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares.

(6) Where a resolution under sub-sections (2) to (5) is passed, the directors shall-

- (a) make all appropriations and applications of the undivided profits resolved to be capitalised thereby, and all allotments and issues of fully-paid shares or debentures, if any; and
- (b) generally do all acts and things required to give effect to it.

(7) For the purposes of sub-section (6), the directors shall have power to make such provisions by the issue of fractional certificates or by payment in cash or otherwise as they think fit in the case of shares or debentures becoming distributable in fractions.

(8) A person may be authorised by the directors to enter, on behalf of all the members entitled under this section, into an agreement with the company to provide the allotment to them, respectively, credited as fully paid up, or any further shares or debentures to which they may be entitled on capitalisation under this section, or, as the case may require, for the payment up by the company on their behalf, of the amounts any part of the amounts remaining unpaid on their existing shares, and any agreement made under the authorisation is effective and binding on all the members.

369. Employees' shares and profit sharing

If, under his or her contract of service, an employee is entitled to share in the profits of the company as an incentive, he or she is entitled to share in the profits of the company, whether or not dividends have been declared.

370. Right of the shareholders to sue for dividends

Dividends are special debts due to, and recoverable by, shareholders within twelve years, and actionable only when declared.

371. Liability for paying dividend out of capital

All directors who knowingly pay, or are party to the payment of dividend out of capital or otherwise in contravention of this Part-

- (a) are personally liable jointly and severally to refund to the company any amount so paid; and

- (b) have the right to recover the dividend from shareholders who receive it with knowledge that the company had no power to pay it.

CHAPTER X - WINDING UP

PART I - RECEIVERS AND RECEIVER MANAGERS

372. Disqualified Receivers

(1) A person shall not be appointed or act as a receiver or receiver- manager of any assets of a company if that person-

- (a) is a body corporate;
- (b) is an undischarged bankrupt;
- (c) is disqualified from being a trustee under a trust deed executed by the company, or would be so disqualified if a trust deed had been executed by the company; or
- (d) is disqualified to act as an insolvency practitioner under Part IV of the Insolvency Act.

[cap. 94.06]

(2) Where a person is disqualified under subsection (1), another person may be appointed in his or her place by the persons who are entitled to make the appointment, or by the court, but a receivership is not terminated or interrupted by the occurrence of the disqualification.

(3) This section applies to a person appointed to be a receiver or receiver-manager whether so appointed before or after the coming into force of this Act.

373. Functions of receivers

A receiver of any property of a company may, subject to the rights of secured creditors, receive the income from the property, pay the liabilities

connected with the property, and realise the security interest of those on behalf of whom he or she is appointed, but, except to the extent permitted by the court, he or she may not carry on the business of the company.

374. Functions of receiver- managers

A receiver of a company may, if he or she is also appointed manager of the company, carry on any business of the company to protect the security interest of those on behalf of whom he or she is appointed.

375. Directors' powers stopped

When a receiver-manager of a company is appointed by the court or under an instrument, the powers of the directors of the company that the receiver-manager is authorised to exercise shall not be exercised by the directors until the receiver-manager is discharged.

376. Duty under court direction

A receiver or receiver-manager of a company appointed by the court shall act in accordance with the directions of the court.

377. Duty under Instrument

A receiver or receiver-manager of a company appointed under an instrument shall act in accordance with that instrument and any directions of the court given under section 379.

378. Duty of care

A receiver or receiver-manager of a company appointed under an instrument shall-

- (a) act honestly and in good faith; and
- (b) deal with any property of the company in his or her possession or control in a commercially reasonable manner.

379. Directions by court

An application by a receiver or receiver-manager of a company, whether appointed by the court or under an instrument, or on an application by an interested person, the court may make any order it thinks fit, including an order-

- (a) appointing, replacing or discharging a receiver or receiver-manager, and approving his or her accounts;
- (b) determining the notice to be given by a person, or dispensing with notice to a person;
- (c) declaring the rights of persons before the court or otherwise, or directing a person to do, or abstain from doing, anything;
- (d) fixing the remuneration of the receiver or receiver manager;
- (e) requiring the receiver or receiver-manager, or a person by or on behalf of whom he or she is appointed, to-
 - (i) make good any default in connection with the receiver's or receiver-manager's custody or management of the property or business of the company,
 - (ii) relieve any the person from any

default on such terms as the court thinks fit, and

(iii) confirm any act of the receiver or receiver-manager; and

(f) giving directions on any matter relating to the duties of the receiver or receiver-manager.

380. Duties of receivers

A receiver or receiver-manager of a company shall-

- (a) immediately give to the Registrar notice of his or her appointment and discharge;
- (b) take into his or her custody and control the property of the company in accordance with the court order or instrument under which he or she is appointed;
- (c) open and maintain a bank account in his or her name as receiver or receiver-manager of the company for the moneys of the company coming under his or her control;
- (d) keep detailed accounts of all transactions carried out by him or her as receiver or receiver-manager;
- (e) keep accounts of his or her administration, which shall be available during usual business hours for inspection by the directors of the company;
- (f) prepare financial statements of his or her administration at such intervals and in such form as may be prescribed;
- (g) on completion of his or her duties, render a final account of his or her administration, in the form adopted for interim accounts under paragraph (f); and
- (h) file with the Registrar a copy of any

financial statement mentioned in paragraph (f) and any final account mentioned in paragraph (g) within fifteen days of the preparation of the financial statement or rendering of the final account, as the circumstances require.

381. Liability of receiver

(1) A receiver of assets of a company appointed under sub-section (3) of section 180 or under powers contained in any instrument-

- (a) is personally liable on any contract entered into by him or her in the performance of his or her functions, except to the extent that the contract otherwise provides; and,
- (b) is entitled in respect of that liability to an indemnity out of the assets of which he or she was appointed to be receiver.

(2) Nothing contained in sub-section (1) limits any right to an indemnity that a receiver would have, apart from that sub-section, or limits his or her liability on contracts entered into without authority, or confers any right to indemnity in respect of that liability.

(3) When the purported appointment of a receiver out of court is invalid because the charge under which the appointment was purported to be made is invalid, or because, in the circumstances of the case, the power of appointment under the charge was not exercisable or not wholly exercisable, the court may, on application being made to it-

- (a) wholly or to such extent as it thinks fit, exempt the receiver from personal liability in respect of anything done or omitted to be done by him or her that, if the appointment had been valid, would have been properly done or omitted to be done; and

- (b) order that the person by whom the purported appointment was made, be personally liable to the extent to which that relief has been granted.

(4) Sub-section (1) applies to a receiver appointed before or after the coming into force of this Act, but does not apply to contracts entered into before this Act came into force.

382. Notice of receivership

Where a receiver or a receiver-manager of any assets of a company has been appointed for the benefit of debenture holders, every invoice, order of goods or business letter issued by or on behalf of the company or the receiver, being a document on or in which the name of the company appears, shall contain a notice that a receiver or a receiver manager has been appointed.

383. Floating charges priorities

(1) Where-

- (a) a receiver is appointed on behalf of the holders of any debentures of a company that are secured by a floating charge; or
- (b) possession is taken, by or on behalf of any debenture holders of a company, of any property of the company that is subject to a floating charge,

then, if the company is not at the time in the course of being wound up, the debts that in every winding up are required, under this Part, and the regulations relating to preferential payments, to be paid in order of priority to all other debts shall be paid in order of priority forthwith out of any assets coming into the hands of the receiver or person taking possession of that property, as the circumstances require, in priority to any claim for principal or interest in respect of the debentures of the company secured by the floating charge.

(2) Any period of time mentioned in the provisions referred to in sub-section (1) is to be reckoned, as the circumstances require, from the date of the appointment of the receiver in respect of the debenture holders secured by the floating charge or from the date possession is taken of any property that is subject to the floating charge.

(3) Payments made pursuant to this section may be recouped as far as can be out of the assets of the company that are available for the payment of general creditors.

384. Statement of affairs

(1) Where a receiver of the whole, or substantially the whole, of the assets of a company, in this section and section 383 of this Act referred to as the "receiver", is appointed under sub-section (3) of section 180 or under the powers contained in any trust deed, for the benefit of the holders of any debentures of the company secured by a general floating charge, then, subject to this section and section 390-

- (a) the receiver shall forthwith send notice to the company of his or her appointment;
- (b) within fourteen days after receipt of the notice by the company, or such longer period as may be allowed by the receiver, the company shall make and submit to the receiver a statement as to the affairs of the company;
- (c) the receiver shall, within two months after receipt of the statement, send to-
 - (i) the Registrar, and, if the receiver was appointed by the court, to the court, a copy of the statement and of any comments he or she sees fit to make on it, and, in the case of the Registrar, also a summary of the statement and of the receiver's comments on it,

- (ii) the company, a copy of those comments, or, if the receiver does not see fit to make any comments, a notice to that effect,
- (iii) to the trustee of the trust deed, a copy of the statement and those comments, and
- (iv) to the holders of all debentures belonging to the same class as the debentures in respect of which he or she was appointed, a copy of that summary.

(2) The receiver shall, within-

- (a) two months or such longer period as the court may allow, after the expiration of the period of twelve months from the date of his or her appointment, and after every subsequent period of twelve months; and
- (b) twelve months or such longer period as the court may allow after he or she ceases to act as receiver of the assets of the company,

send to the Registrar, to the trustee of the trust deed, and to the holders of all debentures belonging to the same class as the debentures in respect of which the receiver was appointed, an abstract in a form approved by the Registrar.

(3) The abstract shall show-

- (a) the receiver's receipts and payments during the period of twelve months, or, if the receiver ceases so to act, during the period from the end of the period to which the last preceding abstract related up to the date of his or her so ceasing to act; and
- (b) the aggregate amounts of his or her receipts and of his or her payments during

all preceding periods since his or her appointment.

(4) Sub-section (1) of this section does not apply in relation to the appointment of a receiver to act with an existing receiver, or in place of a receiver who dies or ceases to act, except that, where that sub-section applies to a receiver who dies or ceases to act before the sub-section has been fully complied with, the references in paragraphs (b) and (c) of that sub-section to the receiver include, subject to sub-section (5) of this section, references to his or her successor and to any continuing receiver.

(5) If the company is being wound up, this section apply notwithstanding that the receiver and the liquidator are the same person but with any necessary modifications arising from that fact.

(6) Nothing in sub-section (2) of this section affects the duty of the receiver to render proper accounts of his or her receipts and payments to the persons to whom, and at the times that, he or she is required to do so apart from that sub-section.

385. Content of statement

(1) The statement as to the affairs of a company required by section 384 of this Act to be submitted to the receiver or his or her successor shall show, as at the date of the receiver's appointment-

- (a) the particulars of the company's assets, debts and liabilities;
- (b) the names, addresses and occupations of the company's creditors;
- (c) the security interests held by the company's creditors;
- (d) the dates when the security interests were created; and
- (e) such further or other information as may be prescribed.

(2) The statement of affairs of the company shall be submitted and verified by, the signed declaration of at least one person who is, at the date of the receiver's appointment, a director, and by the secretary of the company at that date, or by such persons, as the receiver or his or her successor, subject to the direction of the Registrar, may require to submit and verify the statement, namely persons who-

- (a) are or have been officers of the company;
- (b) have taken part in the formation of the company at any time within one year before the date of the receiver's appointment;
- (c) are in the employment of the company, or have been in the employment of the company within that year, and, in the opinion of the receiver, are capable of giving the information required; or
- (d) are, or have been within that year officers of, or in the employment of, an affiliated company.

(3) A person making or verifying the statement of affairs of a company, or any part of it, shall be allowed and paid by the receiver or his or her successor out of the receiver's receipts, such costs and expenses incurred in and about the making or verifying of the statement as the receiver or his or her successor considers reasonable.

PART II - WINDING UP

SUB-PART 1 – MODE OF WINDING UP AND LIABILITIES OF MEMBERS

386. Modes of winding up

(1) The winding up of a company may be-

- (a) by the court; or
- (b) voluntary.

(2) The provisions of this Act with respect to winding up apply, unless the contrary intention appears, to the winding up of a company.

387. Liability of members

(1) In the event of a company being wound up, every member or past member is liable to contribute to the assets of the company to an amount sufficient for payment of its debts and expenses of the winding up and the adjustment of the rights of the members and past members among themselves.

(2) Sub-section (1) is subject to the following limitations -

- (a) a past member is not liable to contribute if he or she has ceased to be a member for a period of one year or upwards before the commencement of the winding up;
- (b) a past member is not liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this section;
- (c) no contribution is required from a member or past member exceeding the amount unpaid on the shares in respect of which he or she is liable as a present or past member, or, as the case may be, the amount undertaken to be contributed by him or her to the assets of the company in the event of the company being bound up; and
- (d) a sum due from the company to a member or past member, in his or her character of member by way of dividend or otherwise, shall not be set-off against the amounts for

which he or she is liable to contribute in accordance with this section, but any such sum shall be taken into account for the purposes of final adjustment of the rights of the members and past members amongst themselves.

(3) Except as provided in sub-sections (1) and (2), a member or past member of a company is not liable as such for any of the debts or liabilities of the company.

(4) In the event of a company being wound up any part of the issue price of a share remaining to be paid shall, with effect from the commencement of the winding up, be treated as an amount unpaid on the share whether or not the due date for the payment has occurred.

(5) For the purposes of this section-

- (a) "member" in relation to a company, means a subscriber and any other person who agrees to become a member of the company and whose name is entered in the company's register of members; and
- (b) "past member" includes the estate of a deceased member and, where a person dies after becoming liable as a member or pastmember, the liability is enforceable against his or her estate.

388. Saving

Nothing in this Act invalidates a provision contained in a policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract.

SUB-PART 2 – CONTRIBUTORIES**389. Definition of contributory**

In this Sub-Part, "contributory" means a person liable to contribute to the assets of a company in the event of it being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes a person alleged to be a contributory.

390. Nature of liability of contributory

The liability of a contributory creates a debt in the nature of a specialty accruing due from the contributory at the time when his or her liability commenced, but payable at the times when calls are made for enforcing the liability.

391. Contributories in case of death of member

(1) If a contributory dies either before or after he or she has been placed on the list of contributories, his or her personal representative is liable in a due course of administration to contribute to the assets of the company in discharge of his or her liability and shall be a contributory accordingly.

(2) If the personal representative makes a default in paying any money ordered to be paid by him or her, then notwithstanding the Interstate Estates Act, proceedings may be taken for administering the estate of the deceased contributory, and for compelling payment from the estate the money due.

392. Contributories in case of bankruptcy of members

If a contributory become bankrupt either before or after he or she has been placed on the list of contributories-

(a) his or her trustee in bankruptcy-

- (i) shall represent him or her for all the purposes of the winding up, and shall be a contributory accordingly, and
 - (ii) may be called on to admit proof against the estate of the bankrupt, or otherwise to allow to be paid out of his or her assets in due course of law, any money due from the bankrupt in respect of his or her liability to contribute to the assets of the company; and
- (b) there may be proved against the estate of the bankrupt the estimated value of his or her liability to future calls and to calls already made.

PART III - WINDING UP BY THE COURT

SUB-PART 1 – WINDING-UP PETITIONS AND ORDERS

393. Circumstances in which company may be wound up by court

A company may be wound up by the court if-

- (a) the company has, by special resolution, resolved that the company be wound up by the court;
- (b) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
- (c) the company is unable to pay its debts;
- (d) an inspector appointed under Part II of Chapter VI of this Act has reported that he or she is of the opinion that-
 - (i) the company cannot pay its debts and should be wound up, or

- (ii) it is in the interests of the public, or of the shareholders or of the creditors, that the company should be wound up; or
- (e) the court is of the opinion that it is just and equitable that the company should be wound up.

394. Definition of liability to pay debts

(1) A company is unable to pay its debts if -

- (a) a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding ten thousand dalasis then due, has served on the company, by leaving it at the registered office of the company, a demand under his or her hand or under the hand of his or her agent lawfully authorised, requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor;
- (b) execution or other process issued on a judgment decree or order of a court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
- (c) it is proved to the satisfaction of the court that-
 - (i) the company is unable to pay its debts as they become due, or
 - (ii) the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.

(2) The money sum specified in sub-section (1) is subject to increase or reduction by regulations made under this Act.

395. Petition for winding up

(1) Subject to this section, an application to the court for the winding up of a company shall be by petition presented by-

- (a) the company;
- (b) a creditor, including a contingent or prospective creditor, of the company;
- (c) a contributory; or
- (d) the trustee in bankruptcy to, or personal representative of, a creditor or contributory.

(2) A contributory is not entitled to present a winding up petition, unless the shares in respect of which he or she is a contributory, or some of them, either-

- (a) were originally allotted to him or her or have been held by him or her, and registered in his or her name, for at least six months during the eighteen months before the commencement of the winding up; or
- (b) have devolved on him or her through the death of a former holder.

(3) The court shall not hear a winding up petition presented by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and until a *prima facie* case for winding up has been established to the satisfaction of the court.

(4) Where a company is being wound up voluntarily, a winding up petition may be presented by the official receiver and by any other person authorised in that behalf under the provisions of this section, but the court shall not make a winding up order on

the petition unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories.

(5) A contributory is entitled to present a winding up petition notwithstanding that there may not be assets available on the winding up for distribution to contributories.

396. Powers of court on hearing petition

(1) On hearing a winding up petition, the court may-

- (a) dismiss it;
- (b) adjourn the hearing conditionally or unconditionally; or
- (c) make any interim order, or any other order that it thinks fit,

but the court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(4) Where the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the court shall, if it is of the opinion that-

- (a) that the petitioners are entitled to relief either by winding up the company or by some other means; and
- (b) in the absence of any other remedy, it would be just and equitable that the company should be wound up,

make a winding up order, unless some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

397. Power to stay or restrain proceedings against company

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

398. Avoidance of disposition of property after commencement of winding up

In a winding up by the court, a disposition of the property of the company, including things in action, and a transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding up, is, unless the court otherwise orders, void.

399. Avoidance of attachments

Where a company is being wound up by the court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding up is void.

400. Commencement of winding up by the court

(1) Where, before the presentation of a petition for the winding up of a company by the court, a resolution has been passed by the company for voluntary winding up, the winding up of the company is deemed to have commenced at the time of the passing of the resolution, and unless the court, on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding up are deemed to have been validly taken.

(2) Subject to sub-section (1), the winding up of a company by the court is deemed to commence at the time of the presentation of the petition for

winding up.

401. Copy of order to be forwarded to Registrar

(1) On the making of a winding up order, a copy of the order shall forthwith be lodged by the company, or otherwise as may be prescribed, with the Registrar, who shall make an entry of the order in his or her records relating to the company.

(2) If default is made in lodging a copy of a winding up order with the Registrar as required by subsection(1) of this section, every officer of the company or other person who knowingly authorizes or permits the default commits an offence.

(3) A person who commits an offence under subsection (2) is liable on conviction to a fine not exceeding fifty thousand dalasis or imprisonment for a term not exceeding twelve months, or to both the fine and imprisonment.

402. Actions stayed on winding up order

When a winding-up order is made, or a provisional liquidator is appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court may impose.

403. Effect of winding up order

An order for winding up a company shall operate in favour of the creditors and the contributories of the company, as if made on the joint petition of a creditor and a contributory.

SUB-PART 2 - OFFICIAL RECEIVER

404. Statement of company's affair

(1) Where the court makes a winding up order or appoints a provisional liquidator, the company shall, unless the court otherwise orders, prepare and submit to the Official Receiver a statement as to the affairs of the company in the prescribed form,

verified by affidavit, and showing the particulars of-

- (a) its assets, debts and liabilities;
- (b) the names, residences, and occupation of its creditors;
- (c) the securities held by its creditors, respectively and the dates when the securities were respectively given; and
- (d) such further or other information as may be prescribed, or as the Official Receiver may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the secretary of the company, or subject to the direction of the court, such of the following persons as the Official Receiver may require to submit and verify the statement-

- (a) persons who are or have been officers, other than employees, of the company;
- (b) persons who have taken part in the formation of the company at any time within one year before the relevant date;
- (c) persons who are in the employment of the company, or have been in the employment of the company within that year, and are in the opinion of the Official Receiver capable of giving the information required; and
- (d) persons who are or have been within that year officers of or in the employment of a company, which is, or within that year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within fourteen days from the relevant date, or within such extended time as the Official Receiver or the court

may for special reasons allow.

(4) A person who makes or concurs in making the statement and affidavit required by this section shall be allowed and shall be paid by the official receiver or provisional liquidator, as the case may be, out of the assets of the company, such costs or expenses incurred in and about the preparation and making of the statement and affidavit as the Official Receiver considers reasonable, subject to an appeal to the court.

(5) A person who, without reasonable excuse, makes default in complying with the requirements of this section commits an offence.

(6) A person who states himself or herself in writing to be a creditor or contributory of the company is entitled by himself or herself or by his or her agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance this section, and to a copy of or an extract from of the statement.

(7) A person who untruthfully states himself or herself to be a creditor or contributory commits the offence of contempt of court and shall, on the application of the liquidator or of the Official Receiver, be punishable accordingly.

(8) In this section, "the relevant date" means, in a case where a provisional liquidator is appointed, the date of his or her appointment and, in a case where no appointment is made, the date of the winding up order.

405. Report by official receiver

(1) Where a winding up order is made, the official Receiver shall, as soon as practicable after receipt of the statement to be submitted under section 411 of this Act, or where the court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the court-

- (a) as to the amount of capital issued, and subscribed, and the estimated amount of assets and liabilities.
- (b) if the company has failed, as to the causes of the failure; and
- (c) whether in his or her opinion further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company, or the conduct of the business of the company.

(2) The official receiver may, if he or she thinks fit, make a further report stating the manner in which the company was formed and whether in his or her opinion any fraud has been committed by-

- (a) a person in its promotion or formation; or
- (b) an officer of the company in relation to the company,

since the formation of the company and any other matter which in his or her opinion it is desirable to bring to the notice of the court.

SUB-PART 3 – LIQUIDATORS

406. Power of Court to appoint liquidators

For the purposes of conducting the proceedings in winding up a company and performing such duties in reference to the winding up as the court may impose, the court may appoint a liquidator.

407. Appointment and powers of provisional liquidators

(1) Subject to the provisions of this section, the court may appoint a liquidator provisionally at any time after the presentation of a winding up petition, and either the Official Receiver or any other fit person may be appointed.

(2) A court may, in appointing a liquidator provisionally, limit and restrict the powers of the liquidator by the order appointing him or her.

408. Appointment and style of liquidators

On the making of a winding up order, the following provisions have effect a liquidator –

- (a) the Official Receiver shall by virtue of his or her office become the provisional liquidator and shall continue to act in that capacity until he or she or another person becomes liquidator and is capable of acting in that capacity;
- (b) the Official Receiver shall summon separate meetings of the creditors and contributories of the company for the purposes of determining whether or not an application is to be made to the court for appointing a liquidator in the place of the Official Receiver;
- (c) the court may make any appointment and order required to give effect to a determination made pursuant to paragraph (b) of this sub-section and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of any such matter, the court shall decide the difference and make such order on the matter as the court may think fit;
- (d) in a case where a liquidator is not appointed by the court, the Official Receiver shall be the liquidator of the company;
- (e) the Official Receiver shall by virtue of his or her office be liquidator during a vacancy; and
- (f) a liquidator shall be described, where-

- (i) a person other than the Official Receiver is liquidator, by the style of "the liquidator", and
- (ii) the Official Receiver is liquidator, by the style of "the Official Receiver and liquidator",

of the particular company in respect of which he or she is appointed, and not by his or her individual name.

409. Custody of company's property

(1) Where in the winding up of a company by the court, a person other than the Official Receiver is appointed liquidator, that person shall-

- (a) not be capable of acting as liquidator until he or she has notified his or her appointment to the Registrar and given security in such manner as the court may direct; and
- (b) give the Official Receiver such information and such access to and facilities for inspecting the books and documents of the company and generally such aid as may be requisite for enabling the Official Receiver to perform his or her duties under this Act.

(2) A liquidator who contravenes paragraph (b) of sub-section (1) commits an offence.

410. General provisions as to liquidators

(1) A liquidator appointed by the court may resign or, on cause shown, be removed by the court.

(2) Where a person, other than the Official Receiver is appointed liquidator, he or she shall receive such salary or remuneration by way of percentage or otherwise as the court may direct and, if two or more persons are appointed liquidators, their remuneration shall be distributed among them in such proportions as the court directs.

(3) A vacancy in the office of a liquidator appointed by the court shall be filled by the court.

(4) If more than one liquidator is appointed by the court, the court shall declare whether an act required or authorised to be done under this Act by the liquidator is to be done by all or anyone or more of the persons appointed.

(5) Subject to this Act, the acts of a liquidator are valid, notwithstanding any defect that may afterwards be discovered in his or her appointment or qualification.

411. Custody of company's property

Where a winding up order has been made or a provisional liquidator has been appointed, the liquidator, or the provisional liquidator, as the case may be, shall take, into his or her custody, or under his or her control, the property and things in action to which the company is or appears to be entitled.

412. Custody of company's property

(1) Where a company is being wound up by the court, the court may, on the application of the liquidator, by order direct that all or any part of the property of any description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his or her official name.

(2) Where the court makes an order under subsection (1), the property to which the order relates shall vest accordingly, and the liquidator may, after giving such indemnity as the court may direct, bring or defend in his or her official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its assets.

413. Powers of liquidator

(1) The liquidator in a winding up by the court may, with the sanction either of the court or of the committee of inspection-

- (a) bring or defend an action or other legal proceeding in the name and on behalf of the company;
- (b) carry on the business of the company, so far as may be necessary, for the beneficial winding up of the company;
- (c) appoint a legal practitioner or other agent to assist him or her in the performance of his or her duties;
- (d) pay any classes of creditors in full, if the assets of the company remaining in his or her hands will suffice to pay in full the debts and liabilities of the company which rank for payment before, or equally with, the debts or claims of the first-mentioned creditors;
- (e) make a compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have a claim, present or future, certain or contingent, ascertained or sounding only in damages, against the company, or whereby the company may be rendered liable; and
- (f) compromise-

- (i) all calls and liabilities to calls, debts and liabilities capable or resulting in debts,
- (ii) all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and
- (iii) all questions in any way relating to or affecting the assets or the winding up of the company,

on such terms as are agreed, and take any security for the discharge of the call, debt, liability or claim, and give a complete discharge in respect of it.

(2) The liquidator in a winding up by the court may-

- (a) sell the real and personal property and things in action of the company by public auction or private contract, with power to transfer the whole of the property to any person or to sell the same in parcels;
- (b) do all acts and execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose, to use, when necessary, the company's seal;
- (c) prove, rank, and claim in the bankruptcy, insolvency, or sequestration of a contributory, for any balance against his or her estate, and receive dividends in the bankruptcy, insolvency, or sequestration in respect of that balance as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors;
- (d) draw, accept, make and endorse any bill

of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;

- (e) raise, on the security of the assets of the company, any money requisite;
- (f) take out in his or her official name letters of administration to a deceased contributory, and do in his or her official name any other act necessary for obtaining payment of any money due from a contributory or his or her estate which cannot be conveniently done in the name of the company, and in all such cases the money due is, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, deemed to be due to the liquidator himself or herself.
- (g) appoint an agent to do any business which the liquidator is unable to do himself or herself; and
- (h) do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(3) The exercise by the liquidator, in a winding up by the court, of the powers conferred by this section is subject to the control of the court, and a creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

414. Books to be kept by liquidator

(1) Subject to this Part, the liquidator of a company which is being wound up by the court shall, in the administration of the assets of the company and in the distribution of those assets among its creditors, have regard to any directions that may be given by-

- (a) resolution of the creditors or contributories at a general meeting; or
- (b) the committee of inspection,

but any directions so given by the creditors or contributories in case of conflict deemed to override any directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and he or she shall summon meetings-

- (a) at such times as the creditors or contributories, by resolution, either to the meeting appointing the liquidator or otherwise, direct; or
- (b) whenever requested in writing to do so by not less than one tenth in value of the creditors or contributories.

(3) The liquidator may apply to the court in the prescribed manner for directions in relation to any particular matter arising under the winding up.

(4) Subject to this Part, the liquidator shall use his or her discretion in the management of the company's estate and its distribution among the creditors.

(5) Where a person is aggrieved by any act or decision of the liquidator, that person may apply to the court, and the court may confirm, reverse, or modify, the act or decision complained of, and make such order as it thinks fit.

415. Books to be kept by liquidator

(1) A liquidator of a company which is being wound up by the court shall keep, in the prescribed manner, proper books in which he or she shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the court, personally or by his or her agent inspect those books and make copies of or extracts from them.

(2) A liquidator who fails to keep proper books as required, or refuses to allow an inspection permitted, under sub-section (1) of this section commits an offence.

416. Payments by liquidator into bank

(1) A liquidator of a company which is being wound up by the court shall pay the money received by him or her into such bank as the court may direct.

(2) If a liquidator at any time retains for more than ten days a sum exceeding two thousand dalasis, or such other amount as the court in any particular case authorises him or her to retain, then, unless he or she explains the retention to the satisfaction of the court, he or she-

(a) shall pay interest on the amount so retained in excess at the rate of twenty *per cent per annum*; and

(b) is liable to-

- (i) disallowance of all or such part of his or her remuneration as the court may think just,
- (ii) be removed from his or her office by the court, and
- (iii) pay any expenses occasioned by reason of his or her default.

(3) A liquidator of a company which is being wound up by the court shall not pay any sums received by him or her as liquidator into his or her private banking account.

(4) A liquidator who contravenes the provisions of sub-section (3) commits an offence.

417. Audit of liquidator's accounts

(1) A liquidator of a company which is being wound up by the court shall, at such times as may be prescribed but not less than twice in each year during his or her tenure of office, send to the Registrar an account of his or her receipts and payments as liquidator.

(2) The account shall be-

- (a) in a prescribed form, made in duplicate; and;
- (b) verified by an affidavit or a statutory declaration.

(3) The Registrar shall cause the account to be audited by an auditor eligible for appointment as auditor of a company under this Act and, for the purpose of the audit, the liquidator shall furnish the auditor with such vouchers and information as the auditor may require, and the auditor may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4) When the account has been audited, the

Registrar shall file and keep one copy and deliver the other copy to the court for filing, and each copy shall be open to the inspection of a creditor or any person interested.

(5) A liquidator who fails to comply with any of the duties imposed on him or her by this section commits an offence.

418. Control of register over liquidators

(1) The Registrar shall take cognisance of the conduct of liquidators of companies which are being wound up by the court and, if-

- (a) a liquidator does not faithfully perform his or her duties and duly observe all the requirements imposed on him or her by statute, rules, or otherwise with respect to the performance of his or her duties; or
- (b) a complaint is made to the Registrar by a creditor or contributory in regard to the performance of those duties,

the Registrar shall inquire into the matter, and take such action on the matter as he or she may think expedient.

(2) The Registrar may-

- (a) at any time, require a liquidator of a company which is being wound up by the court to answer any inquiry in relation to a winding up in which he or she is engaged; and
- (b) if he or she thinks fit, apply to the court to examine the liquidator or any other person on oath concerning the winding up.

(3) The Registrar may direct an investigation to be made of the books and accounts of the liquidator.

419. Release of liquidator

(1) When the liquidator of a company which is being wound up by the court-

- (a) has realised all the assets of the company, or so much of the assets as can, in his or her opinion be realised without needlessly protracting the liquidation, has distributed a final dividend to the creditors, adjusted the rights of the contributories among themselves, and made a final return to the contributories; or
- (b) has resigned, or has been removed from his or her office,

the Registrar shall, on the liquidator's application, cause a report on the liquidator's accounts to be prepared.

(2) Where the liquidator complies with the requirements of the Registrar, the Registrar shall-

- (a) take into consideration the report and any objection which may be urged by a creditor or contributory or person interested against the release of the liquidator; and
- (b) grant or withhold the release accordingly, subject nevertheless to an appeal to the court.

(3) Where the release of a liquidator is withheld, the court may, on application of a creditor or contributory or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he or she may have done or made contrary to his or her duty.

(4) An order of the Registrar releasing the liquidator shall discharge him or her from all liability in respect of any act done or default made by him or her in the administration of the affairs of the company, or otherwise in relation to his or her conduct as

liquidator, but the order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

SUB-PART 4 - COMMITTEES OF INSPECTION

420. Meetings to determine appointment of committees of inspection

(1) When a winding up order has been made by the court, it is the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not an application should be made to the court for appointing a liquidator, other than the Official Receiver, to determine-

- (a) further whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator; and
- (b) who are to be members of the committee if appointed.

(2) The court may make any appointment and order required to give effect to any determination, and if there is a difference between the determination of the meetings of the creditors and contributories in respect of the matters referred to in this section, the court shall decide the difference and make such order as the court thinks fit.

421. Constitution and proceedings of committee of inspection

(1) A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as is agreed on by the meetings of the creditors and contributories, or as, in the case of a difference, may be determined by the court.

(2) A committee shall meet at such times as they

may, from time to time, appoint, and, failing an appointment, at least once a month and the also call a meeting of the committee as and when he or she thinks necessary.

(3) A committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee is present.

(4) A member of the committee may resign by notice in writing signed by him or her and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt, or compounds or arranges with his or her creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with himself or herself represent the creditors or contributories, as the case may be, his or her office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he or she represents creditors, or of contributories, if he or she represents contributories, of which seven days notice has been given, stating the object of the meeting.

(7) Subject to sub-section (8), on a vacancy occurring in the committee, the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.

(8) Where the liquidator, having regard to the position in the winding up, is of the opinion that it is unnecessary for a vacancy to be filled, he or she may apply to the court and the court may make an order that the vacancy shall not be filled, or shall not be filled except in such circumstances as may be specified in the order.

(9) The continuing members of the committee, if not less than two, may act notwithstanding a vacancy in the committee.

SUB-PART 5 - GENERAL POWERS OF COURT**422. Power to stay winding up**

(1) The court may, at any time after an order for winding up, on the application of-

(a) the liquidator or the Official Receiver or any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit; and

(b) of the liquidator or a creditor, and after having regard to the wishes of the creditors and contributories, make an order directing that the winding up, ordered by the court, shall be conducted as a creditors' voluntary winding up, and, if the court does so, the winding up shall be so conducted.

(2) On an application under paragraph (a) of sub-section (1), the court may, before making an order, require the Official Receiver to furnish to the court a report with respect to any facts or matters which are in his or her opinion relevant to the application.

(3) A copy of an order made under this section shall forthwith be lodged by the company, or otherwise as may be prescribed, with the Registrar, who shall make an entry of the order in his or her records relating to the company.

(4) If default is made in lodging a copy of an order made under this section with the Registrar as required by sub-section (3), every officer of the company, or other person who knowingly authorises or permits the default, commits an offence.

423. Settlement of list of contributories and application of assets

(1) As soon as may be practicable after making a winding up order, the court-

- (a) shall settle a list of contributories;
- (b) may rectify the register of members in all cases where rectification is required in pursuance of this Act; and
- (c) shall cause the assets of the company to be collected and applied in discharge of its liabilities.

(2) Notwithstanding sub-section (1), where it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.

(3) In settling the list of contributories, the court shall distinguish between persons who-

- (a) are contributories in their own right; and
- (b) are contributories as being representatives of or liable for the debts of others.

(4) The list of contributories when settled shall be *prima facie* evidence of the liabilities of the persons named in the list as contributories.

424. Delivery of property to liquidator

The court may, at any time after making a winding up order, require a contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer to the liquidator forthwith, or within such time as the court directs, any assets or books and papers in his or her hands to which the company is *prima facie* entitled.

425. Payment of debts due by contributory to company and extent to which set-off allowed

(1) The court may, at any time after making a winding up order, make an order directing a contributory for the time being on the list of contributories to pay to the company, in the manner directed by the order, any money due from him or her or from the estate of the person whom he or she represents, exclusive of any money payable by him or her or the estate by virtue of any call in pursuance of this Act.

(2) The court making an order under this section, may-

- (a) in the case of an unlimited company, allow to the contributory, by way of set-off, any money due to him or her or to the estate which he or she represents, from the company of any independent dealing or contract with the company in respect of any dividend or profit; and
- (b) in the case of a limited company, make to any director or manager whose liability is unlimited or to his or her estate, the like allowance as in paragraph (a) of this subsection.

(3) In the case of a company, when all the creditors are paid in full, any money due on account to a contributory from the company may be allowed to him or her by way of set-off against a subsequent call.

426. Power of court to make calls

(1) The court may, at any time after making a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company, make-

- (a) calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy

the debts and liabilities of the company, and the costs, charges, and expenses of winding up, and for the adjustment of the rights of the contributories, among themselves; and

- (b) an order for payment of any calls so made under paragraph (a) of this subsection.

(2) In making a call, the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

427. Payment into bank of moneys due to company

(1) The court may order any contributory purchaser or other person from whom money is due to the company to pay the amount due into a bank to the account of the liquidator instead of to the liquidator, and such order may be enforced in the same manner as if the court had directed payment to the liquidator.

(2) All moneys and securities paid or delivered into a bank in the event of a winding up by the court are subject in all respect to the orders of the court.

428. Order on contributory is conclusive evidence

An order made by the court on a contributory is, subject to any right of appeal, conclusive evidence that the money appearing to be due or ordered to be paid is due, and all other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.

429. Appointment of special manager

(1) Where in any proceedings, the Official Receiver becomes the liquidator of a company, whether provisionally or otherwise, he or she may, if satisfied that the nature of the estate or business of

the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself or herself, apply to the court.

(2) The court may on an application under subsection (1), appoint a special manager of the estate or business to act during such time as the court directs, with such powers, including any of the powers of a receiver or manager, as are entrusted to him or her by the court.

(3) The special manager shall -

- (a) give such security and account in such manner as the court directs; and
- (b) receive such remuneration as may be fixed by the court.

430. Power to exclude creditors not proving in time

The court may fix a time or times within which creditors are to prove their debts or claims or after which they will be excluded from the benefit of any distribution made before those debts are proved.

431. Adjustment of rights of contributories

The court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled to it.

432. Inspection of books by creditors or contributories

(1) The court may, at any time after making a winding up order, make such order for inspection of the books and papers of the company by creditors and contributories as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors and contributories accordingly, but not further or otherwise.

(2) Nothing in this section shall be taken as excluding or restricting any statutory rights of a Government Department or a person under the authority of a Government Department or the Minister.

433. Power to order costs of winding up to be paid out of assets

The court may, in the event of the assets of a company being insufficient to satisfy its liabilities, make an order as to the payment out of the assets of the costs, charges, and expenses incurred in the winding up in such order of priority as the court thinks fit.

434. Power to summon persons suspected of having property of company

(1) The court may, at any time after the appointment of a provisional liquidator or the making of a winding up order, summon before it-

- (a) any officer of the company;
- (b) a person known or suspected to have in his or her possession a property of the company, or supposed to be indebted to the company; or
- (c) a person whom the court considers capable of giving information concerning the promotion, formation, trade, dealings, affairs, or property of the company.

(2) The court may examine a person on oath concerning the matters mentioned in sub-section (1), either by word of mouth or on written interrogatories, and may reduce his or her answers to writing and require him or her to sign them, and any writing so signed may be used in evidence in any legal proceedings against him or her.

(3) The court may require a person to produce any books and papers in his or her custody or power relating to the company, but where he or she claims a lien on books or papers produced by him or her, the production is without prejudice to that lien, and the court has jurisdiction in the winding up to determine all questions relating to that lien.

(4) If a person summoned under this section, after being tendered a reasonable sum for his or her expenses, refuses to come before the court at the time appointed, without having a lawful impediment (made known to the court at the time of its sitting, and allowed by it), the court may cause him or her to be apprehended and brought before the court for examination.

435. Power to order public examination of promoters, directors and officers

(1) Where an order has been made for winding up a company by the court, and the Official Receiver has made a further report under this Act stating that in his or her opinion a fraud or improper conduct has been committed, or engaged in, by any person in the promotion or formation of the company, or by any officer of the company in relation to the company since its formation, the court may, after consideration of the report, give a direction as specified under sub-section (2).

(2) The court may direct under sub-section (1) that-

- (a) the person or officer or any other person who was previously an officer of the company, including any banker, legal practitioner or auditor, or who is known or suspected to have in his or her possession a property of the company or is supposed to be indebted to the company; or
- (b) any person who the court considers capable of giving information concerning the promotion, formation, trade dealings, affairs or property of the company,

shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or, in the case of an officer or former officer, as to his or her conduct and dealings as officer of the company.

(3) The Official Receiver shall take part in an examination under this section, and for that purpose may, if specially authorised by the court in that behalf, employ a legal practitioner.

(4) The liquidator, where the Official Receiver is not a liquidator, and a creditor or contributory, may also take part in the examination either personally or by a legal practitioner.

(5) The court may put such questions to the person examined as the court thinks fit.

(6) The examination of a person under this section shall be on oath and the person is not excused from answering any question put to him or her on the ground that the answer might tend to incriminate him or her.

(7) Where a person claims before answering the question, that the answer might tend to incriminate him or her, neither the question nor the answer is admissible in evidence against him or her in criminal proceedings other than proceedings under sub-section (12) or in relation to a charge of perjury in respect of the answer.

(8) A person ordered to be examined-

- (a) shall at his or her own cost, before his or her examination, be furnished with a copy of the Official Receiver's report; and
- (b) may at his or her cost employ a legal practitioner who may 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.

(9) When a person directed to attend before the court under sub-section (1) applies to the court to be exculpated from any charge made or suggested against him or her, the Official Receiver shall appear on the hearing of the application and call the attention of the court to any matters which appear to the Official Receiver to be relevant, and if the court, after hearing any evidence given or witnesses called by the Official Receiver, grants the application, the court may allow the applicant such costs as in its discretion it may think fit.

(10) Notes of the examination-

- (a) shall be taken down in writing and shall be read over to or by, and signed by, the person examined;
- (b) may thereafter be used in evidence against him or her; and
- (c) shall be open to the inspection of a creditor or contributory at all reason-able times.

(11) The court may, if it thinks fit, adjourn the examination, from time to time.

(12) A person being examined under this section who makes a statement that is false or misleading in a material particular commits an offence.

(13) For the purposes of this section, conduct is improper if it is of such a nature as to render a person unfit to be concerned in the management of a company.

436. Power to arrest absconding contributory

The court may, at any time either before or after making a winding up order, on proof of probable cause for believing that a contributory is about to leave The Gambia or otherwise to abscond or to remove or conceal any of his or her property for the purpose of evading payment of calls, or of avoiding

examination respecting the affairs of a company cause -

- (a) the contributory to be arrested and detained;
- (b) his or her books and papers and movable property to be seized and kept,

until such time as the court may order.

437. Powers of court cumulative

The powers by this Act conferred on the court are in addition to and not in restriction of any existing powers of instituting proceedings against a contributory or debtors, for the recovery of any call or other sums.

438. Delegation to liquidator of certain powers of court

A provision may be made by rules made under section 511 of this Act enabling or requiring all or any of the powers and duties conferred and imposed on the court by this Act in respect of-

- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
- (b) the settling of list of contributories and the rectifying of the register of members, where required, and the collecting and applying of the assets;
- (c) the paying, delivering, conveyance, surrender or transfer of any money, property, books or papers to the liquidator;
- (d) the making of calls and the adjusting of the rights of contributories; and
- (e) the fixing of the time within which debts and claims shall be proved,

to be exercised or performed by the liquidator as an

officer of the court, and subject to the control of the court.

(2) The liquidator shall not-

(a) without the special leave of the court, rectify the register of members; or

(b) make any call without either the special leave of the court or the sanction of the committee of inspection.

439. Dissolution of company

(1) When the affairs of a company have been completely wound up, the court, if the liquidator makes an application in that behalf, shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) The liquidator shall, within fourteen days from the date an order was made, lodge a copy of the order with the Registrar who shall enter in his or her records a minute of the dissolution of the company.

(3) A liquidator who defaults in complying with the requirements of this section commits an offence.

440. Power to enforce orders and appeals from orders

(1) An order made by the court under this Act may be enforced in the same manner as an order made in any action pending before the court.

(2) Subject to Rules of Court, an appeal from an order or a decision made or given in the winding up of a company by the court under this Act shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the court.

441. Penalty for offence committed by liquidator or Official Receiver

A liquidator or Official Receiver who commits an offence under this Part is liable on conviction to a fine not exceeding one hundred thousand dalasis or to imprisonment for a term not exceeding two years, or to both the fine and imprisonment.

PART IV - VOLUNTARY WINDING UP

SUB-PART 1 - WINDING UP RESOLUTION AND EFFECT

442. Winding up resolutions

(1) A company shall be wound up voluntarily if a general meeting of members of the company so resolves by-

- (a) special resolution; or
- (b) an ordinary resolution which states that the company is unable to pay its debts.

(2) In this Act, "a resolution for voluntary winding up" means a resolution passed under sub-section (1).

443. Notice of resolution to wind up voluntarily

(1) When a company passes a resolution for voluntary winding up, it shall, within fourteen days after the passing of the resolution, give notice of the resolution by advertisement in the *Gazette* and in writing to the Registrar.

(2) If default is made in complying with this section, the company and every officer of the company in default commits an offence.

444. Commencement of voluntary winding up

A voluntary winding up is deemed to commence at the time of passing of the resolution for voluntary winding up.

445. Effect of voluntary winding up on business and status of company

(1) In the case of a voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business except so far as is, in the opinion of the liquidator, required for the beneficial winding up of the company.

(2) The corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

446. Avoidance of transfers after commencement of voluntary winding up

A transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding up, is void.

447. Statutory declaration of solvency in case of proposal for winding up voluntarily

(1) Where it is proposed to wind up a company voluntarily, a director 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 statutory declaration to the effect that-

(a) they have made a full enquiry into the affairs of the company; and

(b) having made the inquiry, they have formed the opinion that the company will be able to pay its debts in full within such period, not exceeding twelve months, from the commencement of the winding up as may be specified in the declaration.

(2) A declaration made under sub-section (1) has no effect for the purposes of this Act unless it-

(a) is made within the five weeks immediately preceding the date of the passing of the resolution for winding up the company

and is lodged with the Registrar for registration before that date; and

- (b) embodies 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 having 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.

(4) If the company is wound up in pursuance of a resolution passed within the period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration, it is presumed until the contrary is shown that the director did not have reasonable grounds for his or her opinion.

(5) In this Act-

- (a) "a members' voluntary winding up" means a winding up in which a declaration has been made and delivered in accordance with this section; and
- (b) "a creditors' voluntary winding up" means a winding up in which a declaration has not been made and delivered in accordance with this section.

SUB-PART 2 - PROVISIONS APPLICABLE TO MEMBERS VOLUNTARY WINDING UP

448. Power of company to appoint and fix remuneration of liquidators

- (1) A company in a general meeting-
 - (a) shall appoint one, or more than one, liquidator for the purposes of winding up the affairs and distributing the assets of the company; and

- (b) may fix the remuneration to be paid to him or her or them.
- (2) Subject to sub-sections (3) and (4), a company may by special resolution remove a liquidator and appoint another liquidator, but the removal or appointment does not have effect-
- (a) until after the expiration of the period of fourteen days after the date on which the resolution is passed; or
- (b) if, within the period referred to in paragraph (a) of this sub-section, an application is made to the court under sub-section (4), unless the court dismissed the application or the application is withdrawn.
- (3) In addition to the other requirements of this Act with respect to the giving of notice of meetings, the company shall give to all creditors and contributories of the company notice of a meeting at which a resolution under sub-section (2) will be proposed, giving in the notice particulars of the proposals.
- (4) A creditor or contributory of the company may, within the period of fourteen days after the date on which a resolution under sub-section (2) is passed, apply to the court for an order cancelling the resolution and the court may, if it is satisfied that it is fair and reasonable to do so, allow the application, but shall, if not so satisfied, dismiss the application.
- (5) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the company, in a general meeting or the liquidator, sanctions the continuance of their powers.

449. Power to fill vacancy in office of liquidator

- (1) If a vacancy occurs by death, registration or otherwise in the office of a liquidator appointed by

the company, the company in a general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For the purpose of sub-section (1), a general meeting may be convened by a contributory or, if there are more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in the manner provided by this Act or by the bye-laws or in such manner as may, on application by a contributory or by the continuing liquidators, be determined by the court.

450. Power of liquidator to accept shares as consideration for sale of property of company

(1) Where a company is proposed to be, or is in the course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company (in this section called “the transferee company”), the liquidator of the company proposed to be, or in the course of being, wound up (in this section called “the transferor company”) may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of a particular arrangement-

- (a) receive, in compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company; or
- (b) enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

(2) A sale or an arrangement in pursuance of this section is binding on the members of the transferor

company.

(3) Where the whole or part of the compensation or benefit accruing to the members of the transferor company in respect of a sale or an arrangement in pursuance of this section consists of fully paid shares in the transferee company, each member of the transferor company is deemed to have agreed with the transferee company for the acceptance of the fully paid shares to which he or she is entitled under the distribution referred to in sub-section (1) of this section.

(3) If a member of the transferor company who did not vote in favour of the special resolution expresses his or her dissent from the resolution in writing addressed to the liquidator and left at the registered office of the company within seven days after the passing of the resolution, he or she may require the liquidator either to-

- (a) abstain from carrying the resolution into effect; or
- (b) purchase his or her interest at a price to be determined by agreement or by arbitration in a manner provided by the Alternative Dispute Resolution Act.

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(4) If the liquidator elects to purchase the member's interest, the purchase money shall be raised by the liquidator in such manner as may be determined by special resolution and be paid before the company is dissolved.

(5) A special resolution is not invalid for the purposes of this section by reason only that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but if an order is made within a year for winding up the company by the court, the special resolution is not valid unless sanctioned by the court.

451. Duty of liquidator to call creditors' meeting in case of insolvency

(1) If, in the case of a winding up commenced after the commencement of this Act, the liquidator is at any time of the opinion that the company will not be able to pay its debts in full within a period stated in the declaration under section 455 of this Act, he or she shall forthwith summon a meeting of the creditors and lay before the meeting a statement of the assets and liabilities of the company.

(2) Unless the meeting of the creditors resolve that the winding up is to continue as a members' voluntary winding up, the winding up shall, as from the date when the liquidator calls a meeting of creditors, become a creditors' voluntary winding up, and the meeting of creditors has the same powers as a meeting of creditors held under section 465 of this Act.

(3) A liquidator who fails to comply with sub-section (1) commits an offence.

452. Duty of liquidator to call general meeting at end of each year

(1) Subject to section 454 of this Act, in the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company-

- (a) at the end of the first year from the commencement of the winding up and of each succeeding year; or
- (b) at the first convenient date within three months or such longer period as the court may allow from the end of the year,

and shall lay before the meeting an account of his or her and dealings and of the conduct of the winding up during the preceding year.

(2) A liquidator who fails to comply with sub-section (1) commits an offence.

453. Final meeting and dissolution

(1) Subject to section 454 of this Act, as soon as the affairs of the company are fully wound up, the liquidator shall-

- (a) make up an account of the winding up, showing how the winding up had been conducted and the property of the company had been disposed of; and
- (b) cause the account to be audited.

(2) When the account has been audited, the liquidator call a general meeting of company for the purposes of laying before it the audited account and giving any necessary explanation in respect of the account.

(3) The general meeting of the company shall be called by advertisement published at least one month before the meeting in the *Gazette* and in at least one in newspaper printed and circulating widely in The Gambia, specifying the time, place and object of the meeting.

(4) Within one week after the meeting, the liquidator shall lodge with the Registrar a copy of the audited account, and make a return to him or her of the holding of the meeting and of its date.

(5) Notwithstanding anything in sub-section (4), if a quorum is not present at the meeting, the liquidator shall, in lieu of the return referred to in sub-section (4), make a return to the Registrar that the meeting was duly summoned and that no quorum was present at the meeting, and on a return being made, the provisions of this sub-section as to the making of the return are, in respect of that meeting, deemed to have been complied with.

(6) The Registrar shall on receiving the account and a return mentioned in sub-section (4) or (5) forthwith register them, and, on the expiration of three months from the registration of the return, the company is deemed to be dissolved by the court, but the court may, on application of the liquidator or

of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(7) The person on whose application an order of the court under this section is made, shall, within seven days after the making of the order, lodge with the Registrar a copy of the order for registration, and if that person fails to do so he or she commits offence.

(8) A liquidator who fails to call a general meeting of the company, or send a copy of an account or make a return as required by this section, commits an offence.

454. Alternative pro-visions as to annual and final meetings in case of insolvency

Where section 451 of this Act has effect, sections 461 and 463 of this Act apply to the winding up to the exclusion of sections 460 and creditor's voluntary winding up and not a member's voluntary winding up, but the liquidator shall not be required to summon a meeting of creditors under section 469 of Act at the end of the first year from the commencement of the winding up, unless the meeting held under this section 451 is held more than three months before the end of that year.

SUB-PART 3 - PROVISIONS APPLICABLE TO A CREDITORS VOLUNTARY WINDING UP

455. Meeting of creditors

(1) A company shall cause-

- (a) a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed; and
- (b) the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the

meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised in the *Gazette* and at least in one newspaper circulating widely in The Gambia.

(3) The directors of the company shall-

(a) cause a full statement of the position of the company's affairs, together with a list of the creditors of the company and the estimated amount of their claims, to be laid before the meeting of creditors; and

(b) appoint one of their number to preside at the meeting.

(4) The director appointed to preside at the meeting of creditors shall attend and preside at the meeting.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, a resolution passed at the meeting of the creditors held in pursuance of sub-section (1) of this section has effect as if it had been passed immediately after the passing of the resolution for winding up the company

(6) If default is made by-

(a) the company in complying with sub-section (1) or (2);

(b) the directors of the company in complying with sub-section (3); or

(c) a director of the company in complying with sub-section (4),

of this section, the company or, as the case may be, each of the directors, commits an offence, and, in the case of default by the company, every officer of the company who is in default commits an offence.

456. Appointment of liquidator

(1) The creditors and the company may, at their respective meetings mentioned in section 454 of this section nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company.

(2) If the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors, the person nominated by the company shall be liquidator.

(3) Notwithstanding the provisions of sub-section (2) of this section, when different persons are nominated, any director, member, or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order directing that-

- (a) the person nominated as liquidator by the company shall be liquidator instead of or jointly with, the person nominated by the creditors; or
- (b) some other person be appointed liquidator instead of the person nominated by the creditors.

457. Appointment of committee of inspection

(1) The creditors at the meeting to be held in pursuance of section 449 of this Act or at a subsequent meeting, may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and if a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in a general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number.

(2) Notwithstanding the provisions of sub-section (1) of this section, the creditors may, if they think fit, resolve that all or any of the persons so appointed

by the company ought not to be members of the committee of inspection, and, if the creditors so resolve the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee; and

(3) On an application to the court under this section the court may, if it think fit, appoint other persons to act as members in place of the persons mentioned in the resolution.

(4) Subject to the provisions of this section and to rules made under section 511 of this Act, the provisions of section 428 of this Act, except subsection (1), apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the court.

458. Fixing of liquidators' remuneration and cessation of directors' powers

(1) The committee of inspection, or if there is no committee, the creditor, may fix the remuneration to be paid to the liquidator or liquidators.

(2) On the appointment of a liquidator, all powers of the directors shall cease except so far as the committee of inspection, or if there is no committee, the creditors, sanction the continuance of those powers.

459. Power to fill vacancy in office of liquidator

If a vacancy occur, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by, or by the direction of, the court, the creditors may fill the vacancy.

460. Application of section 458 to a creditors' winding up

The provisions of section 448 of this Act apply in the case of a creditors' voluntary winding up, with the modification that the powers of the liquidator under that section shall not be exercised except with the sanction of the court or of the committee of

inspection.

461. Duty of liquidator to call meetings of company and of creditors at end of each year.

(1) In the event of the winding up continuing for more than one year, the liquidator shall-

- (a) summon a general meeting of the company and a meeting of creditors at the end of the first year from the commencement of the winding up, and of each succeeding year or at the first convenient date within three months, or such longer period as the court may allow, from the end of the year; and
- (b) lay before the meeting an account of his or her act and dealings and of the conduct of the winding up during the preceding year.

(2) A liquidator who fails to comply with sub-section (1) commits an offence.

462. Final meeting and dissolution

(1) As soon as the affairs of the company are fully wound up, the liquidator shall-

- (a) make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of; and
- (b) call a general meeting of the company and a meeting of the creditors, for the purpose of laying the account before the meeting, and giving any explanation in respect of the accounts.

(2) The meeting shall be called by advertisement published at least one month before the meeting in the *Gazette* and in at least one newspaper circulating widely in The Gambia, specifying the time, place and object of the meeting.

(3) Within one week after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator send to the Registrar a copy of the account, and shall make a return to him or her of the holding of the meetings and of their dates.

(4) Notwithstanding anything in sub-section (3), if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return referred to in sub-section (3), make a return that the meeting was duly summoned and that no quorum was present at the meeting, and upon a return being made, the provisions of this sub-section as to the making of the return are, in respect of that meeting, deemed to have been complied with.

(5) The Registrar shall, receiving the account and in respect of each on meeting a return mentioned in sub-section (3) or (4), forthwith register them, and on the expiration of three months from the registration, a company is deemed to be dissolved, but the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring that date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(6) The person on whose application an order of the court under this section is made, shall, within seven days after the making of the order, lodge with the Registrar a copy of the order for registration, and if that person fails to do so he or she commits an offence.

(7) A liquidator who fails to call a meeting of the company or a meeting of the creditors or send a copy of an account or make a return as required by this section, commits an offence.

SUB-PART 4 - PROVISIONS APPLICABLE TO EVERY VOLUNTARY WINDING UP

463. Distribution of property of company

Subject to the provisions of this Act as to preferential payments, the property of a company

shall, on its winding up, be applied in satisfaction of its liabilities equally, and subject to that application, shall, unless the articles of the company otherwise provide, be distributed among the members according to their rights and interests in the company.

464. Powers and duties of liquidator in voluntary winding up

(1) The liquidator may-

- (a) in the case of a members' voluntary winding up, with the sanction of a special resolution of the company and, in the case of a creditors' voluntary winding up, with the sanction of either the court or the committee of inspection, exercise any of the powers given by paragraphs (d), (e) and (f) of sub-section (1) of section 420 of this Act to a liquidator in a winding up by the court;
- (b) exercise any of the other powers by this Act given to the liquidator in a winding up by the court;
- (c) exercise the power of the court under this Act of settling a list of contributories, and the list of contributories are *prima facie* evidence of the liability of the persons named in the list to be contributories;
- (d) exercise the power of the court of making calls; and
- (e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or for any other purpose he or she may think fit.

(2) The liquidator shall pay the debts of the company and adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, a power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of a determination, by any number not less than two.

465. Power of court to appoint and remove liquidator in voluntary winding up

(1) If for any reason whatever, there is no liquidator acting, the court may appoint a liquidator.

(2) The court may on cause shown, remove a liquidator and appoint another liquidator.

466. Notice by liquidator of his or her appointment

(1) The liquidator shall, within twenty-one days after his or her appointment-

(a) publish in the *Gazette* and in at least one a newspaper circulating widely in The Gambia; and

(b) deliver to the Registrar for registration,

a notice of his or her appointment in the prescribed form.

(2) A liquidator who fails to comply with the requirements of sub-section (1) commits an offence.

467. Arrangement when binding on creditors

(1) An arrangement entered into between a company about to be, or in the cause of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding-

(a) on the company if sanctioned by a special resolution; and

(b) on the creditors if acceded to by three-fourths in number and value of the creditors.

(2) A creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the court against the arrangement and the court may on an appeal, amend, vary, or confirm the arrangement, as it thinks fit.

468. Power to apply to court to have questions determined or powers exercised

(1) The liquidator, a contributory or creditor may apply to the court to-

- (a) determine any question arising in the winding up of a company; or
- (b) exercise, as respects the enforcing of calls, or any other matter, all or any of the powers which the court or might exercise if the company were being wound up by the court.

(2) The court may-

- (a) if satisfied that the determination of the question or the required exercise of the power will be just and beneficial, accede wholly or partially to the application on such terms and conditions as it thinks fit; or
- (b) make such other order on the application as it thinks fit.

(3) A copy of an order made pursuant to this section staying the proceedings in the winding up shall forthwith be lodged by the company, or otherwise as may be prescribed, with the Registrar, who shall enter a minute of the order in his or her records relating to the company.

469. Costs of Voluntary winding up

All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall be paid out of the assets of the company in priority to all other claims.

470. Saving for rights of creditors and contributories

The winding up of a company shall not bar the right of a creditor or contributory to have the company wound up by the court, but, in the case of an application by a contributory, the court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

471. Penalty for offence committed under this Chapter

A person who commits an offence under this Part is liable on conviction to a fine not exceeding fifty thousand dalasis or to a term of imprisonment not exceeding two years, or both.

PART V - PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP**SUB-PART 1 - PROOF AND RANKING OF CLAIMS****472. Debts of all descriptions to be proved**

(1) Subject, in the case of solvent companies, to the application of the provisions of the Insolvency Act, in every winding up, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, are admissible to proof against the company.

(2) A just estimate shall be made, so far as possible, of the value of the debts or claims as are subject to any contingency or sound only in damages or for some other reason do not bear a certain value.

(3) Subject to section 481 of this Act, in the winding up of a company, the same rules as are in force for the time being under the Insolvency Act, with respect to the estates of persons adjudged bankrupt, shall prevail and be observed with regard to-

- (a) the respective rights of secured and unsecured creditors;
- (b) debts provable; and
- (c) the valuation of annuities and future and contingent liabilities,

and any person who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

473. Preferential payments

- (1) In a winding up of a company, there shall be paid in priority to all other debts-
- (a) all rates, charges, taxes, assessments or impositions, whether imposed or made by the Government or by a public authority under the provisions of an enactment and having become due and payable within twelve months next before the relevant date;
 - (b) all deduction under the Social Security Fund;
 - (c) all wages or salary (whether or not earned wholly or in part by way of commission or for time or piece work) of an employee, not being a director, in respect of services rendered to the company during the four months next before the relevant date;
 - (d) all accrued holiday remuneration becoming payable to an employee (or in the case of his or her death, to any other person in his or her right) on the termination of his or her employment before or by the effect of the winding up

order or resolution; and

- (e) all severance benefits, not exceeding the equivalent of forty-five days basic wages or salary, due or accruing to an employee, not being a director, whether retrenched by an employer, a receiver, a liquidator or some other person.
- (2) Where a payment on account of wages, salary or severance benefits has been made to an employee of a company out of money advanced by some person for that purpose, that person shall in a winding up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which that employee would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.
- (3) The debts and claims to which priority is given by sub-section (1) shall-
- (a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and
 - (b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under a floating charge created by the company, and paid accordingly out of any property comprised in or subject to that charge.
- (4) Subject to the retention of such sums as are necessary for the costs and expenses of the winding up, the debts and claims to which priority is given by sub-section (1) shall be discharged forthwith so far as the assets are sufficient to meet them.
- (5) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next

before the date of a winding up order, the debts to which priority is given by sub-section (1) shall be a first charge on the goods or effects so detained on, or the proceeds of the sale of the goods or effects, but in respect of any money paid under the charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(6) In this section, "the relevant date" means-

- (a) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding-up order; and
- (b) in any other case, the date of the commencement of the winding up.

SUB-PART 2 - EFFECT OF WINDING UP ON ANTECEDENT AND OTHER TRANSACTIONS

474. Fraudulent preference

(1) Any conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property which would, if made or done by or against an individual, be deemed in his or her bankruptcy or insolvency to be a fraudulent preference, or a fraudulent conveyance, assignment, transfer, sale or disposition, is, if made or done by or against a company, deemed in the event of its being wound up, to be a fraudulent preference of its creditors, or a fraudulent conveyance, assignment, transfer, sale or disposition, as the case may be, and be invalid accordingly.

(2) For the purposes of this section, the commencement of the winding up is deemed to correspond with the presentation of the bankruptcy or insolvency petition in the case of an individual.

(3) A conveyance or an assignment by a company of all its property to trustees for the benefit of all its creditors is void.

475. Liabilities and rights of certain fraudulently preferred persons

(1) Where, in the case of a company wound up in The Gambia, anything made or done after the commencement of this Act is void under section 474 of this Act as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then, without prejudice to any rights or liabilities arising apart from this provision, the person preferred is subject to the same liabilities, and has the same rights, as if he or she had undertaken to be personally liable as surety for the debt to the extent of the charge on the property or the value of his or her interest, whichever is the less.

(2) The value of the interest of a person referred to in sub-section (1) shall be determined as-

- (a) at the date of the transaction constituting the fraudulent preference; and
- (b) if the interest were free of all encumbrances other than those to which the charge for the company's debt was then subject.

(3) On an application made to the court with respect to a payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the court has jurisdiction to;

- (a) determine any question with respect to whom the payment was made and the surety or guarantor; and
- (b) grant relief in respect thereof,

notwithstanding that it is not necessary to do so for the purposes of the winding up, and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of an action for the recovery of the sum paid.

(4) Sub-section (3) applies, with the necessary modifications, in relation to transactions, other than the payment of money, as it applies in relation to payments.

476. Effect of floating charge

Where a company is being wound up, a floating charge on the undertaking or property of the company created within twelve months of the commencement of the winding up is invalid, unless it is proved that the company immediately after the creation of the charge was solvent, except to the amount of any cash paid to the company at the time of, or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of six *per cent per annum* or such other rate as may be prescribed.

477. Disclaimer of onerous property

(1) Where a part of the property of a company which is being wound up consists of-

- (a) land of any tenure burdened with onerous covenants;
- (b) shares or stock in corporations, or unprofitable contracts; or
- (c) any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money,

the liquidator of the company, notwithstanding that he or she had endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, may, with the leave of the court and subject to the provisions of this section, by writing signed by him or her, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the court, disclaim the property.

(2) Where a property referred to in sub-section (1) has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power under this section of disclaiming the property may be exercised at any time within twelve months after he or she has become aware of the property or such extended period as may be allowed by the court.

(3) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests, and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(4) The court may, before or on granting leave to disclaim-

- (a) require such notices to be given to persons interested;
- (b) impose such terms as a condition of granting leave; and
- (c) make such other order in the matter as the court thinks just.

(5) The liquidator is not entitled to disclaim a property under this section in a case where an application in writing has been made to the liquidator by a person interested in the property requiring him or her to decide whether he or she will or will not disclaim, and the liquidator-

- (a) has not, within a period of twenty-eight days after the receipt of the application or such further period as may be allowed by the court, given notice to the applicant that he or she intends to apply to the court for leave to disclaim; and
- (b) in the case of a contract, if the liquidator, after application, does not, within the

period specified in paragraph (a) of this sub-section or further period disclaim the contract,

the company is deemed to have adopted it.

(6) The court may, on the application of a person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with a company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non performance of the contract, or otherwise as the court thinks just, and any damages payable under the order to such person may be proved by him or her as a debt in the winding up.

(7) The court may, on an application by a person who either claims an interest in a disclaimed property, or is under a liability not discharged by this Act in respect of any disclaimed property and on hearing the person as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any person entitled to it, or to whom it may seem just that the property should be delivered by way of compensation for the liability, or a trustee for him or her and on such terms as the court thinks just.

(8) Where the court makes a vesting order under sub-section (7), the property comprised in the order shall vest accordingly in the person named in the order without any conveyance or assignment for the purpose.

(9) Notwithstanding anything in sub-section (7), where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of a person claiming under the company, whether as under-lessee or as mortgagee by demise, except on terms of making that person-

- (a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the

winding up; or

- (b) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and in either event, if the case so requires, as if the lease had comprised only the property comprised in the vesting order.

(10) A mortgagee or an under-lessee declining to accept a vesting order on the terms specified in sub-section (9) is excluded from all interest in and security on the property, and, if there is no person claiming under the company who is willing to accept an order on such terms, the court may vest the estate and interest of the company in the property in any person liable personally or in a representative character, and either alone or jointly with the company to perform the lessee's covenants in the lease, freed and discharged from all estates, in cumbrances and interests created therein by the company.

(11) A person injured by the operation of a disclaimer under this section is deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

478. Definition applicable to sections 487 and 488

For the purposes of sections 479 and 480 of this Act, "goods" includes all chattels personal.

479. Restriction of rights of creditor as to execution or attachment

(1) Where a creditor has issued execution against the goods or lands of a company or has attached a debt due to the company, and the company is subsequently wound up, the creditor is not entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the

company unless he or she has completed the execution or attachment before the commencement of the winding up.

(2) Where a creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall be substituted for the date of the commencement of the winding up for the purposes of sub-section (1).

(3) A person who purchases, in good faith under a sale by the Sheriff, the goods of a company on which an execution has been levied shall in all cases acquire a good title to them against the liquidator.

(4) The rights conferred by this section on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court may think fit.

(5) For the purposes of this section-

- (a) an execution against goods is taken to be completed by seizure and sale;
- (b) an attachment of a debt is deemed to be completed by receipt of the debt; and
- (c) an execution against land is deemed to be completed from the date of the order for sale or by seizure, as the case may be, and, in the case of an equitable interest, by the appointment of a receiver.

480. Duties of sheriff of as to goods taken in execution

(1) Subject to sub-section (4), where the goods of a company are taken in execution and, before the sale of the goods or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the Sheriff that-

- (a) a provisional liquidator has been

appointed; or

- (b) a winding up order has been made or that a resolution for voluntary winding up has been passed,

the Sheriff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or money so delivered and the liquidator may sell the goods, or a sufficient part of the goods, for the purpose of satisfying that charge.

(2) Subject to sub-section (4), where under an execution in respect of a judgment for a sum exceeding five thousand dalasis the goods of a company are sold or money is paid in order to avoid sale, the Sheriff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for fourteen days.

(3) If, within the time specified in sub-section (2), notice is served on the Sheriff of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company and an order is made or a resolution is passed, as the case may be, for the winding up of the company, the Sheriff shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.

(4) The rights conferred by this section on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit.

SUB-PART 3 - OFFENCES

481. Offences by officers of companies in liquidation

(1) A person commits an offence if he or she, being a past or present officer of a company which, at the

time of the commission of the offence, is being wound up, whether by the court or voluntarily, or is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up-

- (a) does not, to the best of his or her knowledge and belief, fully and truly reveal to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part of the property, except such part as has been disposed of in the ordinary way of the business of the company;
- (b) does not deliver up to the liquidator, or as the liquidator directs, all such part of the real and personal property of the company as is in his or her custody or under his or her control, and which he or she is required by law to deliver up;
- (c) does not deliver up to the liquidator, or as the liquidator directs, all books and papers in his or her custody or under his or her control belonging to the company and which he or she is required by law to deliver up;
- (d) within the twelve months immediately preceding the commencement of the winding up or at any time thereafter, conceals any part of the property of the company to the value of ten thousand dalasis or upwards, or conceals a debt due to or from the company;
- (e) within the twelve months immediately preceding the commencement of the winding up or at any time thereafter, fraudulently removes a part of the property of the company to the value of ten thousand dalasis or upwards;
- (f) makes a material omission in a statement

relating to the affairs of the company;

- (g) knowing or believing that a false debt has been proved by a person under the winding up, fails for the period of one month to inform the liquidator of the fact;
- (h) after the commencement of the winding up, prevents the production of a book or paper affecting or relating to the property or affairs of the company;
- (i) within the twelve months next before the commencement of the winding up or at anytime thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of, a book or paper affecting or relating to the property or affairs of the company;
- (j) within the twelve month immediately preceding the commencement of the winding up or at any time thereafter, makes or is privy to the making of a false entry in a book or paper affecting or relating to the property or affairs of the company;
- (k) within the twelve months immediately preceding the commencement of the winding up or at any time thereafter, fraudulently parts with, alters or makes an omission in, or is privy to the fraudulent parting with, altering or making an omission in, a document affecting or relating to the property or affairs of the company;
- (l) after the commencement of the winding up or at any meeting of the creditors of the company held within the period of twelve months immediately preceding the commencement of the winding up, attempts to account for a part of the

property of the company by fictitious losses or expenses;

- (m) has within the twelve months immediately preceding the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained a property for or on behalf of the company on credit which the company does not subsequently pay for;
 - (n) within the twelve months immediately preceding the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, a property which the company does not subsequently pay for;
 - (o) within the twelve months immediately preceding the commencement of the winding up or at any time thereafter pawns, pledges or disposes of a property of the company which has been obtained on credit and has not been paid for, unless the pawning, pledging or disposing is in the ordinary way of the business of the company; or
 - (p) makes a false representation or commits a fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up.
- (2) It is a sufficient defence in proceedings for an offence-
- (a) under paragraph (a), (b), (c), (d), (l), (n), or (o) of sub-section (1), if the accused person proves that he or she had no intent to defraud; and

- (b) under paragraph (h), (i) or (j) of sub-section (1), if the accused person proves that he or she had no intent to conceal the state of affairs of the company or to defeat the law.
- (3) Where a person pawns, pledges or disposes of a property in circumstances which amount to an offence under paragraph (o) of sub-section (1), every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances commits an offence.
- (4) For the purposes of this section, "officer" includes a person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

482. Penalty for falsification of books

An officer or a contributory of a company being wound up who destroys, mutilates, alters or falsifies any books, papers, or securities, or makes or is privy to the making of a false or fraudulent entry in a register, book of account or document belonging to the company, with intent to defraud or deceive any person, commits an offence.

483. Frauds by officers of companies which have gone into liquidation

A person commits an offence if he or she, being, at the time of the commission of the offence, an officer of a company which is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up-

- (a) has by false pretences or by means of any other fraud induced another person to give credit to the company;
- (b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of an execution against, the property of the

company; or

- (c) with intent to defraud creditors of the company, has concealed or removed a part of the property of the company since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against the company.

484. Liability where proper accounts not kept

(1) If, on a company being wound up, it is shown that proper books of account were not kept by the company throughout the period of-

- (a) two years immediately preceding the commencement of the winding up; or
- (b) between the incorporation of the company and the commencement of the winding up,

whichever is shorter, every officer of the company who was knowingly a party to the default of the company commits an offence, unless the officer shows that he or she acted honestly and that, in the circumstances in which the business of the company was carried on, the fault was excusable.

(2) For the purposes of this section, proper books of account are deemed not to have been kept in the case of a company if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including-

- (a) books containing entries from day-to-day in sufficient detail of all cash received and cash paid; and
- (b) where the trade or business has involved dealing in goods, statements of the annual stock takings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the

buyers and the sellers in sufficient detail to enable those goods and those buyers and sellers to be identified.

485. Fraudulent trading

(1) If, in the course of the winding up of a company, it appears that any business of the company has been carried on-

- (a) with intent to defraud creditors of the company or the creditors of any other person or for any fraudulent purpose;
- (b) with reckless disregard of the company's obligation to pay its debts and liabilities; or
- (c) with reckless disregard of the insufficiency of the company's assets to satisfy its debts and liabilities,

the court may, on the application of the Official Receiver or the liquidator or a creditor or contributory of the company, if it thinks it proper to do so, declare that any of the officers whether past or present, of the company or any other persons who were knowingly parties to the carrying on of the business in that manner are personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company, as far as the court may direct.

(2) Where the court makes a declaration under subsection (1) of this section, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular it may-

- (a) make provision for making the liability of a person under the declaration a charge on any debt or obligation due from the company to him or her or on a mortgage or charge or an interest in a mortgage or charge, on any assets of the company

held by or vested in him or her, or any company or persons on his or her behalf, or any person claiming as assignee from or through the person liable or any person acting on his or her behalf; and

- (b) from time to time, make such further order as may be necessary for the purpose of enforcing a charge imposed under this sub-section.

(3) For the purposes of sub-section (2), "assignee-"

- (a) includes person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created;
- (b) does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(4) Where a business of a company is carried on with such intent or for such purpose as is mentioned in sub-section (1), every person who was knowingly a party to the carrying on of the business in that manner commits an offence.

(5) The provisions of this section have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made.

486. Power of court to assess damages against delinquent directors

(1) If, in the course of winding-up a company, it appears that a person who has taken part in the formation or promotion of the company, or a past or present officer or liquidator of the company, has misapplied or retained or become liable or

accountable for any money or property of the company or has committed a misfeasance or breach of trust in relation to the company, the court may, on the application of the Official Receiver or of the liquidator, or of a creditor or contributory, examine into the conduct of the promoter, liquidator or officer, and compel him or her to-

- (a) repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just; or
- (b) contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the court thinks just.

(2) The provisions of this section have effect notwithstanding that the offence is one for which the offender may be criminally liable.

487. Prosecution of delinquent officers and members of a company

(1) If it appears to the court, in the course of a winding up by the court, that a past or present officer, or a member, of the company has committed an offence in relation to the company for which he or she is criminally liable, the court may, either on the application of a person interested in the winding up, or on its own motion, direct the liquidator to refer the matter to the Director of Public Prosecutions.

(2) If it appears to the liquidator, in the course of a voluntary winding up, that a past or present officer, or a member, of a company has committed an offence in relation to the company for which he or she is criminally liable, he or she shall forthwith report the matter to the Director of Public Prosecutions, and

- (a) furnish to the him or her such information; and
- (b) give to him or her such access to and facilities for inspecting and taking copies of any documents,

being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as the Director may require.

(3) If it appears to the court, in the course of a voluntary winding up, that-

- (a) a past, or present officer, or a member, of the company has committed an offence in relation to company for which he or she is criminally liable; and
- (b) no report with respect to the matter has been made by the liquidator to the Director of Public Prosecutions under sub-section (2),

the court may, on the application of a person interested in the winding up, or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly the provisions of this section have effect as though the report had been made in pursuance of that sub-section.

(4) Where a matter is reported or referred to the Director of Public Prosecutions under this section which he or she considers to be a case in which a prosecution ought to be instituted, the liquidator and every officer and agent of the company past and present (other than the defendant in the proceedings) shall give the Director of Public Prosecutions all assistance in connection with the prosecution, which the liquidator, officer or agent is reasonably able to give.

(5) For the purpose of sub-section (4), "agent", in relation to a company, includes a banker or legal practitioner of the company and a person employed

by the company as auditor, whether that person is or is not an officer of the company.

(6) If a person fails or neglects to give assistance in the manner required by sub-section (4), the court-

- (a) may, on the application of the Director of Public Prosecutions, direct the person to comply with the requirements of that sub-section; and
- (b) where the application is made with respect to a liquidator, may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his or her hands sufficient assets of the company to enable him her to do so, direct that the costs of the application be borne by the liquidator personally.

SUB-PART 4 - SUPPLEMENTARY PROVISIONS AS TO WINDING UP

488. Disqualification for appointment as liquidator

(1) A body corporate or an undercharged bankrupt is not qualified for appointment as liquidator of a company, whether in a winding up by the court or in a voluntary winding up.

(2) An appointment made in contravention of sub-section (1) is void, and a body corporate which or an undercharged bankrupt who, acts as liquidator of a company commits an offence.

489. Notification that a company is in liquidation

Where a company is being wound up, whether by the court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the

company appears, shall contain a statement that the company is being wound up.

490. Failure to comply with section 497

If default is made in complying with section 488 of this Act, the company and every officer of the company and every liquidator, receiver and manager, of the company who knowingly authorises or permits the default, commits an offence.

491. Exemption of certain documents from stamp duty on winding up of companies

(1) In the case of a winding up by the court, or of a creditors' voluntary winding up, of a company,

- (a) every assurance relating solely to freehold or leasehold property, or to any mortgage, charge or other encumbrance on, or any estate, right or interest in, any real or personal property, which forms part of the assets of the company and which, after the execution of the assurance, either at law or in equity, is or remains part of the assets of the company; and
- (b) every power of attorney, proxy, writ, order, certificate, affidavit, bond or other instrument or writing, relating solely to the property of a company which is being so wound up or to a proceeding under the winding up,

is exempt from duties chargeable under the Stamp Act.

(2) In sub-section (1), "assurance" includes deed, conveyance, assignment, transfer and surrender.

492. Books of company to be evidence

Where a company is being wound up, all the books and papers of the company and of the

liquidators are, as between the contributories of the company, *prima facie* evidence of the truth of all matters purporting to be recorded in those books and papers.

493. Disposal of books and papers of companies

(1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of, in the case of-

- (a) a winding up by the court, in such manner as the court directs;
- (b) a members' voluntary winding up, in such manner as a general meeting of the company by ordinary resolution directs; and
- (c) a creditors' voluntary winding up, in such manner as the committee of inspection or, if there is no committee, as a meeting of the creditors of the company, by resolution directs.

(2) After five years from the dissolution of the company, no responsibility rests on the company, the liquidators or a person to whom the custody of the books and papers has been committed, by reason of a book or paper not being forthcoming to a person claiming to be interested in it.

(3) Provision may be made by rules made under section 511 of this Act for enabling-

- (a) the court to prevent, for such period (not exceeding five years from the dissolution of the company) as the court thinks proper, the destruction of the books and papers of a company which has been wound up; and
- (b) a creditor or contributory of the company to make representations to the court on

any action taken under paragraph (a) of this sub-section.

(4) If a person acts in contravention of any rules made under section 511 of this Act for the purposes of this section or of any direction of the court under this section, he or she commits an offence.

494. Information as to pending liquidations

(1) Where a company is being wound up and the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the Registrar a statement in the prescribed form containing the prescribed particulars with respect to the proceedings in the winding up and the position of the liquidator.

(2) A person stating himself or herself in writing to be a creditor or contributory of the company is entitled, by himself or herself or by his or her agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy or extract of the statement sent to the Registrar under sub-section (1).

(3) A liquidator who fails to comply with this section, commits an offence and a person untruthfully stating himself or herself as provided in sub-section (2) to be a creditor or contributory commits the offence of contempt of court, and is, on the application of the liquidator or of the Official Receiver, punishable accordingly.

495. Unclaimed assets

(1) If it appears from a statement sent to the Registrar under section 502 of this Act or otherwise that a liquidator has, in his or her hands, or under his or her control, any money-

- (a) representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for

six months after the date of their receipt;
or

- (b) held by the company in trust in respect of dividends or other sums due to a person as a member of the company,

the liquidator shall forthwith pay that money into court, and is entitled to the prescribed certificate of receipt for the money so paid, and that certificate of receipt is an effectual discharge to him or her in respect of the payment.

(2) A person claiming to be entitled to any money paid into court in pursuance of this section may apply to the court for payment of the money, and the court may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due.

SUB-PART 5 - SUPPLEMENTARY POWERS OF COURT

496. Meetings to ascertain wishes of creditors or contributories

The court may-

- (a) as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence; and
- (b) if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the court directs, and may appoint a person to act as chairperson of the meeting and to report the result of the meeting to the court.

497. Affidavits

(1) An affidavit required to be sworn under the provisions or for the purposes of this Chapter may

be sworn in The Gambia or elsewhere before a court, judge, magistrate, or person lawfully authorised to take and receive affidavits.

(2) Every court, judge, magistrate, justice of the peace, commissioner and person acting judicially shall take judicial notice of the seal, stamp or signature, as the case may be, of the court, judge, magistrate or person attached, appended, or subscribed to an affidavit, or to any other document to be used for the purposes of this Chapter.

SUB-PART 6 - PROVISIONS AS TO DISSOLUTION

498. Power of court to declare dissolution of company void

(1) Where a company has been dissolved, otherwise than pursuant to section 507 of this Act, the court may, at any time within two years of the date of the dissolution, on an application being made for the purpose by-

- (a) the liquidator of the company; or
- (b) any other person who appears to the court to be interested,

make an order, on such terms as the court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) The person on whose application an order is made shall, within seven days after the making of the order, or such further time as the court allows, lodge with the Registrar a copy of the court order, and if that person fails so to do he or she commits an offence.

499. Registrar may strike defunct company off register

(1) Where the Registrar has reasonable cause to believe that a company is not carrying on business

or in operation, he or she may send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the Registrar does not, within one month of sending the letter, receive an answer to his or her letter he or she shall within fourteen days after the expiration of the month, send to the company by post a registered letter-

- (a) referring to the first letter; and
- (b) stating that-
 - (i) no answer has been received to that letter, and
 - (ii) if an answer is not received to the second letter within one month from the date of the letter,

a notice will be published in the *Gazette* with a view to striking the name of the company off the register.

(3) If the Registrar-

- (a) receives an answer to the effect that the company is not carrying on business or in operation; or
- (b) does not within one month after sending the second letter receive any answer,

he or she may publish in the *Gazette*, and send to the company by post, a notice that at the expiration of three months from the date of that, notice, the name of the company mentioned in the notice will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months, the

Registrar shall publish in the *Gazette* and send to the company or the liquidator a like notice as is provided in sub-section (3).

(5) At the expiration of the time mentioned in the notice, the Registrar may, unless cause to the contrary is previously shown by the company, strike the company's name off the register, and shall publish notice of the striking off in the *Gazette*.

(6) On the publication of the notice under sub-section (5), the company shall be dissolved, but-

- (a) the liability of every director, officer, and member of the company continues and may be enforced as if the company had not been dissolved; and
- (b) nothing in this section affects the power of the court to wind up a company, the name of which has been struck off the register.

(7) A company or member or creditor who is aggrieved by the striking off the register of the company under this section may apply to the court at any time before the expiration of twenty years from the publication of the notice under sub-section (5), for an order restoring the company to the register.

(8) On an application under sub-section (7), the court may if satisfied that, at the time of the striking off, the company was carrying on business or was in operation, or that otherwise it is just to restore it to the register, order the name of the company to be restored to the register.

(9) An order under sub-section (8) may include-

- (a) any directions the court thinks fit; and
- (b) a provision may for placing the company and all other persons in the same position, as nearly as may be, as if the name of the company had not been struck off the register,

and on delivery of an office copy to the Registrar for registration, the order shall have effect according to its tenor, and may be registered accordingly.

(10) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his or her last known place of business, and a letter or notice to be sent under this section to a company may be-

- (a) addressed to the company at its registered office, or, if no office has been registered, to the care of some director or other officer of the company; or
- (b) if there is no director or other officer of the company whose name and address are known to the Registrar, sent to each of the persons who subscribed the articles of association, addressed to him or her at the address mentioned in the articles.

500. Outstanding assets of defunct company to vest in official receiver

(1) Where, after a company has been dissolved, there remains any outstanding property, real or personal, including things in action and whether within or outside The Gambia-

- (a) which was vested in the company or to which it was entitled; or
- (b) over which it had a disposing power at the time it was dissolved; and
- (c) has not been realised or otherwise disposed of or dealt with by the company or its liquidator,

the property shall, for the purpose of this section and notwithstanding any enactment or rule of law to the contrary, be and become vested in the Official Receiver for all the estate and interest therein, legal or equitable, of the company or its liquidator at the

date the company was dissolved, together with all claims, rights and remedies which the company or its liquidator then had in respect the property.

(2) Where, under this Act, a claim, right or remedy of the liquidator may be made, exercised or availed of only with the approval or concurrence of the court or some other person, the Official Receiver may, for the purposes of this section, make, exercise or avail himself or herself of that claim, right or remedy without the approval or concurrence.

(3) Subject to sub-section (4), property vested in the Official Receiver by operation of this section is liable and subject to all charges, claims and liabilities imposed thereon or affecting the property by reason of a statutory provision as to rates, taxes, charges or any other matter or thing to which the property would have been liable or subject had the property continued in the possession, ownership or occupation of the company.

(4) There shall not be imposed on the Official Receiver, or the State, any duty, obligation or liability to do or suffer any act or thing required by a statutory provision to be done or suffered by the owner or occupier, other than the satisfaction or payment of charges, claims, or liabilities out of the assets of the company so far as they are, in the opinion of the Official Receiver, properly available and applicable to the payment.

501. Disposal of property and application of moneys

(1) On proof to the satisfaction of the Official Receiver that there is vested in the Official Receiver, by operation of section 500 of this Act or in accordance with the provisions similar to the provisions of section 509 of this Act, any estate or interest in property, whether solely or together with any other person, of a beneficial nature and not merely held in trust, the Official Receiver may get in, sell or otherwise dispose of or deal with the estate or interest or any part of it as he or she sees fit.

(2) The Official Receiver may sell or otherwise dispose of or deal with any property solely or in concurrence with any other person in such manner for such consideration, by public auction, public tender or private contract on such terms and conditions as the Official Receiver thinks fit, with power to rescind any contract and resell or otherwise dispose of or deal with the property as he or she thinks expedient, and may make, execute and give such contracts, instruments and documents as he or she thinks necessary.

(3) The Official Receiver shall be remunerated by such commission, whether by way of percentage or otherwise, as is prescribed in respect of the exercise of the powers conferred by section (1) of this section.

(4) The moneys received by the Official Receiver in the exercise of any of the powers conferred on him or her by this section shall be applied in defraying all costs, expenses, commission and fees incidental thereto, and thereafter to any payment authorised by section 508 or this section and the surplus, if any, shall be-

- (a) paid into such account as may be prescribed; and
- (b) subject to the rules made under section 511, be dealt with according to orders of the court.

(5) Any claim, suit, or action for or in respect of any moneys paid into the prescribed account shall be presented, made, or instituted within twenty years next after the dissolution of the company, after the expiration of which period of time all moneys then or at any time thereafter standing to the credit of the prescribed account shall, if there be no such claim, suit, or action pending, or any order of the court to the contrary, be paid into the Consolidated Fund.

502. Penalty for offences committed under this Part

A person who commits an offence under the provisions of this Part is liable on conviction to a fine not exceeding fifty thousand dalasis or to a term of imprisonment not exceeding five years, or both the fine and imprisonment.

SUB-PART 7 - RULES

503. Rules of court for winding up of companies, etc

The Chief Justice may make Rules of Court for carrying into effect the objects of this Act so far as they relate to the winding-up of companies or generally in respect of other applicants to a court under this Act.

PART VIII - WINDING UP OF UNREGISTERED COMPANIES

504. Unregistered company

(1) For the purposes of this Part, "unregistered company" includes-

- (a) a foreign company;
- (b) any partnership, whether limited or not, or association consisting of more than seven members; or
- (c) a body corporate not incorporated or continued under this Act, and any unincorporated body.

(2) An unregistered company under sub-section (1) does not include-

- (a) a company incorporated or continued under this Act; or
- (b) any society or association established under an enactment and designated by the Minister by order published in the

Gazette.

(3) The provisions of this Part are in addition to and not in restriction of any provision contained in this Act with respect to the winding up of companies by the court, and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which he or she may exercise or do, as the case may be, in the winding up of companies.

(4) The Minister may make an order for the purposes of paragraph (b) of sub-section (2).

505. Winding up of unregistered companies

(1) Subject to this Part, an unregistered company may be wound up under this Chapter, which Chapter shall apply to an unregistered company, subject to the following-

- (a) the principal place of business of an unregistered company in The Gambia is for all the purposes of the winding-up the registered office of the unregistered company;
- (b) an unregistered company shall not be wound up voluntarily;
- (c) an unregistered company may be wound up if-
 - (i) it is dissolved or has ceased to have a place of business in The Gambia or has a place of business only for the purpose of winding up its affairs or has ceased to carry on business,
 - (ii) it is unable to pay its debts,
 - (iii) if the court is of the opinion that it is just and equitable that the company should be wound up, or

- (iv) it is an foreign company, in a case as is referred to in paragraph (d) of section 400 of this Act.

(2) An unregistered company is deemed to be unable to pay its debts if-

- (a) a creditor to whom the unregistered company is indebted in a sum exceeding five thousand dalasis then due has served-

- (i) on the unregistered company, by leaving at its principal place of business or by delivering to the secretary or some director, manager or principal officer of the unregistered company,

- (ii) on a person authorised by an foreign company to accept service of process, or

- (iii) in such manner as the court approves or directs,

a written demand requiring the unregistered company to pay the sum so due and the company has for three weeks after the service of the demand neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor;

- (b) any action or other proceeding has been instituted against a member of the unregistered company for debt or demand due or claimed to be due from the unregistered company or from him or her in his or her capacity as a member, and, notice in writing of the institution of the action or proceeding having been served-

- (i) on the unregistered company by leaving it at its principal of business

or by delivering it to the secretary or some director, manager or principal officer of the company,

- (ii) on a person authorised by an foreign company to accept service of process, or
- (iii) it in such manner as the court approves or directs,

the unregistered company has not within three weeks after service of the notice paid, secured or compounded for the debt or demand or procured the action or proceeding to be stayed or indemnified the defendant to his or her reasonable satisfaction against the action or proceeding and against all costs, damages and expenses to be incurred by him or her by reason thereof;

- (c) execution or other process issued on a judgment, decree or order obtained in any court in favour of a creditor against the unregistered company or a member thereof as such or a person authorised to be sued as nominal defendant on behalf of the company is returned unsatisfied;
- (d) it is proved to the satisfaction of the court that the value of the unregistered company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities; or
- (e) it is otherwise proved to the satisfaction of the court that the unregistered company is unable to pay its debts as they fall due.

(3) A company incorporated outside The Gambia may be wound up as an unregistered company under this Chapter notwithstanding that it is being wound up or has been dissolved or had otherwise ceased to exist as a company under or by virtue of

the laws of the place under which it was incorporated.

(4) The money sum for the time being specified in sub-section (2) is subject to increase or reduction by regulations made under section of this Act, but no increase in the sum so specified affects any case in which the winding up petition was presented before the coming into force of the increase.

506. Contributories in winding up of unregistered company

(1) On an unregistered company being wound up, a person-

- (a) who is liable to pay or contribute to the payment of-
 - (i) a debt or liability of the company,
 - (ii) a sum for the adjustment of the rights of the members among themselves, or
 - (iii) the costs and expenses of winding up, or
- (b) where the company has been dissolved in the place in which it is formed or incorporated, who immediately before the dissolution was so liable,

is deemed to be a contributory and liable to contribute to the assets of the company all sums due from him or her in respect of the liabilities specified in this sub-section.

(2) On the death or bankruptcy of a contributory the provisions of this Act with respect to the personal representatives of deceased contributories and the trustees of bankrupt contributories, respectively, apply.

507. Power of court to stay or rest-rain proceedings

(1) The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall, in the case of an unregistered company where the application to stay or restrain is by a creditor, extend to actions and proceedings against a contributory of the unregistered company.

(2) Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against a contributory of the company in respect of a debt of the unregistered company except by leave of the court and subject to such terms as the court imposes.

508. Outstanding assets of defunct unregistered company

(1) Where an unregistered company has been dissolved and there remains in The Gambia an outstanding property-

- (a) which was vested in the company;
- (b) to which it was entitled; or
- (c) over which it had a disposing power at the time it was dissolved,

but which was not got in, realised, or otherwise disposed of or dealt with, by the company or its liquidator before the dissolution, the property shall, by the operation of this section become vested for all the estate and interest therein, legal or equitable, of the company or its liquidator at the date the company was dissolved, in such person as is entitled thereto according to the law of the place of incorporation or origin of the company.

(2) Where the place of origin of an unregistered

company is The Gambia, the provisions of sections 495 and 496 apply with such adaptations as may be necessary in respect of that company.

PART VII - MISCELLANEOUS

509. Effect of earlier references

(1) A reference in a corporate instrument of a body corporate to the former Act or a procedure under the former Act, in relation to a company under former Act which is to be continued under this Act, is, to be construed as a reference to the provisions of this Act or a under this Act procedure.

(2) When there is no equivalent provision in this Act to the provision or procedure in or under the former Act referred to in the corporate instrument of a body corporate, the provision or proceeding of the former Act is to be applied, and stands unrepeated to the extent necessary to give effect to that reference in the corporate instrument.

CHAPTER X - DEALING IN COMPANY SECURITY

PART I - PROSPECTUS

SUB-PART 1 – PRELIMINARY

510. Definitions

In this Part-

"issue" includes circulate or distribute;

"notice" includes circular or advertisement;

"prospectus" includes, in relation to a company, any notice, or other document that-

- (a) invites applications from the public, or invites offers from the public, to subscribe for or purchase, or
- (b) offers to the public for subscription or purchase, directly or through other persons,

any shares or debentures of the company or any units of any shares or debentures of the company.

511. Application of Part X

This Part applies whether any shares or debentures of a company are offered to the public on, or with reference to, the promotion of a company or, at any time, after the company has come into existence.

SUB-PART 2 - PROSPECTUS REQUIREMENTS

512. Prohibition against public issue of shares and debentures

(1) Subject to sub-section (2), a person shall not issue any form of application for shares or debentures unless-

- (a) a prospectus, as required by this Part, has been registered with the Registrar; and
- (b) a copy of the prospectus is issued with the form of application or the form specifies a place in The Gambia where a copy of the prospectus can be obtained.

(2) Sub-section (1) does not apply if the form of application referred to in that sub-section is issued in connection with shares or debentures that are not offered to the public or intended for the public.

513. Contents of prospectus

The following requirements apply to a prospectus-

- (a) the prospectus shall be dated and that date, unless there is proof to the contrary, is to be taken as the date of issue of the prospectus;
- (b) one copy of the prospectus shall be lodged

with the Registrar, and the prospectus shall-

- (i) set out that a copy of the prospectus has been so lodged, and
 - (ii) immediately state thereafter that the Registrar takes no responsibility as to the validity or veracity of its contents;
- (c) the prospectus shall contain a statement that no shares or debentures are to be allotted on the basis of the prospectus later than three months after the date of issue of the prospectus;
- (d) the prospectus shall, if it contains a statement by an expert made or contained in what purports to be a copy of or extract from a report, memorandum or valuation, of an expert, state the date on which the statement, report, memorandum or valuation was made, and whether or not it was prepared by the expert for incorporation in the prospectus;
- (e) the prospectus shall disclose any commission payable by virtue of section 110 of this Act; and
- (f) the prospectus shall contain such other matters as may be prescribed.

514. Professional names

A prospectus shall not contain the name of a person-

- (a) as a trustee for holders of debentures;
- (b) as an auditor, a banker, a legal practitioner or a stockbroker of the company or proposed company; or
- (c) for or in relation to the issue or proposed issue of shares or debentures,

unless that person has consented in writing, before the issue of the prospectus, to act in that capacity in relation to the prospectus and a copy of the consent, verified as prescribed in this Act, has been lodged with the Registrar.

515. No waivers

A condition is void that purports to-

- (a) require or bind an applicant for shares or debentures of a company to waive compliance with any requirement of this Part; or
- (b) affect the applicant with notice of any contract, document or matter not specifically referred to in the prospectus.

516. Certain notice required

(1) Subject to this section, a person shall not issue a notice that-

- (a) offers, for subscription or purchase, shares or debentures of a company, or invites subscriptions for, or purchase of, any shares or debentures;
- (b) calls attention to-
 - (i) an offer, or intended offer, for sub-subscription or purchase, of shares or debentures of a company,
 - (ii) an invitation, or intended invitation, to subscribe for, or purchase, any such shares or debentures, or
 - (iii) a prospectus.

(2) This section does not apply to-

- (a) a notice that relates to an offer or invitation not made or issued to the

public, directly or indirectly;

- (b) a registered prospectus within the meaning of this Part; or
- (c) a notice that-
 - (i) calls attention to a registered prospectus,
 - (ii) states that allotments of, or contracts with respect to, the shares or debentures will be made only on the basis of one of the forms of applications referred to in, and attached to, a copy of the prospectus,
 - (iii) contains no other information except that permitted pursuant to sub-section (3) of this section,
 - (iv) accompanies a notice referred to in sub-paragraphs (i) to (iii) of this paragraph or would, but for the inclusion therein of a statement referred to in sub-paragraph (vi) or (vii) of this paragraph, be a notice so referred to,
 - (v) is issued by a person whose ordinary business is or includes advising clients in connection with their investments and is issued only to clients so advised in the course of that business
 - (vi) contains a statement that the investment to which it or the accompanying document relates is recommended by that person, and
 - (vii) if the person is an under-writer or sub-underwriter of an issue of shares or debentures to which the notice or accompanying document

relates, contains a statement that the person making the recommendation is interested in the success of the issue as an underwriter or sub underwriter, as the case may be.

(3) All or any of the following information is permitted for the purposes of sub-paragraph (iii) of paragraph (c) of sub-section (2) -

- (a) the number and description of the shares or debentures of the company to which the prospectus relates;
- (b) the name of the company, the date of its incorporation and the number of the company's issued shares and the amount paid on its issued shares;
- (c) the general nature of the company's main business, or its proposed main business;
- (d) the names, addresses and occupations of the directors of the company;
- (e) the names and addresses of the brokers or underwriters to the issue of shares or debentures, or both, and, if the prospectus relates to debentures, the name and address of the trustee for the debenture holders;
- (f) the name of any stock or securities exchange of which the brokers or underwriters to the issue are members;
- (g) the particulars of the period during which the offer is effective;
- (h) the particulars of the time and place at which copies of the registered prospectus and form of application for the shares or debentures to which it relates can be obtained.

(4) This section applies to a notice issued in The Gambia by newspaper, or by radio or television broadcasting, or by cinematograph or any other means.

517. Responsibility for certificate

(1) Where a person issues a notice in contravention of section 516 of this Act and, before doing so, obtains a certificate that-

- (a) is signed by two directors of the company or two proposed directors of the proposed company to which, or to the shares or debentures of which, the notice relates;
- (b) specifies the names of those directors and of that company or of those proposed directors of that proposed company; and
- (c) is to the effect that, by the operation of sub-section (2) of section 516 of this Act, this section does not apply to the notice,

each person who signed the certificate is deemed to have issued the notice and the person who obtained the certificate is deemed not to have done so.

(2) A person who has obtained a certificate referred to in sub-section (1) shall deliver the certificate to the Registrar on being required to do so by the Registrar.

518. Evidence

In proceedings for a contravention of section 516 or 517 of this Act, a certificate that purports to be a, certificate under section 517 is *prima facie* proof that-

- (a) at the time the certificate was given, the persons named in the certificate were directors of the company so

named, or proposed directors of the proposed company so named, as the case may be;

- (b) the signatures in the certificate purporting to be the signatures of those persons are their signatures; and
- (c) publication of the notice to which the certificate relates was authorised by those persons.

SUB-PART 2 - REGISTRATION OF PROSPECTUS AND LIABILITY FOR CLAIMS

519. Registration of prospectus

(1) A person shall not issue a prospectus unless a copy of the prospectus has first been registered by the Registrar and the prospectus states on its face the fact of the registration and the date on which it was affected.

(2) The Registrar shall not register a copy of a prospectus unless-

- (a) a copy of the prospectus is lodged with the Registrar on or before the date of its issue, and it is signed by every director and by every person who is named in the prospectus as a proposed director of the company, or by his or her agent authorised in writing;
- (b) the prospectus appears to comply with the requirements of this Act;
- (c) there are lodged with the Registrar copies of any consent required by section 529 of this Act to the issue of the prospectus and of all material contracts referred to in the prospectus, or, in the case of a contract that is not reduced to writing, a memorandum

giving full particulars of the contract;
and

- (d) the Registrar is of the opinion that the prospectus does not contain a statement or matter that is misleading in the form or context in which it is included.

(3) If the Registrar-

- (a) refuses to register a prospectus, he or she shall give notice of that fact to the person who lodged the prospectus, and give in the notice the reason for his or her refusal; and
- (b) registers a prospectus, he or she shall give notice of that fact to the person who lodged the prospectus, and give in the notice the date on which the registration was effected,

(4) A person who lodges a prospectus with the Registrar may, within thirty days after he or she is notified of a refusal to register pursuant to sub-section (3), require in writing that the Registrar refer the matter to the court and the Registrar shall then refer the matter to the court for its determination.

(5) Where a refusal to register is referred to the court under sub-section (4), the court may, after hearing the person who lodged the prospectus, and, if the court so wishes-

- (a) order the Registrar to register the prospectus;
or
- (b) uphold the decision of the Registrar to refuse registration.

(6) On the hearing under sub-section (5), a party may be heard in person or by a legal practitioner.

520. Prospectus presumed

(1) When a company allots or agrees to allot to a person shares or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, the documents by which the offer of sale to the public is made is for all purposes deemed to be a prospectus issued by the company.

(2) With respect to sub-section (1), every enactment and rules of law as to the contents of prospectuses or otherwise relating to prospectuses shall apply and have effect accordingly, as if-

- (a) the shares or debentures had been offered to the public; and
- (b) the persons accepting the offer in respect of the shares or debentures were subscribers for them, but without affecting the liability of the person by whom the offer is made, in respect of statements or non-disclosures in the document or otherwise.

(3) For the purposes of this Act, and unless the contrary is shown, it is proof that an allotment of, or an agreement to allot, shares or debentures of a company was made with a view to the shares or debentures being offered for sale to the public, if-

- (a) the offer for sale of the shares or debentures, or of any of them, to the public was made within six months after the allotment or agreement to allot; or
- (b) at the date when the offer was made, the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(4) The requirements of this Part as to the prospectuses are to have effect as though the

persons making an offer to which this section relates were persons named in a prospectus as directors of a company.

(5) In addition to complying with the other requirements of this Part, the document making the offer shall set out-

- (a) the net amount of the consideration received, or to be received, by the company in respect of the shares or debentures to which the offer relates; and
- (b) the place and time at which the contract under which the shares or debentures have been or are to be allotted can be inspected.

(6) Where an offer to which this section relates is made by a company or firm, it is sufficient if the document making the offer is signed on behalf of the company, or not less than half the members of the firm, as the case may be, and a director or member may sign by his or her agent authorised in writing to do so.

521. Expert's consent

(1) A prospectus that invites subscription for, or the purchase of shares or debentures of a company, and that includes a statement purporting to be made by an expert shall not be issued unless-

- (a) the expert has given, and has not before delivery of a copy of the prospectus for registration, withdrawn his or her written consent to the inclusion of the statement in the form and context in which it is included in the prospectus; and
- (b) there appears in the prospectus a statement that the expert has given and has not withdrawn his or her consent.

(2) A person is not to be deemed to have authorised

or caused the issue of a prospectus by reason only of his or her having given the consent required by this Part to the inclusion in the prospectus of a statement purporting to be made by him or her as an expert.

522. Liability on prospectus

(1) Subject to this section, the person designated subsection (2) is, for any loss or damage sustained by other persons who, on the faith of a prospectus, subscribe for, or purchase any shares or debentures, liable for any loss or damage sustained by those other persons by reason of any untrue statement in the prospectus, or by reason of the wilful nondisclosure in the prospectus of any matter of which the designated person had knowledge and that he or she knew to be material.

(2) Sub-section (1) refers to a person who –

- (a) is a director of the company at the time of the issue of the prospectus;
- (b) authorised or caused himself or herself to be named, and is named, in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time;
- (c) an incorporator of the company; or
- (d) authorised or caused the issue of the prospectus.

(3) Notwithstanding subsection (1) -

- (a) where the consent of an expert is required to the issue of a prospectus and the expert has given that consent, he or she is not, by reason only of the consent, liable as a person who has authorised or caused the issue of the prospectus except in respect of an untrue statement purporting to be made by him or her as an expert; and

- (b) the inclusion in the prospectus of a name of a person as a trustee for debenture holders, or as an auditor, a banker, legal practitioner, transfer agent or stockbroker may not, for that reason alone, be taken as an authorisation by him or her of the issue of the prospectus.
- (4) A person who -
- (a) having consented to become a director of the company, withdrew his or her consent before the issue of the prospectus and the prospectus was issued without his or her authority or consent;
 - (b) when the prospectus was issued without his or her knowledge or consent, gave reasonable public notice of that fact forthwith after he or she became aware of its issue;
 - (c) after the issue of the prospectus and before allotment or sale under it, became aware of an untrue statement in it and withdrew his or her consent, and gave reasonable public notice of the withdrawal of his or her consent and the reasons for it; or
 - (d) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, had reasonable ground to believe and did, up to the time of the allotment or sale of the shares or debentures, believe that the statement was true,

is not liable under sub-section (1).

(5) A person is not liable under sub-section (1) if, as regards every untrue statement, purporting to be a statement made by -

- (a) an expert or to be based on a statement made by an expert, it fairly represented the statement, or was a correct and fair copy of, or extract from, the report of valuation and

that person –

- (i) had reasonable ground to believe and did, up to the time of the issue of the prospectus, believe that the expert making the statement was competent to make it, and
- (ii) had given his or her consent as required under section 529 of this Act to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration, and the expert, to that person's knowledge, withdrawn that consent before allotment or sale under the prospectus; or

(b) an official person or contained in what purports to be a copy of, or extract from, a public official document, it was a correct and fair representation of the statement or copy of, or extract from, the document.

(6) Sub-sections (4) and (5) do not apply in the case of a person liable, by reason of his or her having given a consent required of him or her by section 521 of this Act, as a person who has authorised or caused the issue of the prospectus in respect of an untrue statement purporting to have been made by him or her as an expert.

(7) A person who, apart from this sub-section, would be liable under sub-section (1) of this section, by reason of his or her having given a consent required of him or her by section 521 of this Act as a person who has authorised or caused the issue of a prospectus in respect of an untrue statement purporting to be made by him or her as an expert, is not liable, if -

- (a) having given his or her consent under that section to the issue of the prospectus, he or she withdrew his or her consent in writing

before a copy of the prospectus was lodged with the Registrar;

- (b) after a copy of the prospectus was lodged with the Registrar and before allotment or sale under the prospectus, he or she, on becoming aware of the untrue statement, withdrew his or her consent in writing and gave reasonable public notice of the withdrawal and of the reasons for the withdrawal; or
- (c) he or she was competent to make the statement and had reasonable ground to believe, and did, up to the time of the allotment or sale of the shares or debentures, believe that the statement was true.

(8) When-

- (a) a prospectus contains the name of a person as a director of the company, or as having agreed to become a director, and he or she has not consented to become a director, or has withdrawn his or her consent before the issue of the prospectus and has not authorised or consented to its issue; or
- (b) the consent of a person is required under section 521 of this Act to the issue of a prospectus and he or she either has not given the consent or has withdrawn it before the issue of the prospectus,

a person who authorised or caused the issue of the prospectus and the directors of the company, other than those directors without whose knowledge or consent the prospectus was issued, are liable to indemnify the person so named, or whose consent was so required, against all damages, costs and expenses to which he or she might be liable by reason of his or her name having been inserted in the prospectus, or of the inclusion of a statement purporting to be made by him or her as an expert,

or in defending himself or herself against any action or legal proceedings brought against him or her in respect thereof.

SUB-PART 4 - SUBSCRIPTION LIST AND MINIMUM SUBSCRIPTION

523. Subscription lists

(1) An allotment shall not be made of any shares or debentures of a company in pursuance of a prospectus, and no proceedings shall be taken on applications made in pursuance of a prospectus, until the beginning of the fifth day after, that on which the prospectus is first issued, or any such later time as is specified in the prospectus, and the beginning of that fifth day or specified later time is referred to in this section as the "time of the opening of the subscription lists".

(2) An application for shares or debentures of a company made in pursuance of a prospectus is not revocable until –

- (a) after the expiration of the fifth day from the time of the opening of the subscription lists; or
- (b) the giving before, the expiration of that fifth day, by some person responsible under this Act for the prospectus, of a public notice having the effect of excluding or limiting the responsibility of the person giving it.

(3) An allotment made in contravention of this section is void.

(4) Notwithstanding sub-section (3), an allotment void under this section does not affect an allotment of the same shares or debentures later made to the same applicant.

524. Minimum subscription

(1) Unless all the shares or debentures offered for

subscription by a prospectus issued to the public are underwritten, the prospectus shall state the minimum amount of money required to be raised by the company by issuing the shares or debentures.

(2) An allotment shall not be made of any shares or debentures of a company that are offered to the public unless -

- (a) the minimum subscription has been subscribed; and
- (b) the sum payable on application for the shares or debentures has been received by the company,

and, if a cheque for the sum payable has been received by the company, the sum is deemed not to have been received by the company until the cheque is paid by the bank on which it is drawn.

(3) If the conditions referred to in sub-section (2) have not been complied with on the expiration of forty days after the first issue of the prospectus -

- (a) all moneys received from the applicants for any shares or debentures shall be forth-with repaid to them within forty-eight days after the issue of the prospectus; and
- (b) the directors of the company are, subject to sub-section (4), jointly and severally liable to repay that money with interest at the rate of six *per cent* per annum from the expiration of the forty-eighth day.

(4) A director is not liable to repay moneys under sub-section (3) if the default in any repayment of moneys was not due to a default or negligence on his or her part.

(5) A condition is void that purports to require or bind an applicant for shares or debentures to waive compliance with a requirement of this section.

(6) This section does not apply to an allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

525. Escrow of subscription money

All application moneys and other moneys paid prior to an allotment by an applicant on account of shares or debentures offered to the public shall, until the allotment of the shares or debentures-

- (a) be held by the company; or
- (b) in the case of an intended company, by the persons named in the prospectus as proposed directors and by the incorporators,

on trust for the applicant, but there is no obligation or duty on any bank or third person with whom the moneys have been deposited to inquire into, or see to the proper application of those moneys so long as the bank, or person acts in good faith.

SUB-PART 5 - REMEDIAL ACTIONS

526. Rescission of contract

(1) A shareholder or a debenture holder may bring, against a company that has allotted shares or debentures under a prospectus, an action for the rescission of all allotments and the repayment to the shareholders or debenture holders of the whole or part of the issue price that has been paid in respect of the shares or debentures, if -

- (a) the prospectus contained a material statement, promise or forecast that was false, deceptive or misleading; or
- (b) the prospectus did not contain a statement, report or account required under this Act to be contained in it.

(2) In an action brought under this section, the plaintiff need not prove that he or she, or the person

to whom the shares or debentures he or she holds were allotted, was in fact influenced by the statement, promise or forecast that he or she alleges to be false, deceptive or misleading, or by the omission of any report, statement, or account required to be contained in the prospectus.

(3) If judgement is given in favour of a plaintiff under this section, the allotment of all shares or debentures under the same prospectus, whether allotted to the plaintiff, or the person under whom he or she derives title, or to other persons, is void.

(4) Where the allotment of shares or debentures is void under sub-section (3), judgement shall be entered in favour of all the shareholders and debenture holders for the payment by the company to them severally of the amount paid in respect of the shares or debentures that they respectively hold, but if a shareholder or debenture holder at the date judgment is so entered signifies to the company in writing, whether before or after the entry of judgment, that he or she waives his or her right to rescind the allotment of shares or debentures that he or she holds, he or she is deemed not to be included among the shareholders and debenture holders in whose favour judgment is entered.

(5) The operation of this section is affected by the company being wound up or ceasing to pay its debts as they fall due, and, in the winding up of the company, a repayment due under sub-section (4) of this section shall be treated as a debt of the company payable immediately before the repayment of the shares or debentures of the class in question, that is in the case of a repayment in respect of -

- (a) shares, before repayment of the capital paid up on shares of the same class, and before any accumulated or unpaid dividends, or any premiums in respect of those shares, but after the payment of all debts of the company and the satisfaction of all claims in respect of prior ranking classes

of shares; and

(b) debentures, before the repayment of the principal of the debentures of the same class, and before any unpaid interest or any premiums in respect of those debentures, but after the payment of all debts or liabilities of the company that this Act requires to be paid before those debentures, and after the satisfaction of all rights in respect of prior ranking classes of debentures.

(6) It is a defence to an action under this section for the company to prove that the plaintiff-

(a) was the allottee of the shares or debentures in right of which the action was brought and that at the time they were allotted to him or her, he or she knew-

(i) that the statement, promise or forecast of which he or she complains was false, deceptive or misleading, or that he or she knew, or

(ii) omission from the prospectus of the matter of which he complains; or

(b) has received a dividend or payment of interest or has voted at a meeting of shareholders or debenture holders since he or she discovered-

(i) that the statement, promise or forecast of which he or she complains was false, deceptive or misleading, or

(ii) the omission from the prospectus of the matter of which he or she complains.

(7) An action may not be dismissed if there are several plaintiffs, when the company proves that it has a defence under sub-section (6) of this section against each of them, and in any case in which the company proves that it has a defence against the plaintiff or all the plaintiffs, the court may, instead of dismissing the action substitute some other

shareholder or debenture holder of the same class as the plaintiff.

(8) If a company would have a defence under sub-section (6) but for the fact that the allottee of the shares or debentures in right of which the action is brought has transferred or renounced them, the company may bring an action against the allottee for an indemnity against any sum that the court orders it to pay to the plaintiff in the action.

(9) Sub-sections (6) and (8) apply also in the case of shares and debentures of the same class as those in right of which a plaintiff obtains and enters judgement against the company under sub-section (4), with the substitution -

(a) in sub-section (6), of references to the shareholder or debenture holder, for references to the plaintiff; and

(b) in sub-sections (6) and (8), of references to a right for the company to have the judgement set aside in respect of the shares or debentures, for references to a defence to the action.

(10) The rights conferred on shareholders and debenture holders by this section are in substitution for all rights to rescission and restitution in equity and all rights to sue the company at common law for deceit or for false statement made negligently, and those common law and equitable rights are hereby abolished in connection with prospectuses, but without prejudice to claims for damages or compensation against persons other than the company.

(11) This section applies to shares and debentures-

(a) allotted pursuant to an underwriting contract as if they had been allotted under the prospectus; and

(b) issued under a prospectus that offers them for subscription in consideration of the transfer or surrender of other shares or

debentures, whether with or without the payment of cash by or to the company, as though the issue price of the shares or debentures offered for subscription were the fair value, as ascertained by the court, of the shares or debentures to be transferred or surrendered, plus the amount of cash to be paid by the company.

(12) For the purposes of this section, a prospectus contains a material statement, promise or forecast, if the statement, promise or forecast was made in such a manner or context, or in such circumstances, as to be likely to influence a reasonable man in deciding whether to invest in the shares or debentures offered for subscription, and a statement, report or accounting is omitted from a prospectus if it is omitted entirely, or if it does not contain all the information required by this Act to be given in the statement, report or account.

(13) In this section -

"debenture holder" means a holder of any of the debentures allotted under the prospectus, whether as the original allottee or a person deriving title under him or her; and

"shareholder" means a holder of any of the shares allotted under the prospectus, as whether the original allottee or a person deriving title under him or her.

527. Time limit on allotment

(1) An allotment shall not be made` on the basis of a prospectus, or any shares or debentures of a company that are offered to the public later than three months after the issue of the prospectus.

(2) An allotment made in contravention of subsection (1) is void.

SUB-PART 6 - STATEMENTS IN LIEU OF PROSPECTUS**528. Restriction of allotment**

A public company that does not issue a prospectus on, or with reference to, its formation shall not allot any of its shares or debentures unless, at least three days, before the first allotment of either shares or debentures there has been lodged with the Registrar for registration a statement in lieu of prospectus that complies with the requirements of this Part.

529. Statements in lieu of prospectus

To comply with the requirements of this Part, a statement in lieu of prospectus lodged by or on behalf of a company shall -

- (a) be signed by every person who is mentioned in the statement as a director or a proposed director of the company, or by his or her agent authorised in writing;
- (b) disclose any commission payable under this Act; and
- (c) contain such matter as may be prescribed.

530. Refusal of registration of statement in lieu of prospectus

(1) The Registrar shall not accept for registration any statement in lieu of prospectus unless it appears to the Registrar that the statement complies with the requirements of this Act.

(2) Sub-sections (3) and (6) of section 514 of this Act apply in relation to the registration of, or refusal to register, a statement in lieu of prospectus as they apply in relation to the registration of, or refusal to register, a prospectus.

PART II – AMALGAMATIONS, REORGANISATION AND TAKEOVERS OF COMPANIES

SUB-PART 1 – AMALGAMATIONS

531. Amalgamation

Two or more companies, including holding and subsidiary companies may amalgamate and continue as one company.

532. Agreement for amalgamation

(1) A company proposing to amalgamate shall enter into an agreement setting out the terms and means of effecting the amalgamation, and in particular, setting out -

- (a) the provisions that are required to be included in the articles;
- (b) the name and address of each proposed director of the amalgamated company;
- (c) the manner in which the shares of each amalgamating company are to be converted into shares or debentures of the amalgamated company;
- (d) if any shares of an amalgamating company are not to be converted into shares or debentures of the amalgamated company, the amount of money or shares or debentures of any body corporate that the holders of those shares are to receive instead of shares or debentures of the amalgamated company;
- (e) the manner of payment of money instead of the issue of fractional shares of the amalgamated company or of any other body corporate the shares or debentures of which are to be received in the amalgamation;
- (f) whether the bye-laws of the amalgamated

company are to be those of one of the amalgamating companies, and, if not, a copy of the proposed by-laws; and

- (g) details of any arrangements necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated company.

(2) If shares of one of the amalgamating companies are held by or on behalf of another of the amalgamating companies, the amalgamation agreement shall provide for the cancellation of those shares when the amalgamation becomes effective, without any repayment of capital in respect of the shares, and no provision may be made in the agreement for the conversion of those shares into shares of the amalgamating company.

533. Approval by shareholders

(1) The directors of each amalgamating company shall submit the amalgamation agreement for approval to a meeting of the shareholders of the amalgamating company of which they are directors, and, subject to sub-section (4), to the holders of each class or series of shares of that amalgamating company.

(2) A notice of a meeting of shareholders shall -

- (a) be sent in accordance with this Act to each shareholder of each amalgamating company and the notice
- (b) include or be accompanied with a copy or summary of the amalgamation agreement;
- (b) state that a dissenting shareholder is entitled to be paid the fair value of his or her shares in accordance with section 546 of this section,

but failure to make the statement referred to in paragraph (c) of this sub-section does not invalidate an amalgamation.

(3) A share of an amalgamating company carries the right to vote in respect of an amalgamation, whether or not the share otherwise carries the right to vote.

(4) The holders of shares of a class or series of shares of an amalgamating company are entitled to vote separately as a class or series in respect of an amalgamation when the amalgamation agreement contains a provision that, if contained in a proposed amendment to the articles of association, would entitle those holders to vote as a class or series.

(5) An amalgamation agreement is adopted when the shareholders of each amalgamating company have approved of the amalgamation by special resolution of each class or series of the shareholders entitled to vote on the amalgamation.

(6) An amalgamation agreement may provide that at any time before the issue of a certificate of amalgamation the agreement can be terminated by the directors of an amalgamating company, notwithstanding approval of the agreement by the shareholders of all or any of the amalgamating companies.

534. Vertical short form amalgamation

A holding company and one or more of its wholly-owned subsidiary companies may amalgamate and continue as one company without complying with sections 533 and 534 of this Act, if -

- (a) the amalgamation is approved by a resolution of the directors of each amalgamating company; and
- (b) the resolutions provide that -
 - (i) the shares of each amalgamating subsidiary company will be cancelled without any repayment of capital in respect of the cancellation,

- (ii) the articles of amalgamation will be the same as the articles of association of the amalgamating holding company, and
- (iii) no shares or debentures will be issued by the amalgamated company in connection with the amalgamation.

535. Horizontal short-format amalgamation

Two or more wholly-owned subsidiary companies of the same holding body corporate may amalgamate and continue as one company without complying with sections 541 and 542 of this Act, if -

- (a) the amalgamation is approved by a resolution of the directors of each amalgamating company; and
- (b) the resolutions provide that -
 - (i) the shares of all but one of the amalgamating subsidiary companies will be cancelled without any repayment of capital in respect of the cancellation,
 - (ii) the articles of amalgamation will be the same as the articles of association of the amalgamating subsidiary company whose shares are not cancelled, and
 - (iii) the stated capital of the amalgamating subsidiary companies whose shares are cancelled will be added to the stated capital of the amalgamating subsidiary company whose shares are not cancelled.

536. Articles of amalgamation

(1) Subject to sub-section (6) of section 538 of this Act, after an amalgamation has been adopted under that section or approved under section 534 or 535 of this Act, the articles of amalgamation in the

prescribed form, shall be sent to the Registrar together with the documents required by section 13 of this Act.

(2) There shall be attached to the articles of amalgamation a statutory declaration of a director or an officer of each amalgamating company that establishes to the satisfaction of the Registrar that there are reasonable grounds for believing that -

- (a) each amalgamating company is, and the amalgamated company will be, able to pay its liabilities as they become due;
- (b) the realisable value of the amalgamated company's assets will not be less than the aggregate of its liabilities and stated capital of all classes; and
- (c) no creditor will be prejudiced by the amalgamation, or
- (d) adequate notice has been given to all known creditors of the amalgamating companies, and no creditor objects to the amalgamation otherwise than on grounds that are frivolous or vexatious.

(3) For the purposes of sub-section (2), adequate notice is given to creditors by a company, if -

- (a) a notice in writing is sent to each known creditor having a claim against the company that exceeds five thousand dalasis;
- (b) a notice is published twice in a newspaper published, and circulating in The Gambia and broadcast twice through a radio announcement; and
- (c) each notice states that the company intends to amalgamate with one or more specified companies in accordance with this Act, and that a creditor of the company can object to the amalgamation within thirty days from the date of the notice.

537. Certificate of amalgamation

(1) On receipt of articles of amalgamation, the Registrar shall issue a certificate of amalgamation.

(2) On the date shown in a certificate of amalgamation-

- (a) the amalgamation of the amalgamating companies and their continuance as one company becomes effective;
- (b) the property of each amalgamating company becomes the property of the amalgamated company;
- (c) the amalgamated company becomes liable for the obligations of each amalgamating company;
- (d) any existing cause of action, claim or liability to prosecution is unaffected;
- (e) a civil, criminal or administrative action or proceeding pending by or against an amalgamating company may be continued by or against the amalgamated company;
- (f) a conviction against, or ruling, order or judgment in favour of or against, an amalgamating company may be enforced by or against the amalgamated company; and
- (g) the articles of amalgamation are the memorandum and articles of association of the amalgamated company and the certificate of amalgamation is the certificate of incorporation of the amalgamated company.

SUB-PART 2 - DISSENTERS' RIGHTS AND OBLIGATIONS**538. Dissent by shareholder**

(1) Subject to sections 301 and 556 of this Act, a

shareholder of a class of shares of a company may dissent if the company resolves to -

- (a) amend its articles to add, change or remove any provisions restricting the issue or transfer of shares of that class;
- (b) amend its articles to add, change or remove any restriction on the businesses that the company can carry on;
- (c) amalgamate with another company, otherwise than under section 542 or 543 of this Act; or
- (d) sell, lease or exchange all or substantially all its property.

(2) Subject to sections 301 and 556 of this Act, a shareholder of a class of shares of a company may dissent if the company is subject to an order of the court under section 557 of this Act permitting the shareholders to dissent.

(3) The articles of a company that is not a public company may provide that a shareholder of a class or series of shares who is entitled to vote under this Act may dissent if the company resolves to amend its articles in a manner contrary to the provisions of this Act.

(4) In addition to any other right shareholder has, but subject to section 555 of this Act, a shareholder who complies with this section is entitled, when the action approved by the resolution from which he or she dissents or an order made under section 557 of this Act becomes effective, to be paid by the company the fair value of the shares held by him or her in respect of which he or she dissents, and the fair value is to be determined as of the close of business on the day before the resolution was adopted or the order made.

(5) A dissenting shareholder shall not claim under this section except only with respect to all the shares of a class or series -

- (a) held by him or her on behalf of anyone as beneficial owner; and
- (b) registered in the name of the dissenting shareholder.

(6) A dissenting shareholder shall send to the company, at or before any meeting of share-holders of the company at which a resolution referred to in sub-section (1) or (3) is to be voted on, a written dissent from the resolution, unless the company did not give notice to the of the shareholder of purpose of the meeting and of his or her right to dissent.

(7) When a shareholder of a company has dissented pursuant to sub-section (6), the company shall, within ten days after the shareholders of the company adopt the resolution, send to the shareholder notice that the resolution has been adopted, but the notice need not be sent to the shareholder if he or she has voted for the resolution or has withdrawn his or her dissent.

539. Demand for payment

(1) A dissenting shareholder shall within twenty days after he or she receives a notice under sub-section (7) of section 541 of this Act, or, if he or she does not receive that notice, within twenty days after he or she learns that a resolution under that sub-section has been adopted, send to the company a written notice containing -

- (a) his or her name and address;
- (b) the number and class or series of shares in respect of which he or she dissents; and
- (c) a demand for payment of the fair value of the shares.

(2) A dissenting shareholder shall within thirty days after sending a notice under sub-section (1), send the certificates representing the shares in respect of which he or she dissents to the company or its

transfer agent.

(3) A dissenting shareholder who fails to comply with sub-section (2) has no right to make a claim under this section.

(4) A company or its transfer agent shall endorse on a share certificate received by it under sub-section (2) a notice that the holder of the share is a dissenting shareholder under this section and forthwith return the share certificate to the dissenting shareholder.

540. Suspension of rights

After sending a notice under section 539 of this Act, a dissenting shareholder ceases to have any right as a shareholder, other than the right to be paid the fair value of his or her shares as determined under this section, unless -

- (a) the dissenting shareholder with-draws his or her notice before the company makes an offer under section 549 of this Act;
- (b) the company fails to make an offer in accordance with section 549 of this Act and the dissenting shareholder withdraws his or her notice; or
- (c) the directors -
 - (i) revoke a resolution to amend the articles of the company,
 - (ii) under sub-section (6) of section 536 of this Act, terminate an amalgamation agreement, or
 - (iii) abandon a sale, lease or an exchange of property,

in which case, his or her rights as a shareholder are re-instated as of the date the notice mentioned in section 539 was sent.

541. Offer to pay for share

(1) A company shall, not later than seven days after the day on which the action approved by the resolution is effective, or the day the company received the notice referred to in section 539 of this Act, whichever is the later date, send to each dissenting shareholder who has sent a notice -

- (a) a written offer to pay for his or her shares in an amount considered by the directors of the company to be the fair value of those shares, which shall be accompanied with a statement showing how the fair value was determined; or
- (b) if section 555 of this Act applies, a notification that it is unable lawfully to pay dissenting shareholders for their shares.

(2) An offer made under sub-section (1) of this section for shares of the same class or series shall be on the same terms.

(3) Subject to section 555 of this Act, a company shall pay for the shares of a dissenting shareholder within ten days after an offer made under sub-section (1) of this section had been accepted, but the offer lapses if the company does not receive an acceptance of the offer within thirty days after it has been made.

542. Application to court

(1) If a company fails to make an offer under sub-section (1) of section 549 of this Act, or if a dissenting shareholder fails to accept the offer made by the company, the company may, within fifty days after the action approved by the resolution is effective, apply to the court to fix a fair value for the shares of a dissenting shareholder.

(2) If a company fails to apply to the court in the circumstances described in sub-section (1), a dissenting shareholder may, within a further period of twenty days, apply to the court to fix a fair value

for the shares of a dissenting shareholder.

543. Joined parties

On an application to the court under section 550 of this Act -

- (a) all dissenting shareholders whose shares have not been purchased by the company are to be joined as parties and are bound by the decision of the court; and
- (b) the company shall notify each affected dissenting shareholder of the date, place and consequences of the application and of his or her right to appear and be heard in person or by a legal practitioner.

544. Court powers

(1) Upon an application to the court under section 550 of this Act, the court may determine whether any other person is a dissenting shareholder who should be joined as a party, and the court shall then fix a fair value for the shares of the dissenting shareholders.

(2) The court may appoint one or more appraisers to assist the court to fix a fair value for the shares of the dissenting shareholders.

(3) The final order of the court shall be made against the company in favour of each dissenting shareholder of the company and for the amount of the shares of the dissenting shareholder as fixed by the court.

545. Interest

The court may allow a reasonable rate of interest on the amount payable to each dissenting shareholder from the date the action approved by the resolution is effective until the date of payment by the company.

546. Recourse of Dissenting shareholder

(1) If section 555 of this Act applies, the company shall, within ten days after the making of an order under sub-section (3) of section 552 of this Act, notify each dissenting shareholder that it is unable lawfully to pay dissenting shareholders for their shares.

(2) If section 555 of this Act applies, a dissenting shareholder may, by written notice delivered to the company within thirty days after receiving a notice under sub-section (1) -

- (a) withdraw his or her notice of dissent, in which case the company consents to the withdrawal and the shareholder is reinstated to his or her full rights as a shareholder; or
- (b) retain a status as a claimant against the company entitled to be aided as soon as the company is lawfully able to do so, or, in a dissolution, to be ranked subordinate to the rights of creditors of the company, but in priority to the company's shareholders.

547. Prohibition of payment

A company shall not make a payment to a dissenting shareholder under section 549 of this Act if there are reasonable grounds for believing that -

- (a) the company is or would, after the payment, be unable to pay its liabilities as they become due; or
- (b) the realisable value of the company's assets would thereby be less than the aggregate of its liabilities.

SUB-PART 3 – RE-ORGANISATION AND ARRANGEMENTS**548. Re-organisation**

(1) In this section, "re-organisation" means a

change in a company effected by a court order made -

- (a) under section 301 of this Act;
 - (b) approving a proposal under the Insolvency Act; or
 - (c) that is made under any other enactment and that affects the rights among the company, its shareholders and creditors.
- (2) If a company is subject to an order referred to in sub-section (1), its articles may be amended by the order to effect any change that might lawfully be made by an amendment.
- (3) If the court makes an order referred to in sub-section (1), the court may also-
- (a) authorise the issue of debentures of the company, whether or not convertible into shares of a class or series, or having attached any rights or options to acquire shares of a class or series, and fix the terms of the issue; and
 - (b) appoint directors in place of, or in addition to, all or any of the directors then in office.
- (4) After an order referred to in sub-section (1) has been made, articles of re-organisation, in the prescribed form, shall be sent by the company to the Registrar, together with any other documents required by the Registrar.
- (5) On receipt of articles of re-organisation for a company, the Registrar shall issue a certificate of amendment.
- (6) A re-organisation of a company becomes effective on the date shown in the certificate of amendment.
- (7) A shareholder of a company is not entitled to dissent under section 546 of this Act if an

amendment to the articles of the company is effected under this section.

549. Arrangements

(1) In this section, "arrangement" includes -

- (a) an amendment of the articles of a company;
- (b) an amalgamation of two or more companies;
- (c) a division of the businesses carried on by a company;
- (d) a transfer of all or substantially all the property of a company to another body corporate in exchange for property, money or shares or debentures of the body corporate; and
- (e) an exchange of shares or debentures held by shareholders or debenture holders of a company for-
 - (i) property, money or other shares or debentures of the company, or
 - (ii) property money or shares or debentures of another body corporate of it,is not a take-over bid within the meaning of this Chapter .

(f) a dissolution of a company.

(2) For the purposes of this section, a company is insolvent when -

- (a) it is unable to pay its liabilities as they become due; or
- (b) the realisable value of the assets of the company are less than the aggregate of its liabilities and stated capital of all classes.

(3) Where it is not practicable for a company that is solvent to effect a fundamental change in the nature of an arrangement under any other provision of this Act, a company may apply to the court for an approval of an arrangement proposed by the company.

(4) In connection with an application under this section, the court may make an interim or a final order-

- (a) determining the notice to be given to any interested person or dispensing with notice to any person other than the Registrar;
- (b) requiring a company, in such manner as the court directs, to call, hold and conduct a meeting of shareholders or debenture holders, or holders of options or rights to acquire shares in the company;
- (c) permitting a shareholder to dissent under section 546 of this Act; or
- (d) approving an arrangement as proposed by the company or as amended in such manner as the court may direct.

(5) An applicant under this section shall give the Registrar notice of the application and the Registrar may appear and be heard in person or by a legal practitioner.

(6) After an order referred to in paragraph (d) of sub-section (4) of this section has been made, articles of arrangement in the prescribed form shall be sent to the Registrar together with the documents required by the Registrar.

(7) On receipt of articles of arrangement, the Registrar shall issue a certificate of amendment.

(8) An arrangement becomes effective on the date shown in the certificate of amendment.

SUB-PART 4 – TAKE-OVER BIDS**550. Definitions**

(1) In this Part -

"dissenting offeree", where a take-over bid is made for all the shares of a class of shares-

- (a) means a shareholder of that class of share who does not accept the take-over bid; and
- (b) includes a subsequent holder of that share who acquires it from the person mentioned in paragraph (a) of this sub-section;

"offer" includes an invitation to make an offer;

"offeree" means a person to whom a take-over bid is made;

"offeree" company" means a company whose shares are the object of a take-over bid;

"offeror" means a person who makes a take-over bid otherwise than as an agent, and includes two or more persons who, directly or indirectly -

- (a) make take-over bids jointly or in concert; or
- (b) intend to exercise, jointly or in concert, voting rights attached to shares for which a take-over bid is made;

"share" means a share with or without voting rights, and includes -

- (a) a debenture currently convertible into a share; and
- (b) currently exercisable options and rights to acquire a share or a convertible debenture; and

- (c) an exchange of shares or debentures held by shareholders or debenture holders of a company for-
 - (i) property, money or other shares or debentures of the company, or
 - (ii) property money or shares or debentures of another body corporate of it,

is not a take-over bid within the meaning of this Chapter .

"take-over bid" means an offer made by an offeror to shareholders of an offeree company to acquire all the shares of a class of issued shares of the offeree company, and includes every offer by an issuer to repurchase its own shares.

(2) An exchange of shares or debentures held by shareholders or debenture holders of a company for property, money or other shares or debentures of the company, or property, money or shares or debentures of another body corporate of it is not a takeover bid within the meaning of this Chapter.

551. Offeror rights

If, within one hundred and twenty days after the date of a take-over bid, the bid is accepted by the holders of not less than ninety per cent of the shares of a class of shares to which the take-over bid relates, other than shares held at the date of the take-over bid by or on behalf of the offeror or an affiliate or associate of the offeror, the offeror may, on complying with this Part acquire the shares held by the dissenting offerees.

552. Notice to dissenting shareholders

An offeror may acquire shares held by a dissenting offeree by sending, by registered post, within sixty after the date of termination of the take-over bid, and in any event within one hundred and eighty

days after the date of the take-over bid, an offeror's notice to each dissenting offeree and to the Registrar stating that-

- (a) offerees who are holding ninety *per cent* or more of the shares to which the bid relates accepted the take-over bid;
- (b) the offeror is bound to take up and pay for or has taken up and paid for the shares of the offerees who accepted the take-over bid;
- (c) a dissenting offeree is required to elect to -
 - (i) transfer his or her shares to the offeror on the terms on which the offeror acquired the shares of the offerees who accepted the take-over bid, or
 - (ii) demand payment of the fair value of his or her shares in accordance with sections 566 to 569 of this Act by notifying the offeror within twenty days after the dissenting offeree receives the offeror's notice;
- (d) a dissenting offeree who does not notify the offeror in accordance with sub-paragraph (ii) of paragraph (c) of this sub-section is presumed to have elected to transfer his or her shares to the offeror on the same terms as the offeror acquired the shares from the offerees who accepted the take-over bids; and
- (e) a dissenting offeree shall send to the offeree company those of his or her shares to which the take-over bid relates within twenty days after he or she receives the offeror's notice.

553. Adverse claims

The offeree shall, at the same time when he or she is sending the offeror's notice under section 560 of

this Act, also send to the offeree company a notice of adverse claim with respect to each share held by a dissenting offeree.

554. Delivery of certificates

A dissenting offeree to whom an offeror's notice is sent under section 560 of this Act shall, within twenty days after he or she receives that notice, send to the offeree company his or her share certificate for the class of shares to which the take-over bid relates.

555. Payment for shares

Within twenty days after the offeror sends an offeror's notice under section 560 of this Act the offeror shall pay or transfer to the offeree company the amount of money or other consideration that the offeror would have had to pay or transfer to a dissenting offeree if the dissenting offeree had elected, under sub-paragraph (ii) of paragraph (c) of section 560 of this Act, to accept the take-over bid.

556. Money in trust

The offeree company-

- (a) holds in trust for the dissenting shareholders the money or other consideration it receives under section 563 of this Act; and
- (b) shall deposit the money in a separate account in a bank and shall place the other consideration in the custody of a bank.

557. Duty of offeree company

Within thirty days after the offeror sends an offeror's notice under section 560 of this Act, the offeree company shall-

- (a) issue the offeror a share certificate in respect of the shares that were held by dissenting offerees;

- (b) give to each dissenting offeree who,
 - (i) under sub-paragraph (i) of paragraph (c) of section 560 of this Act, elects to accept the take-over bid, and
 - (ii) sends his or her share certificate as required under section 562 of this Act,

the money or other consideration to which he or she is entitled, disregarding fractional shares, which may be paid for in money; and
- (c) send to each dissenting shareholder who has not sent his or her share certificate, as required under section 562 of this Act, a notice stating that-
 - (i) his or her shares have been cancelled,
 - (ii) the offeree company or some designated person holds in trust for him or her the money or other consideration to which he or she is entitled as payment for or in exchange for his or her shares, and
 - (iii) the offeree company will, subject to sections 566 and 568 of this section, send that money or other consideration to him or her forthwith after receiving his or her shares.

558. Application to court

(1) If a dissenting offeree has, under sub-paragraph (ii) of paragraph (c) of section 560 of this Act, elected to demand payment of the fair value of his or her shares, the offeror may, within twenty days after it has paid the money or transferred the other consideration under section 563 of this Act, apply to the court to fix the fair value of the shares of that dissenting offeree.

(2) If an offeror fails to apply to the court under subsection (1), a dissenting offeree may, within a further period of twenty days, apply to the court to fix the fair value of the shares of the dissenting shareholder.

(3) If no application is made to the court under subsection (2) within the time provided for in that subsection, a dissenting offeree is deemed to have elected to transfer his or her shares to the offeror on the same terms as the offeror acquired the shares from the offerees who accepted the take-over bid.

559. Joined parties

On an application under section 566 of this Act-

- (a) all dissenting offerees referred to in subparagraph (ii) of paragraph (c) of section 560 of this Act whose shares have not been acquired by the offeror are to be joined as parties and are bound by the decision of the court; and
- (b) the offeror shall notify each affected dissenting offeree of the date, place and consequences of the application and of the offeree's right to appear and be heard in person or by a legal practitioner.

560. Powers and order of court

(1) On an application to the court under section 566 of this Act, the court may determine whether any other person is a dissenting offeree who should be joined as a party, and the court shall then fix a fair value for the shares of all dissenting offerees.

(2) The court may appoint one or more appraisers to assist the court to fix a fair value for the shares of a dissenting offeree.

(3) The final order of the court shall be made in favour of each dissenting offeree against the offeror

and be for the amount of the offeree's shares as fixed by the court.

561. Additional orders

The court may, in connection with proceedings under this Part, make any order it thinks fit, and, in particular, it may-

- (a) fix the amount of money or other consideration that is required to be held in trust under section 564 of the Act;
- (b) order that the money or other consideration be held in trust by a person other than the offeree company;
- (c) allow to each dissenting offeree, from the date he or she sends or delivers his or her share certificate under section 562 of the Act until the date of payment, a reasonable rate of interest on the amount payable to him or her; or
- (d) order that any money payable to a shareholder who cannot be found be paid into court, and sub-section (2) of section 509 of the Act applies in respect of that payment.

PART III - INSIDER TRADING

562. "Insider" defined

In this Part, "insider", in respect of a company, means-

- (a) a director or officer of the company;
- (b) a company that purchases or otherwise acquires shares issued by it or any of its affiliates;
- (c) a person who beneficially owns more than ten *per cent* of the shares of the company, or who exercises control or direction over more than ten *per cent* of the votes attached

to shares of the company;

- (d) an associate, a spouse, relative or affiliate of a person mentioned in paragraphs (a) to (c) of this section;
- (e) a person, whether or not he or she is employed by the company, who
 - (i) receives specific confidential information from a person described in this section, including a person described in this paragraph, and
 - (ii) has knowledge that the person giving the information is a person described in this section, including a person described in this paragraph; and
- (f) a public officer who receives confidential information by virtue of his or her office.

563. Presumed insider

(1) For the purposes of this Part-

- (a) a director or officer of a body corporate that is an insider of a company is an insider of the company;
- (b) a director or officer of a body corporate that is a subsidiary is an insider of its holding company;
- (c) if a body corporate becomes an insider of a company, or enters into a business combination with a company, a director or officer of the body corporate is presumed to have been an insider of the company for the previous twelve months or for such shorter period as he or she was a director or an officer of the body corporate; and
- (d) if a company becomes an insider of a body corporate, or enters into a business

combination with a body corporate, a director or officer of the company is presumed to have been an insider of the body corporate for the previous twelve months, or for such shorter period as he or she was a director or officer of the company.

(2) In sub-section (1), "business combination" means an acquisition of all or substantially all the property of one body corporate or company by another, or an amalgamation of two or more bodies corporate or companies.

564. Liability of insider

(1) An insider who, in connection with a transaction in share or debenture of a company or any of its affiliates, makes use of any specific confidential information for his or her own benefit or advantage that, if generally known, might reasonably be expected to affect materially its value commits an offence.

(2) A person who commits an offence under sub-section (1) is liable on conviction to a fine not exceeding fifty thousand dalasis or imprisonment for a term not exceeding two years, or to both the fine and imprisonment.

(3) In addition to the penalty in sub-section (2), a person who commits an offence under sub-section (1) -

- (a) is liable to compensate a person for any direct loss incurred by that person as a result of the transaction, unless the information was known, or in the exercise of reasonable diligence should have been known, to that person at the time of the transaction; and
- (b) is accountable to the company for any direct benefit or advantage received or receivable by the insider as a result of the transaction.

565. Time limit on action

An action to enforce a right created by section 572 of this Act may not be commenced except within two years after the discovery of the facts that gave rise to the cause of action.

CHAPTER XI – REGISTERED ASSOCIATIONS**566. Application of Chapter**

(1) This Chapter applies to a non-profit company.

(2) When a provision of this Chapter is inconsistent with, or repugnant to, any other provision of this Act, the provision of this Chapter, in so far as it affects a registered association to which this Chapter, applies, supersedes and prevails over the other provision of this Act.

567. Incorporation of associations

(1) Where one or more trustees are appointed by any community of persons bound together by custom, religion, kinship or nationality, or by any body or association of persons established for any religious, patriotic, philanthropic, historical, artistic, fraternal, athletic, educational, literary, scientific, social, developmental, cultural, sporting or charitable purpose, the trustee or trustees may, if so authorised by the community, body or association (in this Chapter referred to as “the association”) apply to the Registrar under this Chapter for registration as a corporate body.

(2) On being registered by the Registrar, the association shall become a corporate body in accordance with and be subject to, the provisions of this Chapter.

568. Method of application

(1) An application under section 586 of this Act shall be in the form prescribed by the Registrar and shall state-

-
- (a) the name of the association;
 - (b) the aims and objects of the association which must be for the advancement of any religious, patriotic, philanthropic, historical, artistic, fraternal, athletic, educational, literary, scientific, social, developmental, cultural, sporting or any other charitable purpose, and must be lawful; and
 - (c) the names, address and occupation of the secretary of the association, if any.
- (2) The association shall submit, with the application -
- (a) two printed copies of the constitution of the association;
 - (b) duly signed copies of the minutes of the meeting appointing the persons and authorising the application, showing the persons present and the votes scored; and
 - (c) the impression or drawing of the proposed common seal.
- (3) The application shall be signed by the person making it.
- (4) The Registrar may require such declaration or other evidence in verification of the statements and particulars in the application, and such other particulars, information, and evidence, if any, as he or she may think fit.
- (5) A person who knowingly makes a false statement or gives any false information for the purpose of registering the association under this Chapter commits an offence and is liable on conviction to a fine of twenty thousand dalasis or imprisonment for a term of one year, or to both the fine and imprisonment.

569. Constitution

The constitution of the association shall, in addition to any other matter -

- (a) state the name or title of the association which shall not conflict with that of a company, or with a business name or trade mark registered in The Gambia;
- (b) the aims and objects of the association; and
- (c) make provisions in respect of the following –
 - (i) appointment, powers, duties, tenure of office and replacement of the trustees,
 - (ii) the use and custody of the common seal,
 - (iii) the meetings of the association,
 - (iv) the number of members of the governing body, the procedure for their appointment and removal, and their powers and duties, and
 - (v) where subscriptions and other contributions are to be collected, the procedure for disbursement of the funds of the association, the keeping of accounts and the auditing of the accounts.

570. Registration and issue of certificate

(1) If the Registrar is satisfied with the application, he or she shall register the association and issue a certificate in the prescribed form.

(2) From the date of registration, the association becomes a body corporate by the name described in the certificate, and has-

- (a) perpetual succession and a common seal;
 - (b) power to sue and be sued in its corporate name; and
 - (c) subject to this Act, to hold and acquire, and transfer, assign or otherwise dispose of, any property or interests in the property belonging to, or held for the benefit of the association, in such manner and subject to such restrictions and provisions as are specified in its constitution.
- (3) The certificate of incorporation vests in the association all property and interests of what-ever nature or tenure belonging to or held by the trustees or any other person in trust for the community, body or association of persons before the registration.
- (4) A certificate of incorporation when issued is *prima facie* evidence that all the preliminary requisitions contained in this Chapter and required in respect of the incorporation have been complied with, and the date of incorporation mentioned in the certificate is deemed to be the date on which incorporation has taken place.
- (5). The common seal of the association shall have such device as may be approved by the Registrar, and any instrument to which the seal has been affixed in apparent compliance with the regulations for the use of the common seal is binding on the association, notwithstanding any defect or circumstance affecting the execution of the instrument.
- (6). Subject to the provisions of this Chapter and of the constitution of the association, the association may contract in the same form and manner as an individual.

571. Change or alteration of names, objects and constitution

- (1) Where the association is desirous of changing or altering its name or objects or any of them, it

shall apply to the Registrar in the prescribed form setting out the change or alteration desired and attaching a copy of the resolution approving the change or alteration duly certified by the trustees.

(2) If the Registrar approves the application, the change or alteration shall be made and, in the case of a change of name, the Registrar shall issue a new certificate in the new name in place of the former certificate.

(3). Subject to section 578 of this Act, an association registered under this Chapter may alter its constitution by a resolution passed by a simple majority of its members and approved by the Registrar.

572. Replacement and appointment of additional trustees

(1) Where an association intends to replace some or all of its trustees or to appoint additional trustees, it may by resolution at a general meeting do so, and apply in the pre-scribed form for the approval of the Registrar.

(2) If the Registrar approves the application, he or she shall signify his or her approval in writing to the association and the replacement or appointment shall become valid as from the date of the resolution replacing or appointing the trustees.

573. Changes in contravention of section 590 or 591

A change or an alteration made in contra-vention of section 579 or 580 of this Act is void.

574. Council or governing body

The association may-

- (a) appoint a council, or governing body, which shall include the trustees; and
- (b) subject to the provisions of this Chapter,

assign to it such administrative and management functions as it deems expedient.

575. Exercise of powers of trustees

The powers vested in the trustees under this Act are subject to the directions of the association.

576. Bye-laws

(1) The Council may make bye-laws, not being contrary to its constitution, with respect to-

- (a) the admission of persons and unincorporated associations as members and as *ex officio* members, and the qualifications of, and the conditions of membership;
- (b) the fees and dues of members;
- (c) the issue of membership cards and certificates;
- (d) the suspension and termination of membership by the company and by a member;
- (e) the method of transferring membership where the articles of association provide that the interest of a member is transferable;
- (f) the qualifications of, and the remuneration of, the directors and the *ex officio* directors;
- (g) the time for, and manner of, election of directors;
- (h) the appointment, remuneration, functions, duties and removal of agents, officers and employees of the company, and the security to be given by them to the company;
- (i) the time and place, and the notice to be given, for the holding of meetings of the members and of the board of directors, the quorum at meetings of members, the

requirements as to proxies, and the procedure in all matters at meetings of the members and at meetings of the board of directors;

- (j) the conduct in all other particulars of the affairs of the company;
 - (k) the division of its members into groups, either into geographical areas or on the basis of common interest;
 - (l) the election of some or all of the directors-
 - (i) by the groups on the basis of the number of members in each group,
 - (ii) for the groups in a defined geographical area, by the delegates of the groups meeting together, or
 - (iii) by the groups on the basis of common interest;
 - (m) the election of delegates and alternate delegate to represent each group on the basis of the number of members in each group;
 - (n) the number and qualifications of delegates and the method of their election;
 - (o) the holding of meetings of members or delegates;
 - (p) the powers and authority of delegates at meetings; and
 - (q) the holding of meetings of members or delegates according to geographical areas or on the basis of common interest.
- (2) A bye-law made under paragraph (f) of subsection (1) may provide that a meeting of delegates for all purposes is a meeting of the members with all

the powers of such a meeting.

(3) A bye-law under sub-section (1) is not effective until it is confirmed by at least two-thirds of the votes cast at a general meeting of the members duly called for that purpose.

(4) A delegate has only one vote and may not vote by proxy.

(5) A bye-law passed under sub-section (1) may not prohibit members from attending meetings of delegates and participating in the discussions at the meetings.

577. Application of income and property

(1) The income and property of the association shall be applied solely towards the promotion of the objects of the association as set out in its constitution and no portion of them shall be paid or transferred directly or indirectly, by way of dividend, bonus, or otherwise by way of profit, to any of the members of association.

(2) Nothing in sub-section (1) prevents the payment, in good faith, of reasonable and proper remuneration to an officer or servant of the association in return for any service actually rendered to the association, but-

- (a) with the exception of *ex-officio* members of the governing council, no member of a council or governing body shall be appointed to any salaried office of the body corporate, or any office of the body corporate paid by fees; and
- (b) no remuneration or other benefit in money or money's worth shall be given by the association to any member of the council or governing body except repayment of out-of-pocket expenses or reasonable and proper rent for premises demised, or let to the body corporate or reasonable fee for services rendered.

(3) If a person knowingly acts or joins in acting in contravention of this section, he or she is liable to refund the income or restore the property so misapplied to the body corporate.

578. Documents and inspection

(1) The Registrar shall preserve all documents delivered to him or her under this Chapter.

(2) A person may, on application to the Registrar, be permitted to inspect the documents kept under sub-section (1) on payment of a prescribed fee and may require a copy or extract of any document to be certified by the Registrar on payment of a prescribed fee.

579. Annual returns

(1) The association shall not later than 31st December each year, other than the year in which it is incorporated, or such other date as may, be prescribed, submit to the Registrar a return showing, among other things, the name of the association, the names, addresses and occupations of the trustees, and members of the council or governing body, particulars of any land held by the association during the year, and of any changes which have taken place in the constitution of the association during the preceding year.

(2) An association that fails to comply with sub-section (1) is liable to a fine of fifty dalasis for each day during which the default continues.

580. Dissolution of an association formed under this Act

(1) An association registered under this Chapter may be dissolved by the court on a petition brought for that purpose by –

- (a) one or more trustees;
- (b) the council or governing body;

-
- (c) members constituting not less than fifty *per cent* of the total membership of the association; or
 - (d) the Registrar.
- (2) The association may be dissolved on the ground that –
- (a) the aims and objects for which it was established have been fully realised and no useful purpose would be served by keeping the association alive;
 - (b) the association is formed to exist for a specified period and that period has expired and it is not necessary for it to continue to exist;
 - (c) all the aims and objects of the association have become illegal or otherwise contrary to public policy; or
 - (d) it is just and equitable in all the circumstances that the body corporate be dissolved.
- (3) At the hearing of the petition, all persons whose interests or rights may, in the opinion of the court, be affected by the dissolution shall be put on notice.
- (4) If, in the event of a dissolution of the corporate body, there remains after the satisfaction of all its debts and liabilities, any money or property whatsoever, the money or property shall not be paid to or distributed among the members of the association, but shall be given or transferred to some other institutions which have been determined by the members, at or before the time of dissolution, as having objects similar to the objects of the association.
- (5) If effect cannot be given to the provisions of subsection (4), the remaining money or property shall be transferred to some charitable object.

581. Regulations under this Chapter

The Minister may, on the recommendation of the Registrar, make regulations generally for the purpose of this Chapter and, in particular, without prejudice to the generality of the foregoing provisions, make regulations –

- (a) prescribing the forms and returns and other information required under this Chapter;
- (b) prescribing the procedure for obtaining any information required under this Chapter;
- (c) requiring returns to be made within the period specified therein by any body corporate to which this Chapter applies; and
- (d) prescribing any fees payable under this Chapter.

582. Validity of previous registrations

An association registered under section 21 of the former Act for promoting commerce, art, science, religion, charity or any useful object is deemed, as from the date of commencement of this Act, to be registered under and in accordance with this Chapter and the provisions of this Chapter shall apply in respect of that association, accordingly.

CHAPTER XII – FOREIGN COMPANIES

583. Interpretation of this Chapter

For the purposes of this Chapter-

“certified” means certified in the prescribed manner to be a true copy or a correct translation;

“director” in relation to a company includes any person in accordance with whose directors or instructions the directors of the company are accustomed to act;

“place of business” included a share transfer or share registration to a company incorporated under this Act;

“secretary” includes any person occupying the position of secretary by whatever name called.

584. Application of this Chapter

This Chapter applies to a foreign companies, that is, companies incorporated outside The Gambia which-

- (a) after the commencement of this Act, establish a place of business within The Gambia; and
- (b) have, before the commencement of this Act, established a place of business within The Gambia and continue to have an established place of business within The Gambia at the commencement of this Act.

585. Documents, etc, to be delivered to registrar by companies carrying on business in The Gambia

(1) An foreign company, which at the commencement of this Act has a place of business in The Gambia or which after the commencement of this Act establishes a place of business within The Gambia, shall within six months from the commencement of this Act or within one month from 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 , if the instrument is not written in the English language, a certified translation of the instrument;
- (b) the full address of the registered or princi-

pal office of the company and its principal place of business in The Gambia;

- (c) a list of the directors of the company, containing such particulars with respect to the directors as are by this Act required to be contained with respect to directors in the register of the directors of a company; and
- (d) the names and address of one or more persons resident in The Gambia authorised to accept on behalf of the company service of process and any notices required to be served on the company.

(2) The list referred to in paragraph (c) of subsection (1) shall contain the following particulars-

- (a) with respect to each director-
 - (i) in the case of an individual, his or her present first names and surname and any former first name or surname, his or her usual residential address, his or her nationality and his or her business occupation, if any, or if he or she has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some of those directorships, and
 - (ii) in the case of a body corporate, its corporate name and registered or principal office;
- (b) with respect to the secretary or, when there are joint secretaries, with respect to each of them-
 - (i) 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 address, and
 - (ii) in the case of a corporation, its corporate name and registered or principal

office.

(3) 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 paragraph (b) of sub-section (2).

586. Power of external companies to hold lands

An foreign company which has delivered to the Registrar the documents and particulars specified in sub-section (1) of section 593 of this Act has the same power to hold lands in The Gambia, as if it were a company incorporated under this Act.

587. Return to be delivered to Registrar by foreign company where documents, etc., altered

If any alteration is made in-

- (a) the charter, statutes, or memorandum and articles of an foreign company or any instrument constituting or defining the constitution of the company;
- (b) the directors or secretary of an foreign company or the particulars contained in the list of the directors and secretary; or
- (c) the names or addresses of the persons authorised to accept service on behalf of an foreign company,

the company shall, within the prescribed time, deliver to the Registrar for registration a return containing the prescribed particulars of the alteration.

588. Accounts of external companies

(1) An 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 such

particulars and including such documents, as under the provisions of this Act (subject, however, 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.

(2) If any document as is mentioned in sub-section (1) of this section is not written in English language, there shall be annexed to it a certified translation of the document.

(3) This section does not apply to a company which if it were incorporated under this Act would be a private company within the provisions of this Act.

589. Obligation to state name of foreign company, whether limited and country where incorporated

An foreign company shall-

- (a) in every prospectus inviting subscription for its shares or debentures in The Gambia state the country in which the company is incorporated;
- (b) conspicuously exhibit, on every place where it carries on business in The Gambia, the name of the company and the country in which the company is incorporated;
- (c) cause the name of the company and of the country in which the company is incorporated to be stated in legible characters in all bill-heads and letter paper, and in all notices and other official publications of the company; and
- (d) if the liability of the members of the company is limited, cause notice of that fact to be stated in legible characters in every prospectus and in all bill-heads, letter paper, notices and other official publication of the company in The Gambia, and to be affixed

on every place where it carries on its business.

590. Service on foreign company

(1) A process or notice required to be served on an foreign company shall be sufficiently served if addressed to a person whose name has been delivered to the Registrar under the section 593 of this Act and left at or sent by post to the address which has be so delivered.

(2) If-

- (a) a company makes default in delivering to the Registrar the name and address of a person resident in The Gambia 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 to the Registrar are dead or have ceased to reside in The Gambia, or refuse to accept service on behalf of the company, or if for any reason cannot be served,

a document may be served on the company by leaving it at or sending it by post to any place of business established by the company in The Gambia.

591. Foreign company ceasing to have place of business in The Gambia

If a foreign company ceases to have a place of business in The Gambia, it shall forthwith give notice of the fact to the Registrar, and, as from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease.

592. Penalties

If an foreign company fails to comply with any of the foregoing provisions of this Part, the company, and every officer or agent of the company who knowingly and wilfully authorises or permits the defaults, shall be liable to a fine not exceeding fifty thousand dalasis or, in the case of a continuing offence, five thousand dalasis for every day during which the default continues.

CHAPTER XII - MISCELLANEOUS**PART I – APPLICATION****593. Application of this Act**

(1) Except as otherwise provided, this Act applies to -

- (a) all companies formed and registered under this Act;
- (b) all existing companies;
- (c) all companies incorporated, formed or registered under other enactments; and
- (d) unregistered companies.

594. Act to override memorandum and articles, etc.

(1) Except as otherwise expressly provided in this Act -

- (a) the provisions of this Act have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company in general meeting or by its board of directors whether the memorandum, or articles, agreement or resolution is registered, executed or passed, as the case

may be, before or after the commencement of this Act; and

- (b) a provision contained in the memorandum or articles, agreement or resolution mentioned in paragraph (a) of this sub-section shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

(2) A provision of this Act overriding or interpreting a company's articles as if a re-enacted provision of the former Act, shall, except as provided by this Act, apply in relation to-

- (a) articles in force at the commencement of this Act, as well as to articles coming into force thereafter; and
- (b) a company's memorandum as it applies in relation to its articles.

595. Application of Act to companies under former enactments

(1) In the application of this Act to existing companies, it shall apply in the same manner, in the case of-

- (a) a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by shares.
- (b) a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by guarantee; and
- (c) a company, other than a limited company, as if the company had been formed and registered under this Act as an unlimited company.

(2) A reference, express or implied, to the date of registration of a company shall be construed as a

reference to the date at which the company was registered under the first Gambia enactment in respect of companies, or as the case may be, the former Act or any enactment relating to companies thereafter in force in The Gambia before the commencement of this Act.

PART II - ADMINISTRATION

596. Registered and head office of company

(1) The address of the registered or head office of a company given to the Registrar in accordance with paragraph (b) of sub-section (21), of section 21 or any other provision, of this Act or any change in the address made in accordance with the provisions of this section shall be the office to which all communications and notices to the company may be addressed.

(2) A company shall, within fourteen days of any change in the address of its registered or head office, give notice of the change to the Registrar who shall record the change.

(3) A postal box address or a private mail bag address shall not be accepted by the Registrar as the registered or head office of a company.

(4) If a company carries on business without complying with sub-section (2), the company and every officer in default commits an offence and is liable on conviction to a fine of five hundred dalasis for every day during which the company carries on business.

(5) The fact that a change in the address of a company is included in its annual return shall not be taken to satisfy the obligation imposed by this section.

(6) Where a company incorporated before the commencement of this Act has provided an address not in accordance with this section or section 21 of this Act, as the case may be, it shall, within fourteen days after the commencement of this Act, comply

with the requirements of this section.

(7) Failure to comply with sub-section (6) is an offence punishable as prescribed by this section.

597. Publication of name by company

(1) A company shall, after incorporation-

- (a) paint or affix, and keep painted or affixed, its name and on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible;
- (b) have its name engraved in legible characters on its seals; and
- (c) have its name and registration number mentioned in legible characters in all-
 - (i) business letters of the company and notices, advertisements, and other official publications of the company,
 - (ii) bills of exchange, promissory notes, endorsement, cheques, and order for money or goods purporting to be signed by or on behalf of the company, and
 - (iii) bills or parcels, invoices, receipts and letters of credit of the company.

(2) If a company fails to paint or affix, and keep painted or affixed its name in the manner directed by this Act, it commits an offence and is liable on conviction to a fine of one thousand dalasis for not so painting or affixing its name, and for every day during which its name is not kept, painted or affixed; and every director and manager of the company who knowingly and wilfully authorises or permits the default is liable to the like penalty.

(3) If a company fails to comply with the provisions

of paragraphs (b) and (c) of sub-section (1), the company commits an offence and is liable on conviction to a fine of one thousand dalasis.

(4) If an officer of a company or a person on its behalf-

- (a) uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraved as specified in this Act; or
- (b) issues or authorises the issue of a 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, any bill of exchange, promissory note, endorsement, cheque or order for money or goods wherein its name is not mentioned in the manner specified in this Act,

he or she commits an offence and is liable on conviction to a fine of five thousand dalasis.

(5) An officer or person who commits an offence under sub-section (4) is further personally liable to the holder of the bill of exchange, promissory note, cheque, or money order or goods, for the amount of the bill, note, cheque, order or goods, as the case may be, unless it is duly paid by the company.

598. Form of register, etc

(1) Any register, record, index, minute book or book of account required by this Act to be made and kept by a company may be made by making entries in bound books or in loose leaves whether pasted or not, or in a photographic film form, or may be entered or recorded by-

- (a) any information storage device that is capable of reproducing the required information in intelligible written form within a reasonable time; or

-
- (b) recording the matters in question in any other manner in accordance with accepted commercial usage.
- (2) Where a register, record, an index, a minute book or book of account is not kept by making entries in a bound book, but by some other means, including electronic means adequate precautions shall be taken for guarding against falsification and for facilitating its discovery.
- (3) Where default is made in complying with the provisions of sub-section (2), the company and every officer of the company who is in default commits an offence and is liable on conviction-
- (a) to a fine of five thousand dalasis; and
- (b) where the offence is a continuing one, to a fine of five hundred for every day during which the default continues.
- (4) The power conferred on a company by sub-section (1) to keep a register, or other record by recording the matters in question, otherwise than by making entries in bound books, includes power to keep the register or other record by recording those matters otherwise than in legible form, so long as the recording is capable of being reproduced in a legible form.
- (5) If a register or any other record of a company as is mentioned in sub-section (2), or a register of holders of a company's debentures, is kept by the company by recording the matters in question otherwise than in legible form, the duty imposed on the company by this Act to allow inspection of or to furnish a copy of the register or other record or any part of it shall be treated as a duty to allow inspection of, or to furnish a reproduction of the recording or of the relevant part of it in a legible form.

599. Fees and inspection, etc, of documents kept by the registrar Eleventh Schedule

(1) There shall be paid to the Registrar in respect of the several matters mentioned in the Eleventh Schedule to this Act the fees specified in that Schedule and when no provision is made for fees the Minister may, by Order published in the *Gazette*, prescribe fees, and add to, alter or amend that Schedule.

(2) A person may, on payment of the fees prescribed in Part III of the Eleventh Schedule to this Act, inspect documents or obtain certificates of incorporation or copies of or extracts from documents held by the Registrar for the purposes of this Act.

(3) Where a copy or extract from any document registered under this Act is certified by the Registrar to be a true copy or extract, it shall in all proceedings be admissible in evidence as of equal validity with the original document and it shall be unnecessary to prove the official position of the person certifying the copy or extract.

(4) A process for compelling the production of any document kept by the Registrar shall not issue from any court, except with the leave of that court, and the process, if issued, shall bear on it a statement that it is issued with the leave of the court.

600. Service of notice on company

A summons, notice, order or other document required to be served on the company, may be served by leaving the same, or sending it through the post in a prepaid letter addressed to the company at their registered office.

601. Rules as to notice by letter

A document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery, within the period, if any, prescribed for its service, and, in

proving service of such document, it is sufficient to prove that the document was properly directed, and that it was put as a prepaid letter into the post office.

602. Authentication of notices of company

A summons, notice, order or proceeding requiring authentication by the company may be-

- (a) signed by any director, secretary, or other authorized officer of the company, and need not be under the common seal of the company; and
- (b) in writing or in print, or partly in writing and partly in print.

PART III - Legal Proceedings

603. General penalty

(1) A person who commits an offence under this Act is, if no penalty is provided for that offence, liable on conviction to a fine not exceeding fifty thousand dalasis and, in default of payment of the fine, to a term of imprisonment for a term not exceeding two years.

(2) A person who fails to comply with a provision made or direction given under this Act, for which a penalty is not prescribed, is liable to a fine not exceeding twenty thousand dalasis and, in default of payment of the fine, to imprisonment for a term not exceeding one years.

604. Recovery of penalties

An offence under this Act made punishable by any penalty is punishable on summary conviction.

605. Application of penalties

The court imposing a penalty under this Act may direct the whole or any part of the penalty be

applied in or towards payment of the cost of the proceedings, or in or towards rewarding the person on whose information or at whose suit the penalty has been recovered, and, subject to a direction given under this section, all penalties shall be paid into the Consolidated Fund.

606. Evidence of proceedings at meetings

(1) A company under this Act shall cause minutes of all resolutions and proceedings of general meetings of the company, and of the directors or managers of the company in cases where there are directors or managers, to be duly entered in books to be from time, to time for the purpose.

(2) Minutes taken pursuant to sub-section (1), if purporting to be signed by the chairperson of the meeting at which resolutions were passed or proceedings had, or by the chairperson as evidence of the next succeeding meeting, shall be received as evidence in all legal proceedings.

(3) Until the contrary is proved-

- (a) every general meeting of the company or meeting of directors or managers of a company in respect of the proceedings of which minutes have been taken is deemed to have been duly held and convened;
- (b) all resolutions passed at the meeting, or proceedings had, are deemed to have been duly passed and had by or in respect of a company;
- (c) all appointments of directors, managers or liquidators of a company shall be deemed to be valid;
- (d) all acts done by the directors, managers or liquidators of a company are valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications.

607. Provisions as to costs in actions brought by certain limited companies

Where a limited company is plaintiff in any action, suit, or legal proceeding, the court may-

- (a) if it appears by a credible testimony that there is reason to believe that if the defendant succeeds in his or her defence, the assets of the company will be insufficient security to pay the cost, require sufficient security to be given for the costs; and
- (b) stay all proceedings until the security required until paragraph (a) of this section is given.

608. Declaration in action against members

In an action or suit brought by the a company against a member to recover all call or other moneys due from the member, it is not necessary to set out the special matter, but it is sufficient to allege that the defendant is a member of the company, and is indebted to the company in respect of a call made, or other moneys due, whereby an action or a suit has accrued to the company.

609. Power of companies to refer matters to arbitration

A company under this Act may, from time to time, by writing under its common seal, agree to refer, and may refer, to arbitration any difference, question, or other matter whatsoever in dispute between itself and any other company or person and the companies, parties to the arbitration, may delegate to the person or persons to whom the reference is made power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by the directors or other managing body of such companies.

610. Provisions of this Act to apply

Unless otherwise provided in this Act, arbitration authorized or directed by this Act shall be conducted in accordance with the Alternative Dispute Resolution Act.

[cap. 6.08]

611. Defence with respect to prospectuses

In a prosecution for an offence under this Act arising out of an untrue statement or wilful non-disclosure in a prospectus, it is a defence for the person charged to prove that the statement or non-disclosure was immaterial, or that he or she had reasonable grounds to believe, and did, up to the time of the issue of the prospectus, believe that the statement was true or non-disclosure was immaterial.

612. Order to comply

When a person is convicted of an offence under this Act in which proceedings in respect of the offence are taken, the court may, in addition to any punishment it may impose, order that person to comply with the provision of this Act for the contravention of which he or she has been convicted.

613. Civil remedies unaffected

A civil remedy for an act or omission is not affected by reason that the act or omission is an offence under this Act.

614. Power of court to grant relief in certain cases

(1) If, in a proceeding for negligence, default or breach of duty or breach of trust against an officer of a company or a person employed by a company as auditor, it appears to the court hearing the case

that the officer or person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that-

- (a) he or she has acted honestly and reasonably; and
- (b) 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, wholly or partly, from his or her liability on such terms as the court may think fit.

(2) Where a person to whom this section applies has reason to apprehend that a 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 the application, has 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.

(3) Where a case to which sub-section (1) applies is being tried by a court, the judge, after hearing the evidence, may, if he or she is satisfied that the defendant ought in pursuance of that sub-section to be relieved either in whole or in part from the liability sought to be enforced against him or her, enter judgment for the defendant on such terms as to costs or otherwise as the judge may think proper.

PART IV – Electronic Services

615. E-Company services

(1) Pursuant to sections 212 and 213 of the Information and Communications Act, the Registrar may deliver all the services under this Act by

electronic means using the computer system provided by the Single Window Registry.

[cap.74.03]

(2) Pursuant to sub-section (1), the Registrar shall-

- (a) accept the filing of documents, the creation or keeping of documents in electronic form;
- (b) issue notices, claims certificates, declarations, authorisations or approvals in electronic form;
- (c) convert written records into electronic records; and
- (d) keep all registers in electronic form in the Single Window Registry database.

(3) The requirements of the Single Window Registry relating to acceptance of electronic filing and issuing of documents, electronic signatures, and the control processes and procedures put in place to ensure the integrity, security and confidentiality of data messages or payments shall apply to the registers to be kept under this Act.

PART V - GENERAL

616. Regulations

The Minister may make regulations for the better administration of this Act, and, in particular, may make regulations-

- (a) on any matter required or authorised by this Act to be prescribed;
- (b) requiring the payment of fees in respect of the filing, examination or copying of any documents or in respect of any action that the Registrar is required or authorised to take under this Act, and prescribing the amount to be paid;

-
- (c) prescribing the fees payable for documents issued by companies and for other matters under this Act;
 - (d) prescribing the format and contents of returns, notices or other documents required to be sent to, or to be issued by, the Registrar;
 - (e) setting out the rules with respect to exemptions permitted by this Act
 - (f) with respect to the names or classes of companies;
 - (g) stipulating the authorised capital of companies;
 - (h) with respect to the preferences, rights, conditions, restrictions, limitations or prohibitions attaching to shares or classes or series of shares of companies;
 - (i) designating classes of shares;
 - (j) setting out the qualifications of persons to be appointed as auditors;
 - (k) prescribing forms, returns and other document required under this Act;
 - (l) prescribing the procedure for obtaining any information required under this Act;
 - (m) requiring returns to be made within the period specified in the returns by bodies corporate; and
 - (n) to give effect to the electronic services to be provided under the Business Registration Act with respect to all types of companies and registered associations; and
 - (o) on any other matter required for the efficient administration of this Act.

617. Repeal and savings

(1) The Companies Act, in this Act referred to as in the former Act is repealed.

[cap.94.01]

(2) Notwithstanding sub-section (1), if on the commencement of this Act, any proceedings under the former Act are pending in respect of the winding-up of a body corporate under that Act, those proceedings may be continued under that Act as if this Act had not been enacted.

(3) When, on the commencement of this Act, an amalgamation agreement entered under the former Act and approved by the court under that Act is in the course of being filed with the Registrar or is in his or her hands, the amalgamation may be continued and effected under that Act as if this Act had not been enacted, unless the parties to the amalgamation withdraw the amalgamation agreement by notice in writing.

(4) Nothing in this Act affects any order, rule, regulation, appointment, conveyance, mortgage, deed or agreement made, resolution passed, direction given, proceeding taken, instrument issued or thing done under the former Act, but the order, rule, regulation, appointment, conveyance, mortgage, agreement, resolution, direction, proceeding, instrument or thing if in force immediately before the commencement of this Act, shall, on the commencement of this Act, continue in force, and shall, so far as it could have been made, passed, given, taken, issued or done under this Act, have effect as if so made, passed, given, taken, issued or done.

(5) Nothing in this Act shall be construed so as to prohibit the continuation of an inspection by inspectors appointed under the former Act, begun before the commencement of this Act, and section 317 of this Act shall apply to a report of inspectors

appointed under the former Act as it applies to a report of inspectors appointed under section 306 of this Act.

(6) A register kept under the former Act is deemed to be kept under the corresponding provisions of this Act.

(7) Where any offence, being an offence for the continuance of which a penalty was provided for in the former Act, has been committed under the former Act, proceedings may be taken under this Act, in respect of the continuance of the offence after the commencement of this Act, in the same manner as if the offence had been committed under the corresponding provisions of this Act.

FIRST SCHEDULE

TABLE A- (I) (section 20)

REGULATIONS FOR THE MANAGEMENT OF A PUBLIC COMPANY LIMITED BY SHARES

THE COMPANIES ACT 2013

COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

OF

[]

Interpretation

1. (1) In these Regulations, “the Act” means the Companies Act, 2013.

(2) Unless the context otherwise requires, words or expressions contained in these Regulations bear the same meaning as in the Act.

Class of Shares

2. The company may, from time to time, issue classes of shares. It shall be the responsibility of

the directors to determine the classes of shares to be issued. All the rights or restrictions attached to each particular class of shares shall be specified in the terms of issue but the rights may at any time be varied in accordance with the provisions of section 120 of the Act.

Commissions and Brokerage

3. The company may exercise the powers of paying commissions conferred by section 110 of the Act, provided that the rate per cent or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by that section. The commissions may be satisfied by the payment of cash or by the allotment of fully or partly paid shares or partly in one way and partly in the other.

4. The company may also on any issue of shares pay such brokerage as is lawful.

Alteration of Capital

5. The company may, from time to time, by ordinary resolution effect an alteration of its share capital in any of the ways set out in section 79 of the Act.

6. Subject to the provisions of the Act on reduction of capital, the company may, whenever it considers it expedient to do so, by special resolution, reduce its share capital, any capital redemption fund or any share premium account.

Meetings

7. The annual general meeting shall be held at such time and place as the directors shall appoint.

8. The chairperson, if any, of the board of directors shall preside as a chairperson at every general meeting of the company, or if there is no chairperson, or if he or she is not present within thirty minutes after the time appointed for the holding of the meeting or is unwilling to act, the

directors present shall elect one of their number to be chairperson of the meeting.

9. If at any meeting no director is willing to act as chairperson or if no director is present within thirty minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairperson of the meeting.

Voting

10. A member is not entitled to vote at any general meeting unless all calls or other sums payable by him or her in respect of shares in the company have been paid.

The Seal

11. The directors shall provide for the safe custody of the company seal, which shall only be used by the authority of the directors or of a committee of the directors authorized by the directors in that behalf. Every instrument to which the seal is affixed shall be signed by a director, and countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.

Notice

12. A notice may be given by the company to any member either personally or by sending it by post to him or her or to his or her registered address, or (if he or she has no registered address within The Gambia) to the address, if any, within The Gambia supplied by him or her to the company for the giving of notice to him or her. Where a notice is sent by post, service of the notice is deemed-

- (a) to be effected by properly addressing, pre-paying, and posting a letter containing the notice to him or her; and
- (b) have been effected at the expiration of seven days after the letter containing the notice is posted.

Names, Addresses and Description of subscribers
1.
2.
3.
Total shares taken

DATED the day of20.....

Witness to the above signatures:.....

TABLE A – (II) (section 20)

**REGULATIONS FOR THE MANAGEMENT
OF A PRIVATE COMPANY LIMITED BY SHARES**

THE COMPANIES ACT 2013

PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

OF

[]

Interpretation

1. (1) In these Regulations, “the Act” means the Companies Act, 2013.

(2) Unless the context otherwise requires, words or expressions contained in these Regulations bear the same meaning as in the Act.

Classes of Shares

2. The company may, from time to time, issue classes of shares. It is the responsibility of the directors to determine the classes of shares to be issued. All the rights or restrictions attached to each particular class of shares shall be specified in the terms of issue but the rights may at any time be varied in accordance with the provisions of section 120 of the Act.

Restriction on transfer of shares

3. The directors may, in their absolute discretion and without giving any reason, refuse to register the transfer of any share, whether or not it is a fully paid share.

Pre-emptive rights of shareholders of the company

4. The company shall not allot any new or unissued shares unless they are offered in the first instance to all the shareholders or to all the shareholders of the class or classes being issued in proportion as nearly as may be to their existing holdings.

5. The offer of shares to existing shareholders shall be by notice specifying the number of shares to which the shareholder is entitled to subscribe and limiting a time, not being less than twenty-eight days after the service of the notice, after the expiration of which the offer, if not accepted, will be deemed to be declined. On the receipt of an intimation from the shareholder that he or she declines to accept the shares offered or after the expiration of the stipulated time, as the case may be, the board of directors may, subject to the terms of any resolution of the company, dispose of the shares at a price not less than that specified in the offer, in such manner as they think most beneficial to the company.

6. Regulations 4 and 5 of these Regulation shall not be altered except with the unanimous consent

of all the members of the company.

Commissions and Brokerage

7. The company may exercise the powers of paying commissions conferred by section 110 of the Act, provided that the rate *per cent* or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the said section. The commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or in one way and partly in the other.

8. The company may also on any issue of shares pay such brokerage as may be lawful.

Alteration of Capital

9. The company may, from time to time, by ordinary resolution effect an alteration of its share capital in any of the ways set out in section 79 of the Act.

10. Subject to the provisions of the Act on reduction of capital, the company may, whenever it considers it expedient to do so, by special resolution, reduce its share capital, any capital redemption fund or any share premium account.

Meetings

11. The annual general meeting shall be held at such time and place as directors shall appoint.

12. The chairperson, if any, of the board of directors shall preside as a chairperson at a general meeting of the company, or if there is no such chairperson, or if he or she is not present within thirty minutes after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be a chairperson of the meeting.

13. If at any meeting no director is willing to act as a chairperson or if no director is present within thirty minutes after the time appointed for the holding of

the meeting, the members present shall choose one of their number to be chairperson of the meeting.

Voting

14. A member is not entitled to vote at any general meeting unless all calls or other sums payable by him or her in respect of shares in the company have been paid.

The Seal

15. The directors shall provide for the safe custody of the company seal, which shall only be used by the authority of the directors or of a committee of directors authorized by the directors in that behalf, and every instrument to which the seal is affixed shall be signed by a director, and countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.

Notice

16. A notice may be given by the company to any member either personally or by sending it by post to him or her or to his or her registered address, or (if he or she has no registered address with The Gambia) to the address, if any, within The Gambia supplied by him or her to the company for the giving of notice to him or her. Where a notice is sent by post, service of the notice is deemed to-

- (a) be effected by properly addressing, pre-paying, and posting a letter containing the notice; and
- (b) have been effected at the expiration of seven days after the letter containing the notice is posted

Directors

17. The minimum number of Directors shall be one and there shall be no maximum number.

18. Any Director (other than an alternate director) may appoint any other Director, or any other person approved by the Directors and willing to act, to be an alternate Director and may remove from office an alternate Director so appointed by him. An alternate Director is entitled to receive notice of all meetings of directors and of all meetings of committees of directors of which his appointor is a member, and to attend, speak and vote at any such meeting. A Director present at such meeting and appointed alternate Director for any other Directors entitled to attend and vote shall have an additional vote for each of his appointors absent from the meeting. Any appointment or removal of an alternate Director shall be by notice to the company signed by the Director making or revoking the appointment or in any other manner approved by the Directors.

19. The Directors may sanction the exercise by the company of all the powers of the company to make provision for the benefit of persons employed or formerly employed by the company or any subsidiary of the company in connection with the cessation or transfer to any person of the whole or part of the undertaking of the company.

20. The Directors shall have power at any time and from time to time to appoint any other person to be a Director of the company either to fill a casual vacancy or as an addition to the board.

21. Provided that a Director declares his interest in a contract or proposed contract with the company in a manner provided by the Act, he or she shall be counted in the quorum of any meeting of Directors at which the same is considered and shall be entitled to vote as a Director in respect thereof.

22. The quorum for the transaction of the business of the Directors shall, except when one Director only is in office, be two. An alternate Director shall, if his appointor is not present, be counted in the quorum. When one Director only is in office, he shall have and may exercise all the powers and

authorities in and over the affairs of the company as are conferred on the Directors by the Articles.

Names, Addresses and Description of Subscribers
1.
2.
3.
Total number of shares taken

DATED the day of20...

Witness to the above signatures:.....

TABLE A – (III) (section 20)

REGULATIONS FOR THE MANAGEMENT OF A COMPANY LIMITED BY GUARANTEE

THE COMPANIES ACT 2013

COMPANY LIMITED BY GUARANTEE

ARTICLES OF ASSOCIATION
OF

[]

Interpretation

1. Unless the context otherwise requires, words or expressions contained in these Regulations bear the same meaning as in the Companies Act, 2013.

Membership of the Company

2. The number of members with which the company proposes to be registered is ten but the directors may from time to time register an increase

of members.

Meetings

3. The annual general meeting shall be held at such time and place the directors shall appoint.

4. The chairperson, if any, of the board of directors shall preside as a chairperson at every general meeting of the company, or if there is no chairperson, or if he or she is not present within thirty minutes after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be a chairperson of the meeting.

5. If at any meeting no director is willing to act as chairperson or if no director is present within thirty minutes after the time appointed for holding the meeting, the members present shall elect one of their number to be chairperson of the meeting.

The Seal

6. The directors shall provide for the safe custody of the company seal which shall only be used by the authority of the directors or of a committee of the directors authorized by the directors in that behalf, and every instrument to which the seal is affixed shall be signed by a director, and countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.

Notice

7. A notice may be given by the company to any member either personally or by sending it by post to him or her or to his or her registered address, or (if he or she has no registered address within The Gambia) to the address, if any, within The Gambia supplied by him or her to the company for the giving of notice to him or her. Where a notice is sent by post, service of the notice is deemed to-

(a) be effected by properly addressing,

prepaying, and posting a letter containing the notice; and

- (b) have been effected at the expiration of seven days after the letter containing the same is posted.

Names, Addresses and Description of Subscri

DATED theday of.....20...

Witness to the above signatures:.....

TABLE A – (IV) (section 20)

**REGULATION FOR THE MANAGEMENT
OF AN UNLIMITED COMPANY**

THE COMPANIES ACT 2013

UNLIMITED COMPANY

ARTICLES OF ASSOCIATION

OF

[]

Interpretation

1. (1) In these Regulations, “the Act” means the Companies Act, 2013.

(2) Unless the context otherwise requires, words or expressions contained in these Regulations bear the same meaning as in the Act.

Member of the Company

2. The number of members with which the company proposes to be registered is twenty but the directors may, from time to time, register increase of members.

Classes of Share

3. The company may, from time to time, issue classes of shares. It is the responsibility of the directors to determine the classes of shares to be issued. All the rights or restrictions attached to each particular class of shares shall be specified in the terms of issued but the rights may at any time be varied in accordance with the provisions of section 120 of the Act.

Commissions and Brokerage

4. The company may exercise the powers of paying commissions conferred by section 110 of the Act, provided that the rate per cent or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by that section. The commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in one way and partly in the other.

5. The company may also on any issue of shares pay such brokerage as may be lawful.

Alteration of Capital

6. The company may by special resolution-

- (a) increase the share capital by any sum to be divided into shares of such amount as the resolution may prescribe;
- (b) consolidate its shares into shares of a larger amount than its existing shares;
- (c) sub-divide its shares into shares of a smaller amount than its existing

shares;

(d) cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person;

(e) reduce its share capital in any way.

Meetings

7. The annual general meeting shall be held at such time and place as the directors shall appoint.

8. The chairperson, if any, of the board of directors shall preside as a chairperson at every general meeting of the company, or if there is no chairperson, or if he or she is not present within thirty minutes after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be a chairperson of the meeting.

9. If at any meeting no director is willing to act as a chairperson or if no director is present within thirty minutes after the time appointed for holding the meeting, the members present shall elect one of their number to be chairperson of the meeting.

Voting

10. A member is not entitled to vote at any general meeting unless all calls or other sums payable by him or her in respect of shares in the company have been paid.

The Seal

11. The directors shall provide for the safe custody of the company seal, which shall only be used by the authority of the directors or of a committee of the directors authorized by the directors in that behalf, and every instrument to which the seal is affixed shall be signed by a director, and countersigned by the secretary or by a second director or by some other person appointed by the

directors for the purpose.

Notice

12. A notice may be given by the company to any member either personally or by sending it by post to him or her or to his or her registered address, or (if he or she has no registered address within The Gambia) to the address, if any, within The Gambia supplied by him or her to the company for the giving of notice to him or her. Where a notice is sent by post, service of the notice is deemed to-

- (a) be effected by properly addressing, prepaying, and posting a letter containing the notice; and
- (b) have been effected at the expiration of seven day after the letter containing the same is posted.

Names, Addresses and Description of Subscribers
1.
2.
3.
Total number of shares taken

DATED the day of 20.....

Witness to the above signatures:.....

Total shares taken	
---------------------------	--

DATED the day of20.....

Witness to the above signatures:.....

TABLE C (section 14)

**FORM OF MEMORANDUM OF ASSOCIATION
OF A COMPANY LIMITED BY GUARANTEE**

THE COMPANIES ACT 20..

COMPANY LIMITED BY GUARANTEE

MEMORANDUM OF ASSOCIATION
OF
[]

1. The name of the company is [].
2. The registered office of the company will be situated at [].
3. The objects for which the company is established are-
 - (a)
 - (b)
4. The company is a private company.
5. The liability of the members is limited by guarantee.
6. The income and property of the company shall be applied solely towards the promotion of its objects, and no portion of the income or property shall be paid or transferred directly to the members of the company except as permitted by or under the Companies Act, 2006.

7. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound-up while he or she is a member or within one year afterwards, for payment of the debts and liabilities of the company contracted before he or she ceases to be a member, and the costs, charges and expenses of winding-up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding D , so however that the total amount to be so contributed by all members shall not be less than D .

We, the subscribers to this memorandum of association wish to be formed into a company pursuant of this memorandum of association; and we agree to guarantee the payment of the amounts shown opposite our respective names.

Names, Addresses and Description of guarantors	
1..... 2..... 3.....	
Total amount guaranteed	

DATED the.....day of.....20.....

Witness to the above signatures:.....

TABLE D (section 14)**FORM OF MEMORANDUM OF ASSOCIATION
OF AN UNLIMITED COMPANY**THE COMPANIES ACT 2013UNLIMITED LIABILITY COMPANYMEMORANDUM OF ASSOCIATION
OF
[]

1. The name of the company is [].
2. The registered office of the company will be situated in [].
3. The objects for which the company is established are-
 - a).....;
 - b).....;
 - c).....
4. The company is a public company.
5. The liability of the company is unlimited.
6. The share capital of the company is D1,000 divided into 1,000 shares of D1 each.

We, the subscribers to this memorandum of association wish to be formed into a company pursuant of this memorandum of association; and we agree to take the number of shares shown opposite our respective names.

Names, addresses and description of subscribers
1.
2.
3.
Total shares taken

DATED theday of20.....

Witness to the above signatures:.....

OBJECTS AND REASONS

The Government of The Gambia took the decision to reform its business registration system and all processes relating to business start-up. The objective of the reform is to establish a Single Window Business Registry as a One Stop Shop for all business start-up processes and thereby improve the Doing Business Environment and consequently The Gambia's rank on the World Bank Doing Business Index.

Another component of the reform process is the enactment of a new Companies Act to replace the current Companies Act which came into force as far back as 1955. Thus this Bill seeks to modernize The Gambia's Companies Act to bring it in line with the developments of the 21st century.

.....
HON. MAMA FATIMA SINGHATEH
ATTORNEY GENERAL AND MINISTER OF
JUSTICE