

THE COMPANIES BILL, 2010

ARRANGEMENT OF CLAUSES

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A Bill for

An Act of Parliament to amend and consolidate the law relating to the incorporation, registration, operation and management of companies; to provide for auditors and actuaries; to provide for companies and other forms of business organisations, and for connected purposes

ENACTED by the Parliament of Kenya, as follows –

PART 1 - PRELIMINARY

Short title and
commencement.

1. This Act may be cited as the Companies Act, 2010 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

Interpretation .

2. In this Act, unless the context otherwise requires—

“address” includes a number or address used for the purposes of sending or receiving documents or information by electronic means;

“articles” means the articles of association of a company;

“associate”—

(a) in relation to an individual means—

(i) that individual’s spouse or child;

(ii) a body corporate of which that individual is a director; and

(iii) an employee or partner of that individual;

(b) in relation to a body corporate means—

- (i) a body corporate of which that body corporate is a director;
 - (ii) a body corporate in the same group as that body; and
 - (iii) an employee or partner of that body corporate or of a body corporate in the same group;
- (c) in relation to a partnership that is a legal person under the law by which it is governed, means—
 - (i) a body corporate of which that partnership is a director;
 - (ii) an employee of or partner in that partnership; and
 - (iii) a person who is an associate of a partner in that partnership;
- (d) in relation to a partnership that is not a legal person under the law by which it is governed, means any person who is an associate of any of the partners.

“authorised signatories” means—

- (a) every director of the company; and
- (b) in the case of a private company with a secretary or a public company, the secretary, or any joint secretary of the company;

“branch” means a place of business that forms a legally dependent part of the institution and comes directly all or some of the operations inherent in its business;

“called-up share capital” means so much of a company’s share capital as equals the aggregate amount of the calls made on its shares, whether or not those calls have been paid together with—

- (a) any share capital paid up without being called; and
- (b) any share capital to be paid on a specified future date under the articles, the terms of allotment of the relevant shares or any other arrangements for payment of those shares; and “uncalled share capital” is to be construed accordingly;

“company” includes a company formed and registered under this Act or an existing company;

“company records” means any register, index, accounting records, agreement, memorandum, minutes or other document required to be kept by a company under this Act ;

“deed” means a legal instrument that grants a right by transferring the right from one person to another;

“director” means a person occupying the position of director, by whatever name called.

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

“equity share capital”, means a company’s issued share capital excluding any part of that capital that does not carry any right, either with respect to dividends or to capital to participate beyond a specified amount in a distribution;

“equity securities” means—

- (a) ordinary shares in a company; or
- (b) rights to subscribe for, or to convert securities into ordinary shares in the company;

“electronic address” means an address used for the purposes of sending or receiving documents or information by electronic means;

“electronic form” means a document that is sent or supplied by—

- (a) electronic means including by e-mail or fax; or
- (b) any other means while in an electronic form, including sending a disk by post; references to an electronic copy have a corresponding meaning;

“electronic means” means that a document or information is—

- (a) sent and received at its destination by means of electronic equipment
-

for the processing, and includes digital compression or storage of data; and

- (b) entirely transmitted, conveyed and received by wire, radio, optical means or by other electromagnetic means;

“employees’ share scheme” means a scheme for encouraging or facilitating the holding of shares in or debentures of a company by or for the benefit of—

- (a) the bona fide employees or former employees of—
 - (i) the company;
 - (ii) a subsidiary of the company;
 - (iii) the company’s holding company or a subsidiary of the company’s holding company; or
- (b) the spouses, surviving spouses, or minor children or step-children of such employees or former employees;

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“existing company” means a company that —was formed and registered under the Companies Act (now repealed);

- (a) was formed and registered under the Companies Act (now repealed); and
- (b) was an existing company for the purpose of that Act.

“firm” means an entity, whether or not a legal person, that is not an individual and includes a body

corporate, a corporation, sole proprietorship, a partnership or other unincorporated association;

“former name” means a name by which a natural person was formerly known for business purposes; where a person is or was formerly known by more than one name, each of their names shall be stated;

“group undertaking”, in relation to an undertaking, means an undertaking which is—

- (a) a parent undertaking or subsidiary undertaking of that undertaking; or
- (b) a subsidiary undertaking of any parent undertaking of that undertaking;

“hard copy form” means a document or information that is sent or supplied in a paper copy or similar form capable of being read and references to hard copy have a corresponding meaning;

“included in the consolidation” or “included in consolidated group financial statements”, in relation to group financial statements, means that the undertaking is included in the financial statements by the method of full and not proportional, consolidation, and references to an undertaking excluded from consolidation shall be construed accordingly;

“intellectual property” means—

- (a) any patent, trade mark, registered design, copyright or design right; or
- (b) any licence under or in respect of any such right;

“key performance indicators” means factors by reference to which the development, performance or

position of the company's business can be measured effectively;

“Minister” means the Minister for the time being responsible for matters relating to companies;

“name” means a person's name or other forename and surname, except that in the case of an individual usually known by a title, the title may be stated instead of his given name or other forename and surname or in addition to either or both of them;

“ordinary shares” means shares other than shares that, with respect to dividends and capital, carry a right to participate only up to a specified amount in a distribution;

“parent company” means a company that is a parent undertaking;

“parent undertaking” means an undertaking that in relation to another undertaking or a subsidiary undertaking—

- (a) holds a majority of the voting rights in the undertaking;
 - (b) is a member of the undertaking and has the right to appoint or remove a majority of its board of directors;
 - (c) has the right to exercise a dominant influence over the undertaking—
 - (i) by virtue of provisions contained in the undertaking's articles; or
 - (ii) by virtue of a control contract;
 - (d) is a member of the undertaking and
-

controls pursuant to an agreement with other shareholders or members, a majority of the voting rights in the undertaking;

“pension scheme” means a scheme for the provision of benefits consisting of or including relevant benefits for or in respect of employees or former employees;

“personal injury” includes any disease and any impairment of a person’s physical or mental condition;

“printed” includes typewritten or lithographed or produced by any mechanical means;

“publish” means to issue or circulate a document or otherwise make it available for public inspection in a manner calculated to invite members of the public generally, or any class of members of the public, to read it;

“qualified” in relation to an auditor’s report or a statement contained in an auditor’s report, means that the report or statement does not state the auditor’s unqualified opinion that the financial statements have been properly prepared in accordance with this Act or, in the case of an undertaking not required to prepare financial statements in accordance with this Act, under any corresponding legislation under which it is required to prepare financial statements;

“qualifying person” means—

- (a) an individual who is a member of the company;
- (b) a person authorised under section 298 to act as the representative of a corporation in relation to the meeting; or
- (c) a person appointed as proxy of a

member in relation to the meeting;

“quoted company” means a company whose equity share capital has been included in the official list on a stock exchange or other regulated market in Kenya;

"Registrar" means the Registrar of companies, the deputy registrar or any assistant registrar or other officer performing the duty of registration of companies under this Act;

“relevant benefits” means any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death or in anticipation of retirement or, in connection with past service, after retirement or death;

“securities” means—

- (a) options;
- (b) futures; and
- (c) contracts for differences, and rights or interests in those investments;

“shares”—

- (a) in relation to an undertaking with capital but no share capital, means rights to share in the capital of the undertaking; and
 - (b) in relation to an undertaking without capital, means interests—
 - (i) conferring a right to share in the profits or liability to contribute to the losses of the undertaking; or
 - (ii) giving rise to an obligation to
-

contribute to the debts or expenses of the undertaking in the event of a winding up;

“statutory auditor” means a person appointed as auditor under Part XV;

“subsidiary” means a company that is connected to a holding company, by the holding company—

- (a) holding a majority of the voting rights in it;
- (b) being a member of the subsidiary and having the right to appoint or remove a majority of the directors of the subsidiary;
- (c) being a member of the subsidiary, and controlling pursuant to an agreement with other members, a majority of the voting rights in it or if it is a subsidiary of a company that is itself a subsidiary of that other company;

“traded company” means a company whose securities are admitted to trading on a stock exchange or other regulated market;

“turnover” means the amounts derived by a company from the provision of goods and services falling within the company’s ordinary activities, after deduction of—

- (a) trade discounts;
- (b) value added tax; and
- (c) any other taxes based on the amounts so derived;

“undertaking” means a body corporate or partnership, or an unincorporated association carrying on a trade or business, with or without a view to profit;

“unquoted company” means a company that is not a quoted company;

PART II-COMPANY FORMATION

GENERAL

Limited and
unlimited companies.

3. (1) A company is a limited company if the liability of its members is limited by its constitution, by shares or by guarantee.

(2) A company is limited by shares where the liability of its members is limited to the amount, if any, unpaid on the shares held by the members.

(3) A company is limited by guarantee if the liability of its members is limited to such amount as the members undertake to contribute to the assets of the company in the event of the company being wound up.

(4) A company is an unlimited company if there is no limit on the liability of its members.

Private and public
companies.

4. (1) A private company is a company that is not a public company.

(2) A public company is a company—

(a) limited by shares or limited by guarantee and having a share capital—

(a) whose certificate of incorporation states that it is a public company; and

(b) which has been registered or re-

registered under this Act as a public company.

Companies limited by guarantee.

5. (1) A company shall not be formed as, or become, a company limited by guarantee with a share capital.

(2) Any provision in the constitution of a company limited by guarantee that purports to divide the company's undertaking into shares or interests is a provision for a share capital.

(3) Subsection (2) applies whether or not the nominal value or number of the shares or interests is specified by the provision.

Method of forming company.

6. (1) One or more persons who wish to form a company may-

- (a) subscribe their names to a memorandum of association; and
- (b) comply with the requirements of sections 8 to 12 of this Act in respect of registration.

(2) A company shall not be so formed for an unlawful purpose.

Memorandum of association.

7. (1) A memorandum of association is a memorandum stating that the subscribers—

- (a) wish to form a company under this Act; and
- (b) agree to become members of the company and, in the case of a company that is to have a share capital, to take at least one share each.

(2) The memorandum of association shall be—

- (a) in the prescribed form; and

(b) authenticated by each subscriber.

Requirements for registration

Registration
documents.

8. (1) The memorandum of association of a company shall be delivered to the Registrar together with an application for the registration of the company, a certified copy of the identification card or passport of each subscriber, the documents required by this section and a statement of compliance.

(2) The application for registration shall state—

- (a) the proposed name of the company;
- (b) where the registered office of the company is to be situated;
- (c) whether the liability of the members of the company is to be limited, and if so whether it is to be limited by shares or by guarantee; and
- (d) whether the company is to be a private or a public company.

(3) If the application for registration of a company is submitted by an agent for the subscribers to the memorandum of association, the application shall state the name and address of the agent.

(4) An application for registration of a company shall contain—

- (a) in the case of a company that is to have a share capital, a statement of capital and initial shareholding in accordance with section 9;

- (b) in the case of a company that is to be limited by guarantee, a statement of guarantee in accordance with section 10; and
- (c) a statement of the company's proposed officers in accordance with section 11,

(5) The application shall also contain—

- (a) a statement of the intended address of the company's registered office; and
- (b) a copy of any proposed articles to the extent that these are not supplied by the default application of the model articles set out in section 18.

Statement of capital
and initial
shareholdings.

9.(1) The statement of capital and initial shareholdings required to be submitted in the case of a company that is to have a share capital shall comply with this section.

(2) The statement of capital and initial shareholding shall state—

- (a) the total number of shares of the company to be taken on formation by the subscribers to the memorandum of association;
- (b) the aggregate nominal value of those shares;
- (c) for each class of shares—
 - (i) the prescribed particulars of the rights attached to the shares;

- (ii) the total number of shares of that class; and
- (iii) the aggregate nominal value of shares of that class; and
- (d) the amount to be paid up and the amount, if any, to be unpaid on each share, whether on account of the nominal value of the share or by way of premium.

(3) The statement of capital and initial shareholding shall—

- (a) contain such information as may be prescribed for the purpose of identifying the subscribers to the memorandum of association;
- (b) state, with respect to each subscriber to the memorandum—
 - (i) the number, nominal value of each share and class of shares to be taken by the subscriber on formation; and
 - (ii) the amount to be paid up and the amount, if any to be unpaid on each share, whether on account of the nominal value of the share or by way of premium.

(4) Where a subscriber to the memorandum of association is to take shares of more than one class, the information required under subsection (3)(b)(i) shall be submitted for each class.

Statement of
guarantee.

10.(1) The statement of guarantee required to be

delivered in the case of a company that is to be limited by guarantee shall contain such information as may be prescribed for the purpose of identifying the subscribers to the memorandum of association.

(2) The statement of guarantee shall state that, each member undertakes, if the company is wound up while he is a member, or within one year after he ceases to be a member, the member will contribute to the assets of the company such amount as may be required for—

- (a) payment of the debts and liabilities of the company contracted before he ceases to be a member;
- (b) payment of the costs, charges and expenses of winding up; and
- (c) adjustment of the rights of the contributories among themselves, not exceeding a specified amount.

Statement of
proposed officers.

11.(1) The statement of the company's proposed officers required to be delivered to the Registrar shall contain the required particulars of—

- (a) the person who is, or persons who are, to be the first director or directors of the company;
 - (b) in the case of a company that is to be a public company, the person who is or the persons who are to be the first secretary or joint secretaries of the company; and
 - (c) any person who is to be appointed as an authorised signatory of the company.
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(2) The required particulars are the particulars that will be required to be stated—

- (a) in the case of a director, in the company's register of directors and register of directors' residential addresses;
- (b) in the case of a secretary of a public company, in the company's register of secretaries; and
- (c) in the case of a person appointed as an authorised signatory, in the company's register of authorised signatories.

(3) The statement of the company's proposal officers shall contain a consent by each of the persons named as a director, as secretary or as one of joint secretaries or as an authorised signatory, to act in the relevant capacity.

(4) If all the partners in a firm are to be joint secretaries, consent may be given by one partner on behalf of all the partners.

Statement of
compliance.

12. (1) The statement of compliance required to be submitted to the Registrar is a statement that the requirements of this Act relating to registration have been complied with.

(2) The statement of compliance shall be issued by an advocate of the High Court.

(3) The Registrar may accept the statement of compliance as sufficient evidence of compliance.

Registration

Registration.

13. If the Registrar is satisfied that the requirements

of this Act relating to registration have complied with, the Registrar shall register the company.

Issue of certificate of incorporation.

14. (1) On the registration of a company under section 13, the Registrar shall issue a certificate of incorporation.

(2) The certificate shall state—

- (a) the name and registered number of the company;
- (b) the date of its incorporation;
- (c) whether it is a limited or unlimited company, and if it is limited, whether it is limited by shares or limited by guarantee; and
- (d) whether it is a private or a public company.

(3) The certificate shall be signed by the Registrar and authenticated by the official seal of the Registrar.

(4) The certificate is conclusive evidence that the requirements of this Act relating to registration have been complied with and that the company is duly registered under this Act.

Effect of registration.

15.(1) From the date of incorporation of a company

—

- (a) the subscribers to 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 stated in the certificate of incorporation;
- (b) the body corporate shall be capable of exercising all the functions of an

incorporated company;

- (c) the status and registered office of the company shall be as stated in the application for registration and in the certificate of incorporation,
- (d) in the case of a company having a share capital, the subscribers to the memorandum of association shall become holders of the shares specified in the statement of capital and initial shareholdings; and
- (e) the persons named in the statement of proposed officers—
 - (i) as director;
 - (ii) in the case of a public company, as secretary or joint secretary of the company; or
- (c) as an authorised signatory,

shall be deemed to have been appointed to that office.

PART III - A COMPANY'S CONSTITUTION

Articles of
association.

16. (1) A company shall have articles prescribing regulations for the company.

(2) Unless a company is a company to which model articles apply under section 18, a company shall register articles of association.

(3) The articles of a company shall be—

- (a) contained in a single document;
- (b) printed;

- (c) divided into paragraphs numbered consecutively;
- (d) dated; and
- (e) signed by each subscriber to the articles in the presence of at least one witness, who shall attest the signature and add his occupation and postal address.

Power of Minister to prescribe model articles.

17. (1) The Minister may by regulations prescribe model articles for companies.

(2) The Minister may prescribe different model articles for different descriptions of companies.

(3) A company may adopt all or any of the provisions of the model articles.

(4) Any amendment of model articles under this section shall not affect a company registered before the amendment takes effect.

Default application of model articles.

18. (1) On the formation of a limited company—

- (a) if its articles are not registered; or
- (b) if its articles are registered, in so far as they do not exclude or modify the relevant model articles,

the relevant model articles shall so far as applicable, form part of the company's articles in the same manner and to the same extent as if articles in the form of those articles had been duly registered.

(2) The relevant model articles means the model articles prescribed for a company of that description in force on the date the company is registered.

Alteration of articles

Amendment of articles.

19. A company may amend its articles by special resolution.

Effect of amendment of articles on company's members.

20. (1) A member of a company is not bound by an amendment to the articles of a company after the date on which he became a member, if and so far as the amendment —

- (a) requires him to take or subscribe for more shares than the number held by him at the date on which the amendment is made; or
- (b) in any way increases his liability as at that date to contribute to the company's share capital or otherwise to pay money to the company.

(2) Subsection (1) does not apply in a case where the member agrees in writing, either before or after the amendment is made, to be bound by the amendment.

Amended articles to be sent to Registrar.

21. (1) Where a company amends its articles, the company shall send to the Registrar a copy of the articles as amended not later than fourteen days after the amendment takes effect.

(2) This section does not require a company to set out in its articles any provisions of model articles that—

- (a) are applied by the articles; or
- (b) apply by virtue of section 18.

Registrar's notice to comply in case of failure with respect to amended articles.

22. (1) If it appears to the Registrar that a company has failed to comply with any provision requiring it—

- (a) to send to the Registrar a document

making or evidencing an amendment in the company's articles; or

- (b) to send to the Registrar a copy of the company's articles as amended,

the Registrar may give notice to the company requiring it to comply.

(2) The notice under subsection (1) shall—

- (a) state the date on which it is issued; and
- (b) require the company to comply within twenty eight days from that date.

Existing companies:
provisions of
memorandum treated
as provisions of
articles.

23. Provisions that immediately before the commencement of this Part were contained in a company's memorandum of association but are not provisions of the kind mentioned in section 7 shall, after the commencement of this Act be treated as provisions of the company's articles.

Copies of resolutions
or agreements
recorded by
Registrar.

24. (1) A copy of—

- (a) a special resolution;
 - (b) a resolution or agreement agreed to by all the members of a company that, if not so agreed to, would not have been effective for its purpose unless passed as a special resolution;
 - (c) a resolution or agreement agreed to by all the members of a class of shareholders that, if not so agreed to, would not have been effective for its purpose unless passed by a particular majority or otherwise in a particular
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manner;

- (d) a resolution or agreement that effectively binds all members of a class of shareholders though not agreed to by all those members;
- (e) a resolution to give, vary, revoke or renew authority for the purposes of section 232;
- (f) a resolution conferring, varying, revoking or renewing authority following market purchase of a company's own shares;
- (g) a resolution for voluntary winding up;
- (h) a resolution of the director of an old public company that the company should be re-registered as a public company; or
- (i) a resolution passed regarding transfer of securities,

shall be submitted to the Registrar within fourteen days after it is passed, or made.

(2) The Registrar shall record a resolution or agreement submitted to him under subsection (1).

Statement of
company's objects.

25.(1) Unless the articles of a company specifically restrict the objects of the company, its objects are unrestricted.

(2) Where a company amends its articles so as to add, remove or alter a statement of the objects of the company it shall give notice of the amendment to the Registrar.

(3) The Registrar shall on receipt of the notice of amendment under subsection (2) register the amendment.

(4) The amendment to the objects of company shall not take effect until the notice has been registered.

(5) Any amendment to the object of a company shall not affect any rights or obligations of the company or render defective any legal proceedings by or against it.

Documents to be
provided to members.

26. (1) A company shall, on request by any member send to the member the following documents—

- (a) an up-to-date copy of the articles of the company;
- (b) a copy of any resolution or agreement relating to the company that has been recorded by the Registrar under section 24;
- (c) a copy of the current certificate of incorporation of the company and of any past certificates of incorporation;
- (d) in the case of a company with a share capital, a current statement of capital; or
- (e) in the case of a company limited by guarantee, a copy of the statement of guarantee.

(2) The statement of capital required by subsection (1)(d) is a statement of—

- (a) the total number of shares of the company;

- (b) the aggregate nominal value of those shares;
- (c) for each class of shares—
 - (i) prescribed particulars of the rights attached to the shares,
 - (ii) the total number of shares of that class;
 - (iii) the aggregate nominal value of shares of that class; and
- (d) the amount paid up and the amount, if any, unpaid on each share, whether on account of the nominal value of the share or by way of premium.

(3) A member who requests for documents under subsection (1) shall pay the costs of preparing and sending the documents to him.

Effect of company's constitution.

27. (1) The provisions of the constitution of a company shall when registered, bind the company and its members to the same extent as if there were covenants, on the part of the company and of each member, to observe those provisions.

(2) Money payable by a member to the company under its constitution is a debt due from him to the company.

Right to participate in profits otherwise than as member void.

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

PART IV -CAPACITY OF COMPANY

Company's capacity.

29. The validity of an act done by a company shall not be called into question on the ground of lack of capacity by reason of anything in the constitution of the company.

Power of directors to bind company.

30. (1) In favour of a person dealing with a company in good faith, the power of the directors to bind the company, or authorise others to do so, is deemed to be free of any limitation under the constitution of the company.

(2) For purposes of subsection (1)—

(a) a person deals with a company if he is a party to any transaction or other act to which the company is a party;

(b) a person dealing with a company—

(i) is not bound to enquire as to any limitation on the powers of the directors to bind the company or authorise others to do so;

(ii) is presumed to have acted in good faith unless the contrary is proved; and

(iii) is not to be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the directors under the constitution of the company.

(3) The powers of the director under the constitution of the company include limitations deriving—

(a) from a resolution of the company or of any class of shareholders; or

- (b) from any agreement between the members of the company or of any class of shareholders.

(4) This section does not affect any right of a member of the company to bring proceedings to restrain the doing of an action that is beyond the powers of the directors.

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

Company contracts.

31. (1) A contract may be made—

- (a) by a company, in writing under its common seal; or
- (b) on behalf of a company, by a person acting under the authority, express or implied.

(2) Any formalities required by law in the case of a contract made by an individual also apply, unless a contrary intention appears, to a contract made by or on behalf of a company.

Execution of documents.

32. (1) A document is executed by a company—

- (a) by the affixing of its common seal; or
- (b) by signature in accordance with subsection (2).

(2) A document is validly executed by a company if it is signed on behalf of the company—

- (a) by two authorised signatories; or
-

- (b) by a director of the company in the presence of a witness who attests the signature.

(3) A document signed in accordance with subsection (2) and expressed, in whatever words to be executed by the company has the same effect as if executed under the common seal of the company.

(4) A document in favour of a purchaser is deemed to have been duly executed by a company if it purports to be signed in accordance with subsection (2).

(5) Where a document is to be signed by a person on behalf of more than one company, it is not duly signed by that person for the purposes of this section unless he signs it separately in each capacity.

(6) References in this section to a document being or purporting to be, signed by a director or secretary are to be read, in a case where that office is held by a firm, as references to its being or purporting to be, signed by an individual authorised by the firm to sign on its behalf.

(7) This section applies to a document that is or purports to be executed by a company in the name of, or on behalf of, another person whether or not that person is also a company.

Common seal.

33. (1) A company may have a common seal.

(2) A company which has a common seal shall have its name engraved in legible characters on the seal.

Execution of deeds.

34.(1) A document is validly executed by a company as a deed only if the document is—

- (a) duly executed by the company; and
- (b) delivered as a deed.

(2) For the purposes of subsection (1)(b), a

document is presumed to be delivered upon its being executed, unless a contrary intention is proved.

Execution of deeds or other documents by attorney.

35. (1) A company may, by instrument in writing, empower a person, either generally or in respect of specified matters, as its attorney to execute deeds or other documents on its behalf.

(2) A deed or other document executed under subsection (1) has effect as if executed by the company.

Authentication of documents.

36. A document or proceedings requiring authentication by a company is sufficiently authenticated by a signature of a person authorised by the company to act on its behalf.

Official seal for use abroad.

37. (1) A company that has a common seal may have an official seal for use outside Kenya.

(2) The official seal shall be a facsimile of the common seal of the company, with the addition on its face of the place or places where it is to be used.

(3) The official seal shall, when duly affixed to a document, have the same effect as the common seal of the company.

(4) A company having an official seal for use outside Kenya may, by writing under its common seal, authorise any person appointed for the purpose to affix the official seal to any deed or other document to which the company is party.

(5) Where a company has appointed an agent for purposes of subsection (4), the authority of the agent when dealing with a company or another person continues—

- (a) during the period specified in the instrument conferring the authority; or
- (b) if no period is specified, until notice of the

revocation or termination of the authority of the agent has been given to the company or person dealing with the agent.

(6) The person affixing the official seal of a company shall certify in writing on the deed or other document to which the seal is affixed the date on which, and place at which, it is affixed.

Official seal for share certificates etc.

38.(1) A company that has a common seal may have an official seal for use for sealing—

- (a) securities issued by the company; or
- (b) documents creating or evidencing securities so issued.

(2) The official seal—

- (a) shall be a facsimile of the common seal of the company, with the addition on its face of the word “Securities” and
- (b) when duly affixed to a document has the same effect as the common seal of the company.

Pre-incorporation contracts, deeds and obligations.

39. (1) A contract that purports to be made by or on behalf of a company at a time when the company has not been formed has effect, subject to any agreement to the contrary, as a contract made with the person purporting to act for the company or as agent for it, and he is personally liable on the contract accordingly.

(2) Subsection (1) applies to a deed as it applies to the making of a contract.

Bills of exchange and promissory notes.

40. A bill of exchange or promissory note is deemed to have been made, accepted or endorsed on behalf of a company if made, accepted or endorsed in the name of,

by or on behalf or on account, of the company by a person acting under the authority of the company.

Registered office of company.

41. A company shall at all times have a registered office to which all communication and notices may be addressed.

Change of address of registered office.

42. (1) A company may change the address of its registered office by giving notice to the Registrar.

(2) The change of address takes effect upon the notice being registered by the Registrar.

(3) A person may serve any document on the company at the address previously registered within fourteen days of the new address being registered by the Registrar.

(4) For the purposes of any duty of a company—

- (a) to keep available for inspection at its registered office any register, index or other document; or
- (b) to state the address of its registered office in any document,

the company that has given notice to the Registrar of a change in the address of its registered office may act on the change as from such date, not more than fourteen days after the notice is given, as it may determine.

(5) Where a company unavoidably ceases to carry on business at its registered office, any duty referred to in subsection (4)(a) in circumstances in which it was not practicable to give prior notice to the Registrar of a change in the address of its registered office, but—

- (a) resumes performance of that duty at other premises as soon as practicable; and

- (b) gives notice accordingly to the Registrar of a change of its registered office within fourteen days of doing so,

the company is not to be treated as having failed to comply with that duty.

PART V - NAME OF COMPANY

Reservation of name.

43. (1) The Registrar, may, on written application, reserve a name pending registration of a company or a change of name by a company.

(2) The reservation of a name under subsection (1) shall remain in force for a period of thirty days or such longer period, not exceeding sixty days, as the Registrar may, for special reason, allow, and during such period, no other company shall be entitled to be registered by that name.

Prohibited names.

44. A company shall not be registered by a name if, in the opinion of the Registrar —

- (a) the use of the name by the company would constitute an offence;
- (b) the name is offensive;
- (c) the name is undesirable; or
- (d) the name consists of abbreviations or initials.

Name suggesting connection with government or public authority .

45.(1) The approval of the Registrar is required for a company to be registered under this Act by a name that would be likely to give the impression that the company is connected with—

- (a) the Government;

- (b) a local authority; or
- (c) any public authority specified for the purposes of this section by the Minister.

(2) For purposes of this section, “public authority” includes any person or body having functions of a public nature.

Duty to seek
comments of
government
department or other
specified body.

46. The Minister may by regulations require that, in connection with an application for the approval of the Registrar for the use of a specific name, the applicant shall seek the view of a specified Government department or other body.

Permitted characters
etc.

47.(1) The Minister may by regulations—

- (a) provide for the letters or other characters, signs or symbols, including accents and other diacritical marks and punctuation that may be used in the name of a company registered under this Act; and
- (b) specify a standard style or format for the name of a company for the purposes of registration.

(2) The Minister may prohibit the use of specified characters, signs or symbols when appearing in a specified positions (in particular, at the beginning of a name).

(3) A company shall not be registered under this Act by a name that consists of or includes anything that is not permitted in accordance with regulations made under this section.

Public limited
companies.

48. The name of a limited company that is a public company shall end with the words “public limited company” or “p.l.c.”.

Private limited companies.

49. (1) The name of a limited company that is a private company shall end with the words “limited” or “ltd.”.

Exemption from requirement to use of “limited”.

50. The Minister may exempt a private company from using the word “limited” or “ltd” as required under section 49.

Inappropriate use of company type or legal form.

51.(1) The Minister may by regulations prohibit the use in a company name of specified words, expressions or other indications—

- (a) that are associated with a particular type of company or form of organisation; or
- (b) that are similar to words, expressions or other indications associated with a particular type of company or form of organisation.

(2) The regulations may prohibit the use of words, expressions or other indications—

- (a) in a specified part, or otherwise than in a specified part, of the name of a company; or
- (b) in conjunction with, or otherwise than in conjunction with, such other words, expressions or indications as may be specified.

(3) A company shall not be registered under this Act by a name that consists of or includes anything prohibited by regulations under this section.

Name not to be the same as another in the index.

52.(1) The Registrar shall not register a company under this Act by a name that is the same as another name appearing in the index of company names.

(2) The Minister may, by regulations provide for—

- (a) matters that are to be disregarded in; and
- (b) words, expressions, signs or symbols that are, or are not, to be regarded as the same,

for the purposes of this section.

(3) The regulations may provide—

- (a) that registration of a company by a name that would otherwise be prohibited under this section is permitted—
 - (i) in specified circumstances; or
 - (ii) with specified consent; and
- (b) that if these circumstances obtain or that consent is given at the time a company is registered by a name a subsequent change of circumstances or withdrawal of consent, does not affect the registration .

Power to direct change of name in case of similarity to existing name.

53. (1) The Minister may direct a company to change its name if it has been registered in a name that is the same as or, in the opinion of the Minister, too like—

- (a) a name appearing at the time of the registration in the Registrar's index of company names; or
- (b) a name that should have appeared in that index at that time.

(2) Section 52(2) shall apply to this section.

Direction to change name.

54. (1) A direction by the Minister under section 53 shall—

- (a) be given within twelve months of the registration of the company by the name in question; and
- (b) specify the period within which the company is to change its name.

(3) The Minister may in writing before the end of the period specified in subsection (1), extend that period .

Misleading
information etc.

55. (1) If it appears to the Minister that—

- (a) misleading information has been given for the purposes of the registration of a company by a particular name; or
- (b) an undertaking or assurance has been given for that purpose and has not been fulfilled,

the Minister may direct the company to change its name.

(2) A direction by the Minister under sub section (1) shall—

- (a) be given within five years of the registration of the company by that name; and
- (b) specify the period within which the company is to change its name.

(3) The Minister may, in writing before the end of the period specified in subsection (2), extend the period within which the company is to change its name.

Misleading indication
of activities.

56. (1) If in the opinion of the Minister the name by

which a company is registered gives so misleading an indication of the nature of its activities as to be likely to cause harm to the public, the Minister may direct the company to change its name.

(2) A company shall comply with the direction of the Minister within a period of sixty days from the date of the direction or such longer period as the Minister may specify.

Change of name.

57. (1) A company may change its name—

- (a) by special resolution; or
- (b) by other means provided for by the articles of the company.

Change of name by special resolution.

58. (1) Where a change of name has been agreed to by a company by special resolution, the company shall give notice to the Registrar and shall submit a copy of the special resolution to the Registrar.

(2) Where a change of name by special resolution is conditional on the occurrence of an event, the notice given to the Registrar of the change shall—

- (a) specify that the change is conditional; and
- (b) state whether the event has occurred.

(3) If the notice states that the event has not occurred—

- (a) the Registrar shall not register the change of name under section 60 until the event has occurred;
 - (b) when the event occurs, the company shall give notice to the Registrar stating that it has
-

occurred; and

- (c) the Registrar may rely on the statement as sufficient evidence of the matters stated in it.

Change of name by means provided for in articles of company.

59. (1) Where a change of name of a company has been made by other means provided for by its articles—

- (a) the company shall give notice to the Registrar; and
- (b) the notice shall be accompanied by a statement that the change of name has been made in accordance with the articles of the company.

(2) The Registrar may rely on the statement as sufficient evidence of the matters stated in it.

Change of name: registration and issue of new certificate of incorporation.

60.(1) Where the Registrar receives notice of change of the name of a company and is satisfied—

- (a) that the new name complies with the requirements of this Act; and
- (b) that the requirements of this Act and any relevant requirements of the articles of the company, with respect to a change of name are complied with,

the Registrar shall enter the new name on the register in place of the former name.

(3) On the registration of the new name, the Registrar shall issue a new certificate of incorporation.

Effect of change of name.

61. (1) A change of the name of a company—

- (a) has effect from the date on which the new certificate of incorporation is issued;
- (b) shall not affect any rights or obligations of the company or render defective any legal proceedings by or against the company.

Requirement to disclose company name etc.

62.(1) The Minister may by regulations require a company to—

- (a) display specified information in specified locations;
- (b) state specified information in specified descriptions of documents or communication;
- (c) provide specified information on request to a person the company deals with in the course of its business;
- (d) disclose the name of the company; and
- (e) display, state or provide any specified information in a specified manner.

(3) For the purposes of any requirement to disclose the name of a company, any variation between a word or words required to be part of the name and a permitted abbreviation of that word or those words shall be disregarded.

Minor variations in form of name.

63. (1) In considering the name of a company no account is to be taken of whether—

- (a) upper or lower case characters or a combination of the two are used;

- (b) diacritical marks or punctuation are present or absent; and
- (c) the name is in the same format or style as is specified under section 47(1)(b) for the purposes of registration:

provided there is no real likelihood of names differing only in those respects being taken to be different names.

(2) The provision of this section shall not affect the operation of regulations made under section 47(1)(a) permitting only specified characters, diacritical marks or punctuation.

PART VI - THE MEMBERS OF A COMPANY

Members of
company.

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

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

Register of members.

65.(1) Every company shall keep a register of its members.

(2) There shall be entered in the register—

- (a) the names and addresses of the members;
- (b) the date on which each person was registered as a member; and

- (c) the date on which any person ceased to be a member.

(3) Where a company has a share capital, there shall be entered in the register, with the names and addresses of the members, a statement of—

- (a) the shares held by each member, distinguishing each share—
 - (i) by its number where the share has a number; and
 - (ii) where the company has more than one class of issued shares, by its class; and
- (b) the amount paid or agreed to be considered as paid on the shares of each member.

(4) If the company has converted any of its shares into stock, and given notice of the conversion to the Registrar, the register of members shall show the amount and class of stock held by each member instead of the amount of shares and the particulars relating to the shares.

(5) In the case of joint holders of shares or stock in a company, the register of members shall state the names of each joint holder.

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

Register to be kept
available for
inspection.

66. (1) A register of members of a company shall be kept available for inspection at its registered office.

- (2) A company shall give notice to the
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Registrar of the registered office where its register of members is kept for inspection and any change in the registered office.

Index of members.

67. (1) A company which has more than fifty members shall keep an index of the names of the members of the company, unless the register of members is in such a form as to constitute in itself an index.

(2) A company shall make any necessary alteration in the index within fourteen days after the date on which any alteration is made in the register of members.

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

(4) The index shall at all times be kept available for inspection at the same place as the register of members.

Rights to inspect and require copies.

68. (1) The register and the index of names of members of a company shall be open to inspection by—

- (a) a member of the company without charge; and
- (b) any other person on payment of the prescribed fee.

(2) Any person may be issued with a copy of a register of members of a company, or of any part of it, on payment of the prescribed fee.

(3) A person seeking to inspect the register of members of a company or to be issued with a copy of the register shall make a request to the company.

(4) The request shall contain the following information—

- (a) in the case of an individual, his name and address;
- (b) in the case of an organisation, the name and address of the person responsible for making the application on behalf of the organisation;
- (c) the purpose for which the information is to be used; and
- (d) whether the information will be disclosed to any other person, and if so—
 - (i) where that person is an individual, his name and address;
 - (ii) where that person is an organisation, the name and address of the person responsible for receiving the information on its behalf, and
 - (iii) the purpose for which the information is to be used by that person.

Refusal of inspection
or default in
providing copy.

69. Where a person makes an application under section 68—

- (a) the application is refused otherwise than in accordance with an order of the court, the court may, by order, compel the company to allow inspection or direct that the copy required be sent to the person requesting it, as the case may be; or
- (b) default is made in providing a copy under that section.

Removal of entries
relating to former

70. An entry relating to a former member of the

members. company may be removed from the register after the expiration of ten years from the date on which the person ceased to be a member.

Share warrants. **71.**(1) On the issue of a share warrant, a company shall—

- (a) enter in the register of members—
 - (i) the fact of the issue of the warrant;
 - (ii) a statement of the shares included in the warrant, distinguishing each share by its number where the share has a number; and
 - (iii) the date of issue of the warrant; and
- (b) amend the register, if necessary, so that no person is named on the register as the holder of the shares specified in the warrant.

(2) Until the warrant is surrendered, the particulars specified in subsection (1)(a) are deemed to be those required by this Act to be entered in the register of members.

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

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

(5) A company is responsible for any loss incurred by any person by reason of the company entering in the register the name of a bearer of a share warrant in respect

of the shares specified in it without the warrant being surrendered and cancelled.

(6) On the surrender of a share warrant, the date of the surrender shall be entered in the register.

Single member
company.

72.(1) If a limited company is formed under this Act with only one member, there shall be entered in the register of members of the company, the name and address of that member and a statement that the company has only one member.

(2) If the number of members of a limited company falls to one, there shall be entered in the register of members of the company—

- (a) the name and address of the member;
- (b) a statement that the company has only one member; and
- (c) the date on which the company became a company having only one member.

(3) If the membership of a limited company increases from one to two or more members, there shall be entered in the register of members, of the company—

- (a) the name and address of the person who was formerly the sole member;
- (b) a statement that the company has ceased to have only one member; and
- (c) the date on which the company ceased to be a single member company.

Power of court to
rectify register.

73. (1) If—

- (a) the name of any person is, without sufficient

cause, entered in or omitted from a register of members of a company; or

- (b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,

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

(2) Where an application is made under subsection(1), the court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.

Trusts not to be entered on register.

74. No notice of any trust, expressed, implied or constructive, shall be entered on the register of members of a company or be received by the Registrar.

Register to be evidence.

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

Time limit for claims arising from entry in register.

76. (1) Liability incurred by a company—

- (a) from the making or deletion of an entry in the register of members; or
- (b) from a failure to make or delete any such entry,

is not enforceable more than ten years after the date on which the entry was made or deleted or, as the case may be, the failure first occurred.

(2) Subsection (1) is without prejudice to any lesser period of limitation.

Prohibition on subsidiary being a member of its holding company.

77.(1) Except as provided in sections 78 and 79—

- (a) a body corporate shall not be a member of a company that is its holding company; and
- (b) any allotment or transfer of shares in a company to its subsidiary is void.

Subsidiary acting as personal representative or trustee.

78.(1) The prohibition in section 77 does not apply where the subsidiary is concerned only—

- (a) as personal representative; or
- (c) as trustee,

unless, the holding company or a subsidiary thereof is beneficially interested under the trust.

(2) For the purpose of ascertaining whether the holding company or a subsidiary is an interested party, the following shall be disregarded—

- (a) any interest held only by way of security for the purposes of a transaction entered into by the holding company or subsidiary in the ordinary course of a business that includes the lending of money;
- (b) any interest under sections 79 and 80—
- (c) any rights that the company or subsidiary has in its capacity as trustee, including in particular—
 - (i) any right to recover its expenses or be remunerated out of the trust property; and

- (ii) any right to be indemnified out of the trust property for any liability incurred by reason of any act or omission in the performance of its duties as trustee.

Interest to be disregarded: residual interest under pension scheme or employees' share scheme.

79. (1) Where shares in a company are held on trust for the purposes of a pension scheme or employees' share scheme, there shall be disregarded for the purposes of section 78 any residual interest that has not vested in possession.

(2) For purposes of this section, a "residual interest" means a right of the company or subsidiary ("the residual beneficiary") to receive any of the trust property in the event of—

- (a) all the liabilities arising under the scheme having been satisfied or provided for;
- (b) the residual beneficiary ceasing to participate in the scheme; or
- (c) the trust property at any time exceeding what is necessary for satisfying the liabilities arising or expected to arise under the scheme.

(3) In subsection (2)—

- (a) the reference to a right includes a right dependent on the exercise of a discretion vested by the scheme in the trustee or another person; and
 - (b) the reference to liabilities arising under a scheme includes liabilities that have resulted, or may result, from the exercise of any such discretion.
-

(4) For the purposes of this section, a residual interest vests in possession—

- (a) in a case under subsection (2) (a), on the occurrence of the event specified in that subsection, whether or not the amount of the property receivable pursuant to the right is ascertained and;
- (b) in a case under subsection (2)(b) or (c), when the residual beneficiary becomes entitled to require the trustee to transfer to him any of the property receivable pursuant to the right.

Employer rights of recovery under pension scheme or employees' share scheme.

80.(1) For purposes of section 77, where shares in a company are held in trust for the purposes of a pension scheme or employees' share scheme, any charge or lien on, or set-off against, any benefit or other right or interest under the scheme for the purpose of enabling the employer or former employer of a member of the scheme to obtain the discharge of a monetary obligation due to him from the member, shall be disregarded.

(2) In the case of a trust for the purposes of a pension scheme, any right to receive from the trustee of the scheme, or as trustee of the scheme to retain, an amount that can be recovered or retained or otherwise, as reimbursement or partial reimbursement for any contributions equivalent premium paid in connection with the scheme shall be disregarded.

Subsidiary acting as authorised dealer in securities.

81.(1) The prohibition in section 77 shall not apply where the shares are held by the subsidiary in the ordinary course of its business as an intermediary.

(2) For purposes of subsection (1), a person is an intermediary if he—

- (a) carries on a bona fide business of dealing in securities;
- (b) is a member of a licensed stock exchange in Kenya or is otherwise approved or supervised as a dealer in securities in Kenya; and
- (c) does not carry on an excluded business.

(3) For purposes of subsection (2) an excluded business is a business that consists —

- (a) wholly or mainly of the making or managing of investments;
 - (b) wholly or mainly in, or is carried on wholly or mainly for the purposes of, providing services to persons who are connected with the person carrying on the business;
 - (c) in insurance business;
 - (d) in managing or acting as trustee in relation to a pension scheme, or that is carried on by the manager or trustee of such a scheme in connection with or for the purposes of the scheme; and
 - (e) in operating or acting as trustee in relation to a collective investment scheme, or that is carried on by the operator or trustee of such a scheme in connection with and for the purposes of the scheme.
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Protection of third parties in cases where subsidiary acting as dealer in securities.

82. (1) Where—

- (a) a subsidiary that is a dealer in securities has purportedly acquired shares in its holding company in contravention of section 77; and
- (b) a person acting in good faith has agreed, for value and without notice of the contravention, to acquire shares in the holding company—
 - (ii) from the subsidiary; or
 - (ii) from someone who has purportedly acquired the shares after their disposal by the subsidiary,

a transfer to that person of the shares under paragraph (a) has the same effect as it would have had if their original acquisition by the subsidiary had not been in contravention of subsidiary section 77.

Application of provisions to companies not limited by shares.

83. In relation to a company other than a company limited by shares, the references in section 77 to section 82 to shares shall be read as references to the interest of its members as such, whatever the form of that interest.

Application of provisions to nominees.

84. The provisions of section 77 to section 82 apply to a nominee acting on behalf of a subsidiary to the subsidiary itself.

PART VII - EXERCISE OF RIGHTS OF MEMBERS

Effect of provisions of articles to enjoyment or exercise of rights of members.

85.(1) This section applies where provision is made in the articles of a company enabling a member to nominate another person or persons to enjoy or exercise all or any specified rights of the member in relation to the company.

(2) So far as is necessary to give effect to that provision anything required or authorised by any provision of this Act to be done by or in relation to the member, shall instead be done, or as the case may instead be done, by, or in relation to the nominated person, or each of them, as if he were a member of the company.

(3) Subsection (2) applies in particular, to the right to—

- (a) be sent a proposed written resolution;
- (b) require circulation of a written resolution;
- (c) require directors to call general meeting;
- (d) notice of general meetings;
- (e) require circulation of a statement;
- (f) appoint a proxy to act at a meeting;
- (g) require circulation of a resolution for the Annual General Meeting of a public company; and
- (h) be sent a copy of annual financial statements and reports.

(4) This section does not—

- (a) confer rights enforceable against the company by anyone other than the member; and
 - (b) affect the requirements for an effective transfer or other disposition of the whole or part of a member's interest in the company.
-

Traded companies:
nomination of
persons to enjoy
information rights.

86. (1) A member of a company whose shares are admitted to trading on a regulated market and who holds shares on behalf of another person may nominate a person to enjoy information rights.

(2) For purposes of subsection (1) “information rights” means—

- (a) the right to receive a copy of all communications that the company sends to its members generally or to any class of its members that includes the person making the nomination; and
- (b) the rights to—
 - (i) require copies of financial statements and reports; and
 - (ii) require a hard copy version of a document or information provided in another form.

(3) A company need not act on a nomination purporting to relate to certain information rights only.

Information rights:
form in which copies
to be provided.

87. (1) If the person to be nominated under section 86 wishes to receive documents or other information in hard copy form, that person shall—

- (a) request the person making the nomination to notify the company of that fact; and
- (b) provide an address to which such copies may be sent.

(2) If having received a request under subsection (1) the person making the nomination—

- (a) notifies the company that the nominated person wishes to receive documents and other information in hard copy form; and

- (c) provides the company with the address;

the nominated person has the right to receive documents and other information in hard copy form accordingly.

(3) Where no notification is received or no address is provided the nominated person shall be presumed to have agreed that documents or information may be sent or supplied to him by the company by means of a website.

- (4) The agreement referred to in subsection (3)—

- (a) may be revoked by the nominated person; and
- (b) does not affect the right of the nominated person under section 617 to require a hard copy version of a document or information provided in any other form.

Information on possible rights in relation to voting.

88.(1) Where a company sends a copy of a notice of a meeting to a person nominated under section 86, the copy of the notice shall be accompanied by a statement that—

- (a) the nominated person may have a right under an agreement between him and the member by whom he was nominated to be appointed, or to have someone else appointed, as a proxy for the meeting; or
-

- (b) if the nominated person has no such right or does not wish to exercise it, he may have a right under such an agreement to give instructions to the member as to the exercise of voting rights.

(3) Section 203 does not apply to the copy of the notice, and the company shall either—

- (a) omit the notice required by that section; or
- (b) include the notice but state that it does not apply to the nominated person.

Power to amend
information rights.

89. (1) The Minister may by regulations amend the provisions on information rights in sections 85 to 88 so as to—

- (a) extend or restrict the classes of companies to which section 85 applies;
- (b) make other provision with regard to the circumstances in which a nomination may be made under that section; or
- (c) extend or restrict the rights conferred by such a nomination.

Exercise of rights
where shares held on
behalf of others.

90. (1) Where a member holds shares in a company on behalf of more than one person—

- (a) rights attached to the shares; and
- (b) rights under any written law exercisable by virtue of holding the shares,

need not all be exercised, and if exercised, need not all be exercised in the same way.

(2) A member who exercises the rights under subsection (1) but does not exercise all his rights, shall inform the company to what extent he is exercising the rights.

(3) A member who exercises the rights in different ways shall inform the company of the ways in which he is exercising the rights and to what extent he is exercising the rights in each way.

(4) If a member exercises the rights in this section without informing the company—

- (a) that he is not exercising all his rights; or
- (b) that he is exercising his rights in different ways,

the company is entitled to assume that he is exercising all his rights and is exercising them in the same way.

Exercise of rights
where shares held on
behalf of others:
members' requests.

91.(1) For purposes of sections 192, 215 and ,455, a company is required to act under any of the sections if it receives a request in relation to which the following conditions are met—

- (a) it is made by at least one hundred persons;
 - (b) it is authenticated by all the persons making it;
 - (c) in the case of any of those persons who is not a member of the company, it is accompanied by a statement—
 - (ii) of the full name and address of a person who is the member of the
-

- company and holds shares on behalf of that person;
- (ii) that the member is holding the shares on behalf of that person in the course of a business;
 - (iii) of the number of shares in the company that the member holds on behalf of that person;
 - (iv) of the total amount paid up on the shares;
 - (v) that the shares are not held on behalf of anyone else or, if they are, that the other person or persons are not among the other persons making the request;
 - (vi) that some or all of the shares confer voting rights that are relevant for the purposes of making a request under the section in question; and
 - (vii) that the person has the right to instruct the member how to exercise the rights;
- (d) in the case of any of these persons who is member of the company, it is accompanied by a statement that the member—
- (i) holds shares otherwise than on behalf of another person; or
 - (ii) holds shares on behalf of one or more other persons but those persons are not among the other persons making the request;
-

- (e) it is accompanied by such evidence as the company may reasonably require of the matters mentioned in paragraphs (c) and (d);
- (f) the total amount of the sums paid up on—
 - (i) shares held as mentioned in paragraph (c); and
 - (ii) shares held as mentioned in paragraph (d), divided by the number of persons making the request, is not less than thirteen thousand, five hundred shillings;
- (g) the request complies with any other requirements of the section.

PART VIII - THE DIRECTORS OF A COMPANY

Companies required to have directors.

92.(1) A private company shall have at least one director.

(2) A public company shall have at least two directors.

Companies required to have natural persons as directors.

93.(1) A company shall have a natural persons as directors.

Direction requiring company to make appointment.

94. (1) If it appears to the Registrar that a company is in breach of section 92 or 93, Registrar may give the company a direction under this section.

(2) The directions shall specify—

- (a) the statutory requirement the company appears to be in breach of;
 - (b) the action the company shall take in order
-

to comply with the direction;

- (d) the period within which the company shall comply with the law which period shall be not less than one month or more than three months after the date on which the direction is given; and
- (e) the consequences of the company failing to comply.

(2) Where the company is in breach of section 92 or 93, the company shall comply with the direction given by the Registrar by—

- (a) making the necessary appointment or appointments; and
- (b) giving notice of the appointment under section 100, before the end of the period specified in the direction or appointments.

(3) If the company has already made the necessary appointment or appointment, it shall comply with the direction by giving notice of the appointment under section 100 before the end of the period specified in the direction.

Minimum age of director.

95.(1) A person may not be appointed a director of a company unless he has attained the age of eighteen years.

(2) An appointment made in contravention of this section is void.

Appointment of director of public company .

96.(1) The appointment of a director for a public company shall be voted on individually.

(2) At a general meeting of a public company a motion for the appointment of two or more persons as

directors of the company by a single resolution shall not be made unless a resolution that it should be made has first been agreed by the meeting without any vote being made against .

(3) A resolution moved in contravention of this section is void, whether or not its being was subjected to at the time.

Board nomination committee.

97.(1) A quoted company and a company of public interest nature that handles public funds, shall establish a board nomination committee where at least two thirds of its members are shareholders in the company and together represent two thirds of the share capital in the company.

(2) The board nomination committee referred to under subsection (1) shall propose candidates for the Board of Management or Directors of the company.

(3) A person who is employed by the quoted company shall not serve as a member of the board nomination committee .

Validity of acts of directors.

98.(1) The acts of a director shall be valid notwithstanding that it is afterwards discovered that—

(a) the appointment of the director was defective;

(b) the director-

(i) was disqualified from holding office;

(ii) had ceased to hold office; or

(iii) was not entitled to vote on the matter in question.

(2) The acts of a director shall be valid even if the resolution for his appointment is not void under section 95.

Register of directors.

99.(1) Every company shall keep a register of each person who is a director of the company.

(2) The register shall contain the following particulars with respect to each director—

- (a) name;
- (b) a service address and a residential address, if the residential address is different from the service address;
- (c) the country in which the director is usually resident;
- (d) nationality;
- (e) business occupation (if any); and
- (f) date of birth.

(3) The Register shall be available for inspection at the registered office of the company or at a place specified in the regulations under section 41

(4) The register shall be open to inspection by—

- (a) any member of the company without charge;
and
- (b) any other person on payment of the prescribed fee.

(5) Where a company refuses to allow a person to inspect the register, the court may, by order, compel the company to allow the inspection.

Duty to notify
Registrar of changes.

100. (1) A company shall, within fourteen days from—

- (a) a person becoming or ceasing to be a director; or
- (b) the occurrence of any change in the particulars contained in its register of directors or its register of directors' residential addresses,

give notice to the Registrar of the change and of the date on which the change occurred.

(2) A notice of the appointment of a new director of the company shall—

- (a) contain a statement of the particulars of the new director that are required to be included in the company's register of directors and its register of directors' residential addresses; and
- (b) be accompanied by a certified copy of the identity card or passport of the new director;
- (c) be accompanied by a consent, by that person, to act in that capacity.

Resolution to remove
director.

101.(1) A company may by ordinary resolution at a meeting, remove a director before the expiration of his period of office, notwithstanding anything in any agreement between the company and the director.

(2) A special notice shall be the required of a resolution to remove a director under this section.

(3) A person appointed director in place of a person removed under this section shall, for the purpose of determining the time at which he or any other director is to retire, be treated as if he had become director on the day on which the person in whose place he is appointed was

last appointed a director.

(4) A person who ceases to be a director continues to be subject to the duty —

- (a) to avoid conflicts of interest with regard to the exploitation of any property, information or opportunity which he became aware of at the time when he was a director; and
- (b) not to accept benefits from third parties with regard to things done or omitted to be done by him before he ceased to be a director.

Director's right
protest against
removal.

102.(1) On receipt of notice of an intended resolution to remove a director under section 101, the company shall send a copy of the notice to the director concerned.

(2) The director, whether or not a member of the company is entitled to be heard on the resolution at the meeting.

(3) Where notice is given of an intended resolution to remove a director under section 101, and the director concerned makes, with respect thereto representations in writing to the company within twenty one days and requests that the members of the company be notified of his representation, 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 sent, whether before or after receipt of the representations by the company.
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(4) If a copy of the representations is not sent as required by subsection (3) because the representations were received too late or because of the company's default, the director may without prejudice to his right to be heard, orally require that the representations be read out at the meeting.

(5) Copies of the representations made under subsection (2) need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused.

(6) The court may order the company to pay any costs on an application under subsection (5) in whole or in part by the director, notwithstanding that he is not a party to the application.

Duty to act within powers.

103. A director of a company shall—

- (a) act in accordance with the constitution of the company; and
- (b) only exercise powers for the purposes for which they are conferred.

Duty to promote the success of the company.

104. (1) A director of a company shall act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard, amongst other matters to—

- (a) the likely consequences of any decision in the long term;
 - (b) the interests of the employees of the
-

company;

- (c) the need to foster the company's business relationships with suppliers, customers and others;
- (d) the impact of the operations of the company on the community and the environment;
- (e) the desirability of the company to maintain a reputation for high standards of business conduct; and
- (f) the need to act fairly between members of the company.

(2) Where or to the extent that the purposes of the company consist of or include purposes other than the benefit of its members, subsection (1) has effect as if the reference to promoting the success of the company for the benefit of its members were to achieving those purposes.

(3) The duty imposed by this section has effect subject to any law requiring directors, in certain circumstances, to consider or act in the interests of creditors of the company.

Duty to exercise
independent
judgment.

105.(1) A director of a company shall exercise independent judgment.

(2) The duty under subsection (1) is not infringed by the director acting—

- (a) in accordance with an agreement duly entered into by the company that restricts the future exercise of

discretion by its directors; or

- (b) in a way authorised by the constitution of the company.

Duty to exercise
reasonable care, skill
and diligence.

106.(1) A director of a company shall exercise reasonable care, skill and diligence which care, skill and diligence would be exercised by a reasonable diligent person with—

- (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company; and
- (b) the general knowledge, skill and experience that the director has.

Duty to avoid
conflicts of interest.

107. (1) A director of a company shall avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or may conflict, with the interests of the company.

(2) Subsection (1) applies in particular to the exploitation of any property, information or opportunity, and it is immaterial whether the company could take advantage of the property, information or opportunity.

(3) The duty of a director under subsection (1) is not infringed—

- (a) if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - (b) if the matter has been authorised by the other directors.
-

(4) Authorisation under subsection (3) (b) may be given by the directors —

- (a) where the company is a private company and nothing in the constitution of the company invalidates such authorisation, by the matter being proposed to and authorised by the directors; or
- (b) where the company is a public company and the constitution of the company includes a provision enabling the directors to authorise the matter, by the matter being proposed to and authorised by them in accordance with the constitution.

(5) The authorisation given under subsection (4) is effective only if—

- (a) any requirement relating to the quorum at the meeting at which the matter is considered is met without counting the director in question or any other interested director; and
- (b) the matter was agreed to without the director in question or any other interested director voting or would have been agreed to if their votes had not been counted.

(6) Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

Duty not to accept
benefits from third
parties.

108.(1) A director of a company shall not accept a benefit from a third party conferred by reason of—

- (a) his being a director; or
- (b) his doing or not doing anything as director.

(2) For purposes of subsection (1), a “third party” means a person other than the company, an associated body corporate or a person acting on behalf of the company or an associated body corporate.

(3) The duty of a director under this section is not infringed if the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

Duty to declare
interest in proposed
or existing transaction
or arrangement.

109.(1) Where a director of a company is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the company, or in a transaction or arrangement that the company has already entered into, the director shall declare the nature and extent of that interest to the other directors.

(2) The declaration referred to in subsection (1) may be made—

- (a) at a meeting of the directors; or
- (b) by notice to the directors in accordance with section 111 or 112.

(3) If a declaration of interest under this section, is inaccurate or incomplete, the director shall make a further declaration.

(4) A declaration required by this section shall be made before the company enters into the transaction or arrangement or as soon as is reasonably practicable.

(5) This section does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.

(6) A director shall be treated as being aware of matters of which he ought reasonably to be aware.

(7) A director need not declare an interest under this section—

- (a) if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- (b) if, or to the extent that, the other directors already aware of it, and for this purpose the other directors are treated as being aware of anything which they ought reasonably to be aware; or
- (c) if, or to the extent that, it concerns terms of his service contract that have been or are to be considered—
 - (i) by a meeting of the directors; or
 - (ii) by a committee of the directors appointed for the purpose under the constitution of the company.

Offence of failure to declare interest.

110. (1) A director who fails to declare interest in a proposed transaction or arrangement or to declare interest in an existing transaction or arrangement commits an offence.

(2) A person who commits an offence under sub

section(1) is liable on conviction, to a fine not exceeding one million shillings.

Declaration made by
notice in writing.

111. (1) A director who is required to make a declaration of interest shall send a notice to the other directors.

(2) The director may send the notice in hard copy form or, if the recipient has agreed to receive it in electronic form, in an agreed electronic form.

(2) The notice under subsection (1) may be sent—

- (a) by hand or by post; or
- (c) if the recipient has agreed to receive it by electronic means, by the agreed electronic means.

(3) Where a director declares an interest by notice in writing in accordance with this section—

- (a) the making of the declaration is deemed to form part of the proceedings at the next meeting of the directors after the notice is given;
- (b) section 113, shall apply if the declaration has been made at the meeting.

General notice treated
as sufficient
declaration.

112. (1) A general notice in accordance with this section is a sufficient declaration of interest in relation to the matters to which it relates.

(2) A general notice is notice given to the directors of a company that the director giving the notice—

- (a) has an interest as a member, officer, employee or otherwise in a specified body

corporate or firm and is to be regarded as interested in any transaction or arrangement that may, after the date of the notice, be made with that body corporate or firm; or

- (b) is connected with a specified person, other than a body corporate or firm, and is to be regarded as interested in any transaction or arrangement that may, after the date of the notice, be made with that person.

- (3) The general notice shall state the nature and extent of the director's interest in the body corporate or firm, as the case may be, the nature of his connection with the person.

- (4) A general notice is not effective unless—

- (a) it is given at a meeting of the directors; or
- (b) the director takes reasonable steps to ensure that the notice is read at the next meeting of the directors after it is given.

Provisions protecting
directors from
liability.

113. (1) This section applies to any provision, whether contained in the articles of a company or in any contract with the company or otherwise.

(2) A provision that purports to exempt a director of a company to any extent, from any liability that would otherwise attach to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company is void.

(3) A provision by which a company directly or indirectly provides an indemnity to any extent for a director of the company, or of an associated company, against any liability attaching to him in connection with any

negligence, default, breach of duty or breach of trust in relation to the company of which he is a director is void, except as permitted by section 114 and section 115.

Provision of insurance.

114. Section 113(3) does not prevent a company from purchasing and maintaining insurance against any liability specified in that subsection. for a director of the company, or of an associated company,

Qualifying third party indemnity provision.

115.(1) Section 113(3) does not apply to qualifying third party indemnity provision.

(2)A third party indemnity provision means provision for indemnity against liability incurred by the director to a person other than the company or an associated company.

(3) A third party indemnity provision shall not provide any indemnity against—

(a) any liability of the director to pay—

- (i) a fine imposed in criminal proceedings; or
- (ii) a sum payable to a regulatory authority as a penalty in respect of non-compliance with any requirement of a regulatory nature however arising; or

(b) any liability incurred by the director—

- (i) in defending criminal proceedings in which he is convicted; or
 - (ii) in defending civil proceedings brought by the company, or an associated company, in which judgment is given against him.
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(4) The references in subsection (3)(b) to a conviction or judgment are to the final decision in the proceedings.

Qualifying indemnity provision to be disclosed in directors' report.

116.(1) Qualifying third party indemnity provision shall be disclosed in the director's report.

(2) Where a directors' report is approved and any qualifying third party indemnity provision, whether made by the company or otherwise, is in force for the benefit of one or more directors of the company, the report shall state that such provision is in force.

(3) If at any time during the financial year to which a directors' report relates any such provision was in force for the benefit of one or more persons who were then directors of the company, the report shall state that such provision was in force.

(4) If when a directors' report is approved and qualifying a third party indemnity provision made by the company is in force for the benefit of one or more directors of an associated company, the report shall state that such provision is in force.

(5) If at any time during the financial year to which a directors' report relates any such provision was in force for the benefit of one or more persons who were then directors of an associated company, the report shall state that such provision was in force.

Copy of qualifying indemnity provision to be available for inspection.

117. Where a qualifying third party indemnity provision is made for a director of a company, and applies—

- (a) to the company of which he is a director, whether the provision is made by that company or an associated company; and
- (b) where the provision is made by an associated company, to that company,

the company or, as the case may be, each of the companies that are associated companies under paragraph (b) shall keep available for inspection a copy of the qualifying third party indemnity provision or if the provision is not in writing, a written memorandum of association setting out the terms of the indemnity.

Right of member to inspect and request copy.

118. (1) Every copy of a qualifying third party indemnity provision or the memorandum required to be kept by a company under section 117 shall be open to inspection by any member of the company without charge.

(2) Any member of the company is entitled, on request and on payment of half the cost of preparing a copy to be provided with a copy of the copy of the third party indemnity provision or the memorandum setting out its terms within seven days after the request is received by the company.

Ratification of acts of directors.

119. (1) A decision of a company to ratify the conduct of a director amounting to negligence, default, breach of duty or breach of trust in relation to the company-

- (a) shall be taken by the members; and
- (b) may be taken by ordinary resolution subject to the articles of a company requiring a higher majority or unanimity.

(2) Where the resolution to ratify the conduct of a director is proposed at a meeting, it is passed only if the necessary majority is obtained disregarding votes in favour of the resolution by the director, if the director is a member of the company and any member connected with him.

(3) Subsection (2) shall not prevent the director or any such member from attending, being counted as part of the quorum and taking part in the proceedings at any meeting at which the decision is considered.

(4) For the purposes of this section—

- (a) “conduct” includes acts and omissions;
- (b) “director” includes a former director; and
- (c) section 123 subsection (3) does not apply.

Power to make provision for employees on cessation or transfer of business.

120.(1) The powers of the directors of a company include power to provide for the benefit of persons employed or formerly employed by the company, or any of the subsidiaries of the company, in connection with the cessation or the transfer to any person of the whole or part of the undertaking of the company or that subsidiary.

(2) The power referred to in subsection (1) is exercisable notwithstanding the general duty imposed by section 104 on a director to promote the success of the company.

(3) The power under subsection (1) may only be exercised if sanctioned by-

- (a) an ordinary resolution of the company subject to a provision in the articles of the company requiring a higher majority; or
- (b) a resolution of the directors authorised by the articles of a company.

(4) A resolution of the directors under subsection (3) is not sufficient sanction for payments to or for the benefit of directors, or former directors.

(5) Any other requirements of the articles of a company as to the exercise of the power conferred by this section shall be complied with.

(6) Any payment under this section shall be made—

- (a) before the commencement of the winding up of the company; and
- (b) out of profits of the company that are available for dividends.

Minutes of directors' meetings.

121. (1) Every company shall cause minutes of all proceedings at meetings of its directors to be recorded.

(2) The minutes under subsection (1) shall be kept for at least ten years from the date of the meeting.

Minutes as evidence.

122. (1) Minutes recorded in accordance with section 121, if authenticated by the chairman of the meeting or by the chairman of the next directors' meeting, are evidence of the proceedings of the meeting.

(2) Where minutes have been recorded in accordance with section 121(1), then until the contrary is proved—

- (a) the meeting is deemed to have been duly held and convened;
- (b) all proceedings at the meeting are deemed to have duly taken place; and
- (c) all appointments at the meeting are deemed valid.

Persons connected with a director.

123.(1) The following persons are connected with a director of a company means —

- (a) members of the family of the director;
-

- (b) a body corporate with which the director is connected;
- (c) a person acting in his capacity as trustee of a trust—
 - (i) the beneficiaries of which include the director or a person who by virtue of paragraph (a) or (b), is connected with him; or
 - (ii) the terms of which confer a power on the trustees that may be exercised for the benefit of the director or any such person, other than a trust for the purposes of an employees' share scheme or a pension scheme,
- (d) a person acting in his capacity as partner—
 - (i) of the director;
 - (ii) of a person who, by virtue of paragraph (a),(b) or (c) is connected with that director,
- (e) a firm in which the director is a partner.

(2) References in this Part to a person connected with a director of a company do not include a person who is himself a director of the company.

Members of family of director.

124 .(1) For the purposes of this Part, the members of a director's family are—

- (a) a spouse of the director;
 - (b) a child or step-child of the director;
 - (c) a child or step-child of a person within
-

paragraph (b), who is not a child or step-child of the director who lives with the director and has not attained the age of eighteen years;

(d) the parents of the director.

(2) Subsection (1)(b) does not apply to the grandparent or grandchild, sister, brother, aunt or uncle, or nephew or niece of the director.

Director connected
with a body
corporate.

125 .(1) A director is connected with a body corporate but only if he and the persons connected with him together—

(a) are interested in shares comprised in the equity share capital of that body corporate of a nominal value equal to at least twenty percent of that share capital; or

(b) are entitled to exercise or control the exercise of more than twenty percent of the voting power at any general meeting of that body.

(2) The rules set out in the First Schedule shall apply for purposes of this Act.

(3) References in this section to voting power the exercise of which is controlled by a director include voting power whose exercise is controlled by a body corporate controlled by the director.

(4) In the application of section 124 a connected person means —

(a) a body corporate with which a director is connected is not treated for the purposes of this section as connected with him by virtue of subsection (2)(c) or (d) of that section; and

- (b) a trustee of a trust the beneficiaries of which include or may include a body corporate with which a director is connected is not treated for the purposes of this section as connected with a director by reason only of that fact.

Director controlling a
body corporate.

126. (1) A director of a company is deemed to control a body corporate only if the director—

- (a) he or any person connected with him—
 - (i) is interested in any part of the equity share capital of that body; or
 - (ii) is entitled to exercise or control the exercise of any part of the voting power at any general meeting of that body; and
- (b) he the persons connected with the director and the other directors of that company, together—
 - (i) are interested in more than fifty percent of that share capital; or
 - (ii) are entitled to exercise or control the exercise of more than fifty percent of the voting power.

(2) The rules set out in the first schedule apply for purposes of this section.

(3) References in this section to voting power the exercise of which is controlled by a director include voting power whose exercise is controlled by a body corporate controlled by him.

(4) In the application of section 124—

- (a) a body corporate with which a director is connected is not treated for the purposes of this section as connected with the director unless it is also connected with him by virtue of subsection (2)(c) or (d) of that section; and
- (b) a trustee of a trust the beneficiaries of which include or may include a body corporate with which a director is connected is not treated for the purposes of this section as connected with a director by reason only of that fact.

Associated bodies
corporate.

127. For the purposes of this Part—

- (a) bodies corporate are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate; and
- (b) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

References to
company's
constitution.

128. References in this Part to the constitution of a company include any resolution or other decision arrived at in accordance with the constitution.

Transactions under
foreign law.

129. For the purposes of this Part, it is immaterial whether the law that, apart from this Act, governs an arrangement or transaction is the law of Kenya, or a part of it, or not.

PART XI - DISQUALIFICATION OF DIRECTORS

Disqualification
orders.

130. (1) In the circumstances specified in this

section, a court may, and shall under section 135, make against a person a disqualification order, that the person with regard to whom the order is made shall not, without leave of the court-

- (a) be a director of a company,
- (b) be a liquidator or administrator of a company,
- (c) be a receiver or manager of a the property of a company; or
- (d) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company, for a specified period beginning with the date of the order.

(2) In this Part a provision which gives to a court power or, as the case may be, imposes on it the duty to make a disqualification order there is specified the maximum or the minimum period of disqualification which may or as the case may be shall be imposed by the order.

(3) Where a disqualification order is made against a person who is already subject to another order, the periods specified in the orders shall run concurrently.

(4) A disqualification order may be made on grounds which are or include matters other than criminal convictions, notwithstanding that the person in respect of whom it is to be made may be criminally liable in respect of those matters.

Disqualification on conviction for offence.

131.(1) The court may make a disqualification order against a person where that person is convicted of an offence in connection with the promotion, formation, management, liquidation, the receivership or management of the property of a company.

(2) For purposes of this section " court" means-

- (a) a court having jurisdiction to wind up the company in relation to which the offence was committed; or
- (b) the court by or before which the person is convicted of the offence.

(3) The maximum period of disqualification under this section is –

- (a) where the disqualification order is made by a magistrate's court, five years; and
- (b) in any other case, fifteen years.

Disqualification for persistent breach of Act.

132.(1) The court may make a disqualification order against a person where it appears to the court that the person has been persistently in default in relation to provisions requiring any return, account or other document to be filed with, delivered or sent, or notice of any matter to be given, to the Registrar of companies.

(2) On an application to the court for an order to be made under this section, the fact that a person has been persistently in default in relation to such provisions may, without prejudice to its proof in any other manner, be conclusively proved by showing that in the five years ending with the date of the application he has been adjudged guilty, whether or not on the same occasion, of three or more defaults in relation to those provisions.

(3) The court may make a disqualification order under subsection (2) for a period not exceeding five years.

Disqualification for fraud, etc., in winding up.

133. (1) The court may issue a disqualification order against a person if, in the course of the winding up of a company, it appears that the person has been guilty, while

an officer or liquidator of the company or receiver or manager of its property, of any fraud in relation to the company or of any breach of his duty as such officer, liquidator, receiver or manager.

(2) The court may make a disqualification order under subsection (1) for a period not exceeding fifteen years.

Disqualification on conviction.

134. (1) For purposes of this section, an offence is one where a person is convicted of a contravention of, or failure to comply with, any provision of this Act requiring a return, account or other document to be filed with, delivered or sent, or notice of any matter to be given, to the Registrar.

(2) Where a person is convicted of an offence referred to under subsection (1), the court which convicts that person may make a disqualification order against that person if during the five years ending with the date of the conviction, the person has had made against him in total not less than three default orders, or has been convicted of, offences and those offences may include the one which he is convicted for under subsection (2) and any other offence which he is convicted for on the same occasion.

(3) The court may make a disqualification order under subsection (2) for a period not exceeding five years.

Duty of court to disqualify unfit directors of insolvent companies.

135.(1) The court shall make a disqualification order against a person in any case where, on an application under this section, it is satisfied-

- (a) that the person is or has been a director of a company which has at any time become insolvent whether while he was a director or subsequently; and
- (b) that the conduct of the person as a director of that company either taken alone or taken together with his conduct as a director of

any other company or companies makes him unfit to take part in the management of a company.

(2) For the purposes of this section and section 136, a company becomes insolvent if-

- (a) the company goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up;
- (b) an administration order is made in relation to the company; or
- (c) an administrative receiver of the company is appointed.

(3) References to the conduct of a person as a director of a company or companies include, where that company or any of those companies has become insolvent, the conduct of that person in relation to any matter connected with or arising out of the insolvency of that company.

(4) The court may make a disqualification order under subsection (2) for a period of not less than two years and not more than fifteen years.

Applications to court
under section 135.

136. (1) If it appears to the Minister that it is expedient in the public interest that a disqualification order under section 135 be made against any person, an application for the order against that person may be made-

- (a) by the Minister; or
 - (b) if the Minister so directs in the case of a person who is or has been a director of a company which is being wound up by the court, by the official receiver.
-

(2) Except with the leave of the court, an application for the making, under that section, of a disqualification order against any person shall not be made after the end of the period of two years beginning with the day on which the company of which that person is or has been a director became insolvent.

(3) If it appears to the office-holder responsible under this section—

- (a) in the case of a company which is being wound up by the court, the official receiver;
- (b) in the case of a company which is being wound up otherwise, the liquidator;
- (c) in the case of a company in relation to which an administration order is in force, the administrator; or
- (d) in the case of a company of which there is an administrative receiver, that receiver,

that the conditions specified in section 135 (1) are satisfied with respect to a person who is or has been a director of that company, the office-holder shall forthwith report the matter to the Minister.

(4) The Minister or the official receiver may require the liquidator, administrator or administrative receiver of a company, or the former liquidator, administrator or administrative receiver of a company to—

- (a) furnish him with such information with respect to the conduct of any person as a director of the company, and
 - (b) produce and permit inspection of such books, papers and other records relevant to the conduct of that person as a director,
-

as the Minister or the official receiver may reasonably require for the purpose of determining whether to exercise, any function of his under this section.

Disqualification after investigation of company.

137. (1) If it appears to the Minister from a report made by inspectors that it is expedient in the public interest that a disqualification order be made against any person who is or has been a director of any company, the Minister may apply to the court for a disqualification order to be made against that person.

(2) The court may make a disqualification order against a person where, on an application under this section, it is satisfied that the person's conduct in relation to the company makes him unfit to take part in the management of a company.

(3) The court may make a disqualification order under subsection (2) for a period not exceeding fifteen years.

Undischarged bankrupts.

138.(1)A person who is an undischarged bankrupt and who acts as a director of, or directly or indirectly takes part in the promotion, formation or management of, a company, except with the leave of the court commits an offence.

(2) The court shall not give leave under subsection (1) unless notice of intention to apply for it has been served on the official receiver.

(3) The official receiver shall, if he considers that it is contrary to the public interest that the application be granted, attend the hearing of the application and oppose it.

(4). A person who commits an offence under subsection (1), is liable on conviction, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding two years or to

both.

Personal liability for
company's debts
where person acts
while disqualified.

139.(1) A person is personally responsible for all the relevant debts of a company if at any time-

- (a) in contravention of a disqualification order or of section 138, he is involved in the management of the company; or
- (b) as a person who is involved in the management of the company, he acts or is willing to act on instructions given without the leave of the court by a person whom he knows at that time to be the subject of a disqualification order or to be an undercharged bankrupt.

(2) Where a person is personally responsible under this section for the relevant debts of a company, he is jointly and severally liable in respect of those debts with the company and any other person who, whether under this section or otherwise, is so liable.

(3) For the purposes of this section the relevant debts of a company are-

- (a) in relation to a person who is personally responsible under subsection (1) (a), such debts and other liabilities of the company as are incurred at a time when that person was involved in the management of the company; and
 - (b) in relation to a person who is personally responsible under subsection (1)(b), such debts and other liabilities of the company as were incurred at a time when that person was acting or was willing to act on instructions given as specified in that paragraph.
-

(4) For the purposes of this section, a person is involved in the management of a company if he is a director of the company or if he is concerned, whether directly or indirectly, or takes part, in the management of the company.

(5) For the purposes of this section, a person who, as a person involved in the management of a company, has at any time acted on instructions given without the leave of the court by a person whom he knew at that time to be the subject of a disqualification order or to be an undischarged bankrupt is presumed, unless the contrary is shown, to have been willing at any time thereafter to act on any instructions given by that person.

Application for
disqualification order.

140.(1) A person intending to apply to a court for a disqualification order shall give not less than ten days' notice of his intention to the person against whom the order is sought and during the hearing of the application, the person against whom the order is sought may appear and give evidence or call witnesses.

(2) An application to a court for a disqualification order under sections 2 to 5 may be made by the official receiver, the liquidator or any past or present member or creditor of any company in relation to which that person has committed or is alleged to have committed an offence or other default.

(3) On the hearing of any application made by the Minister, the official receiver or the liquidator, the applicant shall appear and call the attention of the court to any matters which seem to him to be relevant, and may give evidence or call witnesses.

Application for leave
under an order.

141.(1) An application for leave under a disqualification order shall be made where the application is for leave –

- (a) to promote or form a company, to a court with jurisdiction to wind up companies; and

- (b) to be a liquidator, administrator or director of, or otherwise to take part in the management of a company, or to be a receiver or manager of a company's property, to a court with jurisdiction to wind up that company.

(2) On the hearing of an application for leave made by a person against whom a disqualification order has been made on the application of the Minister, the official receiver or the liquidator, the Minister, official receiver or liquidator shall appear and call the attention of the court to any matters which seem to him to be relevant, and may give evidence or call witnesses.

Register of
disqualification
orders.

142.(1) The Minister may make regulations requiring officers of courts to furnish him with such particulars as the regulations may specify of cases in which –

- (a) a disqualification order is made;
- (b) any action is taken by a court in consequence of which such an order is varied or ceases to be in force; or
- (c) leave is granted by a court for a person, subject to such an order, to do any thing which the order otherwise prohibits him from doing.

(2) The regulations made under subsection (1) may specify the time within which, and the form and manner in which, such particulars are to be furnished.

(3) The Minister shall, from the particulars furnished under subsection (1), maintain the register of orders, and of cases in which leave has been granted as referred to in subsection (1)(c).

(4) When an order which is entered in the register ceases to be in force, the Registrar shall delete the entry

from the register and all particulars relating to it which have been furnished to him under this Act.

(5) The register maintained under this section shall be open to inspection on payment of the prescribed fees.

Persons subject to foreign restrictions.

143.(1) A person is subject to foreign restrictions if under the law of a country or territory outside Kenya, that person —

(a) is by reason of misconduct or unfitness-

(i) disqualified to any extent from acting in connection with the affairs of a company;

(ii) required to—

(i) obtain permission from a court or other authority; or

(ii) meet any other condition,

before acting in connection with the affairs of a company,

(b) has, by reason of misconduct or unfitness, given undertakings to a court or other authority of a country or territory outside Kenya—

(i) not to act in connection with the affairs of a company; or

(ii) restricting the extent to which, or the way in which, he may act in connection with the affairs of a company.

(2) For purposes of subsection (1), acting in connection with the affairs of a company includes—

- (a) being a director of a company;
 - (b) acting as receiver of the property of a company; or
 - (c) being concerned or taking part in the promotion, formation or management of a company.
- (3) In this section—
- (a) “company” means a company incorporated or formed under the law of the country or territory in question; and
 - (b) in relation to such a company—
 - (i) “director” means the holder of an office corresponding to that of director of a Kenyan; and
 - (ii) “receiver” includes any corresponding officer under the law of that country or territory.

Disqualification of
persons subject to
foreign restrictions.

144.(1) The Minister may by regulations disqualify a person subject to foreign restrictions from—

- (a) being a director of a Kenyan company;
- (b) acting as receiver of the property of a Kenyan Company; or
- (c) in any way, whether directly or indirectly, being concerned or taking part in the promotion, formation or management of a Kenyan company.

(2) A person who is subject to foreign restrictions

may be disqualified—

- (a) automatically; or
- (b) by order of the court on the application of the Minister.

(3) The regulations may provide that the Minister may accept a disqualification undertaking from a person subject to foreign restrictions that the person will not do anything which would be in breach of a disqualification under subsection (1).

(4) The regulations may provide for applications to the court by persons disqualified under this Part for permission to act in a way which would otherwise be in breach of the disqualification.

(5) A person ceases to be disqualified under this Part on his ceasing to be subject to foreign restrictions.

Disqualification
regulations.

145.(1) The Minister may make regulations for different cases under section 144 and may in particular distinguish between cases by reference to—

- (a) the conduct on the basis of which the person became subject to foreign restrictions;
- (b) the nature of the foreign restrictions; and
- (c) the country or territory under whose law the foreign restrictions were imposed.

(2) The Minister—

- (a) shall specify the grounds on which an application may be made; and
 - (b) may specify factors to which the court shall have regard in determining an application.
-

(3) The regulations may, in particular, require the court which hears an application under this section to have regard to the following factors—

- (a) whether the conduct on the basis of which the person became subject to foreign restrictions if done in relation to a Kenyan company would have been unlawful;
- (b) in a case where the conduct on the basis of which the person became subject to foreign restrictions would not be unlawful if done in relation to a Kenyan company, the fact that the person acted unlawfully under foreign law;
- (c) whether the activities of the person in relation to Kenyan companies began after he became subject to foreign restrictions; and
- (d) whether the person's activities or proposed activities in relation to Kenyan companies are undertaken or are proposed to be undertaken outside Kenya.

(4) The regulations made under section 144 (3) may allow the Minister, in determining whether to accept an undertaking, to take into account matters other than criminal convictions notwithstanding that the person may be criminally liable in respect of those matters.

(5) Regulations under section 146(5) may provide for the Minister to be represented at the hearing of an application and may provide for the Attorney-General to give evidence or call witnesses at the hearing of an application.

Breach of
disqualification

146. A person who is disqualified under this Part who acts in breach of the disqualification commits an

offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years or to or to both .

Personal liability for
debts of company.

147.(1) The Minister may provide by regulations that a person who, at a time when he is subject to foreign restrictions—

- (a) is a director of a Kenyan company; or
- (b) is involved in the management of a Kenyan company,

is personally responsible for all debts and other liabilities of the company incurred during that time.

(2) A person who is personally responsible for all debts and liabilities of a company under this section is jointly and severally liable in respect of those debts and liabilities with—

- (a) the company; and
- (b) any other person who, whether by virtue of this section or otherwise, is so liable.

(3) For the purposes of this section, a person is involved in the management of a company if he directly or indirectly takes part, in the management of the company.

(4) The Minister may make regulations for different cases under this section and may in particular distinguish between cases by reference to—

- (a) the conduct on the basis of which the person became subject to foreign restrictions;
- (b) the nature of the foreign restrictions; and

- (c) the country or territory under whose law the foreign restrictions were imposed.

Statements from
persons subject to
foreign restrictions.

148.(1)The Minister may require a person who—

- (a) is subject to foreign restrictions;and
- (b) is not disqualified under this Act,

to send a statement to the Registrar if he does anything that, if done by a person disqualified under this Act, would be in breach of the disqualification.

(2) The statement shall include such information as may be specified relating to—

- (a) the activities of the person in relation to Kenyan companies; and
 - (b) the foreign restrictions to which the person is subject,
- and shall be sent to the Registrar within such period as may be specified.

(3) The Minister may make regulations for different cases under this section and may in particular distinguish between cases by reference to—

- (a) the conduct on the basis of which the person became subject to foreign restrictions;
 - (b) the nature of the foreign restrictions;
 - (c) the country or territory under whose law the foreign restrictions were imposed.
-

Statements from
persons disqualified.

149. The Minister may require a statement or notice sent to the Registrar of companies under section 9, 100(2) and 105 that relates wholly or partly to a person who is a person disqualified under this Act.

Statements to be
made public.

150.(1) A statement that is submitted to the Registrar of companies is to be treated as a record relating to a company for the purposes of the companies register.

(2) The Minister may specify the circumstances in which a statement is to be, or may be—

- (a) withheld from public inspection; or
- (b) removed from the register.

(3) The Minister may require that a statement is not to be withheld from public inspection or removed from the register unless the person to whom it relates provides such information, and satisfies such other conditions, as may be specified.

(4) Section 511 does not apply, or applies with such modifications as may be specified, in the case of material removed from the register under this section.

Offence relating to
statement.

151.(1) A person who—

- (a) fails to comply with a requirement to send a statement to the Registrar; or
- (b) knowingly or recklessly sends a statement that is misleading, false or deceptive in a material particular to the Registrar ,

commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years or to

both.

PART X - COMPANY SECRETARY

Private company not
required to have
secretary.

152.(1) A private company with a paid up capital of less than five million shillings is not required to have a secretary.

(2) In the case of a private company without a secretary—

- (a) anything authorised or required to be given or sent to, or served on, the company by being sent to its secretary—
 - (i) may be given or sent to, or served on, the company itself; and
 - (ii) if addressed to the secretary, shall be treated as addressed to the company; and
- (b) anything else required or authorised to be done by the secretary of the company may be done by—
 - (i) a director; or
 - (ii) a person authorised generally or specifically in that behalf by the directors.

Public company
required to have
secretary.

153. A public company shall have a secretary who shall be a member of the Institute of Certified Public Secretaries of Kenya in good standing as specified under the Certified Public Secretaries Act.

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Direction requiring

154.(1) If it appears to the Minister that a public

public company to
appoint secretary.

company is in breach of section 153 , the Minister may give the company a direction under this section.

(2) The direction shall state the company appears to be in breach of that section and specify—

(a) what the company shall do in order to comply with the direction; and

(b) the period within which it shall comply

which period shall be not less than one month or more than three months after the date the direction is given.

(3)2 The direction given under subsection (1) shall inform the company of the consequences of failing to comply with the requirements of the direction.

(4)3 Where the company is in breach of section 153, the company shall comply with the direction by—

(a) making the necessary appointment; and

(b) giving notice of the appointment under section 160,

before the end of the period specified in the direction.

(5)4 If the company has already made the necessary appointment, it shall comply with the direction by giving notice of the appointment under section 160 before the end of the period specified in the direction.

Qualifications of
secretaries of public
companies.

155. The directors of a public company shall take all reasonable steps to ensure that the secretary or each joint secretary of the company—

(a) is a person who appears to them to have the

requisite knowledge and experience to discharge the functions of secretary of the company; and

- (b) is registered and qualified in accordance with the requirements of section 21 of the Certified Public Secretaries of Kenya Act.

Discharge of functions where office vacant or secretary unable to act.

156. Where in the case of a public company the office of secretary is vacant, or there is for any other reason, no secretary capable of acting, anything required or authorised to be done by or to the secretary may be done—

- (a) by or to an assistant or deputy secretary if any; or
- (b) if there is no assistant or deputy secretary or no person capable of acting, by or to any person authorised generally or specifically in that behalf by the directors.

Duty to keep register of secretaries.

157. (1) A public company shall keep a register of its secretaries.

(2) The register shall—

- (a) contain the required particulars of the person who is, or persons who are, the secretary or joint secretaries of the company; and
- (b) be kept available for inspection at the registered office of the company.

(3) The register shall be open for the inspection by—

- (a) any member of the company without charge; and
-

- (b) any other person on payment of the prescribed fee.

Duty to notify
Registrar of changes.

158.(1) A public company shall, within the period of fourteen days from—

- (a) a person becoming or ceasing to be its secretary or one of its joint secretaries; or
- (b) the occurrence of any change in the particulars contained in its register of secretaries,

give notice to the Registrar of the change and of the date on which the change occurred.

(2) A notice of a person having become secretary, or one of joint secretaries of the company shall be accompanied by consent by that person to act as secretary or joint secretary.

Particulars of
secretaries to be
registered:
individuals.

159.(1) Where the secretary of a public company is an individual, the register of secretaries of the public company shall contain the following particulars—

- (a) the name and any former name of the individual; and
- (b) the address of the individual.

(2) The register under subsection (1) does not have to contain particulars of a former name in the following cases—

- (a) in the case of any person, where the former name—
 - (i) was changed or disused before the person attained the age of eighteen years; or

- (ii) has been changed or disused for twenty years or more.

(3) The address required to be stated in the register under subsection (1) is a service address which may be the registered office of the company.

Particulars of
secretaries to be
registered: corporate
secretaries,
and firms

160.(1) Where the secretary of a public company is a company or a firm, the register of secretaries of the public company shall contain the following particulars —

- (a) the name of the company or the firm;
- (b) the registered or principal office of the company or the firm;
- (c) the legal form of the company or firm and the law by which it is governed; and
- (d) if applicable, the register in which it is entered including details of the state and its registration number in that register.

(2) If all the partners in a firm are joint secretaries, it is sufficient to state the particulars that would be required if the firm were a legal person and the firm had been appointed secretary.

(3) The Minister may by regulations add to or remove items from the particulars required to be contained in a public company's register of secretaries.

Acts done by person
in dual capacity.

161. In the case of a public company, a provision requiring or authorising a thing to be done by or to a director and the secretary of a company is not satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary.

PART XI - RESOLUTIONS AND MEETINGS

Resolutions.

162.(1) A resolution of the members or of a class of members of a private company shall be passed—

- (a) as a written resolution; or
- (b) at a meeting of the members.

(2) A resolution of the members or of a class of members of a public company shall be passed at a meeting of the members.

Ordinary resolution.

163. (1) An ordinary resolution of the members or of a class of members of a company is a resolution that is passed by a simple majority.

(2) A written resolution is passed by a simple majority if it is passed by members representing a simple majority of the total voting rights of eligible members.

(3) A resolution passed at a meeting on a show of hands is passed by a simple majority if it is passed by a simple majority of—

- (a) the members who, being entitled to do so, vote in person on the resolution; and
- (b) the persons who vote on the resolution as duly appointed proxies of members entitled to vote on it.

(4) A resolution passed on a poll taken at a meeting is passed by a simple majority if it is passed by members representing a simple majority of the total voting rights of members who being entitled to do so, vote in person or by proxy on the solution.

(5) Anything that may be done by ordinary resolution may also be done by special resolution.

Special resolution.

164. (1) A special resolution of the members or of a class of members of a company is a resolution passed by a majority of not less than seventy five per cent.

(2) A written resolution is passed by a majority of not less than seventy five cent if it is passed by members representing not less than seventy five per cent of the total voting rights of eligible members.

(3) Where a resolution of a private company is passed as a written resolution—

- (a) the resolution is not a special resolution unless it stated that it was proposed as a special resolution; and
- (b) if the resolution so stated, it may only be passed as a special resolution.

(4) A resolution passed at a meeting on a show of hands is passed by a majority of not less than seventy five per cent if it is passed by not less than seventy five per cent of—

- (a) the members who, being entitled to do so, vote in person on the resolution; and
- (b) the persons who vote on the resolution as duly appointed proxies of members entitled to vote on it.

(5) A resolution passed on a poll taken at a meeting is passed by a majority of not less than seventy five per cent if it is passed by members representing not less than seventy five per cent of the total voting rights of the members who being entitled to do so, vote in person or by proxy on the resolution.

(6) Where a resolution is passed at a meeting—

- (a) the resolution is not a special resolution unless the notice of the meeting included the text of the resolution and specified the intention to propose the resolution as a special resolution; and
- (b) if the notice of the meeting so specified, the resolution may only be passed as a special resolution.

Votes: general rules.

165. (1) On a vote on a written resolution—

- (a) in the case of a company having a share capital, every member has one vote in respect of each share or each one hundred shillings of stock held by the member; and
- (b) in any other case, every member has one vote.

(2) On a vote on a resolution on a show of hands at a meeting—

- (a) every member present in person has one vote; and
- (b) every proxy present who has been duly appointed by a member entitled to vote on the resolution has one vote.

(3) On a vote on a resolution on a poll taken at a meeting—

- (a) in the case of a company having a share capital, every member has one vote in respect of each share or each one hundred shillings stock held by

the member; and

- (b) in any other case, every member has one vote.

(4) The provisions of this section have effect subject to any provision of the of the company's articles.

Votes: specific requirements.

166.(1) Where a member entitled to vote on a resolution has appointed one proxy only, and the company's articles provide that the proxy has fewer votes in a vote on a resolution on a show of hands taken at a meeting than the member would have if he were present in person—

- (a) the provision on the number of votes the proxy has on a show of hands is void; and
- (b) the proxy has the same number of votes on a show of hands as the member who appointed him would have if he were present at the meeting.

(2) Where a member entitled to vote on a resolution has appointed more than one proxy, subsection (1) applies as if the references to the proxy were references to the proxies taken together.

Votes of joint holders of shares.

167.(1) In the case of joint holders of shares of a company, only the vote of the senior holder who votes and any proxies duly authorised by him may be counted by the company.

(2) For the purposes of this section, the senior holder of a share is determined by the order in which the names of the joint holders appear in the register of members.

(3) Subsections (1) and (2) have effect subject to

any provision of the company's articles.

Effect of provision in company's articles as to admissibility of votes.

168.(1)Where—

- (a) a person votes on a resolution of a company;
- (b) that person was not entitled to vote ;
and
- (c) the articles provide that an objection to a person's entitlement to vote shall be made in accordance with a procedure specified in the articles.

that person is deemed to have been entitled to vote if—

- (a) no objection to his entitlement to vote is made in accordance with the procedure; or
- (b) at least one objection to his entitlement to vote is made in accordance with the procedure, and each such objection is rejected in accordance with the procedure.

Written resolutions of private companies.

169. (1) In this Part a “written resolution” means a resolution of a private company proposed and passed in accordance with this Part.

(2) The following may not be passed as a written resolution—

- (a) a resolution under section 101 removing a director from office before the expiration of the director's period of office; or
 - (b) a resolution under section 440
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removing an auditor before the expiration of the auditor's term of office.

(3) A resolution may be proposed as a written resolution—

- (a) by the directors of a private company; or
- (b) by the members of a private company.

(4) A written resolution of a private company has effect as if passed—

- (a) by the company in a general meeting; or
- (b) by a meeting of a class of members of the company.

Eligible members.

170.(1) In relation to a resolution proposed as a written resolution of a private company, the eligible members are the members who would have been entitled to vote on the resolution on the circulation date of the resolution.

(2) If the persons entitled to vote on a written resolution change during the course of the day that is the circulation date of the resolution, the eligible members are the persons entitled to vote on the resolution at the time that the first copy of the resolution is sent or submitted to a member for his agreement.

Circulation date.

171. References in this Part to the circulation date of a written resolution are to the date on which copies of the written resolution are sent or submitted to members or if copies are sent or submitted to members on different

days, to the first of those days.

Circulation of written
resolutions proposed
by directors.

172. (1) This section applies to a resolution proposed as a written resolution by the directors of the company.

(2) The company shall send or submit a copy of a written resolution by the directors of the company by to every eligible member-

- (a) by sending copies at the same time, so far as reasonably practicable, to all eligible members in hard copy form, in electronic form or by means of a website; or
- (b) if it is possible to do so without undue delay, by submitting the same copy to each eligible member in turn, or different copies to each of a number of eligible members in turn,

or by sending copies to some members in accordance with paragraph (a) and submitting a copy or copies to other members in accordance with paragraph(b).

(3) The copy of the written resolution shall be accompanied by a statement informing the member—

- (a) how to signify agreement to the resolution; and
- (b) of the date by which the resolution shall be passed if it is not to lapse.

(4) The validity of the written resolution, if passed, is not affected by a failure to comply with this section.

Power of members to
require circulation of
written resolution.

173. (1) The members of a private company may require the company to circulate a resolution that may properly be moved and is proposed to be moved as a written resolution.

(2) Any resolution may properly be moved as a written resolution unless—

- (a) it would, if passed, be ineffective, whether by reason of inconsistency with any written law or the company's constitution of the Company or otherwise;
- (b) it is defamatory of any person; or
- (c) it is frivolous or vexatious.

(3) Where the members require a company to circulate a resolution, the members may require the company to circulate with it a statement of not more than one thousand words on the subject matter of the resolution.

(4) A company is required to circulate the resolution and any accompanying statement once it has received requests to do so from members representing not less than the requisite percentage of the total voting rights of all members entitled to vote on the resolution.

(5) The “requisite percentage” is five per cent or such lower percentage as is specified for this purpose in the articles of the company.

(6) A request made under subsection (3)—

- (a) may be in hard copy form or in electronic form;
- (b) shall identify the resolution and any accompanying statement; and
- (c) shall be authenticated by the person

or persons making it.

Circulation of written
resolution proposed
by members.

174. (1) A company that is required under section 173 to circulate a resolution shall, subject to expenses of circulation, send or submit to every eligible member—

- (a) a copy of the resolution; and
- (b) a copy of any accompanying statement.

(2) The requirement under subsection (1) is subject to section 178.

(3) The company shall send or submit a written resolution to every eligible member—

- (a) by sending copies at the same time so far as reasonably practicable to every eligible member in hard copy form, in electronic form or by posting the resolution on the website of the company; or
- (b) if it is possible to do so without undue delay, by submitting the same copy to each eligible member in turn or different copies to each of a number of eligible members in turn; or

sending copies to some members in accordance with paragraph (a) and submitting a copy or copies to other members in accordance with paragraph (b).

(3) The company shall send or submit the copies of the written resolution or, if copies are sent or submitted to members on different days, the first of those copies not more than twenty one days after it receives a request to circulate the resolution.

(4) The copy of the resolution that is sent or submitted to members under this section shall be accompanied by guidance on—

- (a) how to signify agreement to the resolution; and
- (b) the date by which the resolution shall be passed if it is not to lapse.

(5) The validity of the resolution, if passed, is not affected by a failure to comply with this section.

Expenses of
circulation.

175. (1) The expenses of the company in complying with section 174 shall be paid by the members who requested the circulation of the resolution unless the company resolves otherwise.

(2) Unless the company has previously so resolved, it is not bound to comply with section 174 unless there is deposited with or tendered to the company a sum reasonably sufficient to meet the expenses of the company in circulating the resolution.

Procedure for
signifying agreement
to written resolution.

176.(1) A member signifies his agreement to a proposed written resolution when the company receives from that member or from someone acting on his behalf an authenticated document—

- (a) identifying the resolution to which the agreement or the document relates; and
- (b) indicating his agreement to the resolution.

(2) The authenticated document shall be sent to the company in hard copy form or in electronic form.

(3) The agreement of a member to a written resolution, once signified, shall not be revoked.

(4) A written resolution is passed when the required majority of eligible members have signified their agreement to the written resolution.

Period for agreeing to written resolution.

177.(1)177.(A proposed written resolution lapses if it is not passed before the end of—

- (a) the period specified for this purpose in the company's articles; or
- (b) if none is specified, the period of twenty eight days beginning with the circulation date.

(2) The agreement of a member to a written resolution is ineffective if signified after the expiry of that period.

Sending documents relating to written resolutions by electronic means.

178. Where a company has given an electronic address in any document containing or accompanying a proposed written resolution, it is deemed to have agreed that any document or information relating to that resolution may be sent by electronic means to that address, subject to any conditions or limitations specified in the document.

Publication of written resolution on website.

179. (1) Where a company sends—

- (a) a written resolution; or
- (b) a statement relating to a written resolution, to a person by means of a website,

the resolution or statement is not validly sent unless the resolution is available on the website throughout the period beginning with the circulation date and ending on the date on which the resolution lapses under section 180.

Resolutions at general meetings.

180. A resolution of the members of a company is

validly passed at a general meeting if—

(a) notice of the meeting and of the resolution is given; and

(b) the meeting is held and conducted,

in accordance with the provisions of this Act and the company's articles.

Power of directors to convene general meetings.

181. The directors of a company may convene a general meeting of the company.

Power of members to require directors to convene general meeting.

182. (1) The members of a company may require the directors to convene a general meeting of the company.

(2) The directors are required to convene a general meeting once the company has received requests to do so from—

(a) members representing at least the required percentage of such of the paid-up capital of the company as carries the right of voting at general meetings of the company; or

(b) in the case of a company not having a share capital, members who represent at least the required percentage of the total voting rights of all the members having a right to vote at general meetings.

(3) The required percentage under subsection (2) is ten percent unless, in the case of a private company, more than twelve months has elapsed since the end of the last general meeting—

(a) convened in pursuance of a requirement under this section; or

(b) in relation to which any members of the company had by virtue of a written law, the

articles of the company or otherwise, rights with respect to the circulation of a resolution no less extensive than they would have had if the meeting had been so called at their request,

in which case the required percentage is five percent.

(4) A request for the directors to convene a general meeting—

- (a) shall state the general nature of the business to be dealt with at the meeting; and
- (b) may include the text of a resolution that may properly be moved and is intended to be moved at the meeting.

(5) A resolution may properly be moved at a meeting unless—

- (a) it would, if passed, be ineffective, whether by reason of inconsistency with any written law or the constitution of the company or otherwise;
- (b) it is defamatory of any person; or
- (c) it is frivolous or vexatious.

(6) A request for the directors to convene a general meeting—

- (a) may be in hard copy form or in electronic form; and
- (b) shall be authenticated by the person or persons making it.

Directors' duty to
convene meetings

183. (1) Directors required under section 185 to

required by members. convene a general meeting of the company shall convene a meeting—

- (a) within twenty one days from the date on which request was made; and
- (b) to be held on a date not more than twenty eight days after the date of the notice convening the meeting.

(2) If the requests received by the company identify a resolution intended to be moved at the meeting, the notice of the meeting shall include notice of the resolution.

(3) The business that may be dealt with at the meeting includes a resolution of which notice is given in accordance with this section.

(4) If the resolution is to be proposed as a special resolution, the directors are treated as not having duly convened the meeting if they do not give the required notice of the resolution in accordance with section 167.

Power of members to convene a meeting at the expense of the company.

184. (1) If the directors—

- (a) are required under section 185 to convene a meeting, and
- (b) do not do so in accordance with section 186,

the members who requested the meeting, or any of them representing more than one half of the total voting rights of all of them, may convene a general meeting.

(2) Where the requests received by the company included the text of a resolution intended to be moved at the meeting, the notice of the meeting shall include notice of the resolution.

(3) The meeting referred to under subsection (1) shall be convened for a date not more than three months after the date on which the directors were requested to convene a meeting.

(4) The meeting shall be convened in the same manner, as nearly as possible, as that in which meetings are required to be convened by directors of the company.

(5) The business which may be dealt with at the meeting includes a resolution of which notice is given in accordance with this section.

(6) Any reasonable expenses incurred by the members requesting the meeting by reason of the failure of the directors to duly convene a meeting shall be reimbursed by the company.

(7) Any expenses reimbursed under subsection (6) 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.

Power of court to order meeting.

185. (1) This section applies if for any reason it is impracticable—

- (a) to convene a meeting of a company in any manner in which meetings of that company may be convened; or
- (b) to conduct the meeting in the manner prescribed by the articles of the company or this Act.

(2) The court may, either of its own motion or on the application—

- (a) of a director of the company; or
 - (b) of a member of the company who would be
-

entitled to vote at the meeting,

order a meeting to be convened, held and conducted in any manner the court thinks fit.

(3) Where an order is made, under subsection (2), the court may give such ancillary or consequential directions as it thinks expedient.

(4) Directions given by the Court under subsection (3) may include a direction that one member of the company present at the meeting be deemed to constitute a quorum.

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

Notice of meetings

Notice required of
general meeting.

186. (1) A general meeting of a private company, other than an adjourned meeting, shall be convened by notice of at least twenty one days.

(2) A general meeting of a public company other than an adjourned meeting shall be called by notice of—

(a) in the case of an annual general meeting, at least twenty one days, and

(b) in any other case, at least fourteen days.

(3) The company's articles may require a longer period of notice than that specified in subsection (1) or (2).

(4) A general meeting may be convened by shorter notice than that otherwise required if shorter notice is agreed by the members.

(5) The shorter notice referred to in subsection (4) shall be agreed to by a majority of the members having a right to attend and vote at the meeting, being a majority who—

- (a) together hold not less than the requisite percentage in nominal value of the shares giving a right to attend and vote at the meeting; or
- (b) in the case of a company not having a share capital, together represent not less than the requisite percentage of the total voting rights at that meeting of all the members.

(6) The requisite percentage under subsection (6) is—

- (a) in the case of a private company, ninety per cent or such higher percentage, not exceeding ninety five per cent, as may be specified in the company's articles; or
- (b) in the case of a public company, ninety five percent.

Manner in which
notice to be given.

187. Notice of a general meeting of a company shall be given—

- (a) in hard copy form;
- (b) in electronic form; or
- (c) by means of a website; or

or partly by one such means and partly by another.

Publication of notice
of meeting on

188. (1) Notice of a meeting is not validly given by

website.

a company by means of a website unless it is given in accordance with this section.

(2) When the company notifies a member of the presence of the notice on the website the notification shall—

- (a) state that it concerns a notice of a company meeting;
- (b) specify the place, date and time of the meeting; and
- (c) in the case of a public company, state whether the meeting will be an annual general meeting.

(3) The notice shall be available on the website throughout the period beginning with the date of that notification and ending with the conclusion of the meeting.

Persons entitled to receive notice of meetings.

189. (1) Notice of a general meeting of a company shall be sent to—

- (a) every member of the company; and
- (b) every director.

(2) In subsection (1), the reference to members includes any person who is entitled to a share in consequence of the death or bankruptcy of a member, if the company has been notified of their entitlement.

(3) In subsection (2), the reference to the bankruptcy of a member includes the sequestration of the estate of a member.

(4) This section has effect subject to—

- (a) any written law; and

(b) any provision of the company's articles.

Contents of notices of meetings.

190. (1) Notice of a general meeting of a company shall state—

- (a) the time and date of the meeting; and
- (b) the place of the meeting.

(2) Notice of a general meeting of a company shall state the general nature of the business to be dealt with at the meeting.

Resolution requiring special notice.

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

(2) The company shall, where practicable, give its members notice of any such resolution in the same manner and at the same time as it gives notice of the meeting.

(3) Where that is not practicable, the company shall give its members notice at least fourteen days before the meeting—

- (a) by advertisement in a newspaper having wide circulation; or
- (b) in any other manner allowed by the company's articles.

(4) If, after notice of the intention to move such 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 is deemed to have been properly given, though not given within the time required.

Accidental failure to give notice of resolution or meeting.

192. (1) Where a company gives notice of—

- (a) a general meeting; or
- (b) a resolution intended to be moved at a general meeting,

any accidental failure to give notice to one or more persons shall be disregarded for the purpose of determining whether notice of the meeting or resolution as the case may be is duly given.

(2) Except in relation to notice given under section 186, 187 or 219, subsection (1) has effect subject to any provision of the company's articles.

Power of members to require circulation of statements.

193.(1) The members of a company may require the company to circulate, to members of the company entitled to receive notice of a general meeting, a statement of not more than one thousand words with respect to—

- (a) a matter referred to in a proposed resolution to be dealt with at that meeting; or
- (b) other business to be dealt with at that meeting.

(2) A company is required to circulate a statement once it has received requests to do so from—

- (a) members representing at least five percent of the total voting rights of all the members who have a relevant right to vote, or
 - (b) at least one hundred members who have a relevant right to vote and hold shares in the company on which there has been paid up an average sum, per member, of at least one
-

thousand shillings.

(3) In subsection (2), a “relevant right to vote” means—

- (a) in relation to a statement with respect to a matter referred to in a proposed resolution, a right to vote on that resolution at the meeting to which the requests relate; and
- (b) in relation to any other statement, a right to vote at the meeting to which the requests relate.

(4) A request under subsection (2)—

- (a) may be in hard copy form or in electronic form;
- (b) shall identify the statement to be circulated;
- (c) shall be authenticated by the person or persons making it; and
- (d) shall be received by the company at least seven days before the meeting to which it relates.

Duty of company to circulate members’ statement.

194. (1) A company that is required under section 193, to circulate a statement shall send a copy of the statement to each member of the company entitled to receive notice of the meeting—

- (a) in the same manner as the notice of the meeting; and
 - (b) at the same time as, or as soon as reasonably practicable after, it gives notice of the meeting.
-

(2) Subsection (1) has effect subject to section 195 (2) and section 196.

Expenses of circulating members' statement.

195.(1) The expenses of the company in complying with section 194 need not be paid by the members who requested the circulation of the statement if—

- (a) the meeting to which the requests relate is an annual general meeting of a public company; and
- (b) requests sufficient to require the company to circulate the statement are received before the end of the financial year preceding the meeting.

(2) Otherwise—

- (a) the expenses of the company in complying with section 194 shall be paid by the members who requested the circulation of the statement unless the company resolves otherwise; and
- (b) unless the company has previously resolved not to circulate statements to its members as required by section 193 it is not bound to comply with section 194 unless there is deposited with or tendered to it, not later than seven days before the meeting, a sum reasonably sufficient to meet its expenses in doing so.

Procedure at meetings

Quorum at meetings.

196. (1) In the case of a company limited by shares or guarantee and having only one member, one qualifying person present at a meeting is a quorum.

(2) In any other case, subject to the provisions of the articles of the company two qualifying persons present at a meeting are a quorum, unless—

- (a) each is a qualifying person only because he is authorised under section 204 to act as the representative of a corporation in relation to the meeting, and they are representatives of the same corporation; or
- (b) each is a qualifying person only because he is appointed as proxy of a member in relation to the meeting, and they are proxies of the same member.

Chairman of meeting.

197.(1) A member may be elected to be the chairman of a general meeting by a resolution of the company passed at the meeting.

(2) Subsection (1) is subject to any provision of the company's articles that states who may or may not be chairman.

Declaration by chairman on a show of hands.

198.(1) On a vote on a resolution at a meeting on a show of hands, a declaration by the chairman that the resolution—

- (a) has or has not been passed; or
- (b) has passed with a particular majority,

is conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(2) An entry in respect of such a declaration in minutes of the meeting recorded in accordance with section 220 is also conclusive evidence of that fact without such proof.

(3) This section does not have effect if a poll is demanded in respect of the resolution and the demand is not subsequently withdrawn.

Right to demand a poll.

199. (1) A provision of a company's articles is void in so far as it would have the effect of excluding the right to demand a poll at a general meeting on any question other than—

- (a) the election of the chairman of the meeting; or
- (b) the adjournment of the meeting.

(2) A provision of a company's articles is void in so far as it would have the effect of making ineffective a demand for a poll on any such question which is made—

- (a) by not less than five members having the right to vote on the resolution;
- (b) by a member or members representing not less than ten percent of the total voting rights of all the members having the right to vote on the resolution; or
- (c) by a member or members holding shares in the company conferring a right to vote on the resolution, being shares on which an aggregate sum has been paid up equal to not less than ten percent of the total sum paid up on all the shares conferring that right.

Voting on a poll.

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

Representation of
corporations at
meetings.

201.(1) If a corporation, whether or not a company within the meaning of this Act, is a member of a company, it may by resolution of its directors or other governing body authorise a person or persons to act as its representative or representatives at any meeting of the company.

(2) Where the corporation authorises only one person as its representative, that person is entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual member of the company.

(3) Where the corporation authorises more than one person as its representative, any one of them is entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual member of the company.

(4) Where the corporation authorises more than one person as its representative and more than one of them purport to exercise a power under subsection (3)—

- (a) if they purport to exercise the power in the same way, the power is treated as exercised in that way;
- (b) if they do not purport to exercise the power in the same way, the power is treated as not exercised.

Proxies

Rights to appoint
proxies.

202. (1) A member of a company is entitled to appoint another person as his proxy to exercise all or any of his rights to attend and to speak and vote at a meeting of the company.

(2) In the case of a company having a share capital, a member may appoint more than one proxy in relation to a meeting, provided that each proxy is appointed to exercise the rights attached to a different share or shares held by him, or as the case may be, to a different one hundred shillings, or multiple of one thousand shillings, of stock held by him.

Notice of meeting to contain statement of rights.

203. (1) In every notice calling a meeting of a company there shall appear, with reasonable prominence, a statement informing the member of—

- (a) his rights under section 202; and
- (b) any more extensive rights conferred by the company's articles to appoint more than one proxy.

(2) Failure to comply with this section does not affect the validity of the meeting or of anything done at the meeting.

Company-sponsored invitations to appoint proxies.

204.(1) If for the purposes of a meeting there are issued at the expense of the company invitations to members to appoint as proxy a specified person or a number of specified persons, the invitations shall be issued to all members entitled to vote at the meeting.

(2) Subsection (1) is not contravened if—

- (a) there is issued to a member, at his request, a form of appointment naming the proxy or a list of persons willing to act as proxy; and
- (b) the form or list is available on request to all members entitled to vote at the meeting.

Notice required of appointment of proxy etc.

205. (1) This section applies to—

- (a) the appointment of a proxy; and
- (b) any document necessary to show the validity of, or otherwise relating to, the appointment of a proxy.

(2) Any provision of the company's articles is void in so far as it would have the effect of requiring any such appointment or document to be received by the company or another person earlier than the following period—

- (a) in the case of a meeting or adjourned meeting, forty eight hours before the time for holding the meeting or adjourned meeting;
- (b) in the case of a poll taken more than forty eight hours after it was demanded, twenty four hours before the time appointed for the taking of the poll;
- (c) in the case of a poll taken not more than forty eight hours after it was demanded, the time at which it was demanded.

(3) In calculating the periods mentioned in subsection (2) no account shall be taken of any part of a day that is not a working day.

Chairing meetings.

206. (1) A proxy may be elected to be the chairman of a general meeting by a resolution of the company passed at the meeting.

(2) Subsection (1) is subject to any provision of the company's articles that states who may or who may not be chairman.

Right of proxy to demand a poll.

207. (1) The appointment of a proxy to vote on a matter at a meeting of a company authorises the proxy to demand, or join in demanding, a poll on that matter.

(2) In applying the provisions of section 199 (2) a demand by a proxy counts—

- (a) for the purposes of paragraph (a), as a demand by the member;
- (b) for the purposes of paragraph (b), as a demand by a member representing the voting rights that the proxy is authorised to exercise; and
- (c) for the purposes of paragraph (c), as a demand by a member holding the shares to which those rights are attached.

Notice required of termination of proxy's authority.

208.(1) The authority of a person to act as a proxy of a member of a company may be terminated by notice.

(2) The termination of the authority of a person to act as proxy does not affect—

- (a) whether he counts in deciding whether there is a quorum at a meeting;
- (b) the validity of anything he does as chairman of a meeting; or
- (c) the validity of a poll demanded by him at a meeting,

unless the company receives notice of the termination before the commencement of the meeting.

(3) The termination of the authority of a person to act as proxy does not affect the validity of a vote given by that person unless the company receives notice of the termination—

- (a) before the commencement of the meeting or
-

adjourned meeting at which the vote is given; or

- (b) in the case of a poll taken more than forty eight hours after it is demanded, before the time appointed for taking the poll.

(4) If the company's articles require or permit members to give notice of termination to a person other than the company, the references in this section to the company receiving notice have effect as if they were or as the case may be included a reference to that person.

(5) Subject to subsection 6, subsections (2) and (3) have effect subject to any provision of the company's articles which has the effect of requiring notice of termination to be received by the company or another person at a time earlier than that specified in those subsections.

(6) Any provision of the company's articles is void in so far as it would have the effect of requiring notice of termination to be received by the company or another person earlier than the following period—

- (a) in the case of a meeting or adjourned meeting, forty eight hours before the time for holding the meeting or adjourned meeting;
- (b) in the case of a poll taken more than forty eight hours after it was demanded, twenty four hours before the time appointed for the taking of the poll;
- (c) in the case of a poll taken not more than forty eight hours after it was demanded, the time at which it was demanded.

(7) In calculating the periods referred to in subsections (3)(b) and (6) no account shall be taken of any

part of a day that is not a working day.

Resolution passed at
adjourned meeting.

209. Where a resolution is passed at an adjourned meeting of a company, the resolution is for all purposes to be treated as having been passed on the date on which it was in fact passed, and is not to be deemed passed on any earlier date.

Sending documents
relating to meetings
etc in electronic form.

210. (1) Where a company has given an electronic address in a notice convening a meeting, it is deemed to have agreed that any document or information relating to proceedings at the meeting may be sent by electronic means to that address subject to any conditions or limitations specified in the notice.

(2) Where a company has given an electronic address—

- (a) in an instrument of proxy sent out by the company in relation to the meeting; or
- (b) in an invitation to appoint a proxy issued by the company in relation to the meeting,

it is deemed to have agreed that any document or information relating to proxies for that meeting may be sent by electronic means to that address, subject to any conditions or limitations specified in the notice.

(3) In subsection (2), documents relating to proxies include—

- (a) the appointment of a proxy in relation to a meeting;
 - (b) any document necessary to show the validity of, or otherwise relating to, the appointment of a proxy, and
-

- (c) notice of the termination of the authority of a proxy.

Application to class meetings.

211.(1) Subject to subsection (2) and (3), the provisions of this Part apply, with necessary modifications, in relation to a meeting of holders of a class of shares as they apply in relation to a general meeting.

(2) Section 183, 184, 185 and 186 do not apply in relation to a meeting of holders of a class of shares.

(3) In addition to the section specified in subsection (2), sections 196 and 199 do not apply in relation to a meeting in connection with the variation of rights attached to a class of shares a “variation of class rights meeting”—

(4) The quorum for a variation of class rights meeting is—

- (a) for a meeting other than an adjourned meeting, two persons present holding at least one-third in nominal value of the issued shares of the class in question;
- (b) for an adjourned meeting, one person present holding shares of the class in question.

(5) For the purposes of subsection (4), where a person is present by proxy or proxies, that person is treated as holding only the shares in respect of which those proxies are authorised to exercise voting rights.

(6) At a variation of class rights meeting, any holder of shares of the class in question present may demand a poll.

(7) For the purposes of this section—

- (a) any amendment of a provision contained in a company’s articles for

the variation of the rights attached to a class of shares, or the insertion of any such provision into the articles, is itself to be treated as a variation of those rights; and

- (b) references to the variation of rights attached to a class of shares include references to their abrogation.

Application to class meetings: companies without a share capital.

212.(1) Subject to subsection (2) and (3), the provisions of this Part apply with necessary modifications in relation to a meeting of a class of members of a company without a share capital as they apply in relation to a general meeting.

(2) Sections 183 to 186 do not apply in relation to a meeting of a class of members.

(3) In addition to the sections specified in subsection (2), sections 196 and 199 do not apply in relation to a meeting in connection with the variation of the rights of a class of members or a “variation of class rights meeting”.

(4) The quorum for a variation of class rights meeting is—

- (a) for a meeting other than an adjourned meeting, two members of the class present in person or by proxy who together represent at least one-third of the voting rights of the class;
- (b) for an adjourned meeting, one member of the class present in person or by proxy.

(5) At a variation of class rights meeting, any member present in person or by proxy may demand a poll.

(6) For the purposes of this section—

- (a) any amendment of a provision contained in a company's articles for the variation of the rights of a class of members, or the insertion of any such provision into the articles, is itself to be treated as a variation of those rights; and
- (b) references to the variation of rights of a class of members include references to their abrogation.

Public companies:
annual general
meeting.

213.(1) Every public company shall hold a general meeting as its annual general meeting in each period of six months beginning with the day following its accounting reference date, in addition to any other meetings held during that period.

(2) A company that fails to comply with subsection (1) as a result of giving notice under section 357—

- (a) specifying a new accounting reference date; and
- (b) stating that the current accounting reference period or the previous accounting reference period is to be shortened,

shall be treated as if it had complied with subsection (1) if it holds a general meeting as its annual general meeting within three months of giving that notice.

Public companies:
notice of annual
general meeting.

214. (1) A notice convening an annual general meeting of a public company shall state that the meeting is an annual general meeting.

(2) An annual general meeting may be convened by shorter notice than that required by section 186 (2) or by

the company's articles as the case may be, if all the members entitled to attend and vote at the meeting agree to the shorter notice.

Public companies:
members' power to
require circulation of
resolutions for
annual general
meeting.

215. (1) The members of a public company may require the company to give, to members of the company entitled to receive notice of the next annual general meeting, notice of a resolution which may properly be moved and is intended to be moved at that meeting.

(2) A resolution may properly be moved at an annual general meeting unless—

- (a) it would, if passed, be ineffective, whether by reason of inconsistency with any enactment or the company's constitution or otherwise;
- (b) it is defamatory of any person; or
- (c) it is frivolous or vexatious.

(3) A company is required to give notice of a resolution once it has received requests that it do so from—

- (a) members representing at least five percent of the total voting rights of all the members who have a right to vote on the resolution at the annual general meeting to which the requests relate; or
- (b) at least one hundred members who have a right to vote on the resolution at the annual general meeting to which the requests relate and hold shares in the company on which there has been paid up an average sum, per member, of at least one thousand shillings.

Public companies:
company's duty to

216.(1) **216.**(A company that is required under

circulate members' resolutions for annual general meetings.

section 215 to give notice of a resolution shall send a copy of the resolution to each member of the company entitled to receive notice of the annual general meeting—

- (a) in the same manner as notice of the meeting; and
- (b) at the same time as, or as soon as reasonably practicable after, it gives notice of the meeting.

(2) Subsection (1) has effect subject to section 217(2).

(3) The business which may be dealt with at an annual general meeting includes a resolution of which notice is given in accordance with this section.

Public companies: expenses of circulating members' resolutions for annual general meeting.

217.(1) The expenses of the company in complying with section 216 need not be paid by the members who requested the circulation of the resolution if requests sufficient to require the company to circulate it are received before the end of the financial year preceding the meeting.

(2) Otherwise—

- (a) the expenses of the company in complying with section 216 shall be paid by the members who requested the circulation of the resolution unless the company resolves otherwise; and
- (b) unless the company has previously so resolved, it is not bound to comply with section 216 unless there is deposited with or tendered to it, not later than—
 - (i) six weeks before the annual general meeting to which the requests relate; or

- (ii) if later, the time at which notice is given of that meeting,

a sum reasonably sufficient to meet its expenses in complying with that section.

Results of poll to be made available on website.

218.(1) Where a poll is taken at a general meeting of a quoted company, the company shall ensure that the following information is made available on a website—

- (a) the date of the meeting;
- (b) the text of the resolution or, as the case may be, a description of the subject matter of the poll;
- (c) the number of votes cast in favour of the resolution; and
- (d) the number of votes cast against the resolution.

(2) The provisions of section 217 shall apply to this section.

(3) Failure to comply with this section or the requirements of section 219 does not affect the validity of—

- (a) the poll; or
- (b) the resolution or other business, if passed or agreed to, to which the poll relates.

Requirements as to website availability.

219.(1) This Section shall apply for the purposes of section 221.

(2) The information under section 218 shall be made available on a website that—

- (a) is maintained by or on behalf of the company; and
- (b) identifies the company in question.

(3) Access to the information on the website, and the ability to obtain a hard copy of the information from the website, shall not be conditional on the payment of a fee or otherwise restricted.

(4) The information referred to in subsection (3) shall be —

- (a) made available as soon as reasonably practicable; and
- (b) kept available throughout the period of two years beginning with the date on which it is first made available on a website in accordance with this section.

(5) A failure to make information available on a website throughout the period specified in subsection (4)(b) is disregarded if—

- (a) the information is made available on the website for part of that period; and
- (b) the failure is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.

Records of
resolutions and
meetings etc.,

220. (1) Every company shall keep records comprising—

- (a) copies of all resolutions of members

passed otherwise than at general meetings;

- (b) minutes of all proceedings of general meetings; and
- (c) details provided to the company in accordance with section 222.

(2) The records shall be kept for at least ten years from the date of the resolution, meeting or decision.

Records as evidence
of resolutions etc.

221.(1) This section applies to the records kept in accordance with section 220.

(2) The record of a resolution passed otherwise than at a general meeting, if purporting to be signed by a director of the company or by the company secretary, is evidence of the passing of the resolution.

(3) Where there is a record of a written resolution of a private company, the requirements of this Act with respect to the passing of the resolution are deemed to be complied with unless the contrary is proved.

(4) The minutes of proceedings of a general meeting, if purporting to be signed by the chairman of that meeting or by the chairman of the next meeting, are evidence of the proceedings at the meeting.

(5) Where there is a record of proceedings of a general meeting of a company, then, until the contrary is proved—

- (a) the meeting is deemed duly held and convened;
- (b) all proceedings at the meeting are deemed to have duly taken place; and

- (c) all appointments at the meeting are deemed valid.

Records of decisions
by sole member.

222. (1) Where a company limited by shares or by guarantee has only one member where the member, takes any decision that—

- (a) may be taken by the company in a general meeting; and
- (b) has effect as if agreed by the company in a general meeting,

the member shall, unless that decision is taken by way of a written resolution, provide the company with details of that decision.

(2) Failure to comply with this section does not affect the validity of any decision referred to in subsection (1).

Inspection of records
of resolutions and
meetings.

223. (1) A company shall keep the records referred to in section 220 relating to the previous ten years available for inspection at its registered office.

(2) Any member is entitled on payment of such fee as may be prescribed, to be furnished with a copy of any of those records.

Records of
resolutions and
meetings of class of
members.

224. The provisions of this Part apply, with necessary modifications, in relation to resolutions and meetings of—

- (a) holders of a class of shares; and
- (b) in the case of a company without a share capital, a class of members,

as they apply in relation to resolutions of members generally and to general meetings.

PART XII - SHARE CAPITAL OF COMPANY.

Shares.

225.(1) In this Act “share”, in relation to a company, means share in the share capital of the company.

(2) The shares of a company shall not be converted into stock.

(3) In this Act—

(a) references to shares include stock except where a distinction between share and stock is express or implied; and

(b) references to a number of shares include an amount of stock where the context admits of the reference to shares being read as including stock.

Nature of shares.

226. The shares or other interest of a member in a company are personal property and are not in the nature of real estate or heritage.

Nominal value of shares.

227. (1) Shares in a limited company having a share capital shall each have a fixed nominal value.

(2) An allotment of a share that does not have a fixed nominal value is void.

(3) Shares in a limited company having a share capital shall be denominated in shillings.

(4) Every officer of a company which purports to allot shares in contravention of this section, commits an offence

(5) An officer of a company who commits an offence under this section is liable on conviction to a fine not exceeding one hundred thousand shillings.

Numbering of shares.

228. (1) Each share in a company having a share capital shall be distinguished by its appropriate number, except if at any time—

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

Transferability of shares.

229. The shares or other interest of any member in a company are transferable in accordance with the company's articles.

Exercise by directors of power to allot shares etc.,

230. (1) The directors of a company shall not exercise any power of the company—

- (a) to allot shares in the company; or
- (c) to grant rights to subscribe for, or to convert any security into, shares in the company,

except in accordance with section 231 or section 232 .

(2) Subsection (1) does not apply—

- (a) to the allotment of shares in pursuance of the share scheme of an employee, or
-

- (b) to the grant of a right to subscribe for, or to convert any security into, shares so allotted.

Power of directors to allot shares etc: private company with only one class of shares.

231. Where a private company has only one class of shares, the directors may exercise any power of the company—

- (a) to allot shares of that class; or
- (b) to grant rights to subscribe for or to convert any security into such shares, except to the extent that they are prohibited from doing so by the company's articles.

Power of directors to allot shares etc: authorisation by company.

232. (1) The directors of a company may exercise a power of the company—

- (a) to allot shares in the company, or
- (b) to grant rights to subscribe for or to convert any security into shares in the company,

if they are authorised to do so by the company's articles or by resolution of the company.

(2) The authorisation under subsection (1) may be given for a particular exercise of the power or for its exercise generally, and may be unconditional or subject to conditions.

(3) The authorisation under subsection (1) shall—

- (a) state the maximum amount of shares that may be allotted under it; and
 - (b) specify the date on which it will
-

expire, which shall be not more than five years from—

- (i) in the case of authorisation contained in the company's articles at the time of its original incorporation, the date of that incorporation; or
- (ii) in any other case, the date on which the resolution is passed by virtue of which the authorisation is given.

(4) Authorisation may—

- (a) be renewed or further renewed by resolution of the company for a further period not exceeding five years; and
- (b) be revoked or varied at any time by resolution of the company.

(5) A resolution renewing authorisation shall—

- (a) state or restate the maximum amount of shares that may be allotted under the authorisation or, as the case may be, the amount remaining to be allotted under it; and
- (b) specify the date on which the renewed authorisation will expire.

(6) The directors may allot shares, or grant rights to subscribe for or to convert any security into shares, after authorisation has expired if—

- (a) the shares are allotted, or the rights
-

are granted, in pursuance of an offer or agreement made by the company before the authorisation expired; and

- (b) the authorisation allowed the company to make an offer or agreement which would or might require shares to be allotted, or rights to be granted, after the authorisation had expired.

(7) A resolution of a company to give, vary, revoke or renew authorisation under this section may be an ordinary resolution, even though it amends the company's articles.

General prohibition
of commissions,
discounts and
allowances.

233. (1) Except as permitted by section 234,, a company shall not apply any of its shares or capital money, either directly or indirectly, in payment of any commission, discount or allowance to any person in consideration of his—

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

Permitted
commission.

234. (1) A company may, if the conditions in subsection (2) are satisfied, pay a commission to a person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for shares in the company.

(2) The conditions referred to in subsection (1)

are—

- (a) the payment of the commission is authorised by the company's articles;
- (b) the commission paid or agreed to be paid does not exceed—
 - (i) ten percent of the price at which the shares are issued; or
 - (ii) the amount or rate authorised by the articles, whichever is the less.

Registration of allotment.

235.(1) A company shall register an allotment of shares as soon as practicable and in any event within two months after the date of the allotment.

(2) Subsection (1) shall not apply if the company has issued a share warrant in respect of the shares.

Return of allotment by limited company.

236. (1) A company limited by shares and a company limited by guarantee having a share capital shall, within one month of making an allotment of shares, deliver to the Registrar for registration a return of the allotment.

(2) The return specified in subsection (1) shall—

- (a) contain the prescribed information; and
- (b) be accompanied by a statement of capital.

(3) The statement of capital specified in subsection (2) shall state with respect to the share capital of the company at the date to which the return is made up—

- (a) the total number of shares of the company;
- (b) the aggregate nominal value of those shares;
- (c) for each class of shares—
 - (i) prescribed particulars of the rights attached to the shares;
 - (ii) the total number of shares of that class; and
 - (iii) the aggregate nominal value of shares of that class; and
- (d) the amount paid up and the amount, if any unpaid on each share, whether on account of the nominal value of the share or by way of premium.

Return of allotment
by unlimited
company allotting
new class of shares.

237. (1) An unlimited company that allots shares of a class with rights that are not in all respects uniform with shares previously allotted shall within one month of making such an allotment, deliver to the Registrar for registration a return of the allotment.

(2) The return specified in subsection (1) shall contain the prescribed particulars of the rights attached to the shares.

(4) For the purposes of this section, shares are not to be treated as different from shares previously allotted by reason only that the former do not carry the same rights to dividends as the latter during the twelve months immediately following the former's allotment.

When shares are
allotted.

238. For the purposes of this Act, shares in a company are taken to be allotted when a person acquires the unconditional right to be included in the company's register of members in respect of the shares.

Provisions about allotment not applicable to shares taken on formation.

239. The provisions of this Part on allotment have no application in relation to the taking of shares by the subscribers to the memorandum on the formation of the company.

Meaning of equity securities and related expressions.

240. References to the allotment of equity securities include the grant of a right to subscribe for, or to convert any securities into, ordinary shares in the company.

Existing shareholders' right of pre-emption.

241. (1) A company shall not allot equity securities to a person on any terms unless—

- (a) the company has made an offer to each person who holds ordinary shares in the company to allot to him on the same or more favourable terms, a proportion of those securities that is as nearly as practicable equal to the proportion in nominal value held by him of the ordinary share capital of the company; and
- (b) the period during which any such offer may be accepted has expired or the company has received notice of the acceptance or refusal of every offer so made.

(2) Securities that a company has offered to allot to a holder of ordinary shares may be allotted to a person, or anyone in whose favour that person has renounced his right to their allotment, without contravening subsection (1)(b).

(3) If subsection (1) applies in relation to the grant of such a right, it does not apply in relation to the allotment of shares in pursuance of that right.

(4) This section is subject to sections 244 and 245.

Communication of pre-emption offers to

242. (1) This section has effect as to the manner in

shareholders.

which offers required by section 241 are to be made to holders of the shares of a company.

(2) An offer made under section 241 may be made in hard copy or electronic form.

(3) If the holder of shares is the holder of a share warrant, the offer may be made by causing it, or a notice specifying where a copy of it can be obtained or inspected, to be published in the Gazette.

(4) The offer shall state that the offer may be accepted within a period of not less than twenty one days and that the offer shall not be withdrawn before the end of that period.

(5) The Minister may by regulations—

- (a) reduce the period specified in subsection (4) but not to less than fourteen days; or
- (b) increase that period.

Liability of company
and officers in case of
contravention.

243.(1)A company and every officer of the company who knowingly authorised or permitted the contravention of sections 241 and 242 are jointly and severally liable to compensate any person to whom an offer should have been made in accordance with those provisions for any loss, damage, costs or expenses which the person has sustained or incurred by reason of the contravention.

(2) No proceedings to recover any such loss, damage, costs or expenses shall be commenced after the expiration of two years—

- (a) from the delivery to the Registrar of the return of allotment; or
-

- (b) where equity securities other than shares are granted, from the date of the grant.

Exclusion of requirements by private companies.

244.(1) All or any of the requirements of section 241 or 242 may be excluded by provision contained in the articles of a private company.

(2) All or any of the requirements under sections 241 and 242 may be excluded—

- (a) generally in relation to the allotment by the company of equity securities; or
- (b) in relation to allotments of a particular description.

(3) Any requirement or authorisation contained in the articles of a private company that is inconsistent with either of those sections is treated for the purposes of this section as a provision excluding that section.

Disapplication of pre-emption rights: private company with only one class of shares.

245.(1) The directors of a private company that has only one class of shares may be given power by the articles, or by a special resolution of the company, to allot equity securities of that class as if section 241—

- (a) did not apply to the allotment; or
- (b) applied to the allotment with such modifications as the directors may determine.

References to holder of shares in relation to offer.

246.(1) In relation to an offer to allot securities required by section 241 a reference, however expressed, to the holder of shares of any description is to whoever was the holder of shares of that description at the close of business on a date to be specified in the offer.

(2) The specified date shall fall within the period of twenty-eight days immediately before the date of the offer.

Public companies:
allotment where issue
not fully subscribed.

247.(1) No allotment shall be made of shares of a public company offered for subscription unless—

- (a) the issue is subscribed for in full; or
- (b) the offer is made on terms that the shares subscribed for may be allotted—
 - (i) in any event; or
 - (ii) if specified conditions are made and those conditions are met.

(2) If subsection (1) prohibits the allotment of shares and forty days have elapsed after the first making of the offer, all money received from applicants for shares shall be repaid to them forthwith, without interest.

(3) If any of the money is not repaid within forty-eight days after the first making of the offer, the directors of the company are jointly and severally liable to repay it, with interest at the rate for the time from the expiration of the forty-eighth day.

(4) A director is not liable under subsection (3) if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

Public companies:
effect of irregular
allotment where issue
not fully
Subscribed.

248. (1) An allotment made by a public company to an applicant in contravention of section 247 is voidable at the instance of the applicant within one month after the date of the allotment, and not later.

(2) An allotment made in contravention of section 247 is voidable even if the company is in the course of being wound up.

(3) A director of a public company who knowingly

contravenes, permits or authorises the contravention of section 246 with respect to allotment is liable to compensate the company and the allottee respectively for any loss, damages, costs or expenses that the company or allottee may have sustained or incurred by the contravention.

(4) Proceedings to recover any such loss, damages, costs or expenses may not be brought more than two years after the date of the allotment.

Shares not to be allotted at a discount.

249. (1) The shares of a company shall not be allotted at a discount.

(2) If shares are allotted in contravention of this section, the allottee is liable to pay the company an amount equal to the amount of the discount, with interest at the appropriate rate.

Provision for different amounts to be paid on shares.

250. A company, if so authorised by its articles, may pay dividend in proportion to the amount paid up on each share.

General rule as to means of payment.

251. Shares allotted by a company, and any premium on them, may be paid up in money or money's worth, including goodwill and know-how.

Meaning of payment in cash.

252. A share in a company is deemed paid up, as to its nominal value or any premium on it, in cash, or allotted for cash, if the consideration received for the allotment or payment up is—

- (a) cash received by the company;
 - (b) a cheque received by the company in good faith that the directors have no reason for suspecting will not be paid;
 - (c) a release of a liability of the company for a liquidated sum; or
-

- (d) an undertaking to pay cash to the company at a future date.

Public companies:
shares taken by
subscribers of
memorandum.

253. Shares taken by a subscriber to the memorandum of a public company in pursuance of an undertaking of his in the memorandum, and any premium on the shares, shall be paid up in cash.

Public companies: not
to accept undertaking
for work or services.

254. A public company shall not accept at any time, in payment up of its shares or any premium on them, an undertaking given by any person that he or another person should do work or perform services for the company or any other person.

Public companies:
shares to be at least
one-quarter paid up.

255.(1) A public company shall not allot a share except as paid up at least as to one-quarter of its nominal value and the whole of any premium on it.

(2) Subsection (1) does not apply to shares allotted in pursuance of the share scheme of an employee.

(3) If a company allots a share in contravention of this section—

- (a) the share is to be treated as if one-quarter of its nominal value, together with the whole of any premium on it, had been received; and
- (b) the allottee is liable to pay the company the minimum amount which should have been received in respect of the share under subsection (1), less the value of any consideration actually applied in payment up, to any extent, of the share and any premium on it, with interest at the appropriate rate.

The appropriate rate
of interest.

256. For the purposes of this Part the “appropriate rate” of interest is five percent per annum or such other rate

as may be specified by order made by the Minister.

Application of share premiums.

257. (1) If a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account called “the share premium account”.

(2) Where, on issuing shares, a company has transferred a sum to the share premium account, it may use that sum to write off—

- (a) the expenses of the issue of those shares; and
- (b) any commission paid on the issue of those shares.

(3) Subject to subsection (2), the provisions of this Act relating to the reduction of a share capital of a company apply as if the share premium account were part of its paid up share capital.

Alteration of share capital of limited company.

258. (1) A limited company having a share capital shall not alter its share capital except by increasing its share capital by allotting new shares or reducing its share capital in accordance with the provisions in this Part.

(2) The limited company may sub-divide or consolidate all or any of its share capital in accordance with section 262.

Sub-division or consolidation of shares.

259. (1) A limited company having a share capital may—

- (a) sub-divide its shares, or any of them, into shares of a smaller nominal amount than its existing shares; or

- (b) consolidate and divide all or any of its share capital into shares of a larger nominal amount than its existing shares.

(2) In any sub-division, consolidation or division of shares under this section, the proportion between the amount paid and the amount if any unpaid on each resulting share shall be the same as it was in the case of the share from which that share is derived.

(3) A company may exercise a power conferred by this section only if its members have passed an ordinary resolution authorising it to do so.

(4) A resolution under subsection (3) may authorise a company—

- (a) to exercise more than one of the powers conferred by this section;
- (b) to exercise a power on more than one occasion; or
- (c) to exercise a power at a specified time or in specified circumstances.

(5) The company's articles may exclude or restrict the exercise of any power conferred by this section.

Notice to Registrar of
sub-division or
consolidation.

260. (1) If a company exercises the power conferred by section 259 the company shall within one month after doing so, give notice to the Registrar, specifying the shares affected.

(2) The notice under subsection (1) shall be accompanied by a statement of capital.

(3) The statement of capital of the company shall

state with respect to the company's share capital immediately following the exercise of the power—

- (a) the total number of shares of the company;
- (b) the aggregate nominal value of those shares;
- (c) for each class of shares—
 - (i) prescribed particulars of the rights attached to the shares;
 - (ii) the total number of shares of that class; and
 - (iii) the aggregate nominal value of shares of that class; and
- (d) the amount paid up and the amount if any unpaid on each share whether on account of the nominal value of the share or by way of premium.

Classes of shares.

261. (1) Shares are of one class if the rights attached to them are in all respects uniform.

(2) For purposes of subsection (1), the rights attached to shares are not regarded as different from those attached to other shares by reason only that they do not carry the same rights to dividends in the twelve months immediately following their allotment.

Special resolution for reduction of share capital.

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

- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid

up;

- (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or
- (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company, and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

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

Application to court for confirming order, objections by creditors, and settlement of list of objecting-creditors.

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

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

- (a) every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction;
- (b) the court shall settle a list of creditors so entitled to object, and for that purpose shall

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

- (c) where a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the court may direct, the following amount—
 - (i) if the company admits the full amount of the debt or claim, or though not admitting it is willing to provide for it, then the full amount of the debt or claim;
 - (ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the court after the like inquiry and adjudication as if the company were being wound up by the court.

(3) Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the court may, if having regard to any special circumstances of the case it thinks proper so to do, direct that subsection (2) shall not apply as regards any

class or classes of creditors.

Order confirming
reduction and powers
of court on making
such order.

264. (1) The court, if satisfied, with respect to every creditor of the company who under section 263 is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

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

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

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

Registration of order
and minute of
reduction.

265. (1) The Registrar, on production to him of an order of the court confirming the reduction of the share capital of a company, and the delivery to him of a copy of

the order and of a minute approved by the court, showing with respect to the share capital of the company, as altered by the order —

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

shall register the order and minute.

(2) On the registration of the order and minute, under subsection (1) the resolution for reducing share capital as confirmed by the order so registered shall take effect.

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

(4) The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

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

Liability of members
in respect of reduced
shares.

266.(1) In the case of a reduction of share capital, a member of the company, past or present, shall not be liable

in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount of the share as fixed by the minute and the amount paid, or the reduced amount, if any, which is to be deemed to have been paid, on the share, as the case may be:

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

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

(2) Nothing in this section shall affect the rights of the contributories among themselves.

Penalty for
concealing name of

267. (1) An officer of the company who—

creditor, etc.

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

commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

Shares no bar to damages against company.

268. A person is not barred from obtaining damages or other compensation from a company by reason only of his holding or having held shares in the company or any right to apply or subscribe for shares or to be included in the company's register of members in respect of shares.

Public companies:
duty of directors to
convene a meeting on
loss of capital.

269. (1) Where the net assets of a public company are half or less of its called-up share capital, the directors shall convene a general meeting of the company to consider how to deal with the situation.

(2) The directors shall convene a general meeting of the company not later than twenty-eight days from the earliest day on which that fact is known to a director of the company.

(3) The meeting under subsection (2) shall be convened for a date not later than fifty six days from the day specified in subsection (2).

(4) Nothing in this section authorises the consideration at a meeting convened in pursuance of

subsection (1) of any matter that could not have been considered at that meeting apart from this section.

General power to make further provision by regulations.

270.(1)The Minister may by regulations make further provision for the implementation of this Part.

General rule against limited company acquiring its own shares.

271. A limited company shall not acquire its own shares, whether by purchase, subscription or otherwise, except in accordance with the provisions of this Part.

Assistance for acquisition of shares in public company.

272.(1)Where a person is acquiring or proposing to acquire shares in a public company, the company or any of its subsidiaries shall not give financial assistance directly or indirectly for the purpose of the acquisition before or at the same time as the acquisition takes place.

(2) Subsection (1) does not prohibit a company from giving financial assistance for the acquisition of shares in it or its holding company if—

- (a) the principal purpose of the company in giving the assistance is not to give it for the purpose of any such acquisition; or
- (b) the giving of the assistance for that purpose is only an incidental part of some larger purpose of the company, and the assistance is given in good faith in the interests of the company.

(3) Where—

- (a) a person has acquired shares in a company; and
- (b) a liability has been incurred by that person or another person for the purpose of the acquisition,

the company or any of its subsidiaries shall not give financial assistance directly or indirectly for the purpose of reducing or discharging the liability if, at the time the assistance is given, the company is a public company.

(4) Subsection (3) does not prohibit a company from giving financial assistance if—

- (a) the principal purpose of the company in giving the assistance is not to reduce or discharge any liability incurred by a person for the purpose of the acquisition of shares in the company or its holding company; or
- (b) the reduction or discharge of any such liability is only an incidental part of some larger purpose of the company, and the assistance is given in good faith in the interests of the company.

Meaning of “financial assistance”.

273. (1) In this Part “financial assistance” means—

- (a) financial assistance given by way of gift;
- (b) financial assistance given—
 - (i) by way of guarantee, security or indemnity other than an indemnity in respect of the indemnifier’s own neglect or default; or
 - (ii) by way of release or waiver,
- (c) financial assistance given—
 - (i) by way of a loan or any other agreement under which any of the obligations of the person giving the assistance are to be fulfilled at a time

when in accordance with the agreement any obligation of another party to the agreement remains unfulfilled; or

(ii) by way of the novation of, or the assignment of rights arising under, a loan or such other agreement, or

(d) any other financial assistance given by a company where—

(i) the net assets of the company are reduced to a material extent by the giving of the assistance; or

(ii) the company has no net assets.

(2) In this Part “net assets” means the aggregate amount of the company’s assets of the company less the aggregate amount of its liabilities.

(3) The liabilities of a company include, where the company draws up individual financial statements, any provision made in those financial statements.

Assistance by public company for acquisition of shares in its private holding company.

274.(1) Where a person is acquiring or proposing to acquire shares in a private company, a public company that is a subsidiary of that company shall not give financial assistance directly or indirectly for the purpose of the acquisition before or at the same time as the acquisition takes place.

(2) Subsection (1) does not prohibit a company from giving financial assistance for the acquisition of shares in its holding company if—

(a) the principal purpose of the company in

giving the assistance is not to give it for the purpose of any such acquisition; or

- (b) the giving of the assistance for the purpose of any acquisition is only an incidental part of some larger purpose of the company, and the assistance is given in good faith in the interests of the company.

(3) Where—

- (a) a person has acquired shares in a private company; and
- (b) a liability has been incurred by that person or another person for the purpose of the acquisition,

a public company that is a subsidiary of that company shall not give financial assistance directly or indirectly for the purpose of reducing or discharging the liability.

(4) Subsection (3) does not prohibit a company from giving financial assistance if—

- (a) the principal purpose of the company in giving the assistance is not to reduce or discharge any liability incurred by a person for the purpose of the acquisition of shares in its holding company; or
 - (b) the reduction or discharge of any such liability is only an incidental part of some larger purpose of the company, and the assistance is given in good faith in the interests of the company.
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PART XIII - DISTRIBUTIONS

Meaning of
“distribution”.

275.(1) In this Part “distribution” means every description of distribution of the assets of a company to its members, whether in cash or otherwise, subject to exceptions in subsection (2).

(2) The following are not distributions for the purposes of this Part—

- (a) the reduction of share capital—
 - (i) by extinguishing or reducing the liability of any of the members on any of the shares of the company in respect of share capital not paid up; or
 - (ii) by paying off paid up share capital;
- (b) the redemption of any of the company’s own shares out of capital, including the proceeds of any fresh issue of shares, or out of unrealised profits;
- (c) a distribution of assets to members of the company on its winding up.

Distributions to be
made only out of
profits available for
the purpose.

276.(1) A company may only make a distribution out of profits available for the purpose.

(2) The profits of a company available for distribution are its accumulated, realised profits, so far as not previously utilised by distribution or capitalisation, less its accumulated, realised losses, so far as not previously written off in a reduction or reorganisation of capital duly made.

Net asset restriction
on distributions by

277.(1) A public company may only make a

public companies. distribution—

- (a) if the amount of its net assets is not less than the aggregate of its called up share capital and undistributable reserves; and
- (b) if, and to the extent that, the distribution does not reduce the amount of those assets to less than that aggregate.

(2) For the purposes of subsection (1) “net assets” of the company means the aggregate of the assets less the aggregate of its liabilities.

(3) For purposes of subsection (2) “liabilities” includes provisions of any kind.

(4) The undistributable reserves of a company are—

- (a) its share premium account;
- (b) its capital redemption reserve;
- (c) the amount by which its accumulated, unrealised profits, so far as not previously utilised by capitalisation exceed its accumulated, unrealised losses so far as not previously written off in a reduction or reorganisation of capital duly made; and
- (d) any other reserve that the company is prohibited from distributing by its articles.

(5) The reference in subsection (4) (c) to capitalisation does not include a transfer of profits of the company to its capital redemption reserve.

(6) A public company shall not include any uncalled share capital as an asset in any financial statements relevant for purposes of this section.

Distributions in kind:
determination of
amount.

278.(1) This section applies for determining the amount of a distribution consisting of or including, or treated as arising in consequence of, the sale, transfer or other disposition by a company of a non-cash asset where—

- (a) at the time of the distribution the company has profits available for distribution; and
- (b) if the amount of the distribution were to be determined in accordance with this section, the company could make the distribution without contravening this Part.

(2) The amount of the distribution, or the relevant part of it, is taken to be—

- (a) in a case where the amount or value of the consideration for the disposal is not less than the book value of the asset, zero;
- (b) in any other case, the amount by which the book value of the asset exceeds the amount or value of any consideration for the disposal.

(3) The profits of a company available for distribution are treated as increased by the amount if any by which the amount or value of any consideration for the disposition exceeds the book value of the asset.

(4) In this section “book value”, in relation to an asset, means—

- (a) the amount at which the asset is stated in the relevant financial statements; or
 - (b) where the asset is not stated in those financial statements at any amount, zero.
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Distributions in kind:
treatment of
unrealised profits.

279. (1) Where—

- (a) a company makes a distribution consisting of or including, or treated as arising in consequence of, the sale, transfer or other disposition by the company of a non-cash asset; and
- (b) any part of the amount at which that asset is stated in the relevant financial statements represents an unrealised profit.

(2) The profit under subsection (1)(b) is treated as a realised profit for the purpose of determining the lawfulness of the distribution in accordance with this Part whether before or after the distribution takes place.

Consequences of
unlawful distribution.

280.(1) This section applies where a distribution, or part of a distribution, made by a company to one of its members is made in contravention of this Part.

(2) If at the time of the distribution the member knows or has reasonable grounds for believing that the distribution is made in contravention of this Part, the member is liable—

- (a) to repay it or that part of it, as the case may be, to the company; or
- (b) in the case of a distribution made otherwise than in cash, to pay the company a sum equal to the value of the distribution or part at that time.

(3) Subsection (2) shall apply without prejudice to any obligation imposed apart from this section on a member of a company to repay a distribution unlawfully made to him.

(4) This section does not apply in relation to—

- (a) financial assistance given by a company in contravention of section 272 or 274; or
- (b) any payment made by a company in respect of the redemption or purchase by the company of shares in itself.

PART XIV - CERTIFICATION AND TRANSFER OF SECURITIES

Share certificate to be
evidence of title.

281. A certificate under the common seal of the company specifying any shares held by a member is *prima facie* evidence of his title to the shares.

Duty of company as
to issue of certificates
etc on allotment.

282. (1) A company shall, within two months after the allotment of any of its shares, debentures or debenture stock, complete and have ready for delivery—

- (a) the certificates of the shares allotted;
- (b) the debentures allotted; or
- (c) the certificates of the debenture stock allotted.

(2) Subsection (1) does not apply—

- (a) if the conditions of issue of the shares, debentures or debenture stock provide otherwise;
 - (b) in the case of an allotment of shares if, following the allotment, the company has issued a share warrant in respect of the shares.
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Registration of transfer.

283. A company shall not register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered.

Procedure on transfer being lodged.

284. (1) When a transfer of shares in or debentures of a company has been lodged with the company, the company shall either—

- (a) register the transfer; or
- (b) give the transferee notice of refusal to register the transfer, together with its reasons for the refusal, as soon as practicable and in any event within two months after the date on which the transfer is lodged with it.

(2) If the company refuses to register the transfer, it shall provide the transferee with such further information about the reasons for the refusal as the transferee may reasonably request.

(3) The information to be provided under subsection (2) does not include copies of minutes of meetings of directors.

(4) This section does not apply in relation to a transfer of shares if the company has issued a share warrant in respect of the shares.

Transfer of shares on application of transferor.

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

Execution of share transfer by personal representative.

286. An instrument of transfer of the share or other interest of a deceased member of a company—

- (a) may be made by his personal representative although the personal representative is not himself a member of the company; and
- (b) is as effective as if the personal representative had been such a member at the time of the execution of the instrument.

Issue and effect of share warrant to bearer.

287.(1) A company limited by shares may, if so authorised by its articles, issue with respect to any fully paid shares a share warrant stating that the bearer of the share warrant is entitled to the shares specified in it.

(2) A share warrant issued under the common seal of the company entitles the bearer to the shares specified in it and the shares may be transferred by delivery of the warrant.

(3) A company that issues a share warrant may, if so authorised by its articles, provide by coupons or otherwise for the payment of the future dividends on the shares included in the warrant.

Duty of company as to issue of certificates on surrender of share warrant.

288. (1) A company shall, within two months of the surrender of a share warrant for cancellation, complete and have ready for delivery the certificates of the shares specified in the warrant.

(2) Subsection (1) does not apply if the company's articles provide otherwise.

Provision enabling procedures for evidencing and transferring title.

289.(1) The Minister may by regulations provide for enabling title to securities to be evidenced and transferred without a written instrument.

(2) The regulations may provide for—

- (a) procedures for recording and transferring title to securities;

- (b) the regulation of those procedures and the persons responsible for or involved in their operation;
- (c) appropriate safeguards for the protection of investors and for ensuring that competition is not restricted, distorted or prevented;
- (d) the enabling or facilitating of the operation of the procedures provided for by the regulations, make provision with respect to the rights and obligations of persons in relation to securities dealt with under the procedures;
- (e) power to be conferred on a person to deal with securities on behalf of the person entitled;
- (f) persons responsible for the operation of the procedures provided for by the regulations—
 - (iii) as to the consequences of their insolvency or incapacity; or
 - (iv) as to the transfer from them to other persons of their functions in relation to those procedures.

Provision requiring
arrangements to be
adopted.

290.(1) Regulations under this Part may make provision—

- (f) enabling the members of a company or of any designated class of companies to adopt, by ordinary resolution, arrangements under which title to securities is required to be evidenced and transferred without a written instrument; or

- (b) requiring companies, or any designated class of companies, to adopt such arrangements.
- (c) in respect of all securities issued by a company; or
- (d) in respect of all securities of a specified description.

(2) The arrangements provided for by regulations under subsection (1) shall not be such that a person who, but for the arrangements would be entitled—

- (b) to have his name entered in the company's register of members; or
- (b) to give instructions in respect of any securities, ceases to be so entitled.

(3) The regulations may—

- (a) prohibit the issue of any certificate by the company in respect of the issue or transfer of securities;
- (b) require the provision by the company to holders of securities of statements (at specified intervals or on specified occasions) of the securities held in their name; and
- (c) make provision as to the matters of which any such certificate or statement is, or is not, evidence.

PART XV - PRIVATE AND PUBLIC COMPANIES

Prohibition of public
offers by private
company.

291. (1) A private company limited by shares or limited by guarantee and having a share capital shall not—

- (a) offer to the public any securities of the company; or
- (b) allot or agree to allot any securities of the company with a view to their being offered to the public.

(2) Unless the contrary is proved, an allotment or agreement to allot securities is presumed to be made with a view to their being offered to the public if an offer of the securities, or any of them, to the public is made—

- (a) within six months after the allotment or agreement to allot; or
- (b) before the receipt by the company of the whole of the consideration to be received by it in respect of the securities.

(3) A company does not contravene this section if—

- (a) it acts in good faith in pursuance of arrangements under which it is to re-register as a public company before the securities are allotted; or
- (b) as part of the terms of the offer, it undertakes to re-register as a public company within a specified period, and that undertaking is complied with.

(4) The specified period for the purposes of subsection (3)(b) shall be a period ending not later than six months after the day on which the offer is made or, in the

case of an offer made on different days, first made.

Meaning of “offer to the public”.

292. (1) An offer to the public includes an offer to any section of the public, however selected.

(2) An offer is not regarded as an offer to the public if it can properly be regarded, in all the circumstances, as—

- (a) not being calculated to result, directly or indirectly, in securities of the company becoming available to persons other than those receiving the offer; or
- (b) otherwise being a private concern of the person receiving it and the person making it.

(3) An offer is to be regarded, unless the contrary is proved, as being a private concern of the person receiving it and the person making it if—

- (a) it is made to a person already connected with the company and, where it is made on terms allowing that person to renounce his rights, the rights may only be renounced in favour of another person already connected with the company; or
 - (b) it is an offer to subscribe for securities to be held under the share scheme of an employee and, where it is made on terms allowing that person to renounce his rights, the rights may only be renounced in favour of—
 - (i) another person entitled to hold securities under the scheme; or
 - (ii) a person already connected with the company.
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(4) For the purposes of this section “person already connected with the company” means—

- (a) an existing member or employee of the company;
- (b) a member of the family of a person who is or was a member or employee of the company;
- (c) the widow or widower, of a person who was a member or employee of the company;
- (d) an existing debenture holder of the company; or
- (e) a trustee acting in his capacity as such, of a trust of which the principal beneficiary is a person within any of paragraphs (a) to (d).

(5) For the purposes of subsection (4)(b), a member of the family is the person’s spouse and children, including step-children and their descendants.

Public company:
requirement for
minimum share
capital.

293. (1) A company that is a public company shall not do business or exercise any borrowing powers unless the Registrar has issued it with a trading certificate under this section .

(2) The Registrar shall issue a trading certificate if, on an application made in accordance with section 294, he is satisfied that the nominal value of the allotted share capital of the company is not less than the authorised minimum.

(3) For the purpose of subsection (2) a share allotted in pursuance of a share scheme of an employee shall not be taken into account unless paid up to—

- (a) at least one-quarter of the nominal value of the share; and
- (b) the whole of any premium on the share.

(4) A trading certificate has effect from the date on which it is issued and is conclusive evidence that the company is entitled to do business and exercise any borrowing powers.

Procedure for
obtaining certificate.

294. (1) An application for a certificate under section 293 shall—

- (a) state that the nominal value of the company allotted share capital of the company is not less than the authorised minimum;
- (b) specify the amount, or estimated amount, of the preliminary expenses of the company;
- (c) specify any amount or benefit paid or given, or intended to be paid or given, to any promoter of the company, and the consideration for the payment or benefit; and
- (d) be accompanied by a statement of compliance.

(2) The statement of compliance referred to in subsection (1) is a statement that the company meets the requirements for the issue of a certificate under section 293.

(3) The Registrar may accept the statement of compliance as sufficient evidence of the matters stated in it.

The authorised
minimum.

295. For the purposes of sections 293 and 294 the authorised minimum is six million seven hundred and fifty thousand shillings.

Consequences of doing business etc without a trading certificate.

296. (1) The officer of a company which does business or exercises any borrowing powers in contravention of section 293 commits an offence.

(2) A contravention of section 293 does not affect the validity of a transaction entered into by the company, but if a company—

- (a) enters into a transaction in contravention of that section; and
- (b) fails to comply with its obligations in connection with the transaction within twenty one days from being called on to do so,

the directors of the company are jointly and severally liable to indemnify any other party to the transaction in respect of any loss or damage suffered by him by reason of the company's failure to comply with its obligations.

(3) The directors who are liable under subsection (3) are those who were directors at the time the company entered into the transaction.

PART XVI - REDEEMABLE SHARES

Power of limited company to issue redeemable shares.

297. (1) A limited company having a share capital may issue redeemable share that are to be redeemed or are liable to be redeemed at the option of the company or the shareholder, subject to this section.

(2) The articles of a private limited company may exclude or restrict the issue of redeemable shares.

(3) A public limited company may only issue redeemable shares if it is authorised to do so by its articles.

(4) No redeemable shares may be issued at a time when there are no issued shares of the company that are not redeemable.

Terms and manner of redemption.

298.(1)The directors of a limited company may determine the terms, conditions and manner of redemption of shares if they are authorised to do so—

- (a) by the company's articles; or
- (b) by a resolution of the company.

(2) A resolution under subsection (1)(b) may be an ordinary resolution, even though it amends the company's articles.

(3) Where the directors are authorised under subsection (1) to determine the terms, conditions and manner of redemption of shares—

- (a) the directors shall do so before the shares are allotted; and
- (b) any obligation of the company to state in a statement of capital the rights attached to the shares extends to the terms, conditions and manner of redemption.

(4) Where the directors are not authorised, to determine the terms, conditions and manner of redemption of shares, the terms, conditions and manner of redemption of any redeemable shares shall be stated in the company's articles.

Payment for redeemable shares.

299.(1)Redeemable shares in a limited company may not be redeemed unless they are fully paid.

(2) The terms of redemption of shares in a limited company may, provide that the amount payable on redemption may, by agreement between the company and the holder of the shares, be paid on a date later than the redemption date.

(3) Unless redeemed in accordance with subsection (1), the shares shall be paid for on redemption.

Financing of
redemption.

300. (1) Redeemable shares in a limited company may only be redeemed out of—

- (a) distributable profits of the company; or
- (b) the proceeds of a fresh issue of shares made for the purposes of the redemption.

(2) Subject to subsection (3), any premium payable on redemption of shares in a limited company shall be paid out of distributable profits of the company.

(3) If the redeemable shares were issued at a premium, any premium payable on their redemption may be paid out of the proceeds of a fresh issue of shares made for the purposes of the redemption, up to an amount equal to—

- (a) the aggregate of the premiums received by the company on the issue of the shares redeemed; or
 - (b) the current amount of the share premium account of the company including any sum transferred to that account in respect of premiums on the new shares, whichever is the less.
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(4) The amount of the share premium account of the company is reduced by a sum corresponding or by sums in the aggregate corresponding to the amount of any payment made under subsection (2).

Redeemed shares
treated as cancelled.

301. Where shares in a limited company are redeemed—

- (a) the shares are treated as cancelled;
and
- (b) the amount of the issued share capital of the company is diminished accordingly by the nominal value of the shares redeemed.

Notice to Registrar of
redemption.

302. (1) If a limited company redeems any redeemable shares it shall within one month after redeeming the shares give notice to the Registrar, specifying the shares redeemed.

(2) The notice in subsection (1) shall be accompanied by a statement of capital.

(3) The statement of capital shall state with respect to the share capital of the company immediately following the redemption—

- (a) the total number of shares of the company;
- (b) the aggregate nominal value of those shares;
- (c) for each class of shares—
 - (i) prescribed particulars of the rights attached to the shares;
 - (ii) the total number of shares of that

class; and

(iii) the aggregate nominal value of shares of that class; and

(d) the amount paid up and the amount, if any unpaid on each share, whether on account of the nominal value of the share or by way of premium.

PART XVII - DEBENTURES

Meaning of
“debenture.”

303. In this Part “debenture” includes debenture stock, bonds and any other securities of a company, whether or not constituting a charge on the assets of the company.

Perpetual debentures.

304. (1) A condition contained in debentures, or in a deed for securing debentures, is not invalid by reason only that the debentures are made—

(a) irredeemable; or

(b) redeemable only—

(i) on the happening of a contingency, however remote; or

(ii) on the expiration of a period, however long, any equity to the contrary notwithstanding.

(2) Subsection (1) applies to debentures whenever issued and to deeds whenever executed.

Enforcement of
contract to subscribe
for debentures.

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

Registration of
allotment of
debentures.

306. A company shall register an allotment of debentures as soon as practicable and in any event within two months after the date of the allotment.

Register of debenture
holders.

307. (1) Any register of debenture holders of a company that is kept by the company shall be kept available for inspection—

- (a) at the registered office of the company; or
- (b) at the office where the work of making up such register is done if that is an office other than the registered office.

(2) A company shall give notice to the Registrar of the place where any such register is kept available for inspection and of any change in that place.

(3) A company may not give notice if the register has, at all times since it came into existence, been kept available for inspection at the company's registered office.

(4) References in this section to a register of debenture holders include a duplicate—

- (a) of a register of debenture holders that is kept outside Kenya; or
- (b) of any part of such a register.

Register of debenture
holders: right to
inspect and require
copy.

308. (1) Every register of debenture holders of a company shall, except when duly closed, be open to the inspection—

- (a) of the registered holder of any such debentures, or any holder of shares in the company, without charge; and
 - (b) of any other person on payment of such fee
-

as may be prescribed.

(2) Any person may require a copy of the register, or any part of it, on payment of such fee as may be prescribed.

(3) A person seeking to exercise either of the rights conferred by this section shall make a request to the company to that effect.

(4) The request under subsection (3) shall contain the following information—

- (a) in the case of an individual, his name and address;
 - (b) in the case of an organisation, the name and address of an individual responsible for making the request on behalf of the organisation;
 - (c) the purpose for which the information is to be used; and
 - (d) whether the information will be disclosed to any other person, and if so—
 - (i) where that person is an individual, his name and address;
 - (ii) where that person is an organisation, the name and address of an individual responsible for receiving the information on its behalf; and
 - (iii) the purpose for which the information is to be used by that person.
-

(5) For the purposes of this section a register is “duly closed” if it is closed in accordance with provision contained—

- (a) in the articles or in the debentures;
- (b) in the case of debenture stock in the stock certificates; or
- (c) in the trust deed or other document securing the debentures or debenture stock.

(6) The total period for which a register is closed in any year shall not exceed thirty days.

(7) References in this section to a register of debenture holders include a duplicate—

- (a) of a register of debenture holders that is kept outside Kenya; or
- (b) of any part of such a register.

Right of debenture holder to copy of deed.

309.(1) ~~309.~~(309.) Any holder of debentures of a company is entitled, on request and on payment of such fee as may be prescribed, to be provided with a copy of any trust deed for securing the debentures.

(2) Where a copy of a trust deed for securing the debentures is not provided under subsection (1), the court may direct that the copy required be sent to the person requiring it.

Liability of trustees of debentures.

310. (1) Any provision contained in—

- (a) a trust deed for securing an issue of debentures; or
- (b) any contract with the holders of debentures

secured by a trust deed,

is void in so far as it would have the effect of exempting a trustee of the deed from, or indemnifying him against, liability for breach of trust where he fails to show the degree of care and diligence required of him as trustee, having regard to the provisions of the trust deed conferring on him any powers, authorities or discretions.

(2) Subsection (1) does not invalidate—

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

Power to re-issue
redeemed debentures.

311.(1) Where a company has redeemed debentures previously issued, then unless—

- (a) provision to the contrary, express or implied, is contained in the company's articles or in any contract made by the company; or

- (b) the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled;

the company may re-issue the debentures, either by re-issuing the same debentures or by issuing new debentures in their place.

(2) On a re-issue of redeemed debentures under subsection (1) the person entitled to the debentures has the same priorities as if the debentures had never been redeemed.

Deposit of debentures
to secure advances.

312. Where a company has deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures are not treated as redeemed by reason only of the account of the company having ceased to be in debit while the debentures remained so deposited.

Priorities where
debentures secured by
floating charge.

313. (1) This section applies where debentures of a company are secured by a charge that, as created, was a floating charge.

(2) If possession is taken by or on behalf of the holders of the debentures of any property comprised in or subject to the charge, and the company is not at that time in the course of being wound up, the company's preferential debts shall be paid out of assets coming to the hands of the persons taking possession in priority to any claims for principal or interest in respect of the debentures.

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

PART XVIII - TAKEOVERS

The Capital Markets
Authority.

314. (1) The Capital Markets Authority (in this part referred to as “the Authority”) shall carry out the functions conferred on it by or under this Part.

Rules.

315. (1) The Authority may make rules—

(a) to regulate—

- (i) takeover bids;
- (ii) merger transactions; and
- (iii) transactions, not falling within sub-paragraph (i) or (ii), that have or may have, directly or indirectly, an effect on the ownership or control of companies;

(b) for or in connection with the regulations of things done in consequence of or otherwise in relation to, any such bid or transaction—

(c) about cases where—

- (i) any such bid or transaction is, or has been, contemplated or apprehended; or
- (i) an announcement is made denying that any such bid or transaction is intended.

Further provisions
about rules.

316. (1) Rules made under section 315 may—

- (a) make different provision for different purposes;
 - (b) make provision subject to exceptions or exemptions;
-

(c) contain incidental, supplemental, consequential or transitional provision;

(d) authorise the Authority to dispense with or modify the application of rules in particular cases and by reference to any circumstances.

(2) Rules made under subsection (1) (d) shall require the Authority to give reasons for acting as specified in that paragraph.

Rulings.

317.(1) The Authority may give rulings on the interpretation, application or effect of the rules made under this Part.

(2) To the extent and in the circumstances specified in rules, and subject to any review or appeal, a ruling has a binding effect.

Directions.

318. The Rules may confer power on the Authority to give any direction that appears to the Authority to be necessary in order—

(a) to restrain a person from acting or continuing to act in breach of the rules;

(b) to restrain a person from doing or continuing to do a particular thing, pending determination of whether that or any other conduct of his is or would be a breach of rules; or

(c) otherwise to secure compliance with the rules.

Power to require documents and information.

319. (1)The Authority may, by notice in writing require a person—

(c) to produce any documents that are specified or described in the notice;

(b) to provide, in the form and manner specified in

the notice, such information as may be specified or described in the notice.

(2) A requirement under subsection (1) shall be complied with—

- (a) at a place specified in the notice; and
- (b) before the end of such reasonable period as may be specified in the notice.

(3) This section applies only to documents and information reasonably required in connection with the exercise by the Authority of its functions.

(4) The Authority may require—

- (a) any document produced to be authenticated; or
- (b) any information provided, whether in a document or otherwise, to be verified, in such manner as it may reasonably require.

(5) The Authority may authorise a person to exercise any of its powers under this section.

(6) A person exercising a power by virtue of subsection (5) shall, if required to do so, produce evidence of his authority to exercise the power.

(7) The production of a document in pursuance of this section does not affect any lien that a person has on the document.

(8) The Authority may take copies of or extracts from a document produced in pursuance of this section.

(9) A reference in this section to the production of a

document includes a reference to the production of—

- (b) a hard copy of information recorded otherwise than in hard copy form; or
- (b) information in a form from which a hard copy can be readily obtained.

(10) A person is not required by this section to disclose documents or information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

Restrictions on disclosure.

320. (1) This section applies to information in whatever form—

- (a) relating to the private affairs of an individual; or
- (b) relating to any particular business, that is provided to the Authority in connection with the exercise of its functions.

(2) No information referred to in subsection (1) may, during the lifetime of the individual or so long as the business continues to be carried on, be disclosed without the consent of that individual or, as the case may be, the person for the time being carrying on that business.

(3) Subsection (2) does not apply to any disclosure of information that is made for the purpose of facilitating the carrying out by the Authority of any of its functions.

(4) Subsection (2) does not apply to—

- (b) the disclosure by an authority within subsection (2) of information disclosed to it by the Authority in reliance on subsection (3);

- (b) the disclosure of such information by anyone who has obtained it directly or indirectly from an authority.

(5) This section does not prohibit the disclosure of information if the information is or has been available to the public from any other source.

Offence of disclosure
in contravention of
section 320.

321. A person who discloses information in contravention of section 320 commits an offence, unless that person—

- (a) did not know, and had no reason to suspect, that the information had been provided as specified in section 320(1); or
- (b) took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

(2) A person who commits an offence under this section is liable, on conviction to a fine not exceeding five hundred thousand shillings or, to imprisonment for a term not exceeding one year or to both.

(3) Where a company or other body corporate commits an offence under this section, an offence is also committed by every officer of the company or other body corporate who is in default.

Sanctions.

322. (1) The Authority may impose sanctions on a person who has—

- (b) acted in breach of the rules made under this Part; or
- (b) failed to comply with a direction given under section 318.

Failure to comply
with rules about bid
documentation.

323. (1) This section applies where a takeover bid is made for a company that has securities carrying voting

rights admitted to trading on a stock exchange or other regulated market in Kenya.

(2) A person who makes a bid where an offer document published in respect of the bid does not comply with offer document rules, commits an offence.

(3) Where the person making the bid is a body of persons, any director, officer or member of that body who caused the document to be published commits an offence.

(4) A person commits an offence under subsection (2) only if that person—

- (a) knew that the offer document did not comply, or was reckless as to whether it complied; and
- (b) failed to take all reasonable steps to ensure that it did comply.

(5) A director or other officer of a company who publishes a response document in respect of a bid which does not comply with response document rules, commits an offence.

(6) The director or officer commits an offence if he-

- (a) knew that the response document did not comply, or was reckless as to whether it complied; and
- (b) failed to take all reasonable steps to ensure that it did comply.

(7) Where an offence is committed under subsection (2)(b) or (4) by a company or other body corporate -

- (a) subsection (2)(b) has effect as if the reference to a director, officer or member of the person making the bid included a reference to a director, officer or member of the relevant body;
- (b) subsection (4) has effect as if the reference to a director or other officer of the company referred to in subsection (1) included a reference to a director, officer or member of the relevant body.

(8) A person who commits an offence under this section is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years or to both.

(9) Nothing in this section affects any power of the Authority in relation to the enforcement of its rules.

(10) The meaning of “company” does not apply for the purposes of this section.

(11) In this section, “voting rights” means rights to vote at general meetings of the company in question, including rights that arise only in certain circumstances.

Enforcement by the court.

324. (1) If, on the application of the Authority, the court is satisfied—

- (a) that there is a reasonable likelihood that a person will contravene a rule-based requirement; or
- (b) that a person has contravened a rule-based requirement or a disclosure requirement imposed under section 319,322

the court may make any order it thinks fit to secure compliance with the requirement.

(2) Except as provided by subsection (1), no person has a right to seek an injunction.

Exemption from liability in damages.

325.(1) The Authority, or any person specified in subsection (2), shall not be liable for damages for anything done, or omitted to be done in, or in connection with, the discharge or purported discharge of the functions of the Authority.

(2) Subsection (1) shall apply to a person if that person—

(a) is or is acting as a member, officer or member of staff of the Authority,; or

(b) is a person authorised under section 319(5).

(3) Subsection (1) shall not apply if the act or omission is shown to have been in bad faith.

Privilege against self-incrimination.

326. (1) A statement made by a person in response to—

(a) a requirement under section 319(1); or

(b) an order made by the court under section 324 to secure compliance with such a requirement, may not be used against him in criminal proceedings in which he is charged with an offence to which this subsection applies.

Meaning of “takeover offer”.

327. (1) An offer to acquire shares in a company is a “takeover offer” if the following two conditions are

satisfied in relation to the offer-

(a) if it is an offer to acquire—

(i) all the shares in a company; or

(ii) where there is more than one class of shares in a company, all the shares of one or more classes, other than shares that at the date of the offer are already held by the offer; or

(b) if the terms of the offer are the same—

(i) in relation to all the shares to which the offer relates; or

(ii) where the shares to which the offer relates include shares of different classes, in relation to all the shares of each class.

(2) In subsection (1) “shares” means shares that have been allotted on the date of the offer.

(3) A takeover offer may include among the shares to which it relates, all or any shares that are allotted after the date of the offer but before a specified date.

Shares already held
by the offeror etc.

328. (1) Subject to subsection (2), the reference in section 327 to shares already held by the offeror includes a reference to shares that he has contracted to acquire, whether unconditionally or subject to conditions being met.

(2) The reference in section 327 to shares already held by the offeror does not include a reference to shares that are the subject of a contract—

(a) intended to secure that the holder of the shares will accept the offer when it is made; and

(b) entered into—

- (i) by deed and for no consideration;
- (ii) for consideration of negligible value;
or
- (iii) for consideration consisting of a
promise by the offeror to make the
offer.

(3) The condition in section 327 (1)(a) is treated as satisfied
where—

- (a) the offer does not extend to shares that
associates of the offeror hold or have contracted
to acquire whether unconditionally or subject to
conditions being met; and
- (b) the condition would be satisfied if the offer
did extend to those shares.

Cases where offer
treated as being on
same terms.

329. (1) The condition in section 327(1)(b) is treated
as satisfied where subsection (2) or (3) applies.

(2) Subsection (1) applies where—

- (a) shares carry an entitlement to a particular
dividend which other shares of the same
class, by reason of being allotted later, do
not carry;
 - (b) there is a difference in the value of
consideration offered for the shares allotted
earlier as against that offered for those
allotted later;
 - (c) that difference merely reflects the difference
in entitlement to the dividend; and
-

- (d) the condition in section 327(1)(b) would be satisfied but for that difference.

(3) Subsection (1) applies where—

- (a) the law of a country outside Kenya—
 - (i) precludes an offer of consideration in the form, or any of the forms, specified in the terms of the offer or the specified form; or
 - (i) precludes it except after compliance by the offeror with conditions with which he is unable to comply or which he regards as unduly onerous,
- (b) the persons to whom an offer of consideration in the specified form is precluded are able to receive consideration in another form that is of substantially equivalent value; and
- (c) the condition in section 327(1)(b) would be satisfied but for the fact that an offer of consideration in the specified form to those persons is precluded.

Shares to which an offer relates.

330. (1) Where a takeover offer is made and, during the period beginning with the date of the offer and ending when the offer can no longer be accepted, the offeror—

- (a) acquires or unconditionally contracts to acquire any of the shares to which the offer relates; but
- (b) does not do so by virtue of acceptances of the offer,

those shares are treated for the purposes of this Chapter as excluded from those to which the offer relates.

(2) For the purposes of this Part, shares that an associate of the offeror holds or has contracted to acquire, whether at the date of the offer or subsequently, are not treated as shares to which the offer relates, even if the offer extends to such shares.

(3) In this section “contracted” means contracted unconditionally or subject to conditions being met.

(4) This section is subject to section 332(8) and (9).

Effect of impossibility etc of communicating or accepting offer.

331. (1) Where there are holders of shares in a company to whom an offer to acquire shares in the company is not communicated, that does not prevent the offer from being a takeover offer for purposes of this Part if—

- (a) the shareholders have no registered address in Kenya;
- (b) the offer was not communicated to the shareholders in order not to contravene the law of a country outside Kenya; and
- (c) either—
 - (i) the offer is published in the Gazette; or
 - (ii) the offer can be inspected, or a copy of it obtained, at a place in Kenya or on a website, and a notice is published in the Gazette specifying the address of that place or website.

(2) Where an offer is made to acquire shares in a company and there are persons for whom, by reason of the law of a country outside Kenya, it is impossible to accept the offer, or more difficult to do so, that does not prevent

the offer from being a takeover offer for the purposes of this Part.

(3) It is not to be inferred—

- (a) that an offer which is not communicated to every holder of shares in the company cannot be a takeover offer unless the requirements of subsection (1) (a) to (c) are met; or
- (b) that an offer which is impossible, or more difficult, for certain persons to accept cannot be a takeover offer for those purposes unless the reason for the impossibility or difficulty is the one mentioned in subsection (2).

Right of offeror to buy out minority shareholder.

332. (1) Subsection (2) applies where a takeover offer does not relate to shares of different classes.

(2) If the offeror has, by virtue of acceptances of the offer, acquired or unconditionally contracted to acquire—

- (a) not less than ninety percent in value of the shares to which the offer relates; and
- (b) in a case where the shares to which the offer relates are voting shares, not less than ninety percent of the voting rights carried by those shares,

he may give notice to the holder of any shares to which the offer relates which the offeror has not acquired or unconditionally contracted to acquire that he desires to acquire those shares.

(3) Subsection (4) applies in a case where a takeover offer relates to shares of different classes.

(4) If the offeror has, by virtue of acceptances of the offer, acquired or unconditionally contracted to acquire—

- (a) not less than ninety percent in value of the shares of any class to which the offer relates; and
- (b) in a case where the shares of that class are voting shares, not less than ninety percent of the voting rights carried by those shares,

he may give notice to the holder of any shares of that class to which the offer relates which the offeror has not acquired or unconditionally contracted to acquire that he desires to acquire those shares.

(5) In the case of a takeover offer which includes among the shares to which it relates shares that are allotted after the date of the offer, the offeror's entitlement to give a notice under subsection (2) or (4) on any particular date shall be determined as if the shares to which the offer relates did not include any shares allotted on or after that date.

(6) Subsection (7) applies where—

- (a) the requirements for the giving of a notice under subsection (2) or (4) are satisfied; and
- (b) there are shares in the company which the offeror, or an associate of his, has contracted to acquire subject to conditions being met, and in relation to which the contract has not become unconditional.

(7) The offeror's entitlement to give a notice under subsection (2) or (4) shall be determined as if—

- (a) the shares to which the offer relates included shares falling within subsection (6) (b); and
 - (b) in relation to shares falling within
-

subsection (6) (b) the words “by virtue of acceptances of the offer” in subsection (2) or (4) were omitted.

(8) Where a takeover offer is made and, during the period beginning with the date of the offer and ending when the offer can no longer be accepted, the offeror—

- (a) acquires or unconditionally contracts to acquire any of the shares to which the offer relates; but
- (b) does not do so by virtue of acceptances of the offer; and
- (c) subsection 10 applies,

then, for the purposes of this section those shares are not excluded by section 330(1) from those to which the offer relates and the offeror is treated as having acquired or contracted to acquire those shares by virtue of acceptances of the offer.

(9) Where—

- (a) a takeover offer is made;
- (b) during the period beginning with the date of the offer and ending when the offer can no longer be accepted, an associate of the offeror acquires or unconditionally contracts to acquire any of the shares to which the offer relates; and
- (c) subsection (10) applies,

then, for the purposes of this section those shares are treated for the purposes of this section as shares to which

the offer relates.

(10) This subsection applies if—

- (a) at the time the shares are acquired or contracted to be acquired as mentioned in subsection (8) or (9), as the case may be, the value of the consideration for which they are acquired or contracted to be acquired (“the acquisition consideration”) does not exceed the value of the consideration specified in the terms of the offer; or
- (b) those terms are subsequently revised so that when the revision is announced the value of the acquisition consideration, at the time mentioned in paragraph (a), no longer exceeds the value of the consideration specified in those terms.

Further provision
about notices given
under section 332.

333. (1) A notice under section 332 shall be given in the prescribed manner.

(2) No notice may be given under section 332(2) or (4) after the end of—

- (a) the period of three months beginning with the day after the last day on which the offer can be accepted; or
- (b) the period of six months beginning with the date of the offer, where that period ends earlier and the offer is one to which subsection (3) applies.

(3) This subsection applies to an offer if the time allowed for acceptance of the offer is not governed by rules under section 315.

(4) At the time when the offeror first gives a notice under section 332 in relation to an offer, he shall send to the company—

- (a) a copy of the notice; and
- (b) a statutory declaration by him in the prescribed form, stating that the conditions for the giving of the notice are satisfied.

(5) Where the offeror is a company whether or not a company within the meaning of this Act the statutory declaration shall be signed by a director.

(6) A person who—

- (a) fails to send a copy of a notice or a statutory declaration as required by subsection (3); or
- (c) makes such a declaration for the purposes of subsection (4) knowing it to be false or without having reasonable grounds for believing it to be true,

commits an offence.

(7) It is a defence for a person charged with an offence for failing to send a copy of a notice as required by subsection (4) to prove that he took reasonable steps to comply with that subsection.

(8) A person who commits an offence under this section is liable on conviction to a fine not exceeding one million shillings, to imprisonment for a term not exceeding two years or to both.

Effect of notice under
section 332.

334. (1) Subject to section 339 this section applies where the offeror gives a shareholder a notice under section 332.

(2) The offeror is entitled and bound to acquire the shares to which the notice relates on the terms of the offer.

(3) Where the terms of an offer are such as to give the shareholder a choice of consideration, the notice shall give particulars of the choice and state—

(a) that the shareholder may, within six weeks from the date of the notice, indicate his choice by a written communication sent to the offeror at an address specified in the notice; and

(b) which consideration specified in the offer will apply if he does not indicate a choice.

(4) The reference in subsection (2) to the terms of the offer is to be read accordingly.

(5) Subsection (3) applies whether or not any time-limit or other conditions applicable to the choice under the terms of the offer can still be complied with.

(6) If the consideration offered to or, as the case may be, chosen by the shareholder—

(a) is not cash and the offeror is no longer able to provide it; or

(b) was to have been provided by a third party who is no longer bound or able to provide it,

the consideration is to be taken to consist of an amount of cash, payable by the offeror, which at the date of the notice is equivalent to the consideration offered or, as the case may be, chosen.

(7) At the end of six weeks from the date of the

notice the offeror shall immediately—

- (a) send a copy of the notice to the company;
and
- (b) pay or transfer to the company the consideration for the shares to which the notice relates,

Where the consideration consists of shares or securities to be allotted by the offeror, the reference in subsection (b) to the transfer of the consideration is to be read as a reference to the allotment of the shares or securities to the company.

(8) If the shares to which the notice relates are registered, the copy of the notice sent to the company under subsection (6)(a) shall be accompanied by an instrument of transfer executed on behalf of the holder of the shares by a person appointed by the offeror and on receipt of that instrument the company shall register the offeror as the holder of those shares.

(9) If the shares to which the notice relates are transferable by the delivery of warrants or other instruments, the copy of the notice sent to the company under subsection (6)(a) shall be accompanied by a statement to that effect.

(10) On receipt of the statement under subsection (9)(8) the company shall issue the offeror with warrants or other instruments in respect of the shares, and those already in issue in receipt of the shares shall become void.

(11) The company shall hold any money or other consideration received by it under subsection (6)(b) on trust for the person who, before the offeror acquired them, was entitled to the shares in respect of which the money or other consideration was received.

Further provision
about consideration

335. (1) Where an offeror pays or transfers

held on trust under
section 332.

consideration to the company under section 334(6) the company shall pay into a separate bank account that complies with subsection (2)—

- (a) any money it receives under section 333(6)(b); and
- (b) any dividend or other sum accruing from any other consideration it receives under that paragraph.

(2) A bank account complies with this subsection if the balance on the account —

- (a) bears interest at an appropriate rate; and
- (b) can be withdrawn by such notice, if any, as is appropriate.

(3) If—

- (a) the person entitled to the consideration held on trust under section 334(10) cannot be found; and
- (b) subsection (4) applies,

the consideration, together with any interest, dividend or other benefit that has accrued from the consideration, shall be paid into court.

(4) This subsection applies where—

- (a) reasonable enquiries have been made at reasonable intervals to find the person; and
 - (b) twelve years have elapsed since the consideration was received, or the company is wound up.
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(5) If the person entitled to the consideration held on trust under section 334(10) cannot be found and subsection (4) applies—

- (a) the trust terminates;
- (b) the company, or if the company is wound up, the liquidator shall sell any consideration other than cash and any benefit other than cash that has accrued from the consideration; and
- (c) a sum representing—
 - (i) the consideration so far as it is cash;
 - (ii) the proceeds of any sale under paragraph (b); and
 - (iii) any interest, dividend or other benefit that has accrued from the consideration,

shall be deposited in the name of the Accountant of Court in a separate bank account complying with subsection (2) and the receipt for the deposit shall be transmitted to the Accountant of Court.

(7) The expenses of the enquiries under subsection (4) may be paid out of the money or other property held on trust for the person to whom the enquiry relates.

Right of minority shareholder to be bought out by offeror.

336. (1) Subsections (3) and (4) apply in a case where a takeover offer relates to all the shares in a company.

(2) For purposes of subsection (1) a takeover offer relates to all the shares in a company if it is an offer to acquire all the shares in the company within the meaning of section 327.

(3) The holder of any voting shares to which the offer relates who has not accepted the offer may require the offeror to acquire those shares if, at any time before the end of the period within which the offer can be accepted—

- (a) the offeror has by virtue of acceptances of the offer acquired or unconditionally contracted to acquire some, but not all of the shares to which the offer relates; and
- (b) those shares, with or without any other shares in the company which he has acquired or contracted to acquire whether unconditionally or subject to conditions being met—
 - (i) amount to not less than ninety percent in value of all the voting shares in the company or would do so but for section 343(1); and
 - (ii) carry not less than ninety percent of the voting rights in the company or would do so but for section 344(1).

(4) The holder of any non-voting shares to which the offer relates who has not accepted the offer may require the offeror to acquire those shares if, at any time before the end of the period within which the offer can be accepted—

- (a) the offeror has by virtue of acceptances of the offer acquired or unconditionally contracted to acquire some, but not all of the shares to which the offer relates; and
 - (b) those shares, with or without any other shares in the company which he has acquired or contracted to acquire whether unconditionally or subject to conditions
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being met, amount to not less than ninety percent in value of all the shares in the company or would do so but for section 343(1).

(5) If a takeover offer relates to shares of one or more classes and at any time before the end of the period within which the offer can be accepted—

- (a) the offeror has by virtue of acceptances of the offer acquired or unconditionally contracted to acquire some, but not all, of the shares of any class to which the offer relates; and
- (b) those shares, with or without any other shares of that class which he has acquired or contracted to acquire, whether unconditionally or subject to conditions being met—
 - (i) amount to not less than ninety percent in value of all the shares of that class; and
 - (ii) in a case where the shares of that class are voting shares, carry not less than ninety percent of the voting rights carried by the shares of that class, the holder of any shares of that class to which the offer relates who has not accepted the offer may require the offeror to acquire those shares.

(6) Subsection (7) applies where—

- (a) a shareholder exercises rights conferred on him by subsection (2), (3) or (4)(b);
 - (b) at the time when he exercises the right, there
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are shares in the company which the offeror has contracted to acquire subject to conditions being met, and in relation to which the contract has not become unconditional; and

- (c) the requirement imposed by subsection (2)(b), (3)(b) or (4)(b) as the case may be would not be satisfied if those shares were not taken into account.

(7) The shareholder is treated for the purposes of section 338 as not having exercised his rights under this section unless the requirement imposed by of subsection (2)(b), (3)(b) or (4)(b) as the case may be would be satisfied if—

- (a) the reference in that paragraph to other shares in the company which the offeror has contracted to acquire unconditionally or subject to conditions being met were a reference to such shares which he has unconditionally contracted to acquire; and
- (b) the reference in that subsection to the period within which the offer can be accepted were a reference to the period referred to in section 816(2).

(8) A reference in subsection (2)(b), (3)(b), (4)(b), (6) or (7) to shares which the offeror has acquired or contracted to acquire includes a reference to shares which an associate of his has acquired or contracted to acquire.

Further provision
about rights.
conferred by section
339.

337.(1) Rights conferred on a shareholder by subsection (2), (3) or (4) of section 336 are exercisable by a written communication addressed to the offeror.

(2) Rights conferred on a shareholder by subsection (2), (3) or (4) of section 336 are not exercisable after the end of the period of three months from—

- (a) the end of the period within which the offer can be accepted; or
- (b) if later, the date of the notice that shall be given under subsection (3).

(3) Within one month of the time specified in subsection (2), (3) or (4) of section 339 as the case may be the offeror shall give any shareholder who has not accepted the offer notice in the prescribed manner of—

- (a) the rights that are exercisable by the shareholder under that subsection; and
- (c) the period within which the rights are exercisable,

if the notice is given before the end of the period within which the offer can be accepted, it shall state that the offer is still open for acceptance.

(4) Subsection (3) does not apply if the offeror has given the shareholder a notice in respect of the shares in question under section 332.

(5) An offeror who fails to comply with subsection (3) commits an offence.

(6) If the offeror referred to in subsection (4) is a company, every officer of that company who is in default or to whose neglect the failure is attributable also commits an offence.

(7) If an offeror other than a company is charged with an offence for failing to comply with subsection (3), it is a defence for him to prove that he took all reasonable steps for securing compliance with that subsection.

(8) A person who commits an offence under this section is liable on conviction to a fine not exceeding five

hundred thousand or to imprisonment for a term not exceeding two years or to both.

Effect of requirement
under section 336.

338.(1) Subject to section 339, this section applies where a shareholder exercises his rights under section 336 in respect of any shares held by him.

(2) The offeror is entitled and bound to acquire those shares on the terms of the offer or on such other terms as may be agreed.

(3) Where the terms of an offer are such as to give the shareholder a choice of consideration—

- (a) the shareholder may indicate his choice when requiring the offeror to acquire the shares; and
- (b) the notice given to the shareholder under section 337(3)—
 - (i) shall give particulars of the choice and of the rights conferred by this subsection; and
 - (iii) may state which consideration specified in the offer will apply if he does not indicate a choice; and

(3) The reference in subsection (2) to the terms of the offer is to be read accordingly.

(4) Subsection (3) applies whether or not any time-limit or other conditions applicable to the choice under the terms of the offer can still be complied with.

(5) If the consideration offered to or ,as the case may be ,chosen by the shareholder—

- (a) is not cash and the offeror is no longer able

- to provide it; or
- (b) was to have been provided by a third party who is no longer bound or able to provide it,

the consideration is to be taken to consist of an amount of cash, payable by the offeror, which at the date when the shareholder requires the offeror to acquire the shares is equivalent to the consideration offered or, as the case may be chosen.

Applications to the court.

339. (1) Where a notice is given under section 332 to a shareholder the court may, on an application made by him, order—

- (a) that the offeror is not entitled and bound to acquire the shares to which the notice relates; or
- (b) that the terms on which the offeror is entitled and bound to acquire the shares shall be such as the court thinks fit.

(2) An application under subsection (1) shall be made within six weeks from the date on which the notice referred to in that subsection was given.

(3) If an application to the court under subsection (1) is pending at the end of the six weeks period, section 334(6) does not have effect until the application has been disposed of.

(4) Where a shareholder exercises his rights under section 336 in respect of any shares held by him, the court may, on an application made by him or the offeror, order that the terms on which the offeror is entitled and bound to acquire the shares shall be such as the court thinks fit.

(5) On an application under subsection (1) or (3)—

- (a) the court may not require consideration of a
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higher value than that specified in the terms of the offer (“the offer value”) to be given for the shares to which the application relates unless the holder of the shares shows that the offer value would be unfair;

- (b) the court may not require consideration of a lower value than the offer value to be given for the shares.

(6) No order for costs or expenses may be made against a shareholder making an application under subsection (1) or (3) unless the court considers that—

- (a) the application was unnecessary, improper or vexatious;
- (b) there has been unreasonable delay in making the application; or
- (c) there has been unreasonable conduct on the part of the shareholder in conducting the proceedings on the application.

(7) A shareholder who has made an application under subsection (1) or (3) shall give notice of the application to the offeror.

(8) An offeror who is given notice of an application under subsection (1) or (3) shall give a copy of the notice to—

- (a) any person, other than the applicant, to whom a notice has been given under section 332;
- (b) any person who has exercised his rights under section 336.

(9) An offeror who makes an application under

subsection (3) shall give notice of the application to—

- (a) any person to whom a notice has been given under section 331;
- (b) any person who has exercised his rights under section 335.

(10) Subject to subsection 11, where a takeover offer has not been accepted to the extent necessary for entitling the offeror to give notices under subsection (2) or (4) of section 332 the court may, on an application made by him, make an order authorising him to give notices under that subsection if it is satisfied that—

- (a) the offeror has after reasonable enquiry been unable to trace one or more of the persons holding shares to which the offer relates;
- (b) the requirements of that subsection would have been met if the person, or all the persons, mentioned in paragraph (a) had accepted the offer; and
- (c) the consideration offered is fair and reasonable.

(11) The court may not make an order under subsection (10) unless it considers that it is just and equitable to do so having regard, in particular, to the number of shareholders who have been traced but who have not accepted the offer.

Joint offers.

340. (1) Where a takeover offer is made by two or more persons jointly the conditions for the exercise of the rights conferred by section 332 are satisfied—

- (a) in the case of acquisitions, by virtue of acceptances of the offer, by the joint
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offerors acquiring or unconditionally contracting to acquire the necessary shares jointly;

- (b) in other cases, by the joint offerors acquiring or unconditionally contracting to acquire the necessary shares either jointly or separately.

(2) The conditions for the exercise of the rights conferred by section 336 are satisfied—

- (a) in the case of acquisitions by virtue of acceptances of the offer, by the joint offerors acquiring or unconditionally contracting to acquire the necessary shares jointly;
- (b) in other cases, by the joint offerors acquiring or contracting ,whether unconditionally or subject to conditions being met, to acquire the necessary shares either jointly or separately.

(3) Subject to the following provisions, the rights and obligations of the offeror under sections 332 to 338 are respectively joint rights and joint and several obligations of the joint offerors.

(4) A provision of sections 332 to 339 that requires or authorises a notice or other document to be given or sent by or to the joint offerors is complied with if the notice or document is given or sent by or to any of them.

(5) The statutory declaration required by section 33(4) shall be made by all of the joint offerors and, where one or more of them is a company, signed by a director of that company.

(6) In sections 327 to 330(9), 332(6), 334(8) and 341, references to the offeror are to be read as references to the joint offerors or any of them.

(7) In section 334(7) and (8), references to the offeror are to be read as references to the joint offerors or such of them as they may determine.

(8) In sections 334(5)(a) and 338(5)(a), references to the offeror being no longer able to provide the relevant consideration are to be read as references to none of the joint offerors being able to do so.

(9) In section 339, references to the offeror are to be read as references to the joint offerors, except that—

- (a) an application under subsection (3) or (9) (10) may be made by any of them; and
- (b) the reference in subsection (10)(a) to the offeror having been unable to trace one or more of the persons holding shares is to be read as a reference to none of the offerors having been able to do so.

Associates.

341. (1) In this section “associate”, in relation to an offeror, means—

- (a) a nominee of the offeror;
 - (b) a holding company, subsidiary or fellow subsidiary of the offeror or a nominee of such a holding company, subsidiary or fellow subsidiary;
 - (c) a body corporate in which the offeror is substantially interested;
 - (d) a person who is, or is a nominee of, a party to a share acquisition agreement with the offeror; or
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- (e) where the offeror is an individual his spouse and any minor child or step-child of his.

(2) For the purposes of subsection (1)(b), a company is a fellow subsidiary of another body corporate if both are subsidiaries of the same body corporate but neither is a subsidiary of the other.

(3) For the purposes of subsection (1)(c), an offeror has a substantial interest in a body corporate if—

- (a) the body or its directors are accustomed to act in accordance with his directions or instructions; or
- (b) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of the body.

(4) For the purposes of subsection (1)(d), an agreement is a share acquisition agreement if—

- (a) it is an agreement for the acquisition of, or of an interest in, shares to which the offer relates;
- (b) it includes provisions imposing obligations or restrictions on any one or more of the parties to it with respect to their use, retention or disposal of such shares, or their interests in such shares, acquired in pursuance of the agreement whether or not together with any other shares to which the offer relates or any other interests of theirs in such shares; and
- (c) it is not an excluded agreement.

(5) An agreement is an “excluded agreement”—

- (a) if it is not legally binding, unless it involves mutuality in the undertakings, expectations or understandings of the parties to it; or
- (b) if it is an agreement to underwrite or sub-underwrite an offer of shares in a company, provided the agreement is confined to that purpose and any matters incidental to it.

(6) The reference in subsection (4)(b) to the use of interests in shares is to the exercise of any rights or of any control or influence arising from those interests including the right to enter into an agreement for the exercise, or for control of the exercise, of any of those rights by another person.

(7) In this section—

- (a) “agreement” includes any agreement or arrangement;
- (b) references to provisions of an agreement include—
 - (i) undertakings, expectations or understandings operative under an arrangement; and
 - (ii) any provision whether express or implied and whether absolute or not.

Convertible securities.

342. (1) For the purposes of this Part, securities of a company are treated as shares in the company if they are convertible into or entitle the holder to subscribe for such shares and references to the holder of shares or a shareholder are to be read accordingly.

(2) Subsection (1) does not require any securities to

be treated—

- (a) as shares of the same class as those into which they are convertible or for which the holder is entitled to subscribe; or
- (b) as shares of the same class as other securities by reason only that the shares into which they are convertible or for which the holder is entitled to subscribe are of the same class.

Debentures carrying voting rights.

343.(1) For the purposes of this Part, Act, debentures issued by a company to which subsection (2) applies are treated as shares in the company if they carry voting rights.

(2) This subsection applies to a company that has voting shares, or debentures carrying voting rights, which are admitted to trading on a regulated market.

(3) In this Part, relation to debentures treated as shares by virtue of subsection (1)—

- (a) references to the holder of shares or a shareholder are to be read accordingly;
- (b) references to shares being allotted are to be read as references to debentures being issued.

Interpretation.

344. (1) In this Part—

“the company” means the company whose shares are the subject of a takeover offer;

“date of the offer” means—

- (a) where the offer is published, the date of publication;
- (b) where the offer is not published, or where any notices of the offer are given before the date of publication, the date when notices of the offer, or the first such notices are given;

“non-voting shares” means shares that are not voting shares;

“offeror” means (subject to section 343) the person making a takeover offer;

“voting rights” means rights to vote at general meetings of the company, including rights that arise only in certain circumstances;

“voting shares” means shares carrying voting rights.

(2) A person contracts unconditionally to acquire shares if his entitlement under the contract to acquire them is not or is no longer subject to conditions or if all conditions to which it was subject have been met and a reference to a contract becoming unconditional is to be read accordingly.

PART XIX - FINANCIAL STATEMENTS

Application of Part.

345. (1) The requirements of this Part as to financial statements apply in relation to each financial year of a company.

(2) In certain respects different provisions apply to different kinds of company.

(3) The main distinction for this purpose are—

- (a) between companies subject to the small companies regime and companies that are not subject to that regime;
- (b) between quoted companies and companies that are not quoted.

Companies subject to the small companies regime.

346. The small companies regime for financial statements applies to a company for a financial year in relation to which the company—

- (a) qualifies as small; and
- (b) is not excluded from the regime.

Companies qualifying as small: general.

347. (1) A company qualifies as small in relation to its first financial year if the qualifying conditions are met in that year.

(2) A company qualifies as small in relation to a subsequent financial year if the qualifying conditions—

- (a) are met in that year and the preceding financial year;
- (b) are met in that year and the company qualified as small in relation to the preceding financial year; and
- (c) were met in the preceding financial year and the company qualified as small in relation to that year.

(3) The qualifying conditions are met by a company in a year in which it satisfies two or more of the following

requirements—

- (a) turnover of not more than thirty million shillings;
- (b) a statement of financial position of a total of not more than fifteen million shillings; and
- (c) has not more than fifty employees.

(4) For a period that is a of a company's financial year but not in fact a year, the maximum figures for turnover shall be proportionately adjusted.

(5) In this section—

- (a) the statement of financial position total means the aggregate of the amounts shown as assets in the company's statement of financial position;
 - (b) the number of employees means the average number of persons employed by the company in the year, determined as follows—
 - (i) find for each month in the financial year the number of persons employed under contracts of service by the company in that month, whether throughout the month or not;
 - (ii) add together the monthly totals; and
 - (iii) divide by the number of months in the financial year.
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Companies qualifying
as small: parent
companies.

348.(1) A parent company qualifies as a small company in relation to a financial year only if the group of companies headed by it qualifies as a small group.

(2) A group qualifies as a small group in relation to the parent company's first financial year if the qualifying conditions are met in that year.

(3) A group qualifies as a small group in relation to a subsequent financial year of the parent company—

- (a) if the qualifying conditions are met in that year and the preceding financial year;
- (b) if the qualifying conditions are met in that year and the group qualified as small in relation to the preceding financial year;
- (c) if the qualifying conditions were met in the preceding financial year and the group qualified as a small group in relation to that year.

(4) The qualifying conditions are met by a group in a year in which it satisfies two or more of the following requirements—

- (a) an aggregate turnover of not more than seven hundred and fifty million shillings net or nine hundred million shillings gross;
 - (b) an aggregate statement of the financial position totalling not more than three hundred and seventy five million shillings net or four hundred and fifty million shillings gross; and
 - (c) an aggregate number of not more than fifty employees.
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(5) The aggregate figures in subsection (4) are ascertained by aggregating the relevant figures determined in accordance with section 335 for each member of the group.

(6) In relation to the aggregate figures in subsection (4) for turnover and statement of financial position total—

- (a) “net” means after any set-offs and other adjustments made to eliminate group transactions in accordance with International Financial Reporting Standards;
- (b) “gross” means without those set-offs and other adjustments.

(7) A company may satisfy any relevant requirements on the basis of either the net or the gross figure.

(8) The figures for each subsidiary undertaking shall be those included in its individual financial statements for the relevant financial year, that is—

- (a) if its financial year ends with that of the parent company, that financial year; and
- (b) if not, its financial year ending last before the end of the financial year of the parent company.

(9) If the figures referred to in subsection 8 cannot be obtained without disproportionate expense or undue delay, the latest available figures shall be taken.

Companies excluded
from the small
companies regime.

349. (1) The small companies regime does not apply to a company that is, or was at any time within the financial year to which the financial statements relate—

- (a) a public company;
- (b) a member of an ineligible group.

(2) A group is ineligible if any of its members is—

- (a) a public company;
- (b) a body corporate ,other than a company, whose shares are admitted to trading on a stock exchange or other regulated market in Kenya;; or
- (c) a person who carries on insurance market activity.

(3) A company is a small company for the purposes of subsection (2) if it qualified as smallshall in relation to its last financial year ending on or before the end of the financial year to which the accounts relate.

Quoted and unquoted companies.

350. For the purposes of this Part, a company is a quoted company in relation to a financial year if it is a quoted company immediately before the end of the accounting reference period by reference to which that financial year was determined.

Duty to keep accounting records.

351.(1) Every company shall keep adequate accounting records.

(2) For purposes of subsection (1) adequate accounting records means records that are sufficient—

- (a) to show and explain the transactions of the company;
- (b) to disclose with reasonable accuracy, up to the previous three month trading period, the financial position of the company at that time; and

- (c) to enable the directors to ensure that any financial statements required to be prepared comply with the requirements of this Act.

(3) 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 takes 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 stock held by the company at the end of each financial year of the company;
- (b) all statements of stock takings from which any statement of stock as is mentioned in paragraph (a) has been or is to be prepared; and
- (c) except in the case of goods sold by way of ordinary retail trade, statements of all goods sold and purchased, showing the goods and the buyers and sellers in sufficient detail to enable all these to be identified.

Duty to keep
accounting records:
offence.

352. Every officer of a company which fails to comply with any provision of section 351 commits an offence and is liable on conviction to a fine not exceeding five hundred thousand or to imprisonment for a term not exceeding one year or to both.

Where and for how long records to be kept.

353. (1) Accounting records of a company shall—

- (a) be kept at its registered office or such other place in Kenya as the directors think fit; and
- (b) at all times be open to inspection by the officers of the company.

(2) The accounting records that a company is required to keep under section 351 shall be preserved by it—

- (a) for seven years from the date on which they are made;
- (b) in the case of a company that is party to a lawsuit, until the lawsuit is concluded.

Where and for how long records to be kept offence.

354. (1) Every officer of a company which fails to comply with section 353 commits an offence and is liable, on conviction to a fine not exceeding five hundred thousand or to imprisonment for a term not exceeding two years or to both.

A company's financial year.

355. (1) A financial year of a company is determined as follows—

- (a) its first financial year—
 - (i) begins with the first day of its first accounting reference period; and
 - (ii) ends with the last day of that period or such other date, not more than seven days before or after the end of that period, as the directors may determine;

(b) Subsequent financial years—

- (i) begin with the day immediately following the end of the previous financial year of the company; and
- (ii) end with the last day of its next accounting reference period or such other date, not more than seven days before or after the end of that period, as the directors may determine.

(4) The directors of a parent company shall ensure that, except where in their opinion there are good reasons against it, the financial year of each of its subsidiary undertakings coincides with the financial year of the parent company.

Accounting reference periods and accounting reference date.

356 (1) The accounting reference periods of a company are determined according to its accounting reference date in each calendar year.

(2) The accounting reference date of a company is the last day of the month in which the anniversary of its incorporation falls.

(3) The first accounting reference period of a company is the period beginning with the date of its incorporation and ending with its accounting reference date.

(4) The subsequent accounting reference periods of a company are successive periods of twelve months beginning immediately after the end of the previous accounting reference period and ending with its accounting reference date.

Change of accounting reference date.

357.(1) A company may, by notice given to the Registrar, change its accounting reference date having effect in relation to—

- (a) the current accounting reference period of the company and subsequent periods; or
- (b) the previous accounting reference period of the company and subsequent periods.

(2) A “previous accounting reference period” of a company means the one immediately preceding its current accounting reference period.

(3) The notice under subsection (1) shall state whether the current or previous accounting reference period—

- (a) is to be shortened, so as to come to an end on the first occasion on which the new accounting reference date falls or fell after the beginning of the period; or
- (b) is to be extended, so as to come to an end on the second occasion on which that date falls or fell after the beginning of the period.

(4) A notice extending a company’s current or previous accounting reference period is not effective if given less than five years after the end of an earlier accounting reference period of the company that was extended under this section.

(5) Subsection (4) does not apply where the Minister directs that it should not apply, which he may do with respect to a notice that has been given or that may be given.

(6) A notice under this section shall not be given in respect of a previous accounting reference period if the period for filing financial statements for the financial year determined by reference to that accounting reference period has already expired.

(7) An accounting reference period shall not be

extended so as to exceed eighteen months and a notice under this section is ineffective if the current or previous accounting reference period as extended in accordance with the notice would exceed that limit.

Financial statements to give true and fair view.

358. (1) The directors of a company shall ensure that the company prepares financial statements that materially represents a true and fair view of the assets, liabilities, financial position and profit or loss—

- (a) in the case of the individual financial statements, of the company;
- (b) in the case of the company's group financial statements of the company, of the undertakings included in the consolidation as a whole, so far as concerns members of the company.

(2) The auditor of a company in carrying out his functions under this Act in relation to the company's annual financial statements shall have regard to the duty of the directors under subsection (1).

Duty to prepare individual financial statements.

359. The directors of every company shall prepare individual financial statements for the company for each of its financial years.

Individual financial statements: applicable accounting framework.

360. The individual financial statements of a company shall be prepared in accordance with International Financial Reporting Standards.

Option to prepare group financial statements.

361. If at the end of a financial year a small company is a parent company the directors may, in addition to preparing individual financial statements for the year, prepare group financial statements for the year.

Duty to prepare group financial statements.

362. If at the end of a financial year the company is a parent company the directors shall, in addition to preparing individual financial statements for the year, prepare group financial statements for the year unless the

company is exempt from that requirement.

Information about
related undertakings.

363. The Minister may require information about related undertakings to be submitted together with the annual financial statements of a company.

Information about
related undertakings:
alternative
compliance.

364. (1) Where the directors of a company are of the opinion that the number of undertakings in respect of which the company is required to disclose information is such that compliance with that provision would result in information of excessive length being given in notes to the company's annual financial statements, the directors may only give information in respect of—

- (a) the undertakings whose results or financial position, in the opinion of the directors, principally affected the figures shown in the annual financial statements of the company; and
- (b) where the company prepares group financial statements, undertakings excluded from consolidation.

(2) The information need only be given in respect of—

- (a) the undertakings whose results or financial position, in the opinion of the directors, principally affected the figures shown in the company's annual accounts; and
- (b) where the company prepares group accounts, undertakings excluded from consolidation under section 402(3).

(3) The information under subsection (2)—

- (a) shall be included in the notes to the annual
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financial statements of a company together with a statement that the information is given only with respect to such undertakings as are mentioned in that subsection; and

- (b) shall be the full information, both that which is disclosed in the notes to the financial statements and that which is not, and shall be annexed to the next annual return of the company.

(3) For the purposes of subsection (2) the “next annual return” means that next delivered to the Registrar after the financial statements in question have been approved under section 368.

(4) If a company fails to comply with subsection (2)(b), the company and every officer of the company who is in default shall be liable to a default fine

(5) Every officer of a company which does not comply with subsection (3)(b), commits an offence and is liable on conviction to a fine not exceeding one thousand shilling or to imprisonment for a term not exceeding six months or to both.

Information about
employee numbers
and costs.

365.(1) In the case of a company not subject to the small companies, the following information with respect to the employees of the company shall be given in notes to the company’s annual financial statements—

- (a) the average number of persons employed by the company in the financial year; and
- (b) the average number of persons so employed within each category of persons employed by the company.

(2) The categories by reference to which the number required to be disclosed under subsection (1)(b) is to be determined shall be such as the directors may select

having regard to the manner in which the activities of the company are organised.

(3) The average number required under subsection (1)(a) or (b) is determined by dividing the relevant annual number by the number of months in the financial year.

(4) The relevant annual number referred to in subsection (3) is determined by ascertaining for each month in the financial year—

- (a) for the purposes of subsection (1)(a), the number of persons employed under contracts of service by the company in that month whether throughout the month or not;
- (b) for the purposes of subsection (1)(b), the number of persons in the category in question of persons so employed and adding together all the monthly numbers.

(5) In respect of all persons employed by the company during the financial year who are taken into account in determining the relevant annual number for the purposes of subsection (1)(a), there shall also be stated the aggregate amounts respectively of—

- (a) wages and salaries paid or payable in respect of that year to those persons;
- (b) social security costs incurred by the company on their behalf;
- (c) other pension costs so incurred; and
- (d) any other remuneration for services.

(6) Subsection (5) does not apply in so far as those amounts, or any of them, are stated elsewhere in the financial statements of the company.

(7) In subsection (5) —

- (a) “pension costs” includes any costs incurred by the company in respect of—
 - (i) any pension scheme established for the purpose of providing pensions for persons currently or formerly employed by the company;
 - (ii) any sums set aside for the future payment of pensions directly by the company to current or former employees;
 - (iii) any pensions paid directly to such persons without having first been set aside; and
- (b) “social security costs” means any contributions by the company to any state social security or pension scheme, fund or arrangement.

(8) Where the company prepares group financial statements, this section applies as if the undertakings included in the consolidation were a single company.

Information about
directors’ benefits:
remuneration.

366.(1) The Minister may by regulations require information to be given in notes to the annual financial statements of a company about the remuneration of directors.

(2) The matters about which information may be required include—

- (a) gains made by directors on the exercise of share options;

- (b) benefits received or receivable by directors under long-term incentive schemes;
- (c) benefits receivable, and contributions for the purpose of providing benefits, in respect of past services of a person as director or in any other capacity while director; and
- (d) consideration paid to or receivable by third parties for making available the services of a person as director or in any other capacity while director.

(3) For the purposes of this section, amounts paid to or receivable by—

- (a) a person connected with a director; or
- (b) a body corporate controlled by a director,
are treated as paid to
or receivable by the director.

(4) In subsection (3) the expressions “connected with” and “controlled by” have the same meaning as in Part 10.

(5) It is the duty of—

- (a) any director of a company; and
- (d) any person who is or has at any time in the preceding five years been a director of the company,

to give notice to the company of such matters relating to himself as may be necessary for the purposes of regulations under this section.

advances, credit and
guarantees.

prepare group financial statements, details of—

- (a) advances and credits granted by the company to its directors; and
- (b) guarantees of any kind entered into by the company on behalf of its directors,

shall be shown in the notes to its individual financial statements.

(2) In the case of a parent company that prepares group financial statements, details of—

- (a) advances and credits granted to the directors of the parent company, by that company or by any of its subsidiary undertakings; and
- (b) guarantees of any kind entered into on behalf of the directors of the parent company, by that company or by any of its subsidiary undertakings, shall be shown in the notes to the group financial statements.

(3) The details required of an advance or credit required under subsection (2) are—

- (a) its amount;
- (b) an indication of the interest rate;
- (c) its main conditions; and
- (d) any amounts repaid.

(4) The details required of a guarantee under subsection (2) are—

- (a) its main terms;

- (b) the amount of the maximum liability that may be incurred by the company or its subsidiary; and
- (c) any amount paid and any liability incurred by the company, or its subsidiary for the purpose of fulfilling the guarantee, including any loss incurred by reason of enforcement of the guarantee.

(5) There must be stated in the notes to the financial statements required under subsection (1) shall state the total of the amounts stated under subsection (3) (a) and (d), and subsection (4)(b) and (c).

(6) References in this section to the directors of a company are to the persons who were directors at any time in the financial year to which the financial statements relate.

(7) The requirements of this section apply in relation to every advance, credit or guarantee subsisting at any time in the financial year to which the financial statements relate—

- (a) whenever it was entered into;
- (b) whether or not the person concerned was a director of the company in question at the time it was entered into; and
- (c) in the case of an advance, credit or guarantee involving a subsidiary undertaking of that company, whether or not that undertaking was such a subsidiary undertaking at the time it was entered into.

(8) Banking companies and the holding companies of credit institutions need only state the details required by

subsections (3)(a) and (4)(b).

Approval and signing
of financial
statements.

368.(1) The annual financial statements of a company shall be approved by the board of directors and signed on behalf of the board by a director of the company.

(2) The signature of the director shall be on the statement of financial position of the company.

(3) If the financial statements required under this Part are prepared in accordance with the provisions applicable to small companies, the statement of financial position shall contain a statement to that effect.

(4) If annual financial statements are approved that do not comply with the requirements of this Act, every director of the company who—

- (a) knew that they did not comply, or was reckless as to whether they complied; and
- (b) failed to take reasonable steps to secure compliance with those requirements or, as the case may be, to prevent the financial statements from being approved,

commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term of two years or to both.

Duty to prepare
directors' report.

369. (1) The directors of a company shall prepare a directors report for each financial year of the company.

(2) For a financial year in which—

- (a) the company is a parent company; and
- (b) the directors of the company prepare group financial statements,

the directors' report shall be a consolidated report

or a “group directors’ report” relating to the undertakings included in the consolidation.

(3) A group directors’ report may, where appropriate, give greater emphasis to the matters that are significant to the undertakings included in the consolidation, taken as a whole.

Contents of directors’
report: general.

370. (1) The directors’ report for a financial year shall state—

- (a) the names of the persons who, at any time during the financial year, were directors of the company; and
- (b) the principal activities of the company in the course of the year.

(2) In relation to a group directors’ report, subsection (1)(b) has effect as if the reference to the company was to the undertakings included in the consolidation.

(3) Except in the case of a small company, the report shall state the amount, if any, that the directors recommend should be paid as dividend.

(4) The Minister may by regulations specify other matters that shall be disclosed in a directors’ report.

Contents of directors’
report: business
review.

371.(1) Unless the company is subject to the small companies regime, the directors’ report shall contain a business review.

(2) The purpose of the business review is to inform members of the company and assist them to assess how the directors have performed their duty under section 104.

(3) The business review under subsection (1) shall contain—

- (a) a fair review under subsection (1) of the company's business; and
- (b) a description of the principal risks and uncertainties facing the company.

(4) The review required is a balanced and comprehensive analysis of—

- (a) the development and performance of the business of the company during the financial year; and
- (b) the position of the business of the company at the end of that year, consistent with the size and complexity of the business.

(5) In the case of a quoted company, the business review shall, to the extent necessary for an understanding of the development, performance or position of the business of the company, include—

- (a) the main trends and factors likely to affect the future development, performance and position of the business of the company; and
 - (b) information on—
 - (i) environmental matters, including the impact of the business of the company on the environment;
 - (ii) the employees of the company; and
 - (iii) social and community issues, including information on any policies of the company in relation
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to those matters and the effectiveness of those policies.

(6) If the review does not contain information specified in paragraph (b)(i), (ii) and (iii), it shall state the information it does not contain.

(7) The review shall to the extent necessary for an understanding of the development, performance or position of the company's business, include—

- (a) analysis using financial key performance indicators; and
- (b) where appropriate, analysis using other key performance indicators, including information relating to environmental matters and employee matters.

(8) The review shall, where appropriate, include references to, and additional explanations of, amounts included in the company's annual financial statements.

(9) In relation to a group directors' report this section has effect as if the references to the company were references to the undertakings included in the consolidation.

(10) Nothing in this section requires the disclosure of information about impending developments or matters in the course of negotiation if the disclosure would, in the opinion of the directors, be seriously prejudicial to the interests of the company.

Contents of directors' report: statement as to disclosure to auditors.

372. (1) This section applies to a company unless—

- (a) the company is exempt for the financial year in question from the requirements of Part XXI with regard to audit of financial

statements; and

- (b) the directors take advantage of that exemption.

(2) The directors' report shall contain a statement that each of the directors at the time the report was prepared approved the report and that—

- (a) so far as the director is aware, there is no relevant audit information of which the company's auditor is unaware; and
- (b) each of the directors has taken all the steps that he ought to have taken as a director in order to make himself aware of any relevant audit information and to establish that the company's auditor is aware of that information.

(3) In subsection (2), "relevant audit information" means information needed by the company's auditor in connection with preparing his report.

(4) A director is regarded as having taken all the steps that he ought to have taken as a director in order to do the things specified in subsection (2)(b) if he has—

- (a) made such enquiries of his fellow directors and of the company's auditors for that purpose; and
- (b) taken such other steps, if any, for that purpose, as are required by his duty as a director of the company to exercise reasonable care, skill and diligence.

Approval and
signing of directors'
report.

373. (1) 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.

(2) If the directors' report is prepared in accordance with the small companies regime, it shall contain a statement to that effect.

(3) If a directors' report is approved that does not comply with the requirements of this Act, every director of the company who—

- (a) knew that it did not comply, or was reckless as to whether it complied; and
- (b) failed to take reasonable steps to secure compliance with those requirements or, as the case may be, to prevent the report from being approved,

commits an offence.

Duty to prepare
directors'
remuneration report.

374. (1) The directors of a quoted company shall prepare a directors' remuneration report for each financial year of the company.

(2) Every person who—

- (a) did not comply with the requirement to prepare directors' remuneration report;
- (b) was a director of the company immediately before the end of the period for filing financial statements for the financial year in question; and
- (c) failed to take all reasonable steps for securing compliance with that requirement,

commits an offence.

Contents of directors'
remuneration report.

375.(1) The Minister may by regulations specify—

- (a) the information that shall be contained in a directors' remuneration report;
- (b) how information is to be set out in the report; and
- (c) what is to be the auditable part of the report.

(2) It is the duty of—

- (a) any director of a company; and
- (b) any person who is or has at any time in the preceding five years been a director of the company,

to give notice to the company of such matters relating to himself as may be necessary for the purposes of this section.

Approval and signing
of directors'
remuneration report.

376.(1) The directors' remuneration 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.

(2) If a directors' remuneration report is approved that does not comply with the requirements of this Act, every director of the company who—

- (a) knew that it did not comply, or was reckless as to whether it complied; and
- (b) failed to take reasonable steps to secure compliance with those requirements or, as the case may be, to prevent the report from being approved,

commits an offence.

Duty to circulate
copies of annual
financial statements
and reports.

377. (1) Every company shall send a copy of its annual financial statements for each financial year to—

- (a) every member of the company;
- (b) every holder of the company's debentures;
and
- (c) every person who is entitled to receive notice of general meetings.

(2) Copies of the annual financial statements need not be sent to a person for whom the company does not have a current address.

(3) A company has the current address for a person if—

- (a) an address has been notified to the company by the person as one at which documents may be sent to him; and
- (b) the company has no reason to believe that documents sent to him at that address will not reach him.

(4) In the case of a company not having a share capital, copies need not be sent to anyone who is not entitled to receive notices of general meetings of the company.

(5) This section has effect subject to section 375.

Time allowed for
sending out copies of
financial statements
and reports.

378. (1) A private company shall comply with section 377 not later than—

- (a) the end of the period for filing financial statements and reports; or
 - (b) if earlier, the date on which it actually delivers its financial statements to the
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Registrar.

(3) A public company shall comply with section 380 at least twenty one days before the date of the relevant financial statements meeting.

(4) If in the case of a public company copies of the annual financial statement are sent later than is required by subsection (3), the copies shall be deemed to have been duly sent if all the members entitled to attend and vote at the relevant financial statements meeting agree.

(5) Whether the time allowed is that for a private company or a public company is determined by reference to the company's status immediately before the end of the accounting reference period by reference to which the financial year for the financial statements in question was determined.

(6) In this section the "relevant financial statements meeting" means the financial statements meeting of the company at which the financial statements in question are to be laid.

Default in sending out copies of financial statements and reports.

379.(1) A company and every officer of the company who does not send out copies of the financial statement as required by sections 377 and 378 commits an offence.

(2) A person who commits an offence under subsection (1) is liable, on conviction to a fine not exceeding one million shillings or to two years imprisonment or to both.

Option to provide summary financial statement.

380. (1) A company may—

- (a) in such cases as may be specified by the Minister; and
- (b) provided any conditions so specified are complied with,

provide a summary financial statement instead of copies of the financial statements required to be sent out under section 377.

(2) Copies of the reports and financial statements referred to in subsection (1), shall be sent to any person entitled to be sent them in accordance with that section and who wishes to receive them.

(3) The Minister may by regulations specify the manner in which it is to be ascertained, whether before or after a person becomes entitled to be sent a copy of those financial statements and reports, whether he wishes to receive them.

(4) A summary financial statement shall comply with the requirements of section 381 or section 382.

Form and contents of summary financial statement: unquoted companies.

381. (1) A summary financial statement by a company that is not a quoted company shall—

- (a) be derived from the company's annual financial statements; and
- (b) be prepared in accordance with this section.

(2) The summary financial statement shall be in such form, and contain such information, as the Minister may by regulations.

(3) Nothing in this section prevents a company from including in a summary financial statement additional information derived from the company's annual financial statements or the directors' report.

(4) The summary financial statement shall—

- (a) state that it is only a summary of information derived from the company's annual financial statements;

- (b) state whether it contains additional information derived from the directors' report and, if so, that it does not contain the full text of that report;
- (c) state how a person entitled to annual financial statements can obtain a full copy of the company's annual financial statements and the directors' report;
- (d) contain a statement by the company's auditor of his opinion whether the summary financial statement—
 - (i) is consistent with the company's annual financial statements and, where information derived from the directors' report is included in the statement, with that report; and
 - (ii) complies with the requirements of this section;
- (e) state whether the auditor's report on the annual financial statements was unqualified or qualified and, if it was qualified, set out the report in full together with any further material needed to understand the qualification.

(5) The Minister may require that any specified material may, instead of being included in the summary financial statement, be sent separately at the same time as the statement.

Form and contents of summary financial statement: quoted companies.

382. (1) A summary financial statement by a quoted company shall—

- (a) be derived from the company's annual financial statements and the directors'

remuneration report; and

- (b) be prepared in accordance with this section.

(2) The summary financial statement referred to in subsection (1) shall be in such form, and contain such information, as the Minister may by regulations specify.

(3) Nothing in this section prevents a company from including in a summary financial statement additional information derived from the company's annual financial statements, the directors' remuneration report or the directors' report.

- (4) The summary financial statement shall—

- (a) state that it is only a summary of information derived from the company's annual financial statements and the directors' remuneration report;
- (b) state whether it contains additional information derived from the directors' report and, if so, that it does not contain the full text of that report;
- (c) state how a person entitled to the company's annual financial statement, the directors' remuneration report or the directors' report can obtain a copy of the statement and reports.
- (d) contain a statement by the company's auditor of his opinion whether the summary financial statement—
 - (i) is consistent with the company's annual financial statements and the directors' remuneration report and, where information derived from the directors' report is included in the

statement, with that report; and

- (ii) complies with the requirements of this section;
- (e) state whether the auditor's report on the annual financial statements and the auditable part of the directors' remuneration report was unqualified or qualified and, if it was qualified, set out the report in full together with any further material needed to understand the qualification.

(5) The Minister may by regulations require that any specified material may, instead of being included in the summary financial statement, be sent separately at the same time as the statement.

Summary financial
statements: offences.

383. (1) A company and every officer of a company who does not comply with section 380, 381 or 382, commits an offence.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

Quoted companies:
annual financial
statements to be made
available on website.

384. (1) A quoted company shall ensure that its annual financial statements and reports—

- (a) are made available on a website; and
- (b) remain available on the website until the annual financial statements for the next financial year of the company are made available in accordance with this section.

(2) Section 386389 shall apply to this section.

(3) Every officer of the company who contravenes

subsection (1) of section 385 as it applies for purposes of this section commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

Quoted companies:
preliminary statement
of results to be made
available on website.

385. (1) Where a quoted company prepares a preliminary statement of its annual results in accordance with the requirements of listing rules or comparable requirements of the market on which the company's equity share capital is admitted to trading, the company shall ensure that the statement—

- (a) is made available on a website; and
- (b) remains so available until the annual financial statements for the financial year are made available in accordance with section 384.

(2) Section 386 applies to this section.

(3) A preliminary statement of the annual results of the company means information published before publication of the company's annual financial statements that is or purports to be—

- (a) a statement of financial position as at the end of the financial year; or
- (b) a statement of income and expenses for the financial year, whether on an individual or a consolidated basis.

(4) Every officer of the company who contravenes this section commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

Requirements as to
website availability.

386.(1) Where a quoted company is required to make its annual financial statements and reports and its preliminary statement of results available on website, it shall make the information available on a website that—

- (a) is maintained by or on behalf of the company; and
- (b) identifies the company in question.

(2) The quoted company shall ensure that access to the information on the website, and the ability to obtain a hard copy of the information from the website, is free.

(3) The information referred to in sub-section (2) shall be—

- (a) made available as soon as reasonably practicable; and
- (b) kept available throughout the period specified in the section 384.

(4) A failure to make information available on a website throughout the period referred to in subsection (3)(b) is disregarded if—

- (a) the information is made available on the website for part of that period; and
- (b) the failure is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.

Right of member or
debenture holder to
copies of financial
statements and
reports; unquoted
companies.

387. (1) A member of, or holder of debentures of an unquoted company is entitled to be provided, on demand and without charge, with a copy of—

- (a) the last annual financial statements of the company;

- (b) the last directors' report; and
- (c) the auditor's report on those financial statements including the statement on that report.

(2) The member or holder of debentures is entitled to a single copy of those documents, in addition to any copy to which a person may be entitled to under section 380.

Right of member or debenture holder to copies of financial statements and reports: quoted companies.

388. (1) A member of, or holder of debentures of, a quoted company is entitled to be provided, on demand and without charge, with a copy of—

- (a) the company's last annual financial statements;
- (b) the last directors' remuneration report;
- (c) the last directors' report; and
- (d) the auditor's report on those financial statements, including the report on the directors' remuneration report and on the directors' report.

(2) The member or holder of debentures is entitled to a single copy of those documents, in addition to any copy to which a person may be entitled under section 380.

Name of signatory to be stated in published copies of financial statements and reports.

389.(1) Every copy of a document to which this section applies that is published by or on behalf of the company shall state the name of the person who signed it on behalf of the board.

(2) In the case of an unquoted company, this section applies to copies of—

- (a) the company's statement of financial position; and
- (b) the directors' report.

(3) In the case of a quoted company, this section applies to copies of—

- (a) the company's statement of financial position;
- (b) the directors' remuneration report; and
- (c) the directors' report.

Requirements in connection with publication of statutory financial statements.

390.(1) If a company publishes any of its statutory financial statements, the financial statement shall be accompanied by the auditor's report on those financial statements, unless the company is exempt from audit and the directors have taken advantage of that exemption.

(2) A company that prepares statutory group financial statements for a financial year shall not publish its statutory individual financial statements for that year without also publishing its statutory group financial statements.

(3) A company's statutory financial statements are its financial statements for a financial year as required to be delivered to the Registrar under section 398.

(4) A company and every officer of a company who contravenescontravened this section commits an offence.

(5) A person who commits an offence under subsection (4)(1) is liable on conviction to a fine not exceeding one hundred thousand shilling or to imprisonment for a term not exceeding six months or to both.

(6)5 This section does not apply in relation to the provision by a company of a financial statement under section 380.

Requirements in connection with publication of non-statutory financial statements.

391. (1) If a company publishes non-statutory financial statements, the company shall publish them with a statement indicating—

- (a) that they are not the company's statutory financial statements;
- (b) whether statutory financial statements dealing with any financial year with which the non-statutory financial statements purport to deal have been delivered to the Registrar.

Public companies: laying of financial statements before general meeting.

392. (1) The directors of a public company shall lay before the company in a general meeting copies of its annual financial statements and reports.

(2) Subsection (1) shall be complied with not later than the end of the period for filing the financial statements in question.

(3) In this Act, “financial statements meeting”, in relation to a public company, means a general meeting of the company at which the company's annual financial statements are (or are to be) laid in accordance with this section.

Public companies: offence of failure to lay financial statements and reports.

393.(1) If the requirements of section 392 are not complied with before the end of the specified period, every person who immediately before the end of that period was a director of the company commits an offence.

(2) It is a defence for a person charged with an offence under subsection (1) to prove that he took all reasonable steps to ensure that those requirements would be complied with before the end of that period.

(3) It is not a defence to prove that the documents in question were not in fact prepared as required by this Part.

(4) A person who commits an offence under this section is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

Quoted companies:
members' approval of
directors'
remuneration report.

394. (1) A quoted company shall, prior to the financial statements meeting, give to the members of the company entitled to be sent notice of the meeting notice of the intention to move at the meeting, as an ordinary resolution, a resolution approving the directors' remuneration report for the financial year.

(2) The existing directors shall ensure that the resolution is put to the vote of the meeting.

(3) No entitlement of a person to remuneration is made conditional on the resolution being passed by reason only of the provision made by this section.

(4) In this section—

(a) “the financial statements meeting” means the general meeting of the company before which the company's annual financial statements for the financial year are to be laid; and

(b) “existing director” means a person who is a director of the company immediately before that meeting.

Duty to file financial
statements with the
Registrar.

395. (1) Subject to section 400 the directors of a company shall deliver to the Registrar for each financial year, the financial statements required by section 397, 398 and 399.

Period allowed for
filing financial
statements.

396.(1) The directors of a company shall deliver financial statements for a financial year to the Registrar as

required under section 395—

- (a) in the case of a private company, nine months after the end of the relevant accounting reference period; and
- (b) in the case of a public company, six months after the end of the relevant accounting reference period.

(2) If the relevant accounting reference period is the company's first and is a period of more than twelve months, the period is—

- (a) nine months or six months, as the case may be, from the first anniversary of the incorporation of the company; or
- (b) three months after the end of the accounting reference period, whichever last expires.

(3) If the relevant accounting reference period is treated as shortened by virtue of a notice given by the company under section 357, the accounting reference period is—

- (a) that applicable in accordance with subsection (1) and (2); or
- (b) three months from the date of the notice under section 356, whichever last expires.

(4) Whether the period allowed is that for a private company or a public company is determined by reference to the company's status immediately before the end of the relevant accounting reference period.

(5) In this section “the relevant accounting reference period” means the accounting reference period by reference to which the financial year for the financial statements in question was determined.

Calculation of period
allowed.

397.(1) This section applies for the purposes of calculating the period for filing a company's financial statements which is expressed as a specified number of months from a specified date or after the end of a specified previous period.

(2) Subject to subsection (3), the period for filing a company's financial statements ends with the date in the appropriate month corresponding to the specified date or the last day of the specified previous period.

(3) If the specified date, or the last day of the specified previous period, is the last day of a month, the period ends with the last day of the appropriate month, whether or not that is the corresponding date.

(4) If—

- (a) the specified date, or the last day of the specified previous period, is not the last day of a month but is the twenty-ninth or thirtieth ; and
- (b) the appropriate month is February, the period ends with the last day of February.

(5) In this section, “the appropriate month” means the month that is the specified number of months after the month in which the specified date, or the end of the specified previous period, falls.

Filing obligations of
companies subject to
small companies
regime.

398.(1) The directors of a small company—

- (a) shall deliver to the Registrar for each financial year a copy of a statement of financial position drawn up as at the last day of that year; and
 - (b) may also deliver to the Registrar—
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- (i) a copy of the company's statement of income and expenses for that year; and
 - (ii) a copy of the directors' report for that year.
- (c) shall deliver to the Registrar a copy of the auditor's report on the financial statements and on the directors' report.

(2) Subsection 1 (c) shall not apply if the company is exempt from audit and the directors have taken advantage of that exemption.

(3) The copies of the statement of financial position and any directors' report delivered to the Registrar under this section shall state the name of the person who signed it on behalf of the board.

(4) The copy of the auditor's report delivered to the Registrar under this section shall state the name of the auditor and, where the auditor is a firm the name of the person who signed it as senior statutory auditor.

Filing obligations of
unquoted companies.

399.(1) The directors of an unquoted company shall deliver to the Registrar for each financial year of the company a copy of—

- (a) the company's annual financial statements;
- (b) the directors' report; and
- (c) the auditor's report on those financial statements and the directors' report.

(2) Subsection (1)(c) this does not apply if the company is exempt from audit and the directors have

taken advantage of that exemption.

(3) The copies of the statement of financial position and directors' report delivered to the Registrar under this section shall state the name of the person who signed it on behalf of the board.

(4) The copy of the auditor's report delivered to the Registrar under this section shall state the name of the auditor, and where the auditor is a firm, the name of the person who signed it as senior statutory auditor.

(5) This section does not apply to a small company.

Filing obligations of
quoted companies.

400.(1) The directors of a quoted company shall deliver to the Registrar for each financial year of the company a copy of—

- (a) the company's annual financial statements;
- (b) the directors' remuneration report;
- (c) the directors' report; and
- (d) a copy of the auditor's report on those financial statements and on the directors' remuneration report and the directors' report.

(2) The copies of the statement of financial statement, the directors' remuneration report and the directors' report delivered to the Registrar under this section shall state the name of the person who signed it on behalf of the board.

(3) The copy of the auditor's report delivered to the Registrar under this section shall state the name of the auditor and, where the auditor is a firm, the name of the person who signed it as senior statutory auditor.

Unlimited companies
exempt from
obligation to file
financial statements.

401. (1) The directors of an unlimited company are not required to deliver financial statements to the Registrar in respect of a financial year if at no time during the relevant accounting reference period—

- (a) has the company been, to its knowledge, a subsidiary undertaking of an undertaking which was then limited;
- (b) have there been, to its knowledge, exercisable by or on behalf of two or more undertakings which were then limited, rights which if exercisable by one of them would have made the company a subsidiary undertaking of it; or
- (c) has the company been a parent company of an undertaking which was then limited.

(2) The references in subsection (1) to an undertaking being limited at a particular time are to an undertaking ,under whatever law established, the liability of whose members is at that time limited .

(3) The exemption conferred by this section does not apply if the company is a banking or insurance company or the parent company of a banking or insurance group, or

(4) Where a company is exempt under this section from the obligation to deliver financial statements—

- (a) section 390(3) has effect with the substitution for the words “as required to be delivered to the Registrar under section 395 of the words “as prepared in accordance with this Part and approved by the board of directors”; and
 - (b) section 391(1)(b) has effect with the substitution for the words from “whether
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statutory financial statements” to “have been delivered to the Registrar” of the words “that the company is exempt from the requirement to deliver statutory financial statements”.

(5) In this section the “relevant accounting reference period”, in relation to a financial year, means the accounting reference period by reference to which that financial year was determined.

Default in filing
financial statements
and reports: offences.

402.(1) If a company fails to comply with the requirements of section 395 in relation to a company’s financial statements for a financial year before the end of the period for filing these financial statements and reports, every person who immediately before the end of that period was a director of the company commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

Default in filing
financial statements
and reports: court
order.

403.(1) If—

- (a) the requirements of section 395 are not complied with in relation to a company’s financial statements for a financial year before the end of the period for filing those financial statements and reports; 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 the application of any member or creditor of the company or of 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 under subsection (1) may provide that all costs of and incidental to the application are to be borne by the directors.

Minister's notice in respect of financial statements or reports.

404. (1) Where—

- (a) copies of a company's annual financial statements or directors' report have been sent out under section 377; or
- (b) a copy of a company's annual financial statements or directors' report has been delivered to the Registrar or, in the case of a public company laid before the company in general meeting,

and it appears to the Minister that there is, or may be, a question whether the financial statements or report comply with the requirements of this Act, the Minister may give notice to the directors of the company indicating the respects in which it appears that such a question arises or may arise.

(2) The notice under subsection (1) shall specify a period of not less than one month for the directors to give an explanation of the financial statements or report or prepare revised financial statements or a revised report.

(3) If at the end of the specified period, or such longer period as the Minister may allow, it appears to the Minister that the directors have not—

- (a) given a satisfactory explanation of

the financial statements or report; or

- (b) revised the financial statements or report so as to comply with the requirements of this Act,

the Minister may apply to the court to compel the directors to give the explanation or revise the financial statement .

Liability for false or misleading statements in reports.

405. (1) The section applies to—

- (a) the directors' report;
- (b) the directors' remuneration report; and
- (c) a financial statement so far as it is derived from either of those reports.

(2) A director of a company is liable to compensate the company for any loss suffered by it as a result of—

- (a) any untrue or misleading statement in a report to which this section applies; or
- (b) the omission from a report to which this section applies of anything required to be included in it.

(3) A director of a company is liable under subsection (2) only if the director knew—

- (a) the statement to be untrue or misleading or was reckless as to whether it was untrue or misleading; or
- (b) the omission to be dishonest concealment of a material fact.

(4) No person shall be subject to any liability to a

person other than the company resulting from reliance, by that person or another, on information in a report to which this section applies.

(5) The reference in subsection (4) to a person being subject to a liability includes a reference to another person being entitled as against him to be granted any civil remedy or to rescind or repudiate an agreement.

(6) This section does not affect liability for a criminal offence.

Financial reporting standards.

406.(1) In this Part “accounting standards” means statements of standard accounting practice issued by such body or bodies as may be prescribed by regulations.

(2) References in this Part to accounting standards applicable to a company’s annual financial statements are to such standards as are, in accordance with their terms, relevant to the company’s circumstances and in compliance with those set by the Institute of Certified Public Accountants of Kenya for similar companies.

General power to make further provision about financial statements and reports.

407. The Minister may by regulations provide for—

- (a) the financial statements that companies are required to prepare;
- (b) the categories of companies required to prepare financial statements of any description;
- (c) the form and content of the financial statements that companies are required to prepare;
- (d) the obligations of companies and others with regard to—
 - (i) the approval of financial statements and reports;

- (ii) the sending of financial statements to members and others;
- (ii) the laying of financial statements before the company in general meeting;
- (iv) the delivery of copies of financial statements to the Registrar; and
- (v) the publication of financial statements and reports.

Meaning of “annual financial statements” and related expressions.

408.(1) In this Part a company’s “annual financial statements”, in relation to a financial year, means—

- (a) the company’s individual financial statements for that year; and
- (b) any group financial statements prepared by the company for that year.

(2) In the case of an unquoted company, its “annual financial statements and reports” for a financial year are—

- (a) its annual financial statements;
- (b) the directors’ report; and
- (c) the auditor’s report on those financial statements and the directors’ report unless the company is exempt from audit.

(3) In the case of a quoted company, its “annual financial statements and reports” for a financial year are—

- (a) its annual financial statements;
 - (b) the directors’ remuneration report;
 - (c) the directors’ report; and
-

- (d) the auditor's report on those financial statements, on the auditable part of the directors' remuneration report and on the directors' report.

PART XX – A COMPANY'S ANNUAL RETURN

Duty to deliver
annual returns.

409. (1) Every company shall submit to the Registrar successive annual returns each of which is made up to a date not later than the date that is from time to time the company's return date.

(2) The company's return date is—

- (a) the anniversary of the company's incorporation; or
- (b) if the company's last return delivered in accordance with this Part was made up to a different date, the anniversary of that date.

(3) Each return shall—

- (a) contain the information required by or under the provisions of this Part; and
- (b) be delivered to the Registrar within twenty eight days after the date to which it is made up.

Contents of annual
return: general.

410.(1) Every annual return submitted under section 409 shall state the date to which it is made up and contain the following information—

- (a) the situation of the registered office of the company and the registered postal address thereof;
 - (b) the type of company and its principal
-

business activities;

- (c) the prescribed particulars of—
 - (i) the directors of the company;
 - (ii) in the case of a public company, the secretary or joint secretaries of the company; and
 - (iii) any person appointed as an authorised signatory of the company;
- (d) if the register of members is not kept available for inspection at the registered office, of the company, the address of the place where it is kept; and
- (e) if any register of debenture holders ,or a duplicate of any such register or a part of it, is not kept available for inspection at the company's registered office, the address of the place where it is kept.

(2) The information on the type of company shall be given by reference to the classification scheme prescribed for the purposes of this section.

(3) The information on the principal business activities of the company may be given by reference to one or more categories of any prescribed system of classifying business activities.

Contents of annual return: information about share capital and shareholders.

411. (1) The annual return of a company having a share capital shall also contain—

- (a) a statement of capital; and
- (b) the particulars required by subsections (3) to (6) about the members of the company.

(2) The statement of capital under subsection (1) shall state, with respect to the share capital of the company at the date to which the return is made up—

- (a) the total number of shares of the company;
- (b) the aggregate nominal value of those shares;
- (c) for each class of shares—
 - (i) prescribed particulars of the rights attached to the shares;
 - (ii) the total number of shares of that class; and
 - (iii) the aggregate nominal value of shares of that class; and
- (d) the amount paid up and the amount, if any, unpaid on each share, whether on account of the nominal value of the share or by way of premium.

(3) The return shall contain the prescribed particulars of every person who—

- (a) is a member of the company on the date to which the return is made up; or
- (b) has ceased to be a member of the company since the date to which the last return was made up, or in the case of the first return, since the incorporation of the company.

(4) The return shall conform to such requirements as may be prescribed for the purpose of enabling the entries relating to any person to be easily found.

(5) The return shall also state—

- (a) the number of shares of each class held by each member of the company at the date to which the return is made up;
- (b) the number of shares of each class transferred—
 - (i) since the date to which the last return was made up; or
 - (ii) in the case of the first return, since the incorporation of the company, by each member or person who has ceased to be a member; and
- (c) the dates of registration of the transfers.

(6) If either of the two immediately preceding returns has given the full particulars required by subsections (3) and (5), the return need only give such particulars as relate—

- (a) to persons ceasing to be or becoming members since the date of the last return; and
- (b) to shares transferred since that date.

(7) Where the company has converted any of its shares into stock, the return shall give the corresponding information in relation to that stock, stating the amount of stock instead of the number or nominal value of shares.

Failure to deliver
annual return.

412.(1) If a company fails to deliver an annual return before the end of the period of twenty-eight days after a return date, an offence is committed by—

- (a) subject to subsection (4)—
 - (i) every director of the company; and

- (ii) in the case of a public company, every secretary of the company; and
- (b) every other officer of the company who is in default.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

(3) The contravention of subsection (1) continues until such time as an annual return made up to that return date is delivered by the company to the Registrar.

(4) It is a defence for a director or secretary charged with an offence under subsection (1)(b) to prove that he took all reasonable steps to avoid the commission or continuation of the offence.

(5) In the case of continued contravention, of subsection (1) every officer of the company who did not commit an offence under subsection (1) in relation to the initial contravention but is in default in relation to the continued contravention commits an offence.

(6) A person who commits an offence under subsection (5) is liable on conviction to a fine not exceeding one hundred thousand one hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

(7) References in this section to submission of a return to the Registrar are to the submission of a return in relation to which all the requirements mentioned in section 504 are complied with.

PART XXI - AUDIT

Requirement for
audited financial

413.(1) A company's annual financial statements

statements.

for a financial year shall be audited in accordance with this Part unless the company is exempt from audit under section 415 and 418.

(2) A company is not entitled to exemption unless its statement of financial position contains a statement by the directors to that effect.

(3) A company is not entitled to exemption under sections 415 or 418 unless its statement of financial position contains a statement by the directors to the effect that—

- (a) the members have not required the company to obtain an audit of its financial statements for the year in question in accordance with section 414; and
- (b) the directors acknowledge their responsibilities for complying with the requirements of this Act with respect to accounting records and the preparation of financial statements.

(4) The statement required by subsection (2) or (3) shall appear on the statement of financial position above the signature required by section 368.

Right of members to
require audit.

414. (1) The members of a company that would otherwise be entitled to exemption from audit under any of the provisions mentioned in section 413(1)(1) may by notice under this section require it to obtain an audit of its financial statements for a financial year.

(2) The notice shall be given by—

- (a) members holding not less in total than ten percent in nominal value of the company's issued share capital, or any class of it; or
 - (b) if the company does not have a share
-

capital, not less than ten percent in number of the members of the company.

(3) The notice may not be given before the financial year to which it relates and shall be given not later than one month before the end of that year.

Small companies:
conditions for
exemption from
audit.

415. (1) A company that qualifies as a small company in relation to that year is exempt from the requirements of this Act relating to the audit of financial statements for that year.

(2) For the purposes of this section—

- (a) whether a company qualifies as a small company shall be determined in accordance with section 347(1) to (5); and
- (b) “statement of financial position total” has the same meaning as in that section.

Companies excluded
from small companies
exemption.

416. A company is not entitled to the exemption conferred by section 415 if it was a public company at any time within the financial year in question.

Availability of small
companies exemption
in case of group
company.

417. (1) A company is not entitled to the exemption conferred by section 415 in respect of a financial year during any part of which it was a group company unless—

- (a) the conditions specified in subsection (2) are met; or
- (b) subsection (3) applies.

(2) The conditions referred to in subsection (1) are—

- (a) that the group—
-

- (i) qualifies as a small group in relation to that financial year; and
 - (ii) was not at any time in that year an ineligible group;
- (b) that the group's aggregate turnover in that year is not more than ninety four million and five hundred thousand shillings net or one hundred and thirteen million and five hundred thousand shillings gross;
- (c) that the group's aggregate statement of financial position total for that year is not more than three hundred and seventy million shillings net or four hundred and fifty million shillings gross.

(3) A company is not excluded by subsection (1) if, throughout the whole of the period or periods during the financial year when it was a group company, it was both a subsidiary undertaking and dormant.

(4) In this section—

- (a) “group company” means a company that is a parent company or a subsidiary undertaking; and
- (b) “the group”, in relation to a group company, means that company together with all its associated undertakings.

(5) For purposes of subsection 4(b) undertakings are associated if one is a subsidiary undertaking of the other or both are subsidiary undertakings of a third undertaking.

(6) For the purposes of this section—

- (a) whether a group qualifies as small shall be determined in accordance with section 348;
- (b) “ineligible group” has the meaning given by section 349(2);
- (c) a group’s aggregate turnover and aggregate statement of financial position total shall be determined as for the purposes of section 348;
- (d) “net” and “gross” have the same meaning as in that section.

(7) The provisions mentioned in subsection (6) apply for the purposes of this section as if all the bodies corporate in the group were companies.

Dormant companies:
conditions for
exemption from audit

418. (1) A company is exempt from the requirements of this Act relating to the audit of financial statements in respect of a financial year if-

- (a) it has been dormant since its formation;
or
- (b) it has been dormant since the end of the previous financial year and the conditions in subsection (2).

(2) The conditions referred to in subsection(1) are that the company-

- (a) with regard to its individual financial statement for the financial year in question-

- (i) is entitled to prepare financial statements in accordance with the small companies regime; or
 - (ii) would be so entitled but for having been a public company or a member of an ineligible group; and
- (b) is not required to prepare group financial statements for that year.

(3) This section has effect subject to section 413 (2) and (3) and section 414.

Appointment of
auditors of private
company: general.

419. (1) Every private company shall appoint an auditor or auditors for each financial year of the company, unless the directors reasonably resolve otherwise on the ground that audited financial statements are unlikely to be required.

(2) For each financial year for which an auditor or auditors is or are to be appointed, other than the company's first financial year, the appointment shall be made before the end of the period of twenty eight days beginning with—

- (a) the end of the time allowed for sending out copies of the annual financial statements of the company for the previous financial year; or
- (b) if earlier, the day on which copies of the annual financial statements of the company for the previous financial year are sent out under section 377.

(3) The directors may appoint an auditor or auditors of the company—

- (a) at any time before the company's first period for appointing auditors;
-

(b) following a period during which the company, being exempt from audit, did not have any auditor, at any time before the company's next period for appointing auditors; or

(c) to fill a casual vacancy in the office of auditor.

(4) The members may appoint an auditor or auditors by ordinary resolution—

(a) during a period for appointing auditors;

(b) if the company should have appointed an auditor or auditors during a period for appointing auditors but did not do so; or

(c) where the directors had power to appoint an auditor or auditors under subsection (3) but did not make an appointment.

(5) An auditor or auditors of a private company may only be appointed—

(a) in accordance with this section; or

(b) in accordance with section 420.

(6) The appointment of an auditor or auditors shall be without prejudice to any deemed re-appointment under section 421.

Appointment of auditors of private company: default power of the Minister.

420. (1) If a private company fails to appoint an auditor or auditors in accordance with section 419, the Minister may appoint one or more persons to fill the vacancy.

(2) Where subsection (2) of section 419 applies and

the company does not make the necessary appointment before the end of the period for appointing auditors, the company shall within one week of the end of that period give notice to the Minister of his power having become exercisable.

Term of office of
auditors of private
company.

421.(1) An auditor or auditors of a private company hold office in accordance with the terms of their appointment, subject to the requirements that—

- (a) they do not take office until any previous auditor or auditors cease to hold office; and
- (b) they cease to hold office at the end of the next period for appointing auditors unless re-appointed.

(2) Where no auditor has been appointed by the end of the next period for appointing auditors, any auditor in office immediately before that time is deemed to be re-appointed at that time, unless—

- (a) he was appointed by the directors;
- (b) the company's articles require actual re-appointment;
- (c) the deemed re-appointment is prevented by the members under section 422;
- (d) the members have resolved that he should not be re-appointed; or
- (e) the directors have resolved that no auditor or auditors should be appointed for the financial year in question.

(3) Subsection (2) shall apply without prejudice to the provisions of this Part as to removal and resignation of auditors.

(4) No account shall be taken of any loss of the opportunity of deemed reappointment under this section in ascertaining the amount of any compensation or damages payable to an auditor on his ceasing to hold office for any reason.

Prevention by members of deemed re-appointment of auditor.

422. (1) An auditor of a private company is not deemed to be re-appointed under section 421(2) if the company has received notices under this section from members who hold at least the requisite percentage of the total voting rights of all members who would be entitled to vote on a resolution that the auditor should not be re-appointed.

(2) The “requisite percentage” under subsection (1) is five percent or such lower percentage as is specified for this purpose in the company’s articles.

(3) A notice under this section—

- (a) may be in hard copy or electronic form;
- (b) shall be authenticated by the person or persons giving it; and
- (c) shall be received by the company before the end of the accounting reference period immediately preceding the time when the deemed reappointment would have effect.

Appointment of auditors of public company: general.

423.(1) An auditor or auditors of a public company shall be appointed for each financial year of the company, unless the directors reasonably resolve otherwise on the ground that audited financial statements are unlikely to be required.

(2) For each financial year for which an auditor or

auditors is, or are to be appointed, other than the company's first financial year, the appointment shall be made before the end of the financial statements meeting of the company at which the company's annual financial statements for the previous financial year are laid.

(3) The directors may appoint an auditor or auditors of the company—

- (a) at any time before the company's first financial statements meeting;
- (b) following a period during which the company, being exempt from audit did not have any auditor, at any time before the company's next financial statements meeting; or
- (c) to fill a casual vacancy in the office of auditor.

(4) The members may appoint an auditor or auditors by ordinary resolution—

- (a) at a financial statements meeting;
- (b) if the company should have appointed an auditor or auditors at a financial statements meeting but did not do so;
- (c) where the directors had power to appoint an auditor or auditors under subsection (3) but did not make an appointment.

(5) An auditor or auditors of a public company may only be appointed—

- (a) in accordance with this section; or
 - (b) in accordance with section 424.
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Appointment of
auditors of public
company: default
power of the
Minister.

424. (1) If a public company fails to appoint an auditor or auditors in accordance with section 423, the Minister may appoint one or more persons to fill the vacancy.

(2) The auditor appointed under subsection (1) shall be paid a reasonable fee to perform the service.

(3) Where section 423(2) applies and the company does not make the necessary appointment before the end of the financial statements meeting, the company shall within one week of the end of that meeting give notice to the Minister of his power having become exercisable.

Term of office of
auditors of public
company.

425. (1) The auditor or auditors of a public company hold office in accordance with the terms of their appointment, subject to the requirements that—

- (a) they do not take office until the previous auditor or auditors have ceased to hold office; and
- (b) they cease to hold office at the conclusion of the financial statements meeting next following their appointment, unless re-appointed.

(2) Subsection (1) shall apply without prejudice to the provisions of this Part as to removal and resignation of auditors.

Fixing of auditor's
remuneration.

426. (1) The remuneration of an auditor appointed by the members of a company shall be fixed by the members by ordinary resolution or in such manner as the members may by ordinary resolution determine.

(2) The remuneration of an auditor appointed by the directors of a company shall be fixed by the directors.

(3) The remuneration of an auditor appointed by the Minister shall be fixed at a reasonable rate by the Minister.

(4) For the purposes of this section “remuneration” includes sums paid in respect of expenses.

(5) This section applies in relation to benefits in kind as to payments of money.

Disclosure of terms
of audit appointment.

427.(1) The Minister may by regulations require a company to disclose of the terms on which the company’s auditor is appointed, remunerated or require a company to perform his duties.

(2) Nothing in this section shall affect the generality of this power.

(3) The regulations may—

- (a) require disclosure of—
 - (i) a copy of any terms that are in writing; and
 - (ii) a written memorandum setting out any terms that are not in writing;
- (b) require disclosure to be at such times, in such places and by such means as are specified in the regulations;
- (c) require the place and means of disclosure to be stated—
 - (i) in a note to the annual financial statements of the company, in the case of its

individual financial statements or in such manner as is specified in the regulations, in the case of group financial statements;

- (ii) in the directors' report; or
- (iii) in the auditor's report on the annual financial statements of the company.

(3) The provisions of this section apply to a variation of the terms mentioned in subsection (1) as they apply to the original terms.

Auditor's report on annual financial statement of company.

428.(1) An auditor shall make a report to the members of the company on all annual financial statements of the company of which copies are, during his tenure of office—

- (a) in the case of a private company, to be sent out to members under section 377;
- (b) in the case of a public company, to be laid before the company in a general meeting under section 392.

(2) The auditor's report shall include—

- (a) an introduction identifying the annual financial statements that are the subject of the audit and the financial reporting framework that has been applied in their preparation; and
 - (b) a description of the scope of the audit identifying the auditing standards in accordance with which the audit was conducted.
-

(3) The report shall state clearly whether, in the auditor's opinion, the annual financial statements—

(a) give a true and fair view—

- (i) in the case of an individual statement, of the financial position, and presents fairly in all material respects, the financial position of the company at the end of its financial year and its financial performance for the financial year in accordance with the relevant financial reporting framework;
- (ii) in the case of an individual statement of income and expenses, of the profit or loss of the company for the financial year;
- (iii) in the case of group financial statements, presents fairly in all material respects and in accordance with the relevant financial reporting framework, the financial position of the company at the end of its financial year, its financial performance and profit or loss for the financial year of the undertakings included in the consolidation as a whole, so far as concerns members of the company;

(b) have been properly prepared in accordance with the relevant

financial reporting framework; and

- (c) have been prepared in accordance with the requirements of this Act.

(4) The auditor's report shall —

- (a) be either unqualified or qualified; and
- (b) include a reference to any matters to which the auditor wishes to draw attention by way of emphasis without qualifying the report.

Auditor's report on directors' report.

429. The auditor shall state in his report on the company's annual financial statements whether in his opinion the information given in the directors' report for the financial year for which the financial statements are prepared is consistent with those financial statements.

Auditor's report on auditable part of directors' remuneration report.

430.(1) If the company is a quoted company, the auditor, in his report on the company's annual financial statements for the financial year, shall—

- (a) report to the company's members on the auditable part of the directors' remuneration report; and
- (b) state whether in his opinion that part of the directors' remuneration report has been properly prepared in accordance with this Act.

(2) For the purposes of this Part, “the auditable part” of a directors' remuneration report is the part identified as such under section 375.

Auditor's right to information.

431. (1) An auditor of a company—

- (a) has a right of access at all times to the company's accounting records, financial statements and vouchers, in whatever form they are held; and
 - (b) may require any of the following persons to provide him with such information or explanations as he thinks necessary for the performance of his duties as auditor—
 - (i) an officer or employee of the company;
 - (ii) a person holding or accountable for any of the company's books, financial statements or vouchers;
 - (iii) a subsidiary undertaking of the company which is a body corporate incorporated in Kenya;
 - (iv) an officer, employee or auditor of any such subsidiary undertaking or any person holding or accountable for any books, financial statements or vouchers of any such subsidiary undertaking; and
 - (v) a person who fell within any of subparagraphs (i) to (iv) at a time to which the information or explanations required by the auditor relates or relate.
-

(3) Nothing in this section compels a person to disclose information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

Auditor's right to
information from
foreign subsidiaries.

432. (1) Where a parent company has a subsidiary undertaking that is not a body corporate incorporated in Kenya, the auditor of the parent company may require it to obtain from any of the following persons such information or explanations as he may reasonably require for the purposes of his duties as auditor—

- (a) the undertaking;
- (b) an officer, employee or auditor of the undertaking;
- (c) a person holding or accountable for any of the undertaking's books, financial statements or vouchers;
- (d) any person who fell within paragraph (b) or (c) at a time to which the information or explanations relates or relate.

(2) The parent company shall, if required to do so, take such steps as are reasonable to obtain the information or explanations from the person concerned.

(3) A statement made by a person in response to a requirement under this section may not be used in evidence against him in criminal proceedings except proceedings for an offence under section 433.

(4) Nothing in this section compels a person to disclose information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

Auditor's rights to
information: offences.

433. (1) A person who knowingly or recklessly makes an oral or written statement to an auditor of a company that—

- (a) conveys or purports to convey any information or explanations which the auditor requires, or is entitled to require, under section 431; and
- (b) is misleading, false or deceptive in a material particular.

commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years or to both.

(2) A person who fails to comply with a requirement under section 431 without delay commits an offence unless it was not reasonably practicable for him to provide the required information or explanations.

(3) If a parent company fails to comply with section 432, the company and every officer of the company who is in default commit an offence.

(4) Nothing in this section affects any right of an auditor to apply for an injunction to enforce any of his rights under section 431 or 432.

Auditor's rights in
relation to resolutions
and meetings.

434. (1) In relation to a written resolution proposed to be agreed to by a private company, the company's auditor is entitled to receive all such communication relating to the resolution as are required to be supplied to a member of the company.

(2) A company's auditor is entitled—

- (a) to receive all notices of, and other communication relating to, any general

meeting which a member of the company is entitled to receive;

- (b) to attend any general meeting of the company; and
- (c) to be heard at any general meeting which he attends on any part of the business of the meeting which concerns him as auditor.

(3) Where the auditor is a firm, the right to attend or be heard at a meeting is exercisable by an individual authorised by the firm in writing to act as its representative at the meeting.

Signature of auditor's report.

435. (1) The auditor's report shall state the name of the auditor and be signed and dated.

(2) Where the auditor is an individual, the report shall be signed by him.

(3) Where the auditor is a firm, the report shall be signed by the senior statutory auditor in his own name, for and on behalf of the auditor.

Senior statutory auditor.

436. (1) The senior statutory auditor means the individual identified by the firm as senior statutory auditor in relation to the audit in accordance with any relevant guidance issued by—

- (a) the Minister; or
- (b) a body appointed by order of the Minister.

(2) The person identified as senior statutory auditor shall be eligible for appointment as auditor of the company in question.

(3) The senior statutory auditor is not, by reason of being named or identified as senior statutory auditor or by reason of his having signed the auditor's report, subject to any civil liability to which he would not otherwise be subject.

Names to be stated in published copies of auditor's report.

437. Every copy of the auditor's report that is published by or on behalf of the company shall state the name of the auditor, and where the auditor is a firm, the name of the person who signed it as senior statutory auditor.

Offences in connection with auditor's report.

438. (1) A person to whom this section applies commits an offence if he knowingly or recklessly causes a report under section 428 to include any matter that is misleading, false or deceptive in a material particular.

(2) This section applies to—

- (a) where the auditor is an individual, that individual and any employee or agent of the auditor who is eligible for appointment as auditor of the company;
- (b) where the auditor is a firm, any director, member, partner, employee or agent of the firm who is eligible for appointment as auditor of the company.

(3) A person who commits an offence under this section is liable on conviction, to a fine not exceeding one million or to imprisonment for a term not exceeding two years or to both.

Resolution removing auditor from office.

439. (1) The members of a company may remove an auditor from office at any time.

(2) The power to remove an auditor under subsection (1) is exercisable only—

- (a) by ordinary resolution at a meeting; and
- (b) in accordance with section 440.

(3) Nothing in this section is to be taken as depriving the person removed of compensation or damages payable to him in respect of the termination—

- (a) of his appointment as auditor; or
- (b) of any appointment terminating with that as auditor.

(4) An auditor may not be removed from office before the expiration of his term of office except by resolution under this section.

Special notice
required for
resolution removing
auditor from office.

440. (1) Special notice is required for a resolution at a general meeting of a company removing an auditor from office.

(2) On receipt of notice of such an intended resolution the company shall immediately send a copy of the notice to the person proposed to be removed.

(3) The auditor proposed to be removed may make, with respect to the intended resolution representations in writing not exceeding a reasonable length to the company and request their notification to members of the company.

(4) The company shall unless the representations are received by it too late for it to do so—

- (a) in any notice of the resolution given to 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.

(5) If a copy of any such representations is not sent out as required because it was received too late or because of the company's default, the auditor may, without prejudice to his right to be heard orally, require that the representations be read out at the meeting.

(6) Copies of the representations need not be sent out and the representations need not be read at the meeting if, on the application either of the company or of any other person claiming to be aggrieved, the court is satisfied that the auditor is using the provisions of this section to secure needless publicity for defamatory matter.

(7) The court may order the company's costs on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

Notice to Registrar of resolution removing auditor from office.

441. Where a resolution is passed under section 439, the company shall give notice of that fact to the Registrar within fourteen days.

Rights of auditor who has been removed from office.

442. (1) An auditor who has been removed from office by resolution under section 439 has, notwithstanding his removal, the rights conferred by section 434 in relation to any general meeting of the company—

- (a) at which his term of office would otherwise have expired; or
- (b) at which it is proposed to fill the vacancy caused by his removal.

(2) In such a case the references in section 439 to matters concerning the auditor as auditor shall be construed as references to matters concerning him as a

former auditor.

Failure to re-appoint
auditor: special
procedure required
for written resolution.

443. (1) This section applies where a resolution is proposed as a written resolution of a private company whose effect would be to appoint a person as auditor in place of the outgoing auditor whose term of office has expired, or is to expire, at the end of the period for appointing auditors.

(2) This section applies if—

- (a) the period for appointing auditors has not ended since the outgoing auditor ceased to hold office; or
- (b) such a period has ended and an auditor or auditors should have been appointed but were not.

(3) The company shall send a copy of the proposed resolution to the person proposed to be appointed and to the outgoing auditor.

(4) The outgoing auditor may, within fourteen days after receiving the notice, make with respect to the proposed resolution, representations in writing to the company not exceeding a reasonable length, and request their circulation to members of the company.

(5) The company shall circulate the representations together with the copy or copies of the resolution circulated in accordance with section 172 or section 174.

(6) Where subsection (5) applies—

- (a) the period allowed under section 174(3) for service of copies of the proposed resolution is twenty eight days instead of twenty one days; and

- (b) the provisions of section 174(6) and (7) apply in relation to a failure to comply with that subsection as in relation to a default in complying with that section.

(7) Copies of the representations need not be circulated if, on the application either of the company or of any other person claiming to be aggrieved, the court is satisfied that the auditor is using the provisions of this section to secure needless publicity for defamatory matter.

(8) The court may order the company's costs on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(8) If any requirement of this section is not complied with, the resolution is ineffective.

Failure to re-appoint auditor: special notice required for resolution at general Meeting.

444. (1) This section applies to a resolution at a general meeting of a company whose effect would be to appoint a person as auditor in place of the outgoing auditor whose term of office has ended, or is to end—

- (a) the case of a private company, at the end of the period for appointing auditors;
- (b) in the case of a public company, at the end of the next financial statements meeting.

(2) Special notice is required of such a resolution if—

- (a) in the case of a private company—
 - (i) the period for appointing auditors has not ended since the outgoing auditor ceased to hold office; or
 - (ii) such a period has ended and an auditor or auditors should have been

appointed but were not;

(b) in the case of a public company—

- (i) there has been no financial statements meeting of the company since the outgoing auditor ceased to hold office; or
- (ii) there has been an financial statements meeting at which an auditor or auditors should have been appointed but were not.

(3) On receipt of notice of such an intended resolution, the company shall forthwith send a copy of the intended resolution to the person proposed to be appointed and to the outgoing auditor.

(4) The outgoing auditor may make, with respect to the intended resolution, representations in writing not exceeding a reasonable length to the company, and request their notification to members of the company.

(5) 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.

(6) If a copy of any such representations is not sent out as required because it was received too late or because of the company's default, the outgoing auditor may, without prejudice to his right to be heard orally, require that the representations be read out at the meeting.

Resignation of
auditor.

445. (1) An auditor of a company may resign his office by depositing a notice in writing to that effect at the registered office of the company.

(2) The notice under subsection (1) is not effective unless it is accompanied by the statement required by section 448.

(3) An effective notice of resignation operates to bring the auditor's term of office to an end on the date on which the notice is deposited or on such later date as may be specified in the notice.

Notice to Registrar of
resignation of auditor.

446.(1) Where an auditor resigns, the company shall within fourteen days of the deposit of a notice of resignation, send a copy of the notice to the Registrar of companies.

(2) If a company fails to comply with this section, the company and every officer of the company who is in default commits an offence.

(3) A person who commits an offence under this section is liable on conviction to a fine not exceeding one hundred thousand shillings.

Rights of resigning
auditor.

447. (1) This section applies where an auditor's notice of resignation is accompanied by a statement of the circumstances connected with his resignation.

(2) A resigning auditor may deposit with the notice of resignation, a signed requisition calling on the directors of the company forthwith duly to convene a general meeting of the company for the purpose of receiving and considering such explanation of the circumstances connected with his resignation as he may wish to place before the meeting.

(3) The auditor may request the company to

circulate to its members—

- (a) before the meeting convened on his requisition; or
- (b) before any general meeting at which his term of office would otherwise have expired or at which it is proposed to fill the vacancy caused by his resignation;
- (c) a statement in writing, not exceeding a reasonable length, of the circumstances connected with his resignation.

(4) The company shall unless the statement is received 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.

(5) The directors shall within twenty one days from the date of the deposit of a requisition under this section convene a meeting for a day not more than twenty eight days after the date on which the notice convening the meeting is given.

(6) Every director who fails to take all reasonable steps to convene a meeting under subsection (5) commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years or to both.

(7) If a copy of the statement mentioned in subsection (3) is not sent out as required because it was received too late or because of the company's default, the auditor may, without prejudice to his right to be heard

orally, require that the statement be read out at the meeting.

(8) An auditor who has resigned has, notwithstanding his resignation, the rights conferred by section 437(2) in relation to any such general meeting of the company as specified in subsection (3)(a) or (b) and in such a case the references in subsection (3) section to matters concerning the auditor as auditor shall be construed as references to matters concerning him as a former auditor.

Statement by auditor
to be deposited with
company.

448. (1) Where an auditor of an unquoted company ceases for any reason to hold office, the auditor shall deposit at the registered office of the company a statement of the circumstances connected with his ceasing to hold office, of the company unless he considers that there are no circumstances in connection with his ceasing to hold office that need to be brought to the attention of members or creditors of the company.

(2) If the auditor of an unquoted company considers that there are no circumstances in connection with his ceasing to hold office that need to be brought to the attention of members or creditors of the company, he shall deposit at the company registered office a statement to that effect.

(3) Where an auditor of a quoted company ceases for any reason to hold office, he shall deposit at the company's registered office a statement of the circumstances connected with his ceasing to hold office.

(4) The statement under this section shall be deposited—

- (a) in the case of resignation, along with the notice of resignation;
- (b) in the case of failure to seek re-appointment,

not less than fourteen days before the end of the time allowed for next appointing an auditor;

- (c) in any other case, not later than the end of the period of fourteen days beginning with the date on which he ceases to hold office.

(5) A person ceasing to hold office as auditor who fails to comply with this section commits an offence and is liable on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years or to both.

Company's duties in relation to statement.

449.(1) Where the statement deposited under section 448 states the circumstances connected with the auditor's ceasing to hold office, the company shall within fourteen days of the deposit of the statement send a copy of the statement to every person who is entitled to be sent copies of the financial statements under section 377.

(2) Every officer of the company who does not comply with subsection (1) commits an offence and is liable on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years or to both.

Copy of statement to be sent to Registrar

450. (1) An auditor shall, within seven days beginning with the day on which he deposited the statement under section 451, send a copy of the statement to the Registrar.

(2) An auditor who fails to comply with subsection (1) commits an offence and is liable on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years or both.

Duty of auditor to notify appropriate audit authority.

451. (1) Where an auditor ceases to hold office before the end of his term of office, the auditor shall notify

the appropriate audit authority.

(2) The notice under subsection (1) shall—

- (a) inform the appropriate audit authority that he has ceased to hold office; and
- (b) be accompanied by a copy of the statement deposited by him at the company's registered office in accordance with section 448.

(2) If the statement so deposited is to the effect that the auditors considers that there are no circumstances in connection with his ceasing to hold office that need to be brought to the attention of members or creditors of the company, the notice shall also be accompanied by a statement of the reasons for his ceasing to hold office.

(3) The auditor shall comply with this section—

- (a) in the case of a major audit, at the same time as he deposits a statement at the registered office of the company in accordance with section 448;
- (b) in the case of an audit that is not a major audit, at such time, not being earlier than the time mentioned in paragraph (a), as the appropriate audit authority may require.

(4) A person ceasing to hold office as auditor who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years or to both.

Duty of company to
notify appropriate
audit authority.

452. (1) Where an auditor ceases to hold office before the end of his term of office, the company shall notify the appropriate audit authority.

(2) The notice under subsection (1) shall—

- (a) inform the appropriate audit authority that the auditor has ceased to hold office; and
- (b) be accompanied by—
 - (i) a statement by the company of the reasons for his ceasing to hold office; or
 - (ii) if the copy of the statement deposited by the auditor at the registered office of the company in accordance with section 451 contains a statement of circumstances in connection with his ceasing to hold office that need to be brought to the attention of members or creditors of the company, a copy of that statement.

(3) The company shall give notice under this section not later than fourteen days after the date on which the auditor's statement is deposited at the registered office of the company in accordance with section 451.

(4) Every officer of the company who does not comply with this section commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty thousand.

Information to be
given to accounting
authorities.

453. (1) The appropriate audit authority on receiving notice under section 451 or 452 of an auditor's

ceasing to hold office—

- (a) shall inform the accounting authorities; and
- (b) may if it thinks fit submit a copy of the statement or statements accompanying the notice to the authorities.

(2) In this section, the accounting authorities are—

- (a) the Minister; and
- (b) the Institute of Certified Public Accountants of Kenya.

Meaning of
“appropriate audit
authority” and “major
audit”.

454. (1) In sections 451, 452 and 453 “appropriate audit authority” means—

- (a) in the case of a major audit, the Minister; or
- (b) in the case of an audit that is not a major audit, the Institute of Certified Public Accountants of Kenya.

(2) In sections 451 and this section “major audit” means a statutory audit conducted in respect of—

- (a) a company any of whose securities have been admitted to the official list on a stock exchange or other regulated market in Kenya; or
- (b) any other person in whose financial control there is a major public interest.

(3) In determining whether an audit is a major audit under subsection (2)(b), regard shall be had to any guidance issued by any of the authorities mentioned in subsection (1).

Members' power to
require website
publication of audit
concerns.

455. (1) The members of a quoted company may require the company to publish on a website, a statement setting out any matter relating to—

- (a) the audit of the company's financial statements ,including the auditor's report and the conduct of the audit, that are to be laid before the next financial statements meeting; or
- (b) any circumstances connected with an auditor of the company ceasing to hold office since the previous financial statements meeting, that the members propose to raise at the next financial statements meeting of the company.

(2) A company is required to publish the statement on the website once it has received requests to that effect from—

- (a) members representing at least five percent of the total voting rights of all the members who have a relevant right to vote; or
- (b) at least one hundred members who have a relevant right to vote and hold shares in the company on which there has been paid up an average sum, per member, of at least one thousand shillings.

(3) In subsection (2) a “relevant right to vote” means a right to vote at the financial statements meeting.

(4) A request under this section—

- (a) may be sent to the company in hard copy or electronic form;
 - (b) shall identify the statement to which it relates;
-

- (c) shall be authenticated by the person or persons making it; and
- (d) shall be received by the company at least one week before the meeting to which it relates.

(5) The court may order the members requesting website publication to pay the whole or part of the company's costs on such an application, even if they are not parties to the application.

Requirements as to
website availability.

456. (1) The information to be published for purposes of section 455 shall be made available on a website that—

- (a) is maintained by or on behalf of the company; and
- (b) identifies the company in question.

(2) Access to the information on the website, and the ability to obtain a hard copy of the information from the website, shall not be conditional on the payment of a fee or otherwise restricted.

(3) The statement to be published on the website shall be—

- (a) made available within three working days of the company being required to publish it on a website; and
- (b) kept available until after the meeting to which it relates.

(4) Failure to make information available on a website throughout the period specified in subsection (4)(b) shall be disregarded if—

- (a) the information is made available on the website for part of that period; and
- (b) the failure is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.

Website publication:
company's
supplementary duties.

457. (1) A quoted company shall in the notice it gives of the financial statements meeting draw attention to—

- (a) the possibility of a statement being placed on a website in pursuance of requests of members under section 458; and
- (b) the effect of subsections (2),(3) and (4)

(2) A company may not require the members requesting website publication to pay its expenses in complying with section 455 or section 456.

(3) Where a company is required to place a statement on a website under section 455 ,it shall forward the statement to the company's auditor not later than the time when it makes the statement available on the website.

(4) The business which may be dealt with at the financial statements meeting includes any statement that the company has been required under section 458 to publish on a website.

Website publication:
offences.

458. (1) Every officer of a company which does not comply with sections 456 and 447 commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings.

Meaning of "quoted
company".

459. A company is a quoted company if it is a

quoted company in accordance with section 350 in relation to the financial year to which the financial statements to be laid at the next financial statements meeting relate.

Voidness of provisions protecting auditors from liability.

460. (1) This section applies to any provision—

- (a) for exempting an auditor of a company, to any extent, from any liability that would otherwise attach to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company occurring in the course of the audit of financial statements; or
- (b) by which a company directly or indirectly provides an indemnity, to any extent, for an auditor of the company, or of an associated company, against any liability attaching to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company of which he is auditor occurring in the course of the audit of financial statements.

(2) Any provision referred to under subsection (1) is void, except as permitted by section 461 and section 462, 463 and 464.

(3) This section applies to any provision, whether contained in a company's articles or in any contract with the company or otherwise.

(4) For the purposes of this section companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

Indemnity for costs of successfully defending proceedings.

461. Section 460 does not prevent a company from indemnifying an auditor against any liability incurred by him in defending proceedings, whether civil or criminal, in which judgment is given in his favour or he is acquitted.

Liability limitation agreements.

462. (1) A “liability limitation agreement” is an agreement that purports to limit the amount of a liability owed to a company by its auditor in respect of any negligence, default, breach of duty or breach of trust, occurring in the course of the audit of financial statements, of which the auditor may be guilty in relation to the company.

(2) Section 460 does not affect the validity of a liability limitation agreement that—

- (a) complies with section 463 ;and
- (b) is authorised by the members of the company.

(3) A liability limitation agreement is effective to the extent provided by section 465.

Terms of liability limitation agreement.

463. (1) A liability limitation agreement shall—

- (a) not apply in respect of acts or omissions occurring in the course of the audit of financial statements for more than one financial year; and
- (b) specify the financial year in relation to which it applies.

(2) The Minister may by regulations—

- (a) require liability limitation agreements to contain specified provisions or provisions of a specified description; or
 - (b) prohibit liability limitation agreements from containing specified provisions or provisions of a specified description.
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(3) Subject to this section, it is immaterial how a liability limitation agreement is framed.

(4) The limit on the amount of the auditor's liability need not be a sum of money, or a formula, specified in the agreement.

Authorisation of agreement by members of the company.

464. (1) A liability limitation agreement is authorised by the members of the company if it has been authorised under this section and that authorisation has not been withdrawn.

(2) A liability limitation agreement between a private company and its auditor may be authorised by the company passing a resolution—

- (a) before it enters into the agreement, waiving the need for approval;
- (b) before it enters into the agreement, approving the principal terms of the agreement; or
- (c) after it enters into the agreement, approving the agreement.

(3) A liability limitation agreement between a public company and its auditor may be authorised by the company passing a resolution in a general meeting—

- (a) before it enters into the agreement, approving the principal terms of the agreement ; or
- (b) after it enters into the agreement, approving the agreement.

(4) The resolution required under this section is an ordinary resolution, subject to any provision of the company's articles requiring a higher majority or unanimity.

(5) The “principal terms” of an agreement are terms specifying, or relevant to the determination of—

- (a) the kind of acts or omissions covered;
- (b) the financial year to which the agreement relates; or
- (c) the limit to which the auditor’s liability is subject.

(6) Authorisation under this section may be withdrawn by the company passing an ordinary resolution to that effect—

- (a) at any time before the company enters into the agreement; or
- (b) if the company has already entered into the agreement, before the beginning of the financial year to which the agreement relates.

(7) Subsection (6) (b) has effect notwithstanding anything in the agreement.

Effect of liability
limitation agreement.

465. (1) A liability limitation agreement is not effective to limit the auditor’s liability to less than such amount as is fair and reasonable in all the circumstances of the case having regard, in particular ,to—

- (a) the auditor’s responsibilities under this Part;
- (b) the nature and purpose of the auditor’s contractual obligations to the company; and
- (c) the professional standards expected of the auditor.

(2) A liability limitation agreement that purports to

limit the auditor's liability to less than the amount specified in subsection (1) shall have effect as if it limited his liability to that amount.

(3) In determining what is fair and reasonable in all the circumstances of the case, no account is to be taken of—

- (a) matters arising after the loss or damage in question has been incurred; or
- (b) matters, whenever arising, affecting the possibility of recovering compensation from other persons liable in respect of the same loss or damage.

Disclosure of
agreement by
company.

466. (1) A company which has entered into a liability limitation agreement shall make such disclosure in connection with the agreement as the Minister may by regulations require.

(2) The regulations may require disclosure—

- (a) in a note to the company's annual financial statements, in the case of its individual financial statements or in such manner as is specified by the Minister in the case of group financial statements; or
- (b) in the directors' report.

Quoted Companies:
Audit committee.

467. (1) Each quoted company shall have an audit committee appointed by the shareholders of a size and capability appropriate for the business conducted by the quoted company.

(2) Where a quoted company is a subsidiary of another quoted company, the requirement in subsection (1) may be satisfied by the audit committee of the parent company assuming responsibility for the audit review function of the subsidiary.

Quoted Companies:
Corporate
governance.

468. (1) The audit committee of the quoted company shall set out the corporate governance principles that are appropriate for the nature and scope of its business, establish policies and strategies for achieving them, and measure annually adherence to the policies and strategies.

(2) The audit committee of the quoted company is responsible for—

- (a) organizing the quoted company to promote the effective and prudent management of the institution and the board of directors oversight of that management; and
 - (b) establishing standards of business conduct and ethical behaviour for directors, managers and other personnel, including policies on private transactions, self-dealing,
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and other transactions practices of a non-arm's length nature.

(3) The audit committee of a quoted company is responsible for—

- (a) overseeing the operations of the quoted company and providing direction to it on a day-to-day basis, subject to the objectives and policies set out by the audit committee and legislation;
- (b) providing the board of directors with recommendations, for its review and approval, on objectives, strategy, business plans and major policies that govern the operation of the quoted company; and
- (c) providing the board of directors with comprehensive, relevant and timely information that will enable it to review business objectives, business strategy and policies, and to hold senior management accountable for its performance.

PART XXII - STATUTORY AUDITORS

Main purpose of Part.

469. The main purpose of this Part is to ensure that—

- (a) only persons who are properly supervised and appropriately qualified are appointed as statutory auditors; and
- (b) audits by persons so appointed are carried out properly, with integrity and with a proper degree of independence.

Individuals and firms:
eligibility for
appointment as a
statutory auditor.

470. An individual or firm is eligible for appointment as a statutory auditor if the individual or every

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partner in the firm is the holder of a practising certificate issued pursuant to section 21 of the Accountants Act.

Effect of ineligibility.

471. (1) No person may act as statutory auditor of an audited person if he is ineligible qualify for appointment as a statutory auditor.

(2) If at any time during his term of office a statutory auditor becomes ineligible for appointment as a statutory auditor, he shall immediately—

- (a) resign his office; and
- (b) give notice in writing to the audited person that he has resigned by reason of his becoming ineligible for appointment.

(3) A person who—

- (a) acts as a statutory auditor in contravention of subsection (1); or
- (b) fails to give the notice referred to in of subsection (2) (b)

commits an offence and is liable on conviction to a fine not exceeding one million shillings.

(4) A person who has been convicted of an offence under subsection (3)(a) and after conviction continues to act as a statutory auditor in contravention of subsection (1) commits an offence.

(5) A person who has been convicted of an offence under subsection (3)(b) and who after the conviction, fails to give the notice as required under subsection (2)(b) commits on offence.

(6) A person who commits an offence under subsection (4) or (5) is liable on conviction to a fine not exceeding two million shillings.

Independence
requirement.

472. (1) A person may not act as statutory auditor of an audited person if that person is—

- (a) an officer or employee of the audited person; or
- (b) a partner or employee of the audited person, or a partnership of which such a person is a partner.
- (c) an officer or employee of an associated undertaking of the audited person; or
- (d) a partner or employee of the audited or a partnership of which such a person is a partner.

(2) Subsection (1) applies if there exists between—

- (a) the person or an associate of his; and
- (b) the audited person or an associated undertaking of the audited person,

a connection of any such description as may be specified in regulations.

(3) An auditor of an audited person is not to be regarded as an officer or employee of the person for the purposes of subsection (1).

(4) In this section “associated undertaking”, in relation to an audited person, means—

- (a) a parent undertaking or subsidiary undertaking of the audited person; or

- (b) a subsidiary undertaking of a parent undertaking of the audited person.

Effect of lack of independence.

473.(1) If at any time during his term of office a statutory auditor becomes prohibited from acting as such by section 472(1), he shall immediately—

- (a) resign his office; and
- (b) give notice in writing to the audited person that he has resigned by reason of his lack of independence.

(2) A person who—

- (a) acts as a statutory auditor in contravention of section 472(1); or
- (b) fails to give the notice mentioned in subsection (1)(b).
- (c) has been convicted of an offence under paragraph (a) and after conviction continues to act as a statutory auditor in contravention of section 472(1);
- (d) has been convicted of an offence under paragraph (b); and
- (e) after conviction, continues to fail to give the notice in subsection (1)(b),

commits an offence and is liable on conviction to a fine not exceeding one million shillings.

(3) In proceedings against a person for an offence under this section it is a defence for him to show that he did not know and had no reason to believe that he was, or

had become, prohibited from acting as statutory auditor of the audited person by section 472(1).

Effect of appointment
of a partnership.

474. (1) Where a partnership is appointed as statutory auditor of an audited person unless a contrary intention appears, the appointment is an appointment of the partnership as such and not of the partners.

(2) Where the partnership ceases, the appointment is to be treated as extending to—

- (a) any appropriate partnership which succeeds to the practice of that partnership; or
- (b) any other appropriate person who succeeds to that practice having previously carried it on in partnership.

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

- (a) a partnership is to be regarded as succeeding to the practice of another partnership only if the members of the successor partnership are substantially the same as those of the former partnership; and
- (b) a partnership or other person is to be regarded as succeeding to the practice of a partnership only if it or he succeeds to the whole or substantially the whole of the business of the former partnership.

(4) Where the partnership ceases and the appointment is not treated under subsection (2) as extending to any partnership or other person, the appointment may with the consent of the audited person be treated as extending to an appropriate partnership, or other appropriate person, who succeeds to—

- (a) the business of the former partnership, or
-

- (b) such part of it as is agreed by the audited person is to be treated as comprising the appointment.

(5) For the purposes of this section, a partnership or other person is “appropriate” if the partnership or person—

- (a) is eligible for appointment as a statutory auditor; and
- (b) is not prohibited by section 473(1) from acting as statutory auditor of the audited person.

Appropriate
qualifications.

475. A person holds an appropriate qualification for the purposes of this Part if he holds a practising certificate issued pursuant to section 21 of the Accountants Act.

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Approval of foreign
qualifications.

476. (1) The Minister may declare that the following persons are to be regarded as holding an approved foreign qualification—

- (a) persons who are qualified to audit financial statements under the law of a specified foreign country; or
- (b) persons who hold a specified professional qualification in accountancy obtained in a specified foreign country.

(2) A declaration under subsection (1)(b) may be subject to the satisfaction of any specified requirement or requirements.

(3) The Minister may make a declaration under subsection (1) only if he is satisfied that—

- (a) in the case of a declaration under subsection (1)(a), the fact that the person in question is qualified to audit financial statements under

the law of the specified foreign country; or

- (b) in the case of a declaration under subsection (1)(b), the specified professional qualification taken with any requirement or requirements to be specified under subsection (2),

affords an assurance of professional competence equivalent to that afforded by a recognised professional qualification.

(4) The Minister may make a declaration under subsection (1) only if he is satisfied that the treatment that the person who is the subject of the declaration will receive as a result of it is comparable to the treatment which is, or is likely to be, afforded in the specified foreign country or a part of it to—

- (a) in the case of a declaration under subsection (1)(a), some or all persons who are eligible to be appointed as a statutory auditor; and
- (b) in the case of a declaration under subsection (1)(b), some or all persons who hold a corresponding recognised professional qualification.

(5) The Minister may direct that persons holding an approved foreign qualification are not to be treated as holding an appropriate qualification unless they hold such additional educational qualifications as the Minister may specify for the purpose of ensuring that such persons have an adequate knowledge of the law and practice in Kenya relevant to the audit of financial statements.

(6) The Minister may give different directions in relation to different approved foreign qualifications.

(7) The Minister may, if he thinks fit, having regard to the considerations specified in subsections (3) and (4),

withdraw a declaration under subsection (1) in relation to—

- (a) persons becoming qualified to audit financial statements under the law of the specified foreign country after such date as he may specify; or
- (b) persons obtaining the specified professional qualification after such date as he may specify.

(8) The Minister may, if he thinks fit, having regard to the considerations specified in subsections (3) and (4), vary or revoke a requirement specified under subsection (2) from such date as he may specify.

The Minister's power to call for information.

477. (1) The Minister may, by notice in writing, require a person eligible for appointment as a statutory audit to give him such information as he may reasonably require for the exercise of his functions under this Part.

(2) The Minister may require information given under this section to be given in a specified form or verified in a specified manner.

(3) Any notice or information required to be given under this section shall be given in writing unless the Minister specifies or approves some other manner.

PART XXIII - COMPANY INVESTIGATIONS

Investigation of company's affairs on application of members.

478. (1) The court may appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as the court directs—

- (a) in the case of a company having a share capital, on the application either of not less

than two hundred members or of members holding not less than one-tenth of the shares issued;

- (b) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members.

(2) The application shall be supported by such evidence as the court may require for the purpose of showing that the applicants have good reason for requiring the investigation, and the court may, before appointing an inspector, require the applicants to give security, of an amount not exceeding ten thousand shillings for payment of the costs of the investigation.

Investigation of
company's affairs in
other cases.

479. (1) The court—

- (a) shall appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as the court directs, if the company by special resolution declares that its affairs ought to be investigated by an inspector appointed by the court; and
- (b) may do so, if it appears to the court upon a report from the Registrar that there are circumstances suggesting—
 - (i) that the company's business is being conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive of any part of its members or that it was formed for any fraudulent or unlawful purpose;

- (ii) that persons concerned with its formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members;
- (iii) that its members have not been given all the information with respect to its affairs which they might reasonably expect; or
- (iv) that it is desirable so to do.

Power of inspectors to carry investigation into affairs of related companies.

480. If an inspector appointed to investigate the affairs of a company thinks it necessary for the purposes of his investigation to also investigate the affairs of any other body corporate which—

(a) is, or has at any relevant time been the company's subsidiary or holding company ;;

or

(b) is a subsidiary of its holding company or a holding company of its subsidiary,

the investigation or shall have power so to do, and shall report on the affairs of the other body corporate so far as he thinks the results of his investigation thereof are relevant to the investigation of the affairs of the first-mentioned company.

Production of documents, and evidence on investigation.

481.(1) It shall be the duty of all officers and agents of the company and of all officers and agents of any other body corporate whose affairs are investigated to produce to any inspector all books and documents of or relating to the company or, as the case may be, the other body corporate which are in their custody or power and otherwise to give to the inspectors all assistance in connection with the

investigation which they are reasonably able to give.

(2) An inspector may examine on oath the officers and agents of the company or other body corporate in relation to its business, and may administer an oath accordingly.

(3) If any officer or agent of the company or other body corporate —

(a) refuses to produce to any inspector any book or document which it is his duty under this section to produce; or

(b) refuses to answer any question which is put to him by an inspector with respect to the affairs of the company or other body corporate, as the case may be,

the inspector may certify the refusal under his hand to the court, and the court may thereupon inquire into the case, and after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of the court.

(4) If an inspector thinks it necessary for the purpose of his investigation that a person whom he has no power to examine on oath should be so examined, he may apply to the court and the court may, if it sees fit, order that person to attend and be examined on oath before it on any matter relevant to the investigation, and on any such examination—

(a) the inspector may take part therein either personally or by advocate;

(b) the court may ask such questions to the person examined as the court thinks fit;

- (c) the person examined shall answer all questions as the court may put ask.

(5) The person examined under subsection (4) may be represented by an advocate.

(6) The proceedings of the examination shall be in writing and shall be read to or by, and signed by, the person who was examined, and may thereafter be used in evidence against him:

Provided that, notwithstanding anything in subsection (5), the court may allow the person examined such costs as in its discretion it may think fit, and any costs so allowed shall be paid as part of the expenses of the investigation.

(7) In this section—

- (a) any reference to officers or to agents includes past, as well as present, officers or agents, as the case may be;

- (b) "agents", in relation to a company or other body corporate includes the bankers and advocates of the company or other body corporate, and any persons employed by the company or other body corporate as auditors, whether those persons are or are not officers of the company or other body corporate;

- (c) "document" includes information recorded in any form.

(8) The power under this section to require production of a document includes power, in the case of a document not in hard copy form, to require the production of a copy of the document—

- (a) in hard copy form; or

- (b) in a form from which a hard copy can be

readily obtained.

(9) An inspector may make copies of extracts from a document produced under this section.

Inspectors report.

482. (1) An inspector may, and, if so directed by the court, shall make interim reports to the court, and on the conclusion of the investigation shall make a final report to the court.

(2) A report made under subsection (1) shall be written or, if the court so directs, printed.

(3) The court shall—

- (a) forward a copy of any report made by an inspector to the company and to the Registrar;
- (b) if the court thinks fit, forward a copy thereof on request and on payment of the prescribed fee to any other person who is a member of the company or of any other body corporate dealt with in the report or whose interests as a creditor of the company or any such other body corporate that appears to the court to be affected;
- (c) where any inspector is appointed furnish, at the request of the applicants for the investigation a copy to them.

(4) The court may cause the report made under this section to be printed and published.

Proceedings on inspectors' report.

483. (1) If it appears to the court that any person has, in relation to the company or to any other body corporate whose affairs have been investigated been guilty

of any offence for which he is criminally liable, the court shall forward a copy of the report to the Attorney-General.

(2) If the Attorney-General considers that the case is one in which a prosecution ought to be instituted, he shall institute proceedings accordingly.

(3) It shall be the duty of all officers and agents of the company, past and present, other than the defendant in the proceedings, to assist the Attorney-General in connection with the prosecution.

(4) Section 484(5) shall apply for the purposes of this section.

(5) If, in the case of any body corporate liable to be wound up under this Act, it appears to the Attorney-General, from any such report that it is expedient so to do by reason of any such circumstances as are referred to in section 479(1)(b)(i) and (ii) the Attorney-General may, unless the body corporate is already being wound up by the court, present a petition for it to be so wound up if the court thinks it just and equitable that it should be wound up,

(6) If from any such report it appears to the Attorney-General that proceedings ought, in the public interest to be brought by any body corporate dealt with by the report—

- (a) for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion;
 - (b) formation of that body corporate;
 - (c) the management of its affairs; or
 - (d) for the recovery of any property of the body corporate which has been misapplied or wrongfully retained,
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the Attorney-General may bring proceedings for that purpose in the name of the body corporate.

(7) The Registrar shall indemnify the body corporate against any costs or expenses incurred by it in or in connection with any proceedings brought under subsection (5).

Expenses of
investigation of
company's affairs.

484. (1) The expenses of and incidental to an investigation by an inspector appointed by the court under this Act shall be defrayed in the first instance by the Registrar, but the following persons shall, to the extent mentioned, be liable to repay the Registrar—

- (a) any person who is convicted on a prosecution instituted by the Attorney-General as a result of the investigation, or who is ordered to pay damages or restore any property in proceedings brought by virtue of section 486(3) may in the same proceedings be ordered to pay the said expenses to such extent as may be specified in the order;
- (b) any body corporate in whose name proceedings are brought shall be liable to the amount or value of any sums or property recovered by it as a result of those proceedings;
- (c) unless as a result of the investigation a prosecution is instituted by the Attorney-General—
 - (i) any body corporate dealt with by the report, where the inspector was appointed otherwise than under of section 481 shall be liable, except so far as the court otherwise directs; and

- (ii) the applicants for the investigation, shall be liable to such extent ,if any, as the court directs, and any amount for which a body corporate is liable by virtue of paragraph (b) of this subsection shall be a first charge on the sums or property mentioned in that paragraph.

(2) The report of an inspector appointed otherwise than under of section 478 may, if he thinks fit, and shall, if the court so directs, include a recommendation as to the directions, if any ,which he thinks appropriate, in the light of his investigation, to be given under of subsection (1)(c) of this section.

(3) For the purposes of this section, any costs or expenses incurred by the Registrar in or in connection with proceedings brought by virtue of section 486(3), including expenses incurred by virtue of subsection (4) ,of that section shall be treated as expenses of the investigation giving rise to the proceedings.

(4) Any liability to repay the Registrar imposed by subsection (1) (a) and (b) shall—

- (a) subject to satisfaction of the Registrar's right to repayment, be a liability also to indemnify all persons against liability under subsection (1)(c) ; and
- (b) any such liability imposed by subsection (1) shall be a liability also to indemnify all persons against liability under subsection (1) (b).

(5) Any person liable under subsection (1) (a) (b) or (c) shall be entitled to contribution from any other person liable under that subsection as the case may be, according to the amount of their respective liabilities thereunder.

Inspector's report to be evidence.

485. A copy of any report of any inspector appointed under this Act, authenticated by the seal of the company whose affairs have been investigated, shall be admissible in any legal proceedings as evidence of the opinion of the inspector in relation to any matter contained in the report.

Appointment and powers of inspection to investigate ownership of company.

486. (1) Where it appears to the Registrar that there is good reason so to do, he may appoint one or more competent inspectors to investigate and report on the membership of any company and otherwise with respect to the company for the purpose of determining the persons—

(a) who are or have been financially interested in the success or failure, real or apparent, of the company; or

(b) who are able to control or materially influence the policy of the company.

(2) The appointment of an inspector under this section may define the scope of his investigation, whether with respect to the matter or the period to which it is to extend or otherwise and in particular, may limit the investigation to matters connected with particular shares or debentures.

(3) Where an application for an investigation under this section with respect to particular shares or debentures of a company is made to the Registrar by members of the company, and the number of applicants or the amount of shares held by them is not less than that required for an application for the appointment of an inspector under section 478, the Registrar shall appoint an inspector to conduct the investigation.

(4) The Registrar shall not appoint an investigator if he is satisfied that the application is vexatious, and the inspector's appointment shall not exclude from the

scope of his investigation any matter which the application seeks to have included therein, and is satisfied that it is unreasonable for that matter to be investigated:

Provided that the Registrar may refuse to appoint an inspector under this subsection unless, in any case in which he considers it reasonable so to require, the applicants give sufficient security for the payment of the costs of the investigation.

(5) Subject to the terms of an inspector's appointment, an inspection powers shall extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of his investigation.

(6) For the purposes of any investigation under this section, sections 480 to 482 shall apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate.

(7) The sections specified under subsection (6) shall apply in relation to —

- (a) all persons who are or have been, or whom the inspector has reasonable cause to believe to be or have been financially interested in the success or failure, or the apparent success or failure, of the company; or
 - (b) any other body corporate whose membership is investigated with that of the company, which is able to control or to materially influence the policy the company 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.
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(8) The Registrar shall not be bound to furnish the company or any other person with a copy of any report by an inspector appointed under this section or with a complete copy thereof if he considers that there is good reason for not divulging the contents of the report or of parts thereof.

(9) The expenses of any investigation under subsection (1) shall be defrayed by the Registrar.

(10) The expenses of any investigation under subsection (3) shall be defrayed by the applicants unless the Registrar certifies that it is a case in which he might properly have acted under subsection (1).

Power to require
information as to
persons interested in
shares or debentures.

487. (1) Where it appears to the Registrar that there is good reason to investigate the ownership of any shares in or debentures of a company and that it is unnecessary to appoint an inspector for the purpose, he may require any person whom he has reasonable cause to believe—

- (a) to be or to have been interested in those shares or debentures; or
- (b) to act or to have acted in relation to those shares or debentures as the advocate or agent of someone interested therein,

to give him any information which he has or can reasonably be expected to obtain with regard to present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures.

(2) For the purposes of this section, a person shall be deemed to have an interest in a share or debenture—

- (a) if he has any right to acquire or dispose of the
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share or debenture or any interest therein or to vote in respect thereof;

(b) if his consent is necessary for the exercise of any of the rights of other persons interested therein; or

(c) if other persons interested therein can be required or are accustomed to exercise their rights in accordance with his instructions.

(3) Any person who fails to give any information required of him under this section, or who in giving any such information makes any statement which he knows to be false in a material particular, commits an offence and is liable on conviction to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding six months or to both.

PART XXIV - THE REGISTRAR OF COMPANIES

The Registrar.

488. (1) There shall be a Registrar of companies.

(2) The Registrar shall be appointed by the Minister.

The Registrar's functions.

489. (1) The Registrar shall perform —

(a) the functions conferred on the Registrar under this Act; and

(b) such functions on behalf of the Minister, in relation to the registration of companies or other matters, as the Minister may from time to time direct.

The Registrar's official seal.

490. The Registrar shall have an official seal for the authentication of documents in connection with the performance of the functions of the Registrar.

Fees payable to
Registrar.

491. (1) The Minister may by regulations require the payment to the registrar of fees in respect of—

(a) the performance of any of the registrar's functions; or

(b) the provision by the registrar of services or facilities for purposes incidental to, or otherwise connected with, the performance of any of the registrar's functions..

(2) The matters for which fees may be charged include—

(a) the performance of a duty imposed on the registrar or the Secretary of State;

(b) the receipt of documents delivered to the registrar; and

(d) the inspection, or provision of copies, of documents kept by the registrar.

(3) the regulations may—

(a) provide for the amount of the fees to be fixed by or determined under the regulations;

(b) provide for different fees to be payable in respect of the same matter in different circumstances;

(c) specify the person by whom any fee payable under the regulations is to be paid;

(d) specify when and how fees are to be paid.

(4) Regulations under this section are subject to negative resolution procedure.

(5) In respect of the performance of functions or the

provision of services or facilities—

- (a) for which fees are not provided for by regulations; or
- (b) in circumstances other than those for which fees are provided for by regulations,

the registrar may determine from time to time what fees (if any) are chargeable.

Public notice of issue of certificate of incorporation.

492. (1) The Registrar shall cause to be published in the Gazette or in accordance with section 535, notice of the issue by the Registrar of any certificate of incorporation of a company.

(2) The notice under subsection (1) shall state the name and registered number of the company and the date of issue of the certificate.

(3) This section applies to a certificate of incorporation issued under section 58 and the certificate issued on a the formation of a company.

Right to certificate of incorporation.

493. (1) Any person may require the Registrar to provide him with a copy of any certificate of incorporation of a company.

(2) The copy issued under subsection (1) shall be signed by the Registrar or authenticated by the Registrar's seal.

Company's registered numbers.

494. (1) The Registrar shall allocate to every company registered under this Act a number, which shall be known as the company's registered number.

(2) A company's registered number shall be in such form, consisting of one or more sequences of figures or letters, as the Registrar may determine.

(3) The Registrar may, on adopting a new form of registered number, make such changes of existing registered numbers as appear necessary.

(4) A change of a company registered number has effect from the date on which the company is notified of the change by the Registrar.

(5) In this section “company” includes—

- (a) an foreign company, other than a company that appears to the Registrar not to be required to register particulars;
- (b) any body to which any provision of this Act applies by virtue of regulations under section 596.

Registered numbers
of branches of foreign
company.

495. (1) The Registrar shall allocate to every branch of an foreign company whose particulars are registered a number, which shall be known as the branch’s registered number.

(2) A branch registered number shall be in such form, consisting of one or more sequences of figures or letters, as the Registrar may determine.

(3) The Registrar may on adopting a new form of registered number make such changes of existing registered numbers as appear necessary.

(4) A change of a branch’s registered number has effect from the date on which the company is notified of the change by the Registrar.

Registrar’s
requirements.

496. (1) The Registrar may specify the form, authentication and manner of delivery of documents required or authorised to be delivered to the Registrar under any written law.

(2) Where a document required or authorised to be delivered to the Registrar under any written law is required to be certified as—

- (a) an accurate translation; or
- (b) a correct copy or verified,

the Registrar may impose requirements with regard to the person, or description of person, by whom the certificate or verification is to be given.

(3) The power conferred by subsection (1) is exercisable in relation to the certificate or verification as if it were a separate document.

(4) The Registrar may require the contents of the document referred to in subsection (1) to—

- (a) be in a standard form; and
- (b) specify requirements for the purpose of enabling the document to be scanned or copied.

(5) The Registrar may—

- (a) require the document to be authenticated by a particular person or a person of a particular description;
 - (b) specify the means of authentication of any information which any relevant written law or the Registrar requires to be authenticated; and
 - (c) require the document to contain or be accompanied by the name or registered number of the company to which it relates
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or both.

(6) The Registrar may specify—

- (a) the physical form of the document;
- (b) the means to be used for delivering the document;
- (c) the address to which the document is to be sent;
- (d) in the case of a document to be delivered by electronic means, the hardware and software to be used, and technical specifications.

(7) The power conferred by this section does not authorise the Registrar to require documents to be delivered by electronic means.

Power to require
delivery by electronic
means.

497. (1) The Minister may by regulations require documents that are authorised or required to be delivered to the Registrar to be delivered by electronic means.

(2) Any requirement to deliver documents by electronic means is effective only if Registrar's rules have been published with respect to the detailed requirements for such delivery.

Agreement for
delivery by electronic
means.

498. (1) The Registrar may enter into a written agreement with a company that documents relating to the company that are required or authorised to be delivered to the Registrar shall—

- (a) be delivered by electronic means, except as provided for in the agreement; and
 - (b) conform to such requirements as may be specified in the agreement or specified by
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the Registrar in accordance with the agreement.

(2) An agreement under this section may relate to all or any description of documents to be delivered to the Registrar.

(3) Documents in relation to which an agreement is in force under this section shall be delivered in accordance with the agreement.

Document not delivered until received.

499. (1) A document is not delivered to the Registrar until it is received by the Registrar.

(2) The Registrar may make specifying rules when a document is to be regarded as received.

Defective delivery.

500. (1) A document delivered to the Registrar is not properly delivered unless the following requirements are met—

- (a) the requirements of the provision under which the document is to be delivered to the Registrar with regard to—
 - (i) the contents of the document, and
 - (ii) the form, authentication and manner of delivery;
- (b) any applicable requirements under section 496, 497 or section 498;
- (c) in so far as it consists of or includes names and addresses, any requirement of this Part with regard to permitted characters, letters or symbols or as to its being accompanied on delivery by a certificate as to the transliteration of any element;

- (d) any requirement of regulations under section 499512, ;
- (e) any requirements with regard to payment of a fee in respect of its receipt by the Registrar.

(2) The Registrar may accept and register a document that does not comply with the requirements under subsection (1).

(3) The acceptance or registration of a document by the Registrar under subsection (2) does not affect—

- (a) any liability for failure to comply with the requirements of the provision under which the document is delivered to the Registrar with regard to the contents of the document;
- (b) the continuing obligation to comply with the requirements mentioned in subsection (1);
- (c) the exercise of the Registrar's powers under section 501 and 502—

(4) No objection may be taken to the legal effect of any such action taken by the Registrar on the ground that the requirements mentioned in subsection (1) are not met .

Informal correction of document.

501. (1) A document that is delivered to the Registrar may be corrected by the Registrar if it appears to the Registrar to be incomplete or internally inconsistent.

(2) The power of the Registrar under subsection (1) may be exercise only—

- (a) on instructions; and
- (b) if the company has given and has not withdrawn its consent to instructions being

given under this section.

(3) The following requirements shall be met with regard to the instructions referred to in subsection (2)—

- (a) the instructions shall be given in response to an enquiry by the Registrar;
- (b) the Registrar shall be satisfied that the person giving the instructions is authorised to do so—
 - (i) by the person by whom the document was delivered; or
 - (ii) by the company to which the document relates;
- (c) the instructions shall meet any requirements of Registrar's rules relating to—
 - (i) the form and manner in which they are given; and
 - (ii) authentication.

(4) The company's consent to instructions being given under this section and any withdrawal of such consent—

- (a) may be in hard copy or electronic form; and
- (b) shall be notified to the Registrar.

(5) A document that is corrected under this section is treated, for the purposes of any written law relating to its delivery, as having been delivered when the correction is made.

Voluntary
replacement of
document previously
delivered.

502. (1) The Registrar may accept a replacement for a document previously delivered that did not comply with

the requirements for proper delivery.

(2) A replacement document shall not be accepted unless the Registrar is satisfied that it is delivered by—

- (a) the person by whom the original document was delivered; or
- (b) the company to which the original document relates, and that it complies with the requirements for proper delivery.

(3) The power of the Registrar to specify the form and manner of delivery includes power to specify requirements for the identification of the original document and the delivery of the replacement document in a form and manner that will enable the document to be associated with the original.

(4) For the purposes of this section the requirements for proper delivery of a document are specified in section 499(1).

Exclusion of unnecessary material.

503.(1) If a document delivered to the Registrar contains unnecessary material that in the opinion of the Registrar ought to be excluded from the register, the provisions of section 501(1) to (5) and section 504 shall apply as they apply to a document that does not meet the requirements specified in section 501(1) .

(2) “Unnecessary material” means material that is not specifically authorised to be delivered to the Registrar.

(3) For this purpose an obligation to deliver a document of a particular description, or conforming to certain requirements, is regarded as not extending to anything that is not needed for a document of that description or, as the case may be, conforming to those requirements.

Registrar’s notice to remedy defective

504. (1) This section applies where a document

delivery.

delivered to the Registrar—

- (a) does not meet the requirements for proper delivery; and
- (b) is not corrected under section 501 or replaced under section 503.

(2) The Registrar may give notice to the—

- (a) person by whom the document was delivered if the identity, and name and address of that person are known; or
- (b) company to which the document relates, if notice cannot be given under paragraph (a) and the identity of that company is known.

(3) The notice under subsection (2) shall—

- (a) state in what respects the document does not appear to meet the requirements for proper delivery;
- (b) state the date on which it is issued; and
- (c) require a replacement document complying with the requirements for proper delivery to be delivered to the Registrar within fourteen days after that date.

Public notice of receipt of certain documents.

505. (1) The Registrar shall publish the receipt of certain documents in the Gazette or in accordance with section 535.

(2) The notice under subsection (1) shall state the name and registered number of the company, the description of the document and the date of receipt.

(3) The Registrar is not required to publish a notice

of the receipt of a document before the date of incorporation of the company to which the document relates.

Effect of failure to
give public notice.

506. (1) A company is not entitled to rely against other persons or on the happening of any event to which this section applies unless—

- (a) the event has been officially notified at the material time; or
- (b) the company shows that the person concerned knew of the event at the material time.

(2) The events to which this section applies are—

- (a) an amendment of the company's articles;
- (b) a change among the company's directors;
- (c) with regard to service of any document on the company, a change of the registered office of the company;
- (d) the making of a winding-up order in respect of the company; or
- (e) the appointment of a liquidator in a voluntary winding up of the company.

(3) If the material time falls—

- (a) on or before the fifteenth day after the date of official notification; or
- (b) where the fifteenth day was not a working day, on or before the next day that was,

the company is not entitled to rely on the happening of the event as against a person who

shows that he was unavoidably prevented from knowing of the event at that time.

(4) In subsection (3) (a) “official notification” in relation to—

- (a) an amendment of the company’s articles, means notification in accordance with section 505 of the amendment and the amended text of the articles;
- (b) the appointment of a liquidator in a voluntary winding up, means notification of that event.

The register.

507. (1) The Registrar shall keep a register of—

- (a) the information contained in documents delivered to the Registrar under any written law;
- (b) certificates of incorporation issued by the Registrar; and

(3) Information contained in documents delivered to the Registrar may be recorded and kept in any form the Registrar thinks fit.

(4) The records kept by the Registrar under subsection (3) shall be open for inspection and may be copied.

(5) This is sufficient compliance with any duty of the Registrar to keep, file or register the document or to record the information contained in it.

(6) The records kept by the Registrar shall be such that information relating to a company is associated with that company, in such manner as the Registrar may

determine, so as to enable all the information relating to the company to be retrieved.

Annotation of the register.

508. (1) The Registrar shall note in the register—

- (a) the date on which a document is delivered to the Registrar;
- (b) if a document is corrected under section 501, the nature and date of the correction;
- (c) if a document is replaced, whether or not material derived from it is removed, the fact that it has been replaced and the date of delivery of the replacement;
- (d) if material is removed—
 - (i) what was removed ,giving a general description of its contents;
 - (ii) the power under which the material was removed; and
 - (iii) the date the material was removed.

(2) The Minister may by regulations—

- (a) authorise or require the Registrar to annotate the register in such other circumstances; and
- (b) specify the contents of any such annotation.

(3) No annotation is required in the case of a document that by virtue of section 500 is not registered.

(4) A note may be removed if it no longer serves any useful purpose.

(5) Notes placed in the register in accordance with subsection (1), or in pursuance of regulations under

subsection (2), are part of the register for all purposes of this Act.

Allocation of unique identifiers.

509. (1) The Minister may by regulations provide for the use, in connection with the register, of reference numbers or unique to identify each person who—

- (a) is a director of a company;
- (b) is secretary ,or a joint secretary ,of a public company; or
- (c) is appointed as an authorised signatory of a company.

(2) The regulations—

- (a) provide that a unique identifier may be in such form, consisting of one or more sequences of letters or numbers, as the Registrar may from time to time determine;
 - (b) provide for the allocation of unique identifiers by the Registrar;
 - (c) require there to be included, in any specified description of documents delivered to the Registrar, as well as a statement of the person's name—
 - (i) a statement of the person's unique identifier, or
 - (ii) a statement that the person has not been allocated a unique identifier;
 - (d) enable the Registrar to take steps where a person appears to have more than one unique identifier to discontinue the use of all but one of them.
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(3) The regulations may provide for the application of the scheme in relation to persons appointed, and documents registered, before the commencement of this Act.

(4) The Minister may make different regulations for different descriptions of persons and different descriptions of document.

Preservation of original documents.

510. (1) Subject to section 512, the originals of documents delivered to the Registrar in hard copy form shall be kept for three years after they are received by the Registrar, after which they may be destroyed :

Provided the information contained in the documents has been recorded in the register.

(2) The Registrar is under no obligation to keep the originals of documents delivered in electronic form, provided the information contained in them has been recorded in the register.

(3) This section applies to documents held by the Registrar when this section comes into force as well as to documents subsequently received.

Records relating to companies that have been dissolved etc.

511. (1) This section applies where a company is dissolved.

(2) At any time after two years from the date on which it appears to the Registrar that the company has been dissolved the registrar may direct that records relating to the company may be destroyed.

Inspection of the register.

512. (1) Any person may inspect the register.

(2) Subject to section 514, 517, the right of inspection to the originals of documents delivered to the

Registrar in hard copy form if, the record kept by the Registrar of the contents of the document is illegible or unavailable.

Right to copy of material on the register.

513. (1) Subject to section 514, any person may request a copy of any material on the register.

(2) The fee for a copy of material derived from a document subject to disclosure requirements whether in hard copy or electronic form, shall not exceed the administrative cost of providing it.

Material not available for public inspection.

514. (1) The following material shall not be made available by the Registrar for public inspection—

- (a) the contents of any document submitted to the Registrar containing views expressed pursuant to section 44;
 - (b) any application to the Registrar under section 572 that has not yet been determined or was not successful;
 - (c) any document received by the Registrar in connection with the giving or withdrawal of consent under section 501;
 - (d) any application or other document delivered to the Registrar under section 514 and any address in respect of which such an application is successful;
 - (e) any application or other document delivered to the Registrar under section 525;
 - (f) the contents of any instrument creating or evidencing a charge; and
 - (g) any e-mail address, identification code or
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password deriving from a document delivered for the purpose of authorising or facilitating electronic filing procedures or providing information by telephone.

(2) A restriction applying by reference to material deriving from a particular description of document does not affect the availability for public inspection of the same information contained in material derived from another description of document in relation to which no such restriction applies.

(3) Material to which this section applies need not be retained by the Registrar for longer than appears to the Registrar reasonably necessary for the purposes for which the material was delivered to the Registrar.

Application to
Registrar to make
address unavailable
for public inspection.

515. (1) The Minister may by regulations require the Registrar, on application, to make an address on the register unavailable for public inspection.

(2) The regulations may specify—

- (a) who may make an application under subsection (1);
- (b) the grounds on which an application may be made;
- (c) the information to be included in and documents to accompany an application;
- (d) the notice to be given of an application and of its outcome; and
- (e) how an application is to be determined.

(3) Provision under subsection (2)(e) may in particular—

- (a) confer a discretion on the Registrar;
- (b) provide for a question to be referred to a person other than the Registrar for the purposes of determining the application.

(4) An application under subsection (1) shall specify the address to be removed from the register and indicate where on the register it is.

(5) The regulations may provide—

- (a) that an address is not to be made unavailable for public inspection under this section unless replaced by a service address; and
- (b) that in such a case the application shall specify a service address.

Form of application
for inspection or
copy.

516. The Registrar may specify the form and manner in which application is to be made for—

- (a) an inspection under section 512; or
- (b) a copy under section 513.

Form and manner in
which copies to be
provided.

517. The Registrar may determine the form and manner in which copies are to be provided under section 513.

Certification of
copies as accurate.

518. (1) Copies provided in hard copy form under section 513 shall be certified as true copies unless the applicant dispenses with such certification.

(2) Copies provided in electronic form under section 513 shall not be certified as true copies unless the applicant expressly requests such certification.

(3) A copy provided under section 513, certified by the Registrar to be an accurate record of the contents of the original document, is in all legal proceedings admissible in evidence—

- (a) as of equal validity with the original document; and
- (b) as evidence of any fact stated in the original document of which direct oral evidence would be admissible.

(4) The Minister may by regulations determine the manner in which such a certificate is to be provided in a case where the copy is provided in electronic form.

(5) A copy of a certificate provided by the Registrar may, instead of being certified in writing to be an accurate record, be sealed with the Registrar's official seal.

Issue of process for production of records kept by the Registrar.

519.(1) No process for compelling the production of a record kept by the Registrar shall issue from any court except with the permission of the court.

(2) Any process under subsection (1) shall bear on it a statement that it is issued with the permission of the court.

Registrar's notice to resolve inconsistency on the register.

520.(1) Where it appears to the Registrar that the information contained in a document delivered to the Registrar is inconsistent with other information on the register, the Registrar may give notice to the company to which the document relates—

- (a) stating in what respects the information contained in it appears to be inconsistent with other information on the register; and
 - (b) requiring the company to take steps to resolve the inconsistency.
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(2) The notice under subsection (1) shall—

- (a) state the date on which it is issued; and
- (b) require the delivery to the Registrar, within fourteen days after that date, of such replacement or additional documents as may be required to resolve the inconsistency.

(3) Every officer of the company who does not deliver the necessary documents within the period specified in the notice commits an offence.

Administrative
removal of material
from the register.

521. (1) The Registrar may remove from the register anything that there was power, but no duty, to include.

(2) The Registrar may remove—

- (a) unnecessary material within the meaning of section 503; and
- (b) material derived from a document that has been replaced under sections 502 504, 507 or 520.

(3) This section does not authorise the removal from the register of—

- (a) anything whose registration has had legal consequences in relation to the company with regards to—
 - (i) its formation;
 - (ii) a change of name;
 - (iii) its re-registration;
 - (iv) a reduction of capital;

- (iv) a change of registered office;
- (vi) the registration of a charge; or
- (vii) its dissolution; or
- (b) an address that is a person's registered address for the purposes of section 616 service of documents on directors, secretaries and others.

(4) On or before removing any material under this section otherwise than at the request of the company the Registrar shall give notice—

- (a) to the person by whom the material was delivered, if the identity, and name and address of that person are known; or
- (b) to the company to which the material relates ,if notice cannot be given under paragraph (a) and the identity of that company is known.

(5) The notice under subsection (4) shall—

- (a) state what material the Registrar proposes to remove, or has removed, and on what grounds; and
- (b) state the date on which it is issued.

Rectification of
register on
application to
Registrar.

522.(1) The Minister may by regulations require the Registrar, on application, to remove from the register material that—

- (a) derives from anything invalid or ineffective or that was done without the authority of the company; or
 - (b) is factually inaccurate, or is derived from
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something that is factually inaccurate or forged.

(2) The regulations may specify—

- (a) who may make an application;
- (b) the information to be included in and documents to accompany an application;
- (c) the notice to be given of an application and of its outcome;
- (d) a period in which objections to an application may be made; and
- (e) how an application is to be determined.

(3) An application under this section shall—

- (a) specify what is to be removed from the register and indicate where on the register it is, and
- (b) be accompanied by a statement that the material specified in the application complies with this section.

(4) If no objections are made to the application, the Registrar may accept the statement as sufficient evidence that the material specified in the application should be removed from the register.

Rectification of the register under court order.

523. (1) The Registrar shall remove from the register any material—

- (a) that derives from anything that the court has declared to be invalid or ineffective, or to have been done without the authority of the company; or
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- (b) that a court declares to be factually inaccurate, or to be derived from something that is factually inaccurate, or forged, and that the court directs should be removed from the register.

(2) The court order under subsection (1) shall specify what is to be removed from the register and indicate where on the register it is.

(3) The court shall not make an order for the removal from the register of anything the registration of which had legal consequences as specified in section 521(3) unless satisfied—

- (a) that the presence of the material on the register has caused, or may cause, damage to the company; and
- (b) that the company's interest in removing the material outweighs any interest of other persons in the material continuing to appear on the register.

(4) Where the court does make an order for removal, it may make such consequential orders as appear just with respect to the legal effect, if any, to be accorded to the material by virtue of its having appeared on the register.

(5) A copy of the court's order shall be sent to the Registrar for registration.

Documents to be
drawn up and
delivered in English.

524. Subject to section 525, all documents required to be delivered to the Registrar shall be drawn up and delivered in English.

Documents that may
be drawn up and

525. (1) Documents to which this section applies

delivered in other languages.

may be drawn up and delivered to the Registrar in a language other than English, but when delivered to the Registrar they shall be accompanied by a certified translation into English.

(2) This section applies to—

- (a) agreements required to be forwarded to the Registrar under Part III of this Act;
- (b) documents of any other description specified by the Minister.

Voluntary filing of translations.

526. (1) A company may deliver to the Registrar one or more certified translations of any document relating to the company that is or has been delivered to the Registrar.

(2) The Minister may by regulations specify—

- (a) the languages; and
- (b) the descriptions of document,

in relation to which this facility is available.

(3) The power of the Registrar to impose requirements as to the form and manner of delivery includes power to impose requirements as to the identification of the original document and the delivery of the translation in a form and manner enabling it to be associated with the original.

Certified translations.

527. (1) In this Part a “certified translation” means a translation certified to be a correct translation.

(2) In the case of any discrepancy between the original language version of a document and a certified translation—

- (a) the company may not rely on the translation as against a third party, but
- (b) a third party may rely on the translation unless the company shows that the third party had knowledge of the original.

(3) A “third party” means a person other than the company or the Registrar.

Transliteration of
names and addresses:
permitted characters.

528. (1) Names and addresses in a document delivered to the Registrar shall contain only letters, characters and symbols, including accents and other diacritical marks that are permitted.

(2) The Minister may in regulations—

- (a) specify the letters, characters and symbols, including accents and other diacritical marks that are permitted; and
- (b) permit or require the delivery of documents in which names and addresses have not been translated into a permitted form.

Transliteration of
names and addresses:
voluntary translation
into Roman
characters.

529.(1) Where a name or address is or has been delivered to the Registrar in a permitted form using other than Roman characters, the company may deliver to the Registrar a translation into Roman characters.

(2) The power of the Registrar to impose requirements as to the form and manner of delivery includes power to impose requirements as to the identification of the original document and the delivery of the transliteration in a form and manner enabling it to be associated with the original.

Transliteration of
names and addresses:

530.(1) The Minister may by regulations require the

certification.

certification of transliterations and prescribe the form of certification.

(2) Different provision may be made for compulsory and voluntary translations.

General false statement offence.

531. (1) It is an offence for a person knowingly or recklessly—

- (a) to deliver or cause to be delivered to the Registrar, a document; or
- (b) to make to the Registrar, for any purpose, a statement,

that is misleading, false or deceptive in a material particular.

Enforcement of company's filing obligations.

532. (1) This section applies where a company has not complied with any provision under this Act—

- (a) to deliver a document to the Registrar; or
- (b) to give notice to the Registrar of any matter.

(2) The Registrar, or any member or creditor of the company, may give notice to the company requiring it to comply with the obligation.

(3) If the company fails to comply with the provision within fourteen days after service of the notice, the Registrar, or any member or creditor of the company, may apply to the court for an order directing the company, and any specified officer of the company, to comply within a specified time.

(4) The order of the court may provide that all costs of or incidental to the application are to be borne by the company or by any officers of it responsible for the

default.

Meaning of documents and delivery.

533. (1) In this Part—

- (a) “document” means information recorded in any form; and
- (b) references to delivering a document include forwarding, lodging, registering, sending, producing or submitting it or, in the case of a notice, giving it.

(2) Except as otherwise provided, this Part applies in relation to the supply to the Registrar of information otherwise than in documentary form as it applies in relation to the delivery of a document.

Supplementary provisions relating to electronic communications.

534. (1) The Registrar may by rules require a company to give any necessary consents to the use of electronic means for communications by the Registrar to the company as a condition of making use of any facility to deliver material to the Registrar by electronic means.

(2) A document that is required to be signed by the Registrar or authenticated by the Registrar’s seal shall, if sent by electronic means, be authenticated in such manner as may be specified in the rules.

Alternative to publication in the Gazette.

535.(1) Notices that would otherwise need to be published by the Registrar in the Gazette may instead be published by such means as may from time to time be approved by the Registrar in accordance with regulations made by the Minister.

(2) The Minister may by regulations provide for the alternative means.

(3) The regulations may, in particular—

- (a) require the use of electronic means;
- (b) require the same means to be used for all notices or for all notices of specified descriptions;
- (c) impose conditions as to the manner in which access to the notices is to be made available.

(4) Before publishing notices by means approved under this section, the Registrar shall publish at least one notice to that effect in the Gazette.

(5) Nothing in this section prevents the Registrar from giving public notice in the Gazette and by means approved under this section.

(6) In that case, where the Registrar gives public notice under subsection (5) the requirement of public notice is met when notice is first given by either means

Registrar's rules.

536. (1) Where any provision of this Part enables the Registrar to make provision, or impose requirements as to any matter the registrar may make rules under this section

(2) The Registrar's rules—

- (a) may make different provision for different cases; and
- (b) may allow the Registrar to amend any of the rules.

(3) The Registrar shall—

- (a) publicise the rules in a manner appropriate to bring them to the notice of persons affected by them; and

- (b) make copies of the rules available to the public in hard copy or electronic form.

Application of Part to foreign companies.

537. Unless the context otherwise requires, the provisions of this Part apply to a foreign company as they apply to a company registered this Act.

PART XXV - COMPANY CHARGES

Charges created by a company.

538. (1) A company that creates a charge to which this section applies shall deliver the prescribed particulars of the charge, together with the instrument, if any, by which the charge is created or evidenced, to the Registrar for registration before the end of the period allowed for registration.

(2) A charge to which this section applies may be registered on the application of a person interested in it.

(3) Where registration of a charge is effected on the application of a person other than the company, that person is entitled to recover from the company the amount of any fees properly paid by him to the Registrar on registration.

(4) This section applies to the following charges—

- (a) a charge on land or any interest in land, other than a charge for any rent or other periodical sum issuing out of land;
 - (b) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale;
 - (c) a charge for the purposes of securing any issue of debentures;
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- (d) a charge on uncalled share capital of the company;
- (e) a charge on calls made but not paid;
- (f) a charge on book debts of the company;
- (g) a floating charge on the company's property or undertaking of a company;
- (h) a charge on a ship or aircraft, or any share in a ship;
- (i) a charge on goodwill or on any intellectual property.

Charges which have to be registered: supplementary.

539. (1) The holding of debentures entitling the holder to a charge on land is not, for the purposes of section 538(4)(a), an interest in the land.

(2) The deposit of a negotiable instrument as security to secure the payment of book debts is not, for the purposes of section 538(4)(f), a charge on those book debts.

(3) For purposes of this Part, a “charge” includes a mortgage.

Charges existing on property acquired.

540. (1) This section applies where a company acquires property which is subject to a charge of a kind which would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part.

(2) A company to which this section applies shall deliver the prescribed particulars of the charge, together with a certified copy of the instrument, if any, by which the charge is created or evidenced, to the Registrar for registration.

(3) The company shall comply with subsection (2)

before the end of the period allowed for registration.

Charge in series of
debentures.

541. (1) Where a series of debentures containing, or giving by reference to another instrument, any charge to the benefit of which debenture holders of that series are entitled *pari passu* is created by a company, it is for the purposes of section 538(1) sufficient if the required particulars, together with the deed containing the charge or, if there is no such deed, one of the debentures of the series, are delivered to the Registrar before the end of the period allowed for registration.

(2) The required particulars referred to under subsection (1) are—

- (a) the total amount secured by the whole series;
- (b) the dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the series is created or defined;
- (c) a general description of the property charged; and
- (d) the names of the trustees, if any, for the debenture holders.

(3) Particulars of the date and amount of each issue of debentures of a series of the kind mentioned in subsection (1) shall be sent to the Registrar for entry in the register of charges.

(4) Failure to comply with subsection (3) does not affect the validity of the debentures issued.

(5) Section 538(2) to (4) apply for the purposes of this section as they apply for the purposes of that section, but as if references to the registration of the

charge were a reference to the registration of the series of debentures.

Additional
registration
requirement for
commission etc. in
relation to
debentures.

542. (1) Where any commission, allowance or discount has been paid or made either directly or indirectly by a company to a person in consideration of his—

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

the particulars required to be sent for registration under section 538 shall include particulars as to the amount or rate per cent. of the commission, discount or allowance so paid or made.

(2) The deposit of debentures as security for a debt of the company is not, for the purposes of this section, treated as the issue of debentures at a discount.

(3) Failure to comply with this section does not affect the validity of the debentures issued.

Endorsement of
certificate on
debentures.

543. (1) The company shall cause a copy of every certificate of registration given under section 548 to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the charge so registered.

(2) But this does not require a company to cause a certificate of registration of any charge so given to be endorsed on any debenture or certificate of debenture stock issued by the company before the charge was created.

(3) If a person knowingly and wilfully

authorises or permits the delivery of a debenture or certificate of debenture stock which under this section is required to have endorsed on it a copy of a certificate or registration, without the copy being so endorsed upon it, he commits an offence.

Charges created in, or over property in, jurisdictions outside Kenya.

544. (1) Where a charge is created outside Kenya comprising property situated outside Kenya, the delivery to the Registrar of a verified copy of the instrument by which the charge is created or evidenced has the same effect as the delivery of the instrument itself.

538

(2) Where a charge is created in Kenya but comprises property outside Kenya, the instrument creating or purporting to create the charge may be sent for registration under section 541 even if further proceedings may be necessary to make the charge valid according to the law of the country in which the property is situated.

Register of charges to be kept by Registrar.

545. (1) The Registrar shall keep, with respect to each company, a register of all the charges requiring registration under this Part.

(2) In the case of a charge to the benefit of which holders of a series of debentures are entitled, the Registrar shall enter in the register the required particulars specified in section 541(2).

(3) In the case of any other charge, the Registrar shall enter in the register the following particulars—

- (a) if it is a charge created by a company, the date of its creation and, if it is a charge which was existing on property acquired by the company, the date of the acquisition;
- (b) the amount secured by the charge;

(c) short particulars of the property charged;
and

(d) the persons entitled to the charge.

(5) The Registrar shall issue a certificate of the registration of any charge, stating the amount secured by the charge.

(6) The certificate issued under subsection (5)—

(a) shall be signed by the Registrar or authenticated by the Registrar's official seal;
and

(b) is conclusive evidence that the requirements of this Part as to registration have been satisfied.

(7) The register kept in pursuance of this section shall be open to inspection by any person.

The period allowed
for registration.

546. (1) The period allowed for registration of a charge created by a company is—

(a) twenty one days beginning with the day after the day on which the charge is created;
or

(b) if the charge is created outside Kenya, twenty one days beginning with the day after the day on which the instrument by which the charge is created or evidenced, or a copy of it, if despatched with due diligence, have been received in Kenya.

(2) The period allowed for registration of a charge to which property acquired by a company is subject is—

- (a) twenty one days beginning with the day after the day on which the acquisition is completed; or
- (b) if the property is situated and the charge was created outside Kenya, twenty one days beginning with the day after the day on which the instrument by which the charge is created or evidenced, or a copy of it could, if despatched with due diligence, have been received in Kenya.

(3) The period allowed for registration of particulars of a series of debentures as a result of section 541 is—

- (a) if there is a deed containing the charge mentioned in section 541(1), twenty one days beginning with the day after the day on which that deed is executed; or
- (b) if there is no such deed, twenty one days beginning with the day after the day on which the first debenture of the series is executed.

Registration of
enforcement of
security.

547. (1) If a person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under powers contained in an instrument, he shall, within seven days of the order or of the appointment under those powers, give notice of the fact to the Registrar.

(2) Where a person appointed receiver or manager of the property of a company under powers contained in an instrument ceases to act as such receiver or manager, he shall, on so ceasing, give the Registrar notice to that effect.

(3) The Registrar shall enter a fact of which he is given notice under this section in the register of charges.

(4) A person who does not comply with the requirements of this section commits an offence.

Entries of satisfaction
and release.

548. (1) Subsection (2) applies if a statement is delivered to the Registrar verifying with respect to a registered charge—

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

(2) The Registrar may enter on the register a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the property or undertaking of the company.

(3) Where the Registrar enters a memorandum of satisfaction in whole, the Registrar shall, if required, send the company a copy of it.

Rectification of
register of charges.

549.(1) Subsection (2) applies if the court is satisfied—

- (a) that the failure to register a charge before the end of the period allowed for registration, or the omission or misstatement of any particular with respect to any such charge or in a memorandum of satisfaction—
 - (i) was accidental or due to inadvertence or to some other

Consequence of
failure to register
charges created by a
company

sufficient cause; or

- (ii) is not of a nature to prejudice the position of creditors or shareholders of the company.

(2) The court may, on the application of the company or an interested person, and on such terms and conditions as seem to the court just and expedient, order that the period allowed for registration be extended or, as the case may be, that the omission or mis-statement be rectified.

550 (1) Subject to this Part, if a company creates a charge to which section 538 applies, the charge is void, so far as any security on the property or undertaking of the company is conferred by it, against—

- (a) a liquidator of the company;
- (b) an administrator of the company; and
- (c) a creditor of the company,

unless that section is complied with.

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

Companies to keep
copies of instruments
creating charges.

551. (1) Every company shall cause a copy of every instrument creating a charge, requiring registration under this Part at the registered office of the company.

(2) In the case of a series of uniform debentures, a copy of one of the debentures of the series is sufficient.

Company's register
of charges.

552. (1) Every limited company shall keep at the registered office of the company a register of charges and enter in it—

- (a) all charges specifically affecting property of the company; and
- (b) all floating charges on the whole or part of the property or undertaking of the company.

(2) The entry in the register referred to in subsection (1) shall in each case, give a short description of the property charged, the amount of the charge and, except in the cases of securities to bearer, the names of the persons entitled to it.

(3) An officer of the company who knowingly and wilfully authorises or permits the omission of an entry required to be made in pursuance of this section commits an offence.

Right to inspect
instruments which
create charges, etc.

553. (1) The copies of instruments creating any charge requiring registration with the Registrar, and the register of charges kept in pursuance of section 552, shall be open for inspection during business hours, subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection.

(2) The documents and the register referred to in subsection (1) shall be open to the inspection of any creditor or member of the company without fee.

(2) The register of charges shall be open to the inspection of any other person on payment of such fee for each inspection as the company may prescribe.

(3) If inspection of copies, or of the register, is refused, every officer of the company who authorises or knowingly and wilfully permits the refusal commits an offence.

(4) The court may by order, compel an immediate inspection of the copies or register where a person is not permitted to inspect the register or copies of instrument creating a charge.

PART XXVI - DISSOLUTION AND RESTORATION TO THE REGISTER

Power to strike off
company not carrying
on business or in
operation.

554. (1) If the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, the Registrar may send to the company by post a letter inquiring whether the company is carrying on business or is in operation.

(2) If the Registrar does not receive a response to his query under subsection (1) within one month of sending the letter, the Registrar shall within fourteen days after the expiration of that month send to the company by post a registered letter referring to the first letter, and stating that—

- (a) there has been no response to his query; and
- (b) if a response is not received to the second letter within one month from its date, 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 a response to the effect that the company is not carrying on business or is not in operation; or
- (b) does not within one month after sending the second letter receive any response,

the Registrar 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 the notice the name of the company mentioned in it will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) At the expiration of the time mentioned in the notice under subsection (3) the Registrar may, unless cause to the contrary is previously shown by the company, strike the name of the company off the register.

(5) The Registrar shall publish a notice in the Gazette that the name of the company has been struck off the register.

(6) The company shall, on the publication of the notice in the Gazette, stand dissolved:

Provided that —

- (a) the liability, if any, of every director, managing officer and member of the company shall continue and may be enforced as if the company had not been dissolved; and
- (b) nothing in this section affects the power of the court to wind up a company whose name has been struck off the register.

Duty to act in case of
company being
wound up.

555. (1) If, in a case where a company is being wound up—

- (a) the Registrar has reasonable cause to believe—
 - (i) that no liquidator is acting; or
 - (ii) that the affairs of the company are fully wound up; and

- (b) 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, if any, a notice that at the expiration of three months from the date of the notice the name of the company mentioned in it shall, unless cause is shown to the contrary, be struck off the register and the company shall be dissolved.

(2) At the expiration of the time mentioned in the notice under subsection (1) the Registrar may, unless cause to the contrary is shown by the company, strike its name off the register.

(3) The Registrar shall publish a notice in the Gazette that the name of the company has been struck off the register.

(4) The company shall, on the publication of the notice in the Gazette, stand dissolved:

Provided that—

- (a) the liability, if any, of every director, managing officer and member of the company shall continue and may be enforced as if the company had not been dissolved; and
- (b) nothing in this section affects the power of the court to wind up a company the name of which has been struck off the register.

Supplementary provisions as to service of letter or notice.

556. (1) A letter or notice to be sent to a company under section 554 or 555 may be addressed to the company at the registered office of the company or, if no office has been registered, to the care of an officer of the

company.

(2) If there is no officer of the company whose name and address are known to the Registrar, the letter or notice may be sent to each of the persons who subscribed the memorandum, if their addresses are known to the Registrar.

(3) A notice to be sent to a liquidator under section 555 may be addressed to him at his last known place of business.

Striking off on
application by
company.

557. (1) On application by a company, the Registrar may strike the name of the company off the register.

(2) The application under subsection (1) shall—

- (a) be made on behalf of the company by its directors or by a majority of them; and
- (b) contain the prescribed information.

(3) The Registrar may not strike the name of a company off the register under this section until after the expiration of three months from the publication by the Registrar in the Gazette of a notice—

- (a) stating that the Registrar may exercise the power under this section in relation to the company; and
- (b) inviting any person to show cause why the name of the company should not be struck off.

(4) The Registrar shall publish a notice in the Gazette of the name of the company having been struck off.

(5) The company shall, on the publication of the notice

in the Gazette, stand dissolved:

Provided that—

- (a) the liability, if any, of every director, managing officer and member of the company shall continue and may be enforced as if the company had not been dissolved; and
- (b) nothing in this section affects the power of the court to wind up a company the name of which has been struck off the register.

Circumstances in which application not to be made: activities of company.

558. (1) An application under section 559 on behalf of a company shall not be made if, at any time in the previous three months, the company has—

- (a) changed its name;
 - (b) traded or otherwise carried on business;
 - (c) made a disposal for value of property or rights that, immediately before ceasing to trade or otherwise carry on business, it held for the purpose of disposal for gain in the normal course of trading or otherwise carrying on business; or
 - (d) engaged in any other activity, except one which is—
 - (i) necessary or expedient for the purpose of making an application under section 557, or deciding whether to make an application;
 - (ii) necessary or expedient for the purpose of concluding the affairs of the company;
-

- (iii) necessary or expedient for the purpose of complying with any statutory requirement; or
- (iv) specified by the Minister by order for the purposes of this paragraph.

(2) For the purposes of this section, a company is not to be treated as trading or otherwise carrying on business by virtue only of the fact that it makes a payment in respect of a liability incurred in the course of trading or otherwise carrying on business.

(3) The Minister may by order amend subsection (1) for the purpose of altering the period in relation to which the doing of the things mentioned in paragraph (a) to (d) of that section are relevant.

Circumstances in which application not to be made: other proceedings not concluded.

559. (1) An application made under section 557 on behalf of a company shall not be made at a time when—

- (a) an application to the court under Part XXVII has been made on behalf of the company for the sanctioning of a compromise or arrangement and the matter has not been finally concluded; or
- (b) there is a receiver or manager of the property of the company.

(2) For the purposes of subsection (1)(a), the matter in court is finally concluded if—

- (a) the application has been withdrawn;
 - (b) the application has been concluded without a compromise or arrangement being sanctioned by the court; or
 - (c) a compromise or arrangement has been
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sanctioned by the court and has, together with anything required to be done under any provision made in relation to the matter by order of the court, been fully carried out.

Copy of application
to be given to
members, employees,
etc.

560. (1) A person who makes an application under section 557 on behalf of a company shall ensure that, within seven days from the day on which the application is made, a copy of the application is given to every person who at any time on that day is—

- (a) a member of the company;
- (b) an employee of the company;
- (c) a creditor of the company;
- (d) a director of the company;
- (e) a manager or trustee of any pension fund established for the benefit of employees of the company; or
- (f) a person of a description specified for the purposes of this paragraph by regulations made by the Minister.

(2) Subsection (1) does not require a copy of the application to be given to a director who is a party to the application.

(3) The duty imposed by this section ceases to apply if the application is withdrawn before the end of the period for giving the copy application.

Copy of application
to be given to new
members, employees,
etc.

561. (1) This section applies in relation to any time after the day on which a company makes an application for voluntary striking off under section 557 and before the day on which the application is finally dealt with or withdrawn.

(2) A person who is a director of the company at the end of a day on which a person, other than himself, becomes—

- (a) a member of the company;
- (b) an employee of the company;
- (c) a creditor of the company;
- (d) a director of the company;
- (e) a manager or trustee of any pension fund established for the benefit of employees of the company; or
- (f) a person of a description specified for the purposes of this paragraph by the Minister,

shall ensure that a copy of the application is given to that person within seven days from that day.

(3) The duty imposed by this section ceases to apply if the application is concluded or withdrawn before the end of the period for giving the copy application.

Copy of application:
provisions as to
service of documents.

562. (1) .For the purposes of section 563 and 564 a document is treated as given to a person if it is—

- (a) delivered to him; or
- (b) left at his proper address; or
- (c) sent to him by post at that address.

(3) In the case of a creditor of the company a document is treated as given to him if it is left or sent by post to him—

- (a) at his place of business with which the
-

company has had dealings by virtue of which he is a creditor of the company; or

- (b) if there is more than one such place of business, at each of them.

Circumstances in which application to be withdrawn.

563. (1) This section applies where, at any time on or after the day on which a company makes an application under section 557 and before the day on which the application is concluded or withdrawn—

- (a) the company—
 - (i) changes its name;
 - (ii) trades or otherwise carries on business;
 - (iii) makes a disposal for value of any property or rights other than those which it was necessary or expedient for it to hold for the purpose of making, or proceeding with, an application under that section; or
 - (iv) engages in any activity, except one to which subsection (3) applies;
- (b) an application is made to the court under Part XXVII on behalf of the company for the sanctioning of a compromise or arrangement; or
- (c) a receiver or manager of the property of the company is appointed.

(2) A person who, at the end of a day on which any of the events mentioned in subsection (1) occurs, is a director of the company shall ensure that the application of the company is withdrawn forthwith.

(3) For the purposes of subsection (1)(a), a company is not treated as trading or otherwise carrying on business by virtue only of the fact that it makes a payment in respect of a liability incurred in the course of trading or otherwise carrying on business.

(4) The excepted activities referred to in subsection (1)(a)(iv) are any activity—

(a) necessary or expedient—

(i) for the purpose of making, or proceeding with, an application under section 557; or

(ii) for the purpose of concluding affairs of the company that are outstanding because of what has been necessary or expedient for the purpose of making, or proceeding with such an application;

(b) necessary or expedient for the purpose of complying with any statutory requirement; and

(c) specified by the Minister for the purposes of this subsection.

Withdrawal of
application.

564. An application under section 557 shall be withdrawn by notice to the Registrar.

Meaning of “creditor”

565. In this Part “creditor” includes a contingent or prospective creditor.

Property of dissolved
company to be *bona*
vacantia.

566. (1) When a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution, including

leasehold property, but not including property held by the company on trust for another person, are deemed to be *bona vacantia* and—

- (a) accordingly belong to the Government; and
- (b) vest and may be dealt with in the same manner as other *bona vacantia* accruing to the Government.

(2) Subsection (1) has effect subject to the possible restoration of the company to the register under this Part.

Government
disclaimer of property
vesting as *bona
vacantia*.

567. (1) Where property vests in the Government under section 566, the Government's title to it under that section may be disclaimed by a notice signed by the Attorney-General.

(2) The right to execute a notice of disclaimer under this section may be waived by or on behalf of the Government either expressly or by taking possession or other act evidencing that intention.

(3) A notice of disclaimer shall be executed within three years after—

- (a) the date on which the fact that the property may have vested in the Government under section 560 first comes to the notice of the Attorney-General; or
- (b) if ownership of the property is not established at that date, the end of the period reasonably necessary for the Attorney-General to establish the ownership of the property.

(4) If an application in writing is made to the Attorney-General by a person interested in the property requiring him to decide whether he will or will not

disclaim, any notice of disclaimer shall be executed within twelve months after the making of the application or such further period as may be allowed by the court.

(5) A notice of disclaimer under this section is of no effect if it is shown to have been executed after the end of the period specified by subsection (3) or (4).

(6) A notice of disclaimer under this section shall be delivered to the Registrar and retained and registered by him.

(7) Copies of a notice of disclaimer shall be published in the Gazette and sent to any persons who have given the Attorney-General notice that they claim to be interested in the property.

Effect of Government disclaimer.

568. (1) Where notice of disclaimer is executed under section 570 as respects any property, that property is deemed not to have vested in the Government under section 566.

(2) Sections 570 to 573 apply in relation to the effect of the Government disclaimer.

General effect of disclaimer.

569. The Government's disclaimer operates-

- (b) so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the company in or in respect of the property disclaimed; and
- (b) does not, except so far as is necessary for the purpose of releasing the company from any liability, affect the rights or liabilities of any other person.

Disclaimer of leaseholds.

570. (1) The disclaimer of any property of a

leasehold character does not take effect unless a copy of the disclaimer has been served, so far as the Attorney-General is aware of their addresses, on every person claiming under the company as mortgagee, and either—

- (a) no application under section **571** is made with respect to that property before the end of the period of fourteen days beginning with the day on which the last notice under this paragraph was served; or
- (b) where such an application has been made, the court directs that the disclaimer shall take effect.

(2) Where the court gives a direction under subsection (1)(b) it may also, instead of or in addition to any order it makes under section 571, make such order as it thinks fit with respect to fixtures, tenant's improvements and other matters arising out of the lease.

Power of court to
make vesting order.

571. (1) The court may on application by a person who—

- (a) claims an interest in the disclaimed property; or
- (b) is under a liability in respect of the disclaimed property that is not discharged by the disclaimer,

make an order under this section in respect of the property.

(2) An order under this section is an order for the vesting of the disclaimed property in, or its delivery to—

- (a) a person entitled to it, or a trustee for such a person; or
 - (b) a person subject to such a liability as is
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mentioned in subsection (1)(b), or a trustee for such a person.

(3) An order under subsection (2)(b) may only be made where it appears to the court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(4) An order under this section may be made on such terms as the court thinks fit.

(5) On a vesting order being made under this section, the property comprised in it vests in the person named in that behalf in the order without conveyance, assignment or transfer.

Protection of persons
holding under a lease.

572. (1) The court shall not make an order under section 571 vesting property of a leasehold nature in a person claiming under the company as or mortgagee except on terms making that person—

- (a) subject to the same liabilities and obligations as those to which the company was subject under the lease; or
- (b) if the court thinks fit, subject to the same liabilities and obligations as if the lease had been assigned to him.

(2) Where the order relates to only part of the property comprised in the lease, subsection (1) applies as if the lease had comprised only the property comprised in the vesting order.

(3) A person claiming under the company as mortgagee who declines to accept a vesting order on such terms is excluded from all interest in the property.

(4) If there is no person claiming under the company who is willing to accept an order on such terms,

the court has power to vest the estate of the company and interest in the property in any person who is liable, whether personally or as a representative, and whether alone or jointly with the company, to perform the lessee's covenants in the lease.

(5) The court may vest that estate and interest in such a person freed and discharged from all estates, encumbrances and interests created by the company.

Application for
administrative
restoration to the
register.

573. (1) An application may be made to the Registrar to restore to the register, a company that has been struck off the register under section 554 or 555.

(2) An application under this section may

- (a) be made whether or not the company has in consequence been dissolved;
- (c) only be made by a former director or former member of the company; and
- (d) not be made after the end of the period of six years from the date of the dissolution of the company.

(3) For purposes of this section, an application is made when it is received by the Registrar.

Requirements for
administrative
restoration.

574. (1) On an application made under section 573, the Registrar shall restore the company to the register if-

- (a) the company was carrying on business or was in operation at the time of its striking off; and
 - (b) any property or right previously vested in or held on trust for the company has vested as *bona vacantia*, the Attorney-general has
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signified to the Registrar in writing, consent to the restoration of the company to the register; and

- (c) the applicant has delivered to the Registrar such documents relating to the company as are necessary to bring up to date the records kept by the Registrar.

(2) It is the responsibility of the applicant to obtain the consent required under subsection (1) (b) and to pay any costs of the Attorney-General—

- (a) in dealing with the property during the period of dissolution; or
- (b) in connection with the proceedings on the application, that may be demanded as a condition of giving consent.

Application to be accompanied by statement of compliance.

575. (1) An application under section 573 shall be accompanied by a statement of compliance.

(2) The statement of compliance required under subsection (1) is a statement—

- (a) that the person making the application has standing to apply; and
- (b) that the requirements for administrative restoration are met.

(3) The Registrar may accept the statement of compliance as sufficient evidence of the matters specified in subsection (2).

Registrar's decision on application for administrative restoration.

576. (1) The Registrar shall give notice to the applicant of the decision on an application for administrative restoration to the register under section 573.

(2) If the Registrar determines that the company shall be restored to the register, the restoration shall take effect from the date that notice of the restoration is sent.

(3) Where the Registrar makes a decision under subsection (1), the Registrar shall—

- (a) enter on the register a note of the date from which the restoration of the company to the register takes effect; and
- (b) cause notice of the restoration to be published in the Gazette.

(4) The notice under subsection (3)(b) shall state—

- (a) the name of the company or, if the company is restored to the register under a different name, that name and its former name;
- (b) the registered number of the company; and
- (c) the date from which the restoration of the company to the register takes effect.

Effect of
administrative
restoration.

577. (1) The effect of the restoration of a company to the register is that the company is deemed to have continued in existence as if it had not been dissolved or struck off the register.

(2) The court may give such directions and make such provision as it deems just for placing the company and all other persons in the same position as nearly as may be as if the company had not been dissolved or struck off the register.

(3) An application to the court for such directions or provision may be made any time within three years after the date of restoration of the company to the register.

Application to court
for restoration to the
register.

578.(1) An application may be made to the court to restore to the register a company that has been struck off the register under section 554, 555; or 557, whether or not the company has in consequence been dissolved.

(2) An application under this section may be made by—

- (a) the Minister;
 - (b) any former director of the company;
 - (c) any person having an interest in land in which the company had a superior or derivative interest;
 - (d) any person having an interest in land or other property—
 - (i) that was subject to rights vested in the company; or
 - (ii) that was benefited by obligations owed by the company;
 - (e) any person who but for the dissolution of the company would have been in a contractual relationship with it;
 - (f) any person with a potential legal claim against the company;
 - (g) any manager or trustee of a pension fund established for the benefit of employees of the company;
 - (h) any former member of the company or the personal representatives of such a person;
-

- (i) any person who was a creditor of the company at the time of its being struck off the register or dissolved;
- (j) any former liquidator of the company;
- (k) where the company was struck off the register under section 557, any person of a description specified by regulations under section 560(1)(f) or 561(2)(f) or by any other person appearing to the court to have an interest in the matter.

When application to the court may be made.

579. (1) An application to the court for restoration of a company to the register may be made at any time for the purpose of bringing proceedings against the company for damages for personal injury.

(2) An application to the court for restoration of a company to the register may not be made after the end of the period of six years from the date of the dissolution of the company.

(3) In a case where—

- (a) the company has been struck off the register under section 554 or 555;
- (b) an application to the Registrar has been made under section 573 within the time allowed for making such an application; and
- (c) the Registrar has refused the application,

an application to the court may be made within twenty eight days of notice of the decision of the Registrar being issued by the Registrar, even if the period of six years mentioned in subsection (2) has expired.

Decision on
application for
restoration by the
court.

580. (1) On an application under section 578, the court may order the restoration of the company to the register—

- (a) if the company was struck off the register under section 554 or 555 and the company was, at the time of the striking off, carrying on business or was in operation;
- (b) if the company was struck off the register under section 557 and any of the requirements of section 558 to 563 was not complied with; or
- (c) if in any other case the court considers it just to do so.

(2) If the court orders restoration of the company to the register, the restoration takes effect on a copy of the court order being delivered to the Registrar.

(3) The Registrar shall publish a notice of the restoration of the company to the register in the Gazette.

(4) The notice under subsection (3) shall state—

- (a) the name of the company or, if the company is restored to the register under a different name, that name and its former name;
- (b) the company's registered number; and
- (c) the date on which the restoration took effect.

Effect of court order
for restoration to the
register.

581. (1) The effect of an order by the court for the restoration of the company to the register is that the company is deemed to have continued in existence as if it had not been dissolved or struck off the register.

(2) The court may give such directions and make

such provision as it deems just for placing the company and all other persons in the same position, as nearly as may be, as if the company had not been dissolved or struck off the register.

(3) The court may also give directions with regard—

- (a) to the delivery to the Registrar of such documents relating to the company as are necessary to bring up to date the records kept by the Registrar;
- (b) to the payment of the costs of the Registrar in connection with the proceedings for the restoration of the company to the register;
- (c) where any property or right previously vested in or held on trust for the company has vested as *bona vacantia*, the payment of the costs of the Attorney-General—
 - (i) in dealing with the property during the period of dissolution; or
 - (ii) in connection with the proceedings on the application.

Company's name on restoration.

582. (1) A company is restored to the register with the name it had before it was dissolved or struck off the register, subject to the following provisions-

- (a) if at the date of restoration the company could not be registered under its former name without contravening section 44;
- (b) under another name specified—
 - (i) in the case of administrative restoration, in the application to the Registrar; or

(ii) in the case of restoration under a court order, in the court's order; or

(iii) as if its registered number was also its name.

(2) References to a company's being registered in a name and to registration, in that context, shall be read as including the company's being restored to the register.

(3) If a company is restored to the register under a name specified in the application to the Registrar, sections 60 and 61 shall apply as if the application to the Registrar were a notice of a change of name.

(4) If a company is restored to the register under a name specified in the order of the court, sections 60 and 61 shall apply as if the copy of the court order delivered to the Registrar were notice of a change a name.

(5) If the company is restored to the register as if its registered number was also its name—

(a) the company shall change its name within fourteen days after the date of the restoration;

(b) the change may be made by resolution of the directors, without prejudice to any other method of changing the company's name;

(c) the company shall give notice to the Registrar of the change; and

(d) sections 60 and 61 shall apply with regard to the registration and effect of the change.

(5) If the company fails to comply with subsection (5)(a) or (c) every officer of the company who is in default commits an offence.

Effect of restoration
to the register where
property has vested as
bona vacantia.

583. (1) The person in whom any property or right is vested by section 569 may dispose of, or of an interest in, that property or right despite the fact that the company may be restored to the register under this Part.

(2) If the company is restored to the register—

(a) the restoration does not affect the disposition, but without prejudice to its effect in relation to any other property or right previously vested in or held on trust for the company; and

(b) the Government shall pay to the company an amount equal to—

(i) the amount of any consideration received for the property or right or, as the case may be, the interest in it; or

(ii) the value of any such consideration at the time of the disposition, or, if no consideration was received, an amount equal to the value of the property, right or interest disposed of, as at the date of the disposition.

(3) There may be deducted from the amount payable under subsection (2)(b) the reasonable costs of the Attorney-General in connection with the disposition, to the extent that they have not been paid as a condition of administrative restoration or pursuant to a court order for restoration.

PART XXVII - ARRANGEMENTS AND

RECONSTRUCTIONS

Application of Part.

584. (1) The provisions of this Part apply where a compromise or arrangement is proposed—

- (a) between a company and its creditors, or any class of its creditors; or
- (b) between the company and its members, or any class of its creditors.

(2) The provisions of sections 585 to 593 apply to every compromise or arrangement made under subsection (1).

(3) Sections 585 to 593 have effect subject to regulations under section 596 in the circumstances specified in that section.

(4) In this Part—

“arrangement” includes a reorganisation of the company’s share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

Court sanction for compromise or arrangement.

585. Where a compromise or arrangement is proposed between a company and its creditors, or any class of its creditors, or between the company and its members, or any class of its members—

- (a) the company;
- (b) any creditor or member of the company; or
- (c) if the company is being wound up or an administration order is in force in relation to it,

the liquidator or administrator, may apply to the court to

sanction the compromise or arrangement.

Meeting of creditors
or members.

586. On receiving an application under section 584, the court may order a meeting of the creditors or class of creditors, or of the members of the company or class of members, to be summoned at least thirty days prior to the meeting in such manner as the court directs.

Statement to be
circulated or made
available.

587. (1) Where a meeting is convened under section 586—

- (a) every notice convening the meeting that is sent to a creditor or member shall be accompanied by a statement complying with this section; and
- (b) every notice convening the meeting that is given by advertisement shall either—
 - (i) include such a statement, or
 - (ii) state where and how creditors or members entitled to attend the meeting may obtain copies of such a statement.

(2) The statement mentioned in subsection (1) shall—

- (a) explain the effect of the compromise or arrangement; and
 - (b) in particular, state—
 - (i) any material interests of the directors of the company, whether as directors or as members or as creditors of the company or otherwise; and
 - (ii) the effect on those interests of the compromise or arrangement, in so far as it is different from the effect
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on the like interests of other persons.

(3) Where the compromise or arrangement affects the rights of debenture holders of the company, the statement shall give an explanation with respect to the trustees of any deed for securing the issue of the debentures as it is required to give with respect to the directors of the company.

(4) Where a notice given by advertisement states that copies of an explanatory statement can be obtained by creditors or members entitled to attend the meeting, every such creditor or member is entitled, on making an application in the manner indicated by the notice, to be provided by the company with a copy of the statement free of charge.

(5) Subject to subsection (7), if a company contravenes this section, every officer of the company who is in default commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings.

(6) For purposes of subsection (5), the following are treated as officers of the company—

- (a) a liquidator or administrator of the company; and
- (b) a trustee of a deed for securing the issue of debentures of the company.

(7) A person is not guilty of an offence under this section if he shows that the default was due to the refusal of a director or trustee for debenture holders to supply the necessary particulars of his interests.

Duty of directors and trustees to provide information.

588. (1) It is the duty of—

- (a) any director of the company; and
 - (b) any trustee for its debenture holders,
-

to give notice to the company of such matters relating to himself as may be necessary for purposes of section 590.

(2) Any person who contravenes this section commits an offence.

Court order
sanctioning
compromise or
arrangement.

589. (1) The court may sanction a compromise or arrangement only if, at a meeting convened under section 586, a majority in number representing seventy-five percent in value of the creditors or class of creditors or members or class of members present and voting either in person or by proxy at the meeting, agree to the compromise or arrangement.

(2) A compromise or agreement sanctioned by the court is binding on—

- (a) all creditors or the class of creditors or on the members or class of members; and
- (b) the company or, in the case of a company in the course of being wound up, the liquidator and contributories of the company.

(3) The order of the court has no effect until a copy of it has been delivered to the Registrar of companies for registration

Copy of court order
to be annexed to
copies of company's
constitution.

590. (1) A copy of every court order under section 589 shall be annexed to—

- (a) every copy of the company's articles issued after the court order has been made; or
 - (b) in the case of a company not having articles, of every copy so issued of the instrument constituting the company or defining its constitution.
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Powers of court to facilitate reconstruction or amalgamation.

591. (1) This section applies where—

- (a) application is made to the court under section 585 to sanction a compromise or arrangement proposed between a company and any such persons as are mentioned in that section; and
- (b) it is shown that—
 - (i) the compromise or arrangement is proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies; and
 - (ii) under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (“a transferor company”) is to be transferred to another company (“the transferee company”).

(2) The court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters—

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;
 - (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any
-

person;

- (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
- (d) the dissolution, without winding up, of any transferor company;
- (e) the provision to be made for any persons who, within such time and in such manner as the courts directs, dissent from the compromise or arrangement; and
- (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.

(3) If the court order under subsection (2) provides for the transfer of property or liabilities—

- (a) the property is by virtue of the order transferred to, and vests in, the transferee company; and
- (b) the liabilities are, by virtue of the order, transferred to and become liabilities of that company.

(4) The property, if the order so directs, vests freed from any charge that is by virtue of the compromise or arrangement to cease to have effect.

(5) In this section—

- (a) “property” includes property, rights and powers of every description; and
 - (b) “liabilities” includes duties.
-

Copy of order to be delivered to the Registrar.

592. Where a court order is made under section 594, every company in relation to which the court order is made shall cause a copy of the order to be delivered to the Registrar for registration within seven days after its making.

Power to make provision for mergers and divisions of public companies.

593. (1) Where—

- (a) a compromise or arrangement is proposed between a public company and any person mentioned in section 585 for the purpose of, or in connection with, a scheme for—
 - (i) the reconstruction of any company or companies; or
 - (ii) the amalgamation of any two or more companies;
- (b) the circumstances are as specified in subsection (2); and
- (c) the consideration for the transfer or each of the transfers envisaged in subsection (2) is to be shares in the transferee company or any of the transferee companies receivable by members of the transferor company or transferor companies, with or without any cash payment to members,

the provisions of this Part shall apply, with regard to that compromise or arrangement, subject to regulations under this section.

(2) The circumstances mentioned in subsection (1) are where under the scheme the undertaking property and liabilities of—

- (a) the company in respect of which the compromise or arrangement in question is

proposed are to be transferred to another public company, other than one formed for the purpose of, or in connection with, the scheme;

- (b) two or more public companies concerned in the scheme, including the company in respect of which the compromise or arrangement in question is proposed, are to be transferred to a company, whether or not a public company, formed for the purposes of or in connection with the scheme; and
- (c) the company in respect of which the compromise or arrangement in question is proposed are to be divided among and transferred to two or more companies each of which is either—
 - (i) a public company; or
 - (ii) a company, whether or not a public company, formed for the purposes of, or in connection with, the scheme.

(3) This section does not apply where the company in respect of which the compromise or arrangement is proposed is being wound up.

(4) The Minister may by regulations provide that where this section applies the court shall not sanction a compromise or arrangement unless the requirements of this Act have been complied with.

PART XXVIII - COMPANIES NOT FORMED UNDER THIS ACT

Registration of
Companies formed
under other Acts.

594. (1) A company formed under any other written law may apply for registration under this Act.

- (2) Subject to subsection (3) and (4), a company

may register as an unlimited company, as a company limited by shares or as a company limited by guarantee.

(3) A company that is not a joint stock company may not register under this section as a company limited by shares.

(4) The registration of a company under this section is not invalid by reason that it has taken place with a view to the company being wound up.

Definition of “joint stock company”.

595. (1) For the purposes of section 594, a “joint stock company” means a company—

- (a) having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other; and
- (b) formed on the principle of having for its members, the holders of those shares or that stock, and no other person.

(2) A joint stock company when registered with limited liability under this Act is deemed to be a company limited by shares.

Power to make provision by regulations.

596. (1) The Minister may by regulations provide for—

- (a) the registration of the companies under section 594; and
 - (b) the application to this Act to those Companies.
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Application of provisions to existing companies.

597. The provisions this Act apply to companies registered but not formed under any of the former laws relating to companies in the same manner as they apply to companies registered under section 594.

PART XXIX - FOREIGN COMPANIES

Foreign companies.

598. (1) In this Act, a “foreign company” means a company incorporated outside Kenya.

(2) The Minister may make regulations to apply to contracts and execution of documents by foreign companies, subject to such exceptions, adaptations or modifications as may be specified in the regulations.

Duty to register particulars.

599.(1) The Minister may by regulations regime a foreign company that intends to be registered under this Act to deliver to the Registrar—

- (a) a return containing specified particulars; and
- (b) other specified documents.

(2) The regulations—

- (a) shall require the foreign company to register particulars if the company opens a branch in Kenya; and
- (b) may require the foreign company register such particulars as may be specified.

(3) Where a company has registered particulars under this section and any alteration is made—

- (a) in the specified particulars; or
 - (b) in any document delivered with the return,
-

the company shall deliver to the Registrar for registration a return containing specified particulars of the alteration.

(4) A foreign company may be required to deliver different documents to the Registrar according to—

- (a) the place where the company is incorporated; and
- (b) the activities carried on, or proposed to be carried on, by it.

Registered name of foreign company.

600. (1) Regulations made under section 602 shall require a foreign company that is required to register particulars to register its name and may register—

- (a) the corporate name of the company under the law of the country or territory in which it is incorporated; or
- (b) an alternative name specified in accordance with section 601.

(2) In any other case, sections 43, 44, 49, 50, 51, 52, 53 and 54 shall apply in relation to the registration of the name of a foreign company.

(3) Any reference in the provisions mentioned in subsection (2) to a change of name shall be read as a reference to registration of a different name under section 604.

Registration under alternative name.

601. (1) A foreign company that is required to register particulars under section 599 may at any time deliver to the Registrar for registration a statement specifying a name, other than its corporate name, under which it proposes to carry on business in Kenya.

(2) A foreign company that has registered an alternative name may at any time, deliver to the Registrar for registration, a statement specifying a different name

under which it proposes to carry on business in Kenya, which may be its corporate name or a further alternative, in substitution for the name previously registered.

(3) The alternative name for the time being registered under this section is treated for all purposes of the law applying in Kenya as the corporate name of the company.

(4) Subsection (3) shall not—

- (a) affect the references in this section or section 600 to the company's corporate name;
- (b) affect any rights or obligation of the company; or
- (c) render defective any legal proceedings by or against the company.

(5) Any legal proceedings that might have been continued or commenced against the company by its corporate name, or any name previously registered under this section, may be continued or commenced against it by its name for the time being so registered.

Financial statements
and reports: general.

602. (1) The Minister may by regulations require a foreign company that is required to register particulars under section 599—

- (a) to prepare financial statements and directors' report; and
- (b) to cause to be prepared such an auditor's report,

as would be required if the company were formed and registered under this Act.

(2) A foreign company shall deliver to the Registrar

copies of—

- (a) the financial statements prepared in accordance with this Act; or
- (b) the financial statements that it is required to prepare and have audited under the law of the country in which it is incorporated.

Trading disclosures.

603. (1) The Minister may, by regulations, require a foreign company carrying on business in Kenya to—

- (a) display specified information in specified locations;
- (b) state specified information in specified descriptions of document or communication; and
- (c) provide specified information on request to those they deal with in the course of their business.

(2) A foreign company—

- (a) that has registered particulars under section 599 shall disclose the name registered by it under section 600; and
- (b) may display, state or provide specified information in the prescribed manner.

Company charges.

604. (1) The Minister may by regulations provide for the registration of specified charges over property in Kenya of a registered foreign company.

(2) The Minister may provide for—

- (a) the circumstances in which property is to be
-

regarded, as being, or not being, in Kenya or in a particular part of Kenya;

- (b) the keeping by a registered foreign company of records and registers about specified charges and their inspection;
- (c) the consequences of a failure to register a charge in accordance with this Act; and
- (d) the circumstances in which a registered foreign company ceases to be subject to this Act.

(3) In this section, a “registered foreign company” means an foreign company that has registered particulars under section 599(1).

Other returns etc.

605. (1) Foreign companies that are required to register particulars under section 599 shall deliver to the Registrar returns by a company or the liquidator of a company that—

- (a) is being wound up; or
- (b) becomes or ceases to be subject to insolvency proceedings, or an arrangement or composition or any analogous proceedings;

(2) The Minister may by regulations specify—

- (a) the circumstances in which a return is to be made;
- (b) the particulars to be given in it; and
- (c) the period within which it is to be made.

Requirement to identify persons

606. (1) Regulations under section 602 shall require

authorised to accept service of documents. a foreign company to register—

- (a) particulars identifying every person resident in Kenya authorised to accept service of documents on behalf of the company; or
- (b) a statement that there is no such person.

Notice of cessation of business by a foreign company.

607. (1) The Minister may by regulations require a foreign company which has registered particulars—

- (a) following the opening of a branch, in accordance with regulations under section 599 (2)(a) or (b), to give notice to the Registrar if it closes that branch;
- (b) in other circumstances, to give notice to the Registrar if the circumstances that gave rise to the obligation to register particulars cease to obtain.

(2) The Minister may specify the period within which notice shall be given.

PART XXX - OFFENCES

Liability of officer in default.

608. (1) Where, by any section of this Act, it is provided that a company and every officer of the company who is in default shall be liable to a default fine, the company and every officer shall, for every day during which the default, refusal or contravention continues, be liable to a fine not exceeding such amount as is specified in the section, or, if the amount of the fine is not so specified, to a fine not exceeding one hundred thousand shilling.

(2) For the purposes of subsection (1) an officer includes—

- (a) director, manager or secretary; and
- (b) a person who is to be treated as an officer of the company for the purposes of the provision in question.

(3) An officer is “in default” for the purposes of the provision if he authorises or permits, participates in, or fails to take all reasonable steps to prevent, the contravention.

Legal professional
privilege.

609. Where proceedings are instituted against a person for an offence under this Act, nothing in this Act shall be taken to require any person to disclose any information that he is entitled to refuse to disclose on grounds of legal professional privilege.

Production and
inspection of
documents where
offence suspected.

610. (1) An application under this section may be made to the High Court by the Attorney-General, or the Minister.

(2) If on an application under this section there is shown to be reasonable cause to believe that—

- (a) a person has, while an officer of a company, committed an offence in connection with the management of the affairs of the company; and
- (b) evidence of the commission of the offence is to be found in any documents of or under the control of the company,

the High Court may make an order.

(3) The order made under subsection (2) may-

- (a) authorise a person named in it to inspect the documents in question, or any of them, for

the purpose of investigating and obtaining evidence of the offence; or

- (b) require the secretary of the company, or such other officer of the company as may be named in the order, to produce the documents to a person named in the order at a place so named.

(4) This section shall apply in relation to documents in the possession or control of a person carrying on the business of banking, so far as they relate to the company's affairs, as it applies to documents in the possession or control of the company, except that no such order as is referred to in subsection (3)(b) may be made by virtue of this subsection.

PART XXXI - COMPANY RECORDS

Form of company records.

611. (1) Company records may be—

- (a) kept in hard copy or electronic form; and
- (b) arranged in such manner as the directors of the company think fit, provided the information in question is adequately recorded for future reference.

(2) Where the records are kept in electronic form, they shall be capable of being reproduced in hard copy form.

(3) Every officer of a company who contravenes this section commits an offence.

Inspection of records and provision of copies.

612. (1) A Company shall make available for inspection any company records or provide copies of any company records.

(2) A company that does not make any company records available shall be treated as having refused inspection or, as the case may be, having failed to provide a copy.

(3) The Minister may by regulations—

- (a) Provide for the time, duration and manner of inspection, including the circumstances in which and extent to which the copying of information is permitted in the course of inspection; and
- (b) define what may be required of the company with regard to the nature, extent and manner of extracting or presenting any information for the purposes of inspection or the provision of copies.

(4) Nothing in this Act shall be read as preventing a company—

- (a) from affording more extensive facilities than are required; or
- (b) where a fee may be charged, from charging a lesser fee than that prescribed or none at all.

Duty to take
precautions against
falsification.

613. (1) Where company records are kept otherwise than in bound books, adequate precautions shall be taken—

- (a) to guard against falsification; and
- (b) to facilitate the discovery of falsification.

(2) If a company fails to comply with this section, every officer of the company who is in default commits an offence.

PART XXXII – SERVICE OF DOCUMENTS

Service address.

614. (1) In this Act a “service address”, in relation to a person, means an address at which documents may be effectively served on that person.

(2) The Minister may by regulations specify conditions with which a service address shall comply.

(3) Any obligation under this Act to give a person’s address is, unless otherwise expressly provided, to give a service address for that person

Service of documents on a person.

615.(1) A document may be served on a person to whom this section applies by leaving it at, or sending it by post to, the registered address of that person.

(2) For the purposes of this section a person’s “registered address” means any address for the time being shown as a current address in relation to that person in the part of the register available for public inspection.

(3) If notice of a change of address is given to the Registrar, a person may validly serve a document at the address previously registered until the end of the period of fourteen days beginning with the date on which notice of the change is registered.

(4) Service may not be effected by virtue of this section at an address if notice has been registered of the termination of the appointment in relation to which the address was registered and the address is not a registered address of the person concerned in relation to any other appointment;

Service of documents on company.

616. (1) A document may be served on a company registered under this Act by leaving it at, or sending it by post to, the registered office of the company.

(2) Where a provision in this Act requires a document or information to be sent or supplied to a company in hard copy form, that document shall not be sent by electronic means.

(3) A provision that authorises documents or information to be sent or supplied in hard copy form, in electronic form or by means of a website only authorises them to be sent or supplied in that form.

(4) Where a provision in this Act requires a document or information to be sent or supplied by a company must sent or supplied in accordance with the provisions of the Third Schedule.

(5) References to documents or information being sent or supplied by or to a company include references to documents or information being sent or supplied by or to the directors of a company acting on behalf of the company.

Form of documents.

617. (1) Where a member of a company or a holder of a company's debentures has received a document or information from the company otherwise than in hard copy form, he is entitled to require the company to send him the document or information in hard copy form.

(2) The company shall send the document or information in hard copy form within twenty one days of receipt of the request from the member or debenture holder.

(3) The company shall not charge for providing the document or information in that form.

(4) If a company fails to comply with this section every officer of the company who is in default commits an offence.

Hard copy and
electronic form and
related expressions.

618. (1) A document or information is sent or supplied in hard copy form if it is sent or supplied in a paper copy or similar form capable of being read.

(2) A document or information is sent or supplied in electronic form if it is sent or supplied—

- (a) by electronic means (by electronic mail or facsimile); or
- (b) by any other means while in an electronic form.

(3) References to electronic copy have a corresponding meaning.

(3) A document or information is sent or supplied by electronic means if it is—

- (a) sent initially and received at its destination by means of electronic equipment for the processing, which expression includes digital compression, or storage of data; and
- (b) entirely transmitted, conveyed and received by wire, radio, optical means or other electromagnetic means,

and references to electronic means have a corresponding meaning.

(4) A document or information authorised or required to be sent or supplied in electronic form shall be sent or supplied in a form, and by a means, that the sender or supplier reasonably considers shall enable the recipient—

- (a) to read it; and
- (b) to retain a copy of it.

(5) For the purposes of this section, a document or information can be read only if—

- (a) it can be read with the naked eye; or
- (b) to the extent that it consists of images, photographs, pictures, maps, plans or drawings, it can be seen with the naked eye.

(6) The provisions of this section apply whether the provision of this Act in question uses the words “sent” or “supplied” or uses other words as “deliver”, “provide”, “produce” or, in the case of a notice, “give” to refer to the sending or supplying of a document or information.

Authentication of documents.

619. (1) A document or information sent or supplied to a company in hard copy form is sufficiently authenticated if it is signed by the person sending or supplying it.

(2) A document or information sent or supplied in electronic form is sufficiently authenticated—

- (a) if the identity of the sender is confirmed in a manner specified by the company; or
- (b) where no such manner has been specified by the company, if the communication contains or is accompanied by a statement of the identity of the sender and the company has no reason to doubt the truth of that statement.

(3) Where a document or information is sent or supplied by one person on behalf of another, nothing in this section affects any provision of the company’s articles under which the company may require reasonable evidence of the authority of the former to act on behalf of the latter.

PART XXXIII - GENERAL

Parent and subsidiary undertakings.

620. (1) An undertaking is a parent undertaking in relation to another undertaking, a subsidiary undertaking, if—

- (a) it holds a majority of the voting rights in the undertaking;
- (b) it is a member of the undertaking and has the right to appoint or remove a majority of its board of directors;
- (c) it has the right to exercise a dominant influence over the undertaking—
 - (i) by virtue of provisions contained in the undertaking's articles;
 - (ii) by virtue of a control contract; or
- (d) it is a member of the undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the undertaking.

(3) For purpose of subsection (1) an undertaking shall be treated as a member of another undertaking—

- (a) if any of its subsidiary undertakings is a member of that undertaking; or
- (b) if any shares in that other undertaking are held by a person acting on behalf of the undertaking or any of its subsidiary undertakings.

(4) An undertaking is also a parent undertaking in relation to a subsidiary undertaking, if the parent undertaking—

- (a) has the power to exercise, or actually exercises, dominant influence or control over the subsidiary undertaking; or
-

- (b) and the subsidiary undertaking are managed on a unified basis.

(4) A parent undertaking shall be treated as the parent undertaking of undertakings in relation to which any of its subsidiary undertakings are, or are to be treated as, parent undertakings; and references to its subsidiary undertakings shall be construed accordingly.

(5) The Fourth Schedule contains provisions explaining expressions used in this section and otherwise supplementing this section.

(6) In this section and that Schedule references to shares, in relation to an undertaking, are to allotted shares.

Dormant companies.

621. (1) For the purposes of this Act a company is “dormant” during any period in which it has no significant accounting transaction.

(2) A “significant accounting transaction” means a transaction that is required by section 353 to be entered in the company’s accounting records.

(3) In determining whether or when a company is dormant—

- (a) any transaction arising from the taking of shares in the company by a subscriber to the memorandum as a result of an undertaking of his in connection with the formation of the company;
- (b) any transaction consisting of the payment of—
 - (i) a fee to the Registrar on a change of the name of the company;
 - (ii) a fee to the Registrar on the re-registration of the company;

- (iii) a penalty for failure to file financial statements; or
- (iv) a fee to the Registrar for the registration of an annual return,

shall not be taken into account.

Regulations

622. The Minister may make regulations in respect of any matter under this Act.

Repeal of Cap 486

623. The Companies Act is repealed.

PART XXXIII – TRANSITIONAL PROVISIONS

624.(1) A company, which has been duly registered as a company under the provisions of the Companies Act and is in existence at the commencement of this Act (hereinafter called “the existing company”) shall be deemed to be a company under this Act.

(2) All rights, powers, liabilities and duties, whether arising under any written law or otherwise, which immediately before coming into operation of this Act were vested in, imposed on or enforceable by or against the existing company shall, be transferred to, vested in, imposed on or be enforceable by or against the company under this Act.

(3) All actions, suits or legal proceedings pending by or against the existing company shall be carried under this Act.

(4) The officers and members of the existing company in office on the day of commencement of this Act shall be deemed to be the duly appointed officers and members of the company.

FIRST SCHEDULE

S.125 and 126

**CONNECTED PERSONS: REFERENCES TO AN INTEREST IN
SHARES OR DEBENTURES.**

Introduction.

1.(1) The provisions of this Schedule have effect for the interpretation of references in sections 125 and 126 to directors connected with or controlling a body corporate to an interest in shares or debentures.

(2) The provisions are expressed in relation to shares but apply to debentures as they apply to shares.

General provisions.

2.(1) A reference to an interest in shares includes any interest of any kind whatsoever in shares.

(2) Any restraints or restrictions to which the exercise of any right attached to the interest is or may be subject shall be disregarded.

(3) It is immaterial that the shares in which a person has an interest are not identifiable.

(4) Persons having a joint interest in shares are deemed each to have that interest.

3.(1) A person is deemed to have an interest in shares if he enters into a contract to acquire the shares.

(2) A person is deemed to have an interest in shares if—

(a) he has a right to call for delivery of the shares to himself or to his order; or

(b) he has a right to acquire an interest in the shares or is under an obligation to take an interest in the shares,

whether the right or obligation is conditional or absolute.

(3) Rights or obligations to subscribe for shares for the purposes of sub-paragraph (2) are rights to acquire or obligations to take an interest in shares.

(4) A person ceases to have an interest in shares by virtue of this paragraph—

(a) on the shares being delivered to another person at his order—

(i) in fulfillment of a contract for the acquisition of shares by him; or

(ii) in satisfaction of his right call for the delivery of the shares;

(b) on a failure to deliver the shares in accordance with the terms of such a contract or on which such a right fails to be satisfied;

(c) on the lapse of his right to call for the delivery of the shares.

Right to exercise or
control exercise of
rights.

4.(1) A person is deemed to have an interest in shares if, not being the registered holder, he is entitled—

(a) to exercise any right conferred by the holding of the shares; or

(b) to control the exercise of any such right.

(2) For this purpose a person is deemed to be entitled to exercise or control the exercise of a right conferred by the holding of shares if he—

(a) has a right, whether subject to conditions or not, the exercise of which would make him so entitled; or

(b) is under an obligation, whether or not so subject, the fulfilment of which would make him so entitled.

(3) A person is not by virtue of this paragraph deemed to be interested in shares by reason only that—

(a) he has been appointed a proxy to exercise any of the rights attached to the shares; or

(b) he has been appointed by a body corporate to act as its representative at any meeting of a company or of any class of its members.

Bodies corporate.

5.(1) A person is deemed to be interested in shares if a body corporate is interested in them and—

(a) the body corporate or its directors are accustomed to act in accordance with his directions or instructions; or

(b) he is entitled to exercise or control the exercise of more than one-half of the voting power at general meetings of the body corporate.

(2) For the purposes of sub-paragraph (1)(b) where—

(a) a person is entitled to exercise or control the exercise of more than one-half of the voting power at general meetings of a body corporate; and

(b) that body corporate is entitled to exercise or control the exercise of any of the voting power at general meetings of another body corporate,

the voting power mentioned in paragraph (b) above is deemed to be exercisable by that person.

Trusts

6. (1) Where an interest in shares is comprised in property held on trust, every beneficiary of the trust is deemed to have an interest in shares.

(2) Where a person is entitled to receive, during his lifetime or the lifetime of another person, income from trust property comprising shares, an interest in the shares in reversion or remainder or in fee shall be disregarded.

(3) A person is treated as not interested in shares where he holds them under the law in force in Kenya, as a bare trustee or as a custodian trustee.

SECOND SCHEDULE

S. 616

DOCUMENTS AND INFORMATION SENT OR SUPPLIED TO COMPANY

Application of
Schedule.

1.(1) This Schedule applies to documents or information sent or supplied to a company.

Communication in
hard copy form

2. (1) A document or information is validly sent or supplied to a company if it is sent or supplied in hard copy form in accordance with this Schedule.

(2) A document or information in hard copy form may be sent or supplied by hand or by post to an address in accordance with paragraph 3.

(3) For the purposes of this Schedule, a person sends a document or information by post if he posts a prepaid envelope containing the document or information.

Address for
communication in
hard copy form.

3. A document or information in hard copy form may be sent or supplied—

- (a) to an address specified by the company for the purpose;
- (b) to the registered office of the company;
- (c) to an address to which any provision of the law relating to Companies authorises the document or information to be sent or supplied.

Communication in
electronic form.

4. A document or information is validly sent or supplied to a company if it is sent or supplied in electronic form in accordance with this Schedule.

Conditions for use of
communications in
electronic form.

5. A document or information may only be sent or supplied to a company in electronic form if—

- (a) the company has agreed, generally or specifically, that the document or information may be sent or supplied in that form and has not revoked that agreement; or
- (b) the company is deemed to have so agreed by a provision in this Act.

6.(1) Where the document or information is sent or supplied by electronic means, it may only be sent or supplied to an address—

- (a) specified for the purpose by the company, generally or specifically; or
- (b) deemed by a provision in this Act to have been so specified.

(2) Where the document or information is sent or supplied in electronic form by hand or by post, it shall be sent or supplied to an address to which it could be validly sent if it were in hard copy form.

- (a) specified for the purpose by the company, generally or specifically; or
- (b) deemed by a provision in this Act to have been so specified.

(2) Where the document or information is sent or supplied in electronic form by hand or by post, it shall be sent or supplied to an address to which it could be validly sent if it were in hard copy form.

Other forms of communication.

7. A document or information that is sent or supplied to a company otherwise than in hard copy form or electronic form is validly sent or supplied if it is sent or supplied in a form or manner that has been agreed by the company.

THIRD SCHEDULE S. 616 (4)

COMMUNICATION BY A COMPANY

Application of Schedule.schedules.

1. This Schedule applies to documents or information sent or supplied by a traded or a non traded company.

Communication in hard copy form.

2. (1) A document or information is validly sent or supplied by a company if it is sent or supplied in hard copy form in accordance with of this Schedule.

Method of communication in hard copy form.

(2) A document or information in hard copy form shall be—

(a) handed to the intended recipient; or

(b) sent or supplied by hand or by post to an address in accordance with paragraph 3.

(3) For the purposes of this Schedule, a person sends a document or information by post if he posts a prepaid envelope containing the document or information.

Address for communications in hard copy form.

3. (1) A document or information in hard copy form may be sent or supplied by the company—

(a) to an address specified for the purpose by the intended recipient;

(b) to a company at its registered office;

(c) to a person in his capacity as a member of the company at his address as shown in the register of members of the company;

- (d) to a person in his capacity as a director of the company at his address as shown in the register of directors of the company;
- (e) to an address to which any provision of this Act, authorises the document or information to

Communication in
electronic form.

4. A document or information is validly sent or supplied by a company in electronic form in accordance to this Schedule.

Agreement to
communication in
electronic form.

5. A document or information may only be sent or supplied by a company in electronic form-

(a) to a person who has agreed, generally or specifically, that the document or information may be sent or supplied in that form and has not revoked that agreement; or,

(b) to a company that is deemed to have so agreed by a provision in the law relating to companies.

Address for
communication
In electronic form.

6. (1) Where the document or information is sent or supplied by electronic means, it may only be sent or supplied to an address —

(a) specified for the purpose by the intended recipient generally or specifically; or

(b) where the intended recipient is a company, deemed by a provision of the law relating to companies to have been so specified.

(2) Where a document or information is sent or supplied in electronic form, by hand or by post, it shall be —

(a) handed to the intended recipient; or

(b) sent or supplied to an address to which it could be validly sent if it were hard copy form.

Use of website.

7. A document or information is validly sent or supplied by a company if it is made available on a website in accordance with this Part of this Schedule.

Agreement to use of website.

8. A document or information may only be sent or supplied by the company to a person by being made available on a website if the person—

(a) has agreed, generally or specifically, that the document or information may be sent or supplied to him in that manner; or

(b) is deemed to have so agreed under paragraph 9 and 10 and has not revoked that agreement.

Deemed agreement of members of company to use of website.

9. (1) This paragraph applies to a document or information to be sent or supplied to a person—

(a) as a member of the company; or

(b) as a person nominated by a member in accordance with the company's articles to enjoy or exercise all or any specified rights of the member in relation to the company; or

(c) as a person nominated by a member under section 85 to enjoy information rights.

(2) To the extent that—

(a) the members of the company have resolved that the company may send or supply documents or information to members by making them available on a website; or

(b) the company's articles contain a provision authorizing the posting of information on the website,

a person in relation to whom the conditions in sub-paragraph(3) are met is taken to have agreed that the company may send or supply documents or information to him in that manner.

(3) The conditions specified in sub-paragraph (2) are that—

- (a) the person has been asked individually by the company to agree that the company may send or supply documents or information generally, or the documents or information in question, to him by means of a website; and
- (b) the company has not received a response within the period of twenty -eight days beginning with the date on which the company's request was sent.

(4) A person is not taken to have so agreed to receive information on a website if the company's request—

- (a) did not state clearly what the effect of a failure to respond would be; or
 - (b) was sent less than twelve months after a previous request made to him for the purposes of this paragraph in respect of the same or a similar class of documents or information.
-

Deemed agreement of debenture holders to use of website.

10.(1) This paragraph applies to a document or information to be sent or supplied to a person as holder of a company's debentures.

(2) To the extent that—

- (a) the relevant debenture holders have duly resolved that the company may send or supply documents or information to them by making them available on a website; or
- (b) the instrument creating the debenture in question contains provision authorizing the posting of information on the website,

a debenture holder in relation to whom the following conditions in sub-paragraph(3) are met is deemed to have agreed that the company may send or supply documents or information to him in that manner.

(3) The conditions specified in paragraph (2) are that—

- (a) the debenture holder has been asked individually by the company to agree that the company may send or supply documents or information generally, or the documents or information in question, to him by means of a website; and
- (b) the company has not received a response within the period of twenty-eight days beginning with the date on which the company's request was sent.

(4) A person is not taken to have agreed to receive information on the website if the company's request—

- (a) did not state clearly what the effect of a failure to respond would be; or

- (b) was sent less than twelve months after a previous request made to him for the purposes of this paragraph in respect of the same or a similar class of documents or information.

(5) For the purposes of this paragraph—

- (a) the relevant debenture holders are the holders of debentures of the company ranking *pari passu* for all purposes with the intended recipient; and
- (b) a resolution of the relevant debenture holders is duly passed if they agree in accordance with the provisions of the instruments creating the debentures.

Availability of
document or
information.

11. (1) A document or information authorised or required to be sent or supplied by means of a website shall be made available in a form, and by means, that the company reasonably considers will enable the recipient—

- (a) to read it; and
- (b) to retain a copy of it.

(2) For purposes a document or information can be read only if—

- (a) read with the naked eye; or
- (b) to the extent that it consists of images (for example photographs, pictures, maps, plans or drawings), which can be seen with the naked eye.

Notification of
availability.

12. (1) The company shall notify the intended recipient of—

- (a) the presence of the document or information on the website;
- (b) the address of the website;
- (c) the place on the website where it may be accessed; and
- (d) how to access the document or information.

(2) The document or information is taken to be sent—

- (a) on the date on which the notification required by this paragraph is sent; or
- (b) if later, the date on which the document or information first appears on the website after that notification is sent.

Period of
availability on
website.

13. (1) The company shall make the document or information available on the website throughout—

- (a) the period specified by any applicable provision of this Act; or
- (b) if no such period is specified, the period of twenty eight days beginning with the date on which the notification required under

paragraph 13 is sent to the person in question.

(2) For the purposes of this paragraph, a failure to make a document or information available on a website throughout the period mentioned in sub-paragraph (1) shall be disregarded if—

- (a) it is made available on the website for part of that period; and
- (b) the failure to make it available throughout that period is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.

14. A document or information that is sent or supplied otherwise than in hard copy or electronic form or by means of a website is validly sent or supplied if it is sent or supplied in a form or manner that has been agreed by the intended recipient.

Joint holders of
shares or
debentures.

15. (1) This paragraph applies in relation to documents or information to be sent or supplied to joint holders of shares or debentures of a company.

(2) Anything to be agreed or specified by the holder shall be agreed or specified by all the joint holders.

(3) Anything authorised or required to be sent or supplied to the holder may be sent or supplied either—

(a) to each of the joint holders; or

(b) to the holder whose name appears first in the register of members or the relevant register of debenture holders.

(4) This paragraph has effect subject to anything in the company's articles.

Death or
bankruptcy of
holder of shares.

16.(1) This paragraph has effect in the case of the death or bankruptcy of a holder of a company's shares.

(2) Documents or information required or authorized to be sent or supplied to the member may be sent or supplied to the persons claiming to be entitled to the shares in consequence of the death or bankruptcy.—

(a) by name; or

(b) by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description at the address in supplied for the purpose by those so claiming.

(3) Until such an address has been so supplied, a document or information may be sent or supplied in any manner in which it might have been sent or supplied if the death or bankruptcy had not occurred.

(4) This paragraph has effect subject to anything

in the company's articles.

(5) References in this paragraph to the bankruptcy of a person include—

(a) the sequestration of the estate of a person;

(b) a person's estate being the subject of a protected trust deed.

(6) The reference in sub-paragraph (2)(b) to the trustee of the bankrupt is to be read as the permanent or interim trustee the sequestrated estate or, as the case may be, the trustee under the protected deed.

FOURTH SCHEDULE (S 623)

**PARENT AND SUBSIDIARY
UNDERTAKINGS: SUPPLEMENTARY
PROVISIONS**

Right to appoint or remove a majority of the directors.

3. (1) In section 627(2)(b) the reference to the right to appoint or remove a majority of the board of directors is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters.

(2) An undertaking shall be treated as having the right to appoint to a directorship if—

- (a) a person's appointment to it follows necessarily from his appointment as director of the undertaking; or
- (b) the directorship is held by the undertaking itself.

Right to exercise dominant influence.

(3) A right to appoint or remove which is exercisable only with the consent or concurrence of another person shall be left out of account unless no other person has a right to appoint or, as the case may be, remove in relation to that directorship.

4. (1) For the purposes of section 632(2)(c) an undertaking shall not be regarded as having the right to exercise a dominant influence over another undertaking unless it has a right to give directions with respect to the operating and financial policies of that other undertaking which its directors are obliged to comply with whether or not they are for the benefit of that other undertaking.

Rights exercisable only in certain circumstances or temporarily incapable

(2) A “control contract” means a contract in writing conferring such a right which—

of exercise.

- (a) is of a kind authorised by the articles of the undertaking in relation to which the right is exercisable; and
- (b) is permitted by the law under which that undertaking is established.

(3) This paragraph shall not be read as affecting the construction of section 162 (4)(a).

5. (1) Rights which are exercisable only in certain circumstances shall be taken into account only—

- (a) when the circumstances have arisen, and for so long as they continue to obtain; or
- (b) when the circumstances are within the control of the person having the rights.

(2) Rights which are normally exercisable but are temporarily incapable of exercise shall continue to be taken into account.

Rights held by one person on behalf of another.

6. Rights held by a person in a fiduciary capacity shall be treated as not held by him.

7. (1) Rights held by a person as nominee for another shall be treated as held by the other.

(2) Rights shall be regarded as held as nominee for another if they are exercisable only on his instructions or with his consent or concurrence.

Rights attached to shares held by way of security.

8. Rights attached to shares held by way of security shall be treated as held by the person providing the security—

- (a) where apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with his instructions; and

- (b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in his interests.

Rights attributed to parent undertaking.

9. (1) Rights shall be treated as held by a parent undertaking if they are held by any of its subsidiary undertakings.

(2) Nothing in paragraph 7 or 8 shall be construed as requiring rights held by a parent undertaking to be treated as held by any of its subsidiary undertakings.

(3) For the purposes of paragraph 8 rights shall be treated as being exercisable in accordance with the instructions or in the interests of an undertaking if they are exercisable in accordance with the instructions of or, as the case may be, in the interests of any group undertaking.

Disregard of certain rights.

10. The voting rights in an undertaking shall be reduced by any rights held by the undertaking itself.

Supplementary.

11. References in any provision of paragraphs 6 to 10 to rights held by a person include rights falling to be treated as held by him by virtue of any other provision of those paragraphs but not rights which by virtue of any such provision are to be treated as not held by him.

MEMORANDUM OF OBJECTS AND REASONS

The objective of the Bill is to develop a modern companies law to support a competitive economy in a coherent and simple form. The Bill seeks to consolidate the law relating to incorporation, registration, operation and management of companies and other forms of business organizations.

The Bill has also taken into consideration the current trends on globalization and regional integration with particular reference to the East Africa Community and reflects the present day circumstances of carrying on business including modern patterns of regulation and ownership.

PART I (clauses 1-2) deals with preliminary matters.

PART II (clauses 3-15) provides for the various types of companies that may be incorporated in Kenya deals with the formation of companies. It provides for the method of forming companies, requirements for registration and the effect of registration and makes it possible for one person to form a company.

PART III (clauses 16-28) provides for the constitution of a company. It provides that a company must have articles of association. The Part gives the Minister power to prescribe model articles of association to make the registration of companies cheaper and easier.

PART IV (clause 29-42) deals with the capacity of a company in relation to contracts, execution of documents, execution of deeds and authentication of documents.

PART V (clauses 43-63) deals with company names and prohibits names that are offensive, similar to the name of another company or names which, if used would constitute an offence, and regulates the use of names which suggest a connection with the Government or a public entity. The Part gives the Minister the power to make regulations specifying the type of names to be used in the registration of a company and further provides for change of names of a company and related matters.

PART VI (clauses 64-84) deals with the membership of a company. It provides for the register of members, prohibits a subsidiary company from being member of its holding company and the exercise of members' rights.

PART VII (clauses 85-91) provides for the exercise of rights of the members of a company.

PART VIII (clauses 92-129) deals with company directors. It provides for the appointment and removal of directors, duties of directors, requires directors to declare any interest in existing transactions or arrangements with the company, transactions with directors which require the approval of members of the company and director's liabilities.

PART IX (clauses 130-151) specifies the circumstances under which directors of a company can be disqualified from holding office as directors. These include disqualification on conviction of an offence, for persistent breaches of legislation relating to company affairs and fraud.

PART X (clauses 152-161) deals with company secretaries. A private company is not required to have a company secretary while a public company must have a company secretary. The Part deals with qualifications of a company secretary and the records to be kept by a company with regard to the company secretary.

PART XI (clauses 162-224) deals with resolutions and meetings of the members of a company. The Part provides for special resolutions, ordinary resolutions and for voting to pass a resolution.

PART XII (clauses 225-274) deals with a companies share capital. It provides for allotment of shares, allotment of equity securities, allotment where an issue is not fully subscribed for public companies, payment of shares, independent valuation of non-cash consideration for public companies, share premiums classes of shares and class rights; and reduction of share capital.

Part XIII (clause 275-280) deals with distribution of a company's assets to its members. It provides that distribution can only be made out of profits available for that purpose.

PART XIV (clause 281-290) deals with certification and transfer of securities.

PART XV (clause 291-296) deals with private and public companies. This Part prohibits public offers by private companies, and provides for

minimum share capital requirements for public companies, certification and transfer of securities and evidence and transfer of title to securities without a written instrument.

PART XVI (clause 297-302) deals with redeemable shares, the power of a company to issue redeemable shares, the terms and manner of redemption and financing redemption.

PART XVII (clause 303-313) deals with debentures. The Part provides for among other things, the registration of debenture holders, the liability of trustees of debentures and the deposit of debentures to secure advances.

PART XVIII (clause 314-344) deals with takeovers, and sets out the rules and the rights of minority shareholders during a takeover.

PART XIX (clause 345-408) deals with the financial statements of a company. This Part establishes two regimes of accounting for small companies and large companies respectively. The Part introduces international accounting standards as the format for accounting, accounts and reports and provides for the use of websites to provide information on financial statements of a company.

PART XX (clauses 409-412) deals with annual returns of a company and specifies the contents of an annual return.

PART XXI (clauses 413 -468) provides for audited accounts, the appointment of auditors, functions of auditors and the right of members to raise audit concerns at accounting meetings.

PART XXII (clauses 469-477) deals with statutory auditor's including eligibility for appointment as a statutory auditor and gives the Minister power to request for information on an auditor's appointment under this Part.

PART XXIII (clauses 478-487) deals with investigation of the affairs of a company and specifies the power of inspectors to carry out investigations into related companies. It also provides for an inspector to report to the court on any matter under investigation.

PART XXIV (clauses 488-537) establishes the office of the registrar of companies and specifies the functions of the registrar of companies and the fees payable to the registrar under the Act.

PART XXV (clauses 538 -553) deals with charges created by a company.

PART XXVI (clauses 554-583) deals with the powers of the registrar to strike the name of a company off the register of companies and to restore it. The Part specifies circumstances in which a name can be struck off the register and be restored.

PART XXVII (clauses 584-593) deals with arrangements and reconstructions between a company and its creditors.

PART XXVIII (clauses 594-597) provides for companies not formed under the Companies Act to apply for registration under the Act.

PART XXIX (clauses 598-607) provides for foreign Companies.

PART XXX (clauses 608- 610) deals with offences under the Companies Act.

PART XXXI (clause 611-613) provides for company records.

PART XXXII (clauses 614-619) deals with service of documents.

PART XXXIII (clauses 620 - 623) contains general provisions.

PART XXXIV (clause 624) contains the transitional provision.

SCHEDULES.

The First Schedule elaborates the provisions of clause 125 and 126 of the Bill and specifies circumstances under which a director of a company can be said to have an interest in the shares or debentures of a company.

The Second Schedule gives effect to clause 619 of the Bill and specifies the form and manner in which documents may be sent to a company.

The Third Schedule gives effect to clause 619 (4) of the Bill and specifies the form and manner in which a traded and a non-traded company may send information.

The Fourth Schedule gives effect to clause 623 of the Bill and contains provisions on parent and subsidiary undertakings.

The enactment of this Bill shall not occasion additional expenditure from the exchequer.

Dated the 17th December, 2010.

S. A. WAKO,
Attorney-General,