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CAP. 486

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Companies Act

Cap. 486

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Companies Act (Cap. 486)
Contents

1. Short title and commencement 1
2. Objects of this Act 1
3. Interpretation of provisions of this Act 1
4. Provisions supplementing definition of "holding company" in section 3 9
Part II – COMPANIES AND COMPANY FORMATION 9
5. Limited companies 9
6. Companies limited by shares 10
7. Companies limited by guarantee 10
8. Unlimited companies 10
9. Private companies 10
10. Public companies 11
11. Method of forming company 11
12. Memorandum of association 11
13. Registration documents 11
14. Statement of capital and initial shareholdings 12
15. Statement of guarantee 13
16. Statement of proposed officers 13
17. Registrar to register company if requirements of Act are complied with 13
18. Registrar to issue company with certificate of incorporation 13
19. Effect of registration 14
Part III – A COMPANY'S CONSTITUTION 14
20. Regulation may prescribe model articles 14
21. Default application of model articles 14
22. Amendment of articles 15
23. Effect of amendment of articles on company's members 15
24. Amended articles to be sent to Registrar 15
25. Registrar's notice to comply in case of failure with respect to amended articles 15
26. Existing companies provisions of memorandum treated as provisions of articles 16
27. Copies of resolutions or agreements recorded by Registrar 16
28. Statement of company's objects 17
29. Documents to be provided to members 17
30. Effect of company's constitution 18
31. Right to participate is profits otherwise than a member is void 18
32. Application to single member companies of enactment and rules of law 18

Part IV – CAPACITY OF COMPANY 18
33. Company's capacity 18
34. Power of directors to bind company 18
35. Company contracts 19
36. Constitutional limitations: transactions involving directors or their associates 19
37. Execution of documents 20
38. Company may have common seal for execution of documents 21
39. Execution of deeds by companies 21
40. Execution of deeds or other documents by attorney 21
41. Authentication of documents 21
42. Official seal for use outside Kenya 21
43. Official seal for share certificates etc 22
44. Pre-incorporation contracts, deeds and obligations 22
45. Execution of bills of exchange and promissory notes by companies 22
46. Company to have registered office 22
47. Company to notify change of address of registered office 22
Part V – NAME OF COMPANY 23
48. Reservation of name 23
49. Prohibited names 23
50. Name suggesting connection with the State or local or public authority 23
51. Applicant to seek views of specified public officer or body if regulations so require 24
52. Regulations may permit or prohibit the use of certain characters, signs or symbols 24
53. Registration of public limited companies 24
54. Registration of private limited companies 24
55. Exemption from requirement to use of "limited" 24
56. Inappropriate use of company type or legal form 24
57. Name not to be the same a another in the index 25
58. Power to direct change of name in case of similarity to existing name 25
59. Power to make regulations for purposes of sections 57 and 58 25
60. Power of Registrar to direct company to change its name because of misleading information given for registration of company or because its name gives misleading indication of company's activities 26
61. Company may apply to court for order to quash direction under section 60 26
62. Company may change the name 26
63. Change of name by special resolution 27
64. Change of name by means provided for in articles of company 27

65. Change of name: registration and issue of certificate of change of name 27
66. Effect of change of name 27
67. Company to display its company name etc 28
68. Minor variations in form of name 28
Part VI – ALTERATION OF STATUS OF COMPANIES 28
69. How companies may alter their status 28
70. Conversion of private company to public company 29
71. Requirement as to share capital 29
72. Requirements as to net assets 30
73. Recent allotment of shares for non-cash consideration 31
74. Requirements for registration of conversion of private company 32
75. Statement of proposed secretary 32
76. Registrar to issue certificate of incorporation on registration of conversion 32
77. Conversion of public company into private limited company 33
78. Application to Court to cancel conversion resolution 33
79. Notices of application to Court and court order application or order to be given to Registrar 34
80. Requirements for registration of conversion of public company into private company 34
81. Registrar to issue certificate of incorporation on registration of conversion 35
82. Registration of conversion of private limited company into unlimited company 35
83. Requirements for application for registration of conversion of company into unlimited company 36
84. Registrar to issue certificate of incorporation on registration of conversion 36
85. Conversion of unlimited company into a private limited company 36
86. Requirements for registration of unlimited company as private limited company 37
87. Registrar to issue certificate of incorporation on registration of conversion 37
88. Statement of capital required if company already has share capital 38
89. Conversion of public company into private and unlimited company 38
90. Registrar not to register conversion unless application for registration complies with prescribed requirements 39
91. Registrar to issue certificate of incorporation on registration of conversion 39
Part VII – COMPANY MEMBERS 39
92. How persons become members of company 39
93. Company to keep register of members 40
94. Company to keep register of members of its registered office 41
95. Certain companies to keep index of members 41
96. Rights of persons to inspect register of members and require copies 41

97. Consequences of company refusing inspection of its register or to provide copy of its register of members 42
98. Offence to refuse inspection of register of members or to fail to provide copy 42
99. Register of members: offences in connection with request for or disclosure of information 42
100. Company to provide information as to state of register of members and index of members' names 43
101. Removal of entries relating to former members 43
102. Single member companies 43
103. Power of Court to rectify register 44
104. Trusts not to be entered on register 44
105. Register to be evidence 44
106. Time limit for claims arising from entry in register 44
107. Interpretation: Division 3 45
108. Prohibition on subsidiary being a member of its holding company 45
109. Subsidiary acting as executor, administrator or trustee 45
110. Interest to be disregarded: residual interest under pension scheme or employees' share scheme 45
111. Employers' rights of recovery under pension scheme or employees' share scheme 46
112. Subsidiary acting as authorised dealer in securities 46
113. Protection of third parties in cases if subsidiary acting as dealer in securities 47
Part VIII – EXERCISE OF RIGHTS OF MEMBERS 47
114. Effect of provisions of articles relating to enjoyment or exercise of rights of members 47
115. Traded companies: nomination of persons to enjoy information rights 48
116. Information rights: form in which copies to be provided 48
117. Information on possible rights in relation to voting 49
118. Information rights and status of rights 49
119. Termination or suspension of nomination 49
120. Exercise of rights if shares held on behalf of others 50
121. Exercise of rights if shares held on behalf of others: members' requests 51
Part IX – COMPANY DIRECTORS 51
122. Persons who are connected with a director for purposes of this Part 52
123. Members of a director's family 52
124. When director connected with a body corporate for purposes of this Part 52
125. When a director is to be regarded as controlling a body corporate for purposes of this Part 53
126. When bodies corporate are to be treated as being associated for purposes of this Part 53
127. References to company's constitution 54
128. Company required to have directors 54

129. Company required to have at least one natural person as a director 54
130. Direction requiring company to make appointment 54
131. Minimum age for director 55
132. Appointment of director of public company 55
133. Validity of acts of directors 55
134. Company to keep register of directors 55
135. Particulars of directors to be registered: natural persons 56
136. Particulars of directors to be registered: corporate directors 56
137. Company to keep register of directors' residential addresses 57
138. Duty of company to notify Registrar of changes of directors and directors' addresses 57
139. Resolution to remove directors from office 58
140. Scope and nature of general duties 58
141. Director's right to protest against removal 58
142. Duty of director to act within powers 59
143. Duty of director to promote the success of the company 59
144. Duty of director to exercise independent judgement 60
145. Duty of director to exercise reasonable care, skill and diligence 60
146. Duty of director to avoid conflicts of interest 60
147. Duty not to accept benefits from third parties 61
148. Civil consequences of breach of general duties 61
149. Cases within more than one of the general duties 61
150. Consent, approval or authorisation by members 61
151. Duty to declare interest in proposed or existing transaction or arrangement 62
152. Director to make declaration by notice in writing 63
153. General notice to be regarded as sufficient declaration 63
154. Declaration of interest in case of company with sole director 64
155. Definition of credit transaction for purposes of Division 5 64
156. Meaning of "quasi-loan" and related expressions 64
157. Director's long-term service contracts: requirement of members' approval 65
158. Substantial property transactions: requirement of members' approval 66
159. Exception for transactions with members or other group companies 67
160. Exception in case of company in liquidation or under administration 67
161. Exception for transactions on recognised investment exchange 67
162. Property transactions: civil consequences of contravening section 159 67
163. Property transactions: effect of subsequent affirmation 68

164. Loans to directors to be approved by members 69
165. Quasi-loans to directors: requirement of members' approval 69
166. Loans or quasi-loans to persons connected with directors: requirement of members' approval 70
167. Credit transactions: requirement of members' approval 71
168. Related arrangements: requirement of members' approval 72
169. Exceptions for expenditure on company business 73
170. Exception for expenditure on defending proceedings etc 73
171. Exception for expenditure in connection with regulatory action or investigation 74
172. Exceptions for minor and business transactions 74
173. Exceptions for intra-group transactions 74
174. Exceptions for money-lending companies 75
175. Other relevant transactions or arrangements 75
176. The value of transactions and arrangements 76
177. The person for whom a transaction or arrangement is entered into 76
178. Loans etc: civil consequences for contravention 76
179. Loans etc: effect of subsequent affirmation 77
180. Payment for loss of office 78
181. Amounts taken to be payments for loss of office 78
182. Members' approval required for payment by company 79
183. Members' approval required for payment in connection with transfer of undertaking etc 79
184. Members' approval required for payment in connection with share transfer 80
185. Exception for payments in discharge of legal obligations etc 81
186. Exception for small payments 81
187. Payments made without approval: civil consequences 82
188. Approval by written resolution: accidental failure to send memorandum 82
189. What happens if approval is required under more than one provision 82
190. Directors' service contracts 83
191. Company to keep copy of contract or memorandum of terms available for inspection 83
192. Right of member to inspect and to obtain copy of memorandum 83
193. Contract with sole member who is also a director 84
194. Provisions protecting directors from liability 84
195. Provision of insurance not prevented 85
196. Qualifying third party indemnity provision not affected 85
197. Directors to disclose qualifying indemnity provision in directors' report 85
198. Copy of qualifying indemnity provision to be available for inspection 86

199. Right of member to inspect and request copy of qualifying indemnity provision 86
200. Interpretation: Division 10 87
201. Protected information: restriction on use or disclosure by company 87
202. Protected information: restriction on use or disclosure by Registrar 87
203. Permitted use or disclosure by the Registrar 88
204. Disclosure under Court order 88
205. Circumstances in which Registrar may place address on the public record 89
206. Placing the director's address on the public record 89
207. Ratification of acts of directors 90
208. Power to make provision for employees on cessation or transfer of business 91
209. Limitations on the exercise of the power to make provision for employees 91
210. Minutes of directors' meetings 91
211. Minutes taken to be evidence of proceedings at meeting of company until contrary proved 91
212. Transactions under foreign law 92
Part X – DISQUALIFICATION OF DIRECTORS 92
213. Interpretation: Part X 92
214. Effect of order disqualifying person from being a director or secretary 92
215. Disqualification on conviction for offence 92
216. Disqualification for fraud or breach of duty committed while company in liquidation or under administration 93
217. Disqualification on conviction of offence involving failure to lodge returns or other documents with Registrar 93
218. Duty of court to disqualify unfit directors and secretaries of insolvent companies 93
219. Applications to court under section 219 94
220. Disqualification undertakings 95
221. Disqualification after investigation of company 95
222. Variation of disqualification undertaking 96
223. Offence for undischarged bankrupts to act as director or secretary of company 96
224. Personal liability for company's debts if person acts while disqualified 96
225. Application for leave under an order or undertaking 97
226. Application for leave under an order or undertaking 97
227. Register of disqualification orders and disqualification undertakings 98
228. Offence to breach of disqualification order or undertaking 98
229. Disqualified person may apply to the Court for permission to act in way that would otherwise breach disqualification 98
230. Statements from persons who are disqualified 98

231. Statements to be made public 99
232. Offence relating to statement 99
233. Persons who are subject to foreign restrictions 99
234. Disqualification of persons who are subject to foreign restrictions 100
235. Persons subject to foreign restrictions to be personally liable for debts of company 100
236. Registrar to establish and maintain Register of foreign restrictions 100
237. Admissibility in evidence of statements 101
Part XI – DERIVATIVE ACTIONS 101
238. Interpretation: Part XI 101
239. Application for permission to continue derivative claim 102
240. Application to Court for permission to continue claim as a derivative claim: how disposed of 102
241. Application for permission to continue claim as a derivative action 103
242. Application for permission to continue derivative claim brought by another member 103
Part XII – COMPANY SECRETARIES 104
243. Private company not required to have secretary 104
244. Public company required to have secretary 104
245. Direction requiring public company to appoint secretary 104
246. Qualifications of secretaries of public companies 105
247. Discharge of functions if office vacant or secretary unable to act 105
248. Duty to keep register of secretaries 105
249. Duty to notify Registrar of change of secretary or joint secretary 106
250. What particulars of secretaries are required to be registered: natural persons 106
251. What particulars of secretaries are required to be registered: corporate secretaries and firms 107
252. Offence to include misleading, false or deceptive particulars in register of secretaries 107
253. Offence to fail to keep register of secretaries 107
254. Acts done by person in dual capacity 107
Part XIII – RESOLUTIONS AND MEETINGS 107
255. Requirements for passing company resolutions 108
256. Requirements for passing an ordinary resolution of a company 108
257. Requirements for the passing of special resolution 108
258. General rules for voting on company resolutions 109
259. Specific requirements for voting on company resolutions 109
260. Votes of joint holders of shares 109
261. Effect of provision in company's articles as to admissibility of votes 110
262. Written resolutions of private companies 110

263. Who is entitled to vote on a written resolution 110
264. Circulation date for written resolutions 110
265. Circulation of written resolutions proposed by directors 110
266. Right of members to require circulation of written resolution 111
267. Circulation of written resolution proposed by members 112
268. Requisitioning members to meet expenses of circulation 112
269. Application not to circulate members' statement 112
270. Procedure for signifying agreement to written resolution 113
271. Deadline for agreeing to written resolution 113
272. Sending documents relating to written resolutions by electronic means 113
273. Publication of written resolution on website 113
274. Relationship between this Division and provisions of company's articles 113
275. Resolutions at general meetings 113
276. Power of directors to convene general meetings 114
277. Right of members to require directors to convene general meeting 114
278. Directors' duty to convene general meeting required by members 114
279. Power of members to convene general meeting at the expense of the company 115
280. Power of Court to order general meeting to be convened 115
281. Amount of notice to be given for general meetings 116
282. Manner in which notice of general meeting to be given 116
283. Publication of notice of general meeting on company's website 116
284. Persons entitled to receive notice of general meetings 117
285. Contents of notices of general meetings 117
286. Offence for company to fail to comply with section 281, 282, 283, 284 or 285 117
287. Resolution requiring special notice. 117
288. Accidental failure to give notice of resolution or general meeting 118
289. Power of members to require circulation of statements 118
290. Duty of company to circulate members' statements 119
291. Who is liable to meet cost of circulating members' statements 119
292. Quorum for general meetings 119
293. Members present may elect person to preside at general meeting 119
294. Person presiding at general meeting may declare result of voting on a show of hands 120
295. Right of members to demand a poll at general meeting 120
296. Member not obliged to use all votes when voting on a poll at general meeting 120
297. Representation of bodies corporate at general meetings 120

298. Right of members to appoint proxies 121
299. Notice of general meeting to contain statement of rights of members to appoint proxies 121
300. Company sponsored invitations to appoint proxies 121
301. Notice of appointment of proxy to be given to company 121
302. Proxy can be elected to preside at general meeting 122
303. Right of proxy to demand a poll at general meeting 122
304. Notice to be given to company of termination of proxy's authority 122
305. Articles may confer more extensive rights on members and proxies 123
306. Resolutions passed at adjourned general meeting 123
307. Sending to members documents relating to general meetings in electronic form 123
308. Application of Division 3 to meetings of holders of classes of shares 124
309. Application of Division to meetings of classes of members of company having no share capital 124
310. Public companies: annual general meeting 125
311. Public companies: notice of annual general meeting 125
312. Public companies: members' power to require circulation of resolutions for annual general meeting 125
313. Public companies; company's duty to circulate members' resolutions for annual general meetings 126
314. Public companies; expenses of circulating members' resolutions for annual general meeting 126
315. Results of poll to be made available on website 127
316. Requirements as to website availability 127
317. Records of resolutions and meetings, etc 128
318. Records as evidence of resolutions, etc 128
319. Records of decisions by sole member 129
320. Inspection of records of resolutions and meetings 129
321. Records of resolutions and meetings of class of members 130
Part XIV – SHARE CAPITAL OF COMPANY 130
322. Shares no longer capable of being converted into stock 130
323. Nature of shares 130
324. Nominal value of shares 130
325. Shares to be numbered 130
326. Transferability of shares 131
327. Exercise by directors of power to allot shares, etc 131
328. Power of directors to allot shares etc: private company with only one class of shares 131
329. Power of directors to allot shares etc: authorisation by company 131
330. General prohibition of commissions, discounts and allowances 132
331. Permitted commission 132

332. Registration of allotment 133
333. Return of allotment by limited company 133
334. Return of allotment by unlimited company allotting new class of shares 134
335. Offence for company to fail to lodge return of allotment for registration 134
336. Provisions about allotment not applicable to shares taken on formation 134
337. Interpretation: Division 3 134
338. Existing shareholders' right of pre-emption 134
339. Communication of pre-emption offers to shareholders 135
340. Liability of company and officers in case of contravention 135
341. Exception to pre-emption right; issue for non-cash consideration 135
342. Exception to preemption right: securities held under employees' share scheme 135
343. Exception to preemption right: securities held under employees' share scheme 136
344. Exclusion of requirements by private companies. 136
345. Exclusion of pre-emption right: articles conferring corresponding right 136
346. Disapplication of pre-emption rights: private company with only one class of shares 137
347. Disapplication of pre-emption rights: directors acting under general authorisation 137
348. Disapplication of pre-emption rights by special resolution 137
349. Disqualification of pre-emption rights: sale of treasury shares 138
350. References to holder of shares in relation to offer 138
351. Provisions about pre-emption not applicable to shares taken on formation 139
352. Saving for other restrictions on offer or allotment 139
353. Saving for certain older pre-emption requirements 139
354. Public companies: allotment if issue not fully subscribed 139
355. Public companies: effect of irregular allotment if issue not fully subscribed 140
356. Shares not to be allotted at a discount 140
357. Provision for different amounts to be paid on shares 140
358. General rule as to means of payment 140
359. Meaning of payment in cash 141
360. Public companies: shares taken by subscribers of memorandum 141
361. Public companies: not to accept undertaking for work or services 141
362. Public companies: shares to be at least one quarter paid up 142
363. Public companies: payment by long-term undertaking 142
364. Liability of subsequent holders of shares 143
365. Power of the Court to grant relief 143
366. Offences involving contravention of section 358, 363, 364 and 365 144

367. Meaning of “appropriate rate of interest” for purpose of this Division 144
368. Restrictions on public company allocating shares for non-cash consideration 144
369. Exception to valuation requirement: arrangement with another company 145
370. Exception to valuation requirement: merger 146
371. Non-cash consideration for shares: requirements as to valuation and report 146
372. Copy of report to be lodged with Registrar 147
373. Public company: agreement for transfer of non-cash asset in initial period 147
374. Agreement for transfer of non-cash asset: requirement of independent valuation 148
375. Agreement for transfer of non-cash asset: requirements as to valuation and report 148
376. Agreement for transfer of non-cash asset: requirement of approval by members 149
377. Copy of resolution to be lodged with Registrar 149
378. Modification of provisions in relation to company whose conversion into a public company has been registered 150
379. Agreement for transfer of non-cash inset; effect of contravention 150
380. Liability of subsequent holders of shares 150
381. Power of Court to grant relief 151
382. Offence to contravene section 368 or 373 152
383. Enforceability of undertakings to do work etc 152
384. What is the appropriate rate of interest for the purposes of this Division? 152
385. Interpretation: Division 7 153
386. Company’s share premium account and application of share premiums 153
387. Relief from requirements as to share premiums: Group reconstruction relief 154
388. Merger relief 154
389. Merger relief: meaning of ninety percent equity holding 155
390. Power to make further provision by regulations for the purposes of this Division 155
391. Relief may be reflected in company’s balance sheet 155
392. Classes of shares 156
393. Variation of class rights: companies having a share capital 156
394. Variation of class rights: companies without a share capital 156
395. Section 393 and 394 not to affect powers of Court under certain provisions 157
396. Right to object to variation: companies having a share capital 157
397. Right to object to variation: companies having a share capital 157
398. Copy of Court order to be lodged with Registrar 158
399. Notice of name or other designation of class of shares 158
400. Notice of particulars of variation of rights attached to shares to be lodged with Registrar 158

401. Notice of new class of members to be lodged with Registrar 159
402. Notice of name or other designation of class of members to be lodged with Registrar 159
403. Notice of particulars of variation of class rights 159
Part XV – REORGANISATION OF COMPANY'S SHARE CAPITAL 159
404. Alteration of share capital of limited company 160
405. Sub-division or consolidation of shores 160
406. Notice to Registrar of sub-division or consolidation 160
407. Special resolution for reduction of share capital 161
408. Application to Court for confirming order 161
409. Creditors entitled to object to reduction 161
410. Order confirming reduction and powers of Court on making such order 162
411. Registration of Court order and statement of capital 162
412. Liability of members following reduction of capital 163
413. Liability to creditors omitted from list of creditors 164
414. Offence to conceal name of creditor, etc 164
415. Shares no bar to damages against company 164
416. Public companies: duty of directors to convene a meeting on loss of capital 164
417. Public company reducing capital below authorised minimum 165
418. Expedited procedure for registration of conversion of company into a private company 165
419. Reduction of capital of private company supported by solvency statement 166
420. What is a solvency statement? 166
421. Registration of resolution and supporting documents 167
422. General power to make further provision by regulations 168
Part XVI – ACQUISITION BY LIMITED COMPANY OF ITS OWN SHARES 168
423. Interpretation: Part XVI 168
424. General rule against limited company acquiring its own shares 168
425. Treatment of shares held by nominee 169
426. Liability of others if nominee fails to make payment in respect of shares 169
427. Duty to cancel shares in public company held by or for the company 170
428. Notice of cancellation of shares 170
429. Conversion of public company into private company in consequence of cancellation of shares 171
430. Issue of certificate of incorporation on registration of conversion of public company into private company 171
431. Effect of failure to apply for registration of company's conversion into private company 172
432. Offence to fail to cancel shares or apply for registration of company's conversion into private company 172

433. Application of sections 437 to 442 to private company that applies for registration of conversion into public company 172
434. Transfer to reserve on acquisition of shares by public company or nominee 173
435. Public companies: general rule against lien or charges on own shares 173
436. Interests to be disregarded in determining whether company has beneficial interest 174
437. Residual interest under pension scheme or employees' share scheme 174
438. Employer's charges and other rights of recovery 174
439. Rights as executor, administrator or trustee 175
440. Meaning of "financial assistance" for purposes of this Part 175
441. Assistance by public company for acquisition of shares in its private holding company. 176
442. Assistance for acquisition of shares in public company 176
443. Assistance by public company for acquisition of shares in its private holding company 177
444. Offence to give prohibited assistance 177
445. Certain transactions excepted unconditionally from sections 442 and 443 178
446. Certain transactions excepted from sections 442 and 443 conditionally 178
447. Power of limited company to purchase own shares 179
448. Purchase of company's own shares 179
449. Financing of purchase of company's own shares 179
450. Approval for company to purchase own shares 180
451. Authorisation for off-market purchase 180
452. Resolution authorising off-market purchase: exercise of voting rights 181
453. Resolution approving off-market purchase: disclosure of details of contract 181
454. Variation of contract for off-market purchase 181
455. Resolution approving variation: exercise of voting rights 182
456. Resolution approving variation: disclosure of details of variation 182
457. Release of company's rights under contract for off-market purchase 183
458. Approval for company to make market purchase 183
459. Copy of contract or memorandum to be available for inspection 184
460. Enforcement of right to inspect copy or memorandum 184
461. Company's right to purchase own shares not assignable 184
462. Payments apart from purchase price to be made out of distributable profits 185
463. How shares purchased are to be treated 185
464. Return of purchase of own shares to be lodged with Registrar 185
465. Notice to Registrar of cancellation of shares 186
466. Interpretation: Division 4 187

467. Power of private limited company to redeem or purchase own shares out of capital 187
468. The permissible capital payment 187
469. What profits are available 187
470. Determination of available profits 187
471. Requirements for payment out of capital 188
472. Directors' statement and auditor's report 188
473. Directors' statement: offence if no reasonable grounds for opinion 189
474. Payment to be approved by special resolution 189
475. Resolution authorising payment: exercise of voting rights 189
476. Resolution authorising payment: disclosure of directors' statement and auditor's report 189
477. Public notice of proposed payment 190
478. Company to make directors' statement and auditor's report to be available for inspection 190
479. Objection to payment by members or creditors: application to the Court to cancel resolution 191
480. Notice of Court application or order to be lodged with Registrar 192
481. When payment out of capital to be made 192
482. Company whose shares are redeemed or purchased to transfer amount to capital redemption reserve 193
483. Accounting consequences of payment out of capital 193
484. Effect of company's failure to redeem or purchase 194
Part XVII – HOW COMPANY'S ASSETS ARE TO BE DISTRIBUTED 195
485. Interpretation: Part XVII 195
486. Distributions to be made only out of profits available for the purpose 195
487. Net asset restriction on distributions by public companies 196
488. Justification of distribution by reference to relevant financial statements 196
489. Successive distribution etc by reference to the same financial statements 197
490. Treatment of development costs 198
491. Determination of profit or loss in respect of asset where records incomplete 198
492. Distribution in kind: determination of amount 198
493. Distributions in kind: treatment of unrealised profits 199
494. Consequences of unlawful distribution 199
Part XVIII – CERTIFICATION AND TRANSFER OF SECURITIES 199
495. Share certificate to be evidence of title 200
496. Duty of company as to issue of certificates etc. on allotment 200
497. Registration of transfer of shares and debentures 200
498. Procedure on transfer being lodged 200
499. Transfer of shares on application of transferor 201

500. Execution of share transfer by executor or administrator 201
501. Evidence of grant of probate, etc 201
502. Certification of document of transfer of shares or debentures 201
503. Duty of company as to issue of certificates etc on transfer 202
504. Company no longer authorised to issue share warrants after commencement of this section 202
505. Power of Court to order company to make good failure to issue certain documents 202
506. Provision enabling procedures for evidencing and transferring title 203
507. Power to make regulations requiring arrangements to be adopted 203
508. Provision enabling or requiring arrangements to be adopted: order-making powers 204
509. Duty to consult 204
Part XIX – PUBLIC OFFERS OF SECURITIES BY COMPANIES 204
510. Interpretation: Part XIX 204
511. Prohibition of public offers by private companies 205
512. Enforcement of prohibition: order restraining proposed contravention 206
513. Enforcement of prohibition: orders available to the Court after contravention 206
514. Enforcement of prohibition: power of Court to make remedial orders 206
515. Validity of allotment etc not affected 207
516. Public company: requirement for minimum share capital 207
517. Procedure for obtaining trading certificate 207
518. The authorised minimum 208
519. Consequences of doing business etc without a trading certificate 208
Part XX – REDEEMABLE SHARES 208
520. Power of limited company to issue redeemable shares 208
521. Terms and manner of redemption 208
522. Payment for redeemable shares 208
523. Financing of redemption 209
524. Redeemed shares treated as cancelled 209
525. Notice to Registrar of redemption 209
Part XXI – TREASURY SHARES 210
526. Treasury shares 210
527. Treasury shares: maximum holdings 211
528. Exercise of rights in respect of treasury shares 211
529. Disposal of treasury shares 211
530. Treasury shares: notice of disposal 212
531. Cancellation of treasury shares 212

532. Treasury shares: notice of cancellation 212
533. Treatment of proceeds of sale of treasury shares 213
534. Treasury shares: offences 213
Part XXII – INFORMATION ABOUT INTERESTS IN A PUBLIC COMPANY'S SHARES 213
535. Application of Part XXII 214
536. Notice by public company requiring information about interests in its shares 214
537. Public company may apply to Court for order imposing restrictions on the relevant shares if notice requiring information is not complied with 215
538. Notice requiring information: offences 215
539. Notice requiring information: persons exempted from obligation to comply 215
540. Consequences of order imposing restrictions 215
541. Offence to attempt to evade restrictions 216
542. Relaxation of restrictions 217
543. Removal of restrictions 217
544. Order of Court for sale of shares 217
545. Application of proceeds of sale under order of Court 218
546. Power of members of company to require company to act 218
547. Duty of company to comply with requirement 219
548. Report to members on outcome of investigation 219
549. Offences relating to a failure to comply with requirement of section 560 219
550. Right to inspect and request copy of reports 220
551. Company to keep register of interest disclosed 220
552. Register to be kept available for inspection 221
553. Rights to inspect and require copy of entries 221
554. Court supervision of purpose for which rights may be exercised 222
555. Register of interests disclosed: refusal of inspection or default in providing copy 222
556. Register of interests disclosed: offences in connection with request for or disclosure of information 223
557. Entries not to be removed from register 223
558. Removal of entries from register: old entries 223
559. Removal of entries from register: incorrect entry relating to third party 223
560. Adjustment of entry relating to share acquisition agreement 224
561. Duty of company ceasing to be public company 224
562. Interest in shares: general 224
563. Interest in shares: right to subscribe for shares 225
564. Interest in shares: family interests 225

565. Interest in shares: corporate interests 225
566. Interest in shares: agreement to acquire interests in a particular company 226
567. Extent of obligation in case of share acquisition agreement 226
568. Information protected from wider disclosure 227
569. Calculating periods for fulfilling obligations 227
Part XXIII – COMPANY DEBENTURES 227
570. Perpetual debentures 227
571. Enforcement of contracts to subscribe for debentures 228
572. Company to register allotment of debentures 228
573. Company to establish and maintain register of debenture holders 228
574. Rights of debenture holders and others to inspect and obtain copies of register of debenture holders 228
575. Offence to refuse inspection of register of debenture holders or to fail to provide copy 229
576. Register of debenture holders: offences in connection with request for or disclosure of information 230
577. Time limit for claims arising from entry in register of debenture holders 230
578. Right of debenture holder to obtain copy of trust deed securing debentures 230
579. Provisions protecting trustees of deed securing debentures to be void 231
580. Power of company to re-issue redeemed debentures 231
581. Deposit of debentures to secure advances 232
582. Priorities when debentures are secured by floating charge 232
Part XXIV – COMPANY TAKEOVERS 232
583. Interpretation: Part XXIV 232
584. What constitutes a takeover offer 233
585. Shares already held by the offeror, etc 233
586. Cases in which offer is treated as being on same terms 234
587. Effect of impossibility etc of communicating or accepting offer 234
588. Certain shares excluded from offer 235
589. Persons who are associates of offerors for purposes of this Part 235
590. How debentures that confer voting rights are treated for the purposes of this Part 236
591. How convertible securities are to be treated for purposes of this Part 236
592. Power of Authority to make Takeover Rules 237
593. Further provisions about Takeover Rules 237
594. Power of Authority to give rulings in takeover cases 238
595. Rules may empower Authority to give directions 238
596. Power of Authority to require documents and Information 238
597. Restrictions on disclosure of information about affairs of natural person or particular business 239

598. Offence to disclose information in contravention of section 597 239
599. Power of Authority to impose sanctions for breaches of Takeover Rules 240
600. Failure to comply with the Takeover Rules relating to bid documentation 240
601. Enforcement of Takeover Rules by the Court 241
602. Authority not liable for damages in connection with the performance of its functions under this Part 242
603. No action for breach of statutory duty etc 242
604. Privilege against self-incrimination 242
605. Interpretation: Division 3 242
606. Impediments to takeovers: opting in and opting out 243
607. Further provision about opting-in and opting-out resolutions 243
608. Consequences of opting in: effect on contractual restrictions 243
609. Power of offeror to require general meeting to be convened 244
610. Requirements as to notification of opting-in or opting out resolutions 245
611. Right of offeror to buy out minority shareholder 245
612. Further provision about notices given under section 611 246
613. Effect of notices under section 611 247
614. Further provision about consideration held on trust under section 613 248
615. Right of minority shareholder to be bought out by offeror 248
616. Further provision about rights conferred by section 615 250
617. Effect of exercising the rights conferred by section 615 250
618. Circumstances in which offeror or minority shareholder may apply to the Court 251
619. When takeover offers are made by two or more persons jointly 252
Part XXV – COMPANY ACCOUNTING RECORDS AND FINANCIAL STATEMENTS 253
620. Interpretation: Part XXV 253
621. Notes to a company's financial statements 253
622. Application of this Part 254
623. Companies subject to the small companies regime 254
624. Companies qualifying as small: general rules 254
625. Companies qualifying as small: parent companies 255
626. Companies excluded from the small companies regime 256
627. When company is a quoted company or an unquoted company for the purposes of this Part 256
628. Duty of company to keep proper accounting records 256
629. Offence for company to fail to keep proper accounting records 257
630. Where and for how long company is required to keep its records 257
631. Offences relating to company's failure to preserve its records 257

632. How company's financial year is to be determined 257
633. How accounting reference periods and accounting reference date of company are determined 258
634. Power of company to change its accounting reference date 258
635. Duty of directors to prepare individual financial statement 259
636. Financial statements to give true and fair view 259
637. Accounting framework applicable to individual financial statements 259
638. Requirements for individual financial statements 260
639. Company that is not a small company to prepare group financial statement 260
640. Exemption for company included in group financial statement of larger group 261
641. Exemption if no subsidiary undertakings need to be included in consolidation 262
642. Group financial statements: applicable accounting framework 262
643. Requirements for group financial statements 262
644. Group financial statements: subsidiary undertakings to be included in consolidation 263
645. Directors of parent company to ensure consistency of financial reporting within group 263
646. Certain information may be omitted from individual profit and loss account when group financial statement is prepared 263
647. Information about related undertakings to be provided in notes to financial statements 264
648. Information about related undertakings: alternative compliance 264
649. Information about employee numbers and costs to be included in company's annual financial statement 265
650. Directors to include in notes to company's annual financial statement details of their benefits other than remuneration 266
651. Information about directors' benefits to be included in notes to company's individual financial statement 266
652. Directors to approve and sign financial statements 268
653. Duty to prepare directors' report 268
654. General requirements for contents of directors' report 268
655. Business review to be included in certain directors' reports 269
656. When business review not required 270
657. Contents of directors' report: statement as to disclosure to auditors 270
658. Directors to approve and sign directors' report 270
659. Duty of directors of quoted company to prepare directors' remuneration report 271
660. Regulations may prescribe requirements for contents of directors' remuneration report 271
661. Directors to approve and sign directors' remuneration report 271
662. Company's duty to circulate copies of annual financial statement and reports 271
663. Deadline for sending out copies of annual financial statement and reports 272
664. Offence to fail to send out copies of financial statements and reports 272

665. Option to provide summary financial statement 272
666. Duty of company to send financial statement to persons entitled 273
667. Form and contents requirements for summary financial statements of unquoted companies 273
668. Form and contents requirements for summary financial statements of quoted companies 274
669. Offences relating to summary financial statements 274
670. Quoted company to make annual financial statement available on company's website 275
671. Quoted company to make preliminary statement of results available on company's website 275
672. Requirements as to website availability 275
673. Right of member or debenture holder of unquoted company to copies of company's financial statements and directors' reports 276
674. Right of member or debenture holder of quoted company to copies of company's financial statement and reports 276
675. Name of signatory to be stated in published copies of annual financial statement and reports, etc 277
676. Requirements in connection with publication of statutory financial statement 277
677. Requirements in connection with publication of non-statutory financial statement 278
678. Meaning of "publication" in relation to company's financial statement and reports 278
679. Public company to present annual financial statement and reports at general meeting of company 278
680. Offence for public company to fail to present annual financial statement and reports at general meeting of company 279
681. Directors of quoted company required to obtain members' approval of directors' remuneration report 279
682. Offence for directors of quoted company to fail to comply with section 694 279
683. Company's directors to lodge certain documents with Registrar 280
684. Deadline for lodging financial statements with Registrar 280
685. Calculation of deadline for lodging financial statements with Registrar 280
686. Lodgement requirements for companies subject to small companies regime 281
687. Lodgement requirements for unquoted companies 281
688. Lodgement requirements for quoted companies 282
689. Exemption of unlimited companies from requirement to lodge financial statements with Registrar 282
690. Special auditor's report required if abbreviated financial statement is lodged with Registrar 283
691. Directors of company to approve and sign abbreviated financial statement 284
692. Offence to fail to lodge annual financial statement and reports with Registrar 284
693. Power of the Court to order compliance if annual financial statement or reports not lodged with Registrar 285
694. Company liable to default penalty for failure to lodge annual financial statement and reports with Registrar 285
695. Voluntary revision of defective financial statements and reports 285

696. Cabinet Secretary may give notice in respect of company's financial statements or reports that are believed to be defective 286
697. Application to the Court to rectify defective annual financial statement or directors' report of company 286
698. Power of Cabinet Secretary to authorise other persons to make application to the Court under section 710 288
699. Power of Kenya Revenue Authority to disclose information to authorised person for certain purposes 288
700. Power of Cabinet Secretary or authorised person to require documents, information and explanations 289
701. Restrictions on disclosure of information obtained under compulsory powers 290
702. Permitted disclosure of information obtained under compulsory powers 290
703. Liability of directors for false or misleading statements in company's financial statement and reports 291
704. Regulations may make further provision about financial statements and reports of companies 291
Part XXVI – COMPANIES TO MAKE ANNUAL RETURNS TO REGISTRAR 292
705. Duty of company to lodge annual returns with Registrar 292
706. Contents of annual return: general 292
707. Contents of annual return: information about share capital and shareholders 293
708. Offence for company not to lodge annual return on time, etc 294
Part XXVII – AUDITING OF COMPANY FINANCIAL STATEMENTS 294
709. Requirements for auditing financial statements 294
710. Right of members to require audit 294
711. Small companies: conditions for exemption from audit 295
712. Companies excluded from small companies exemption 295
713. Availability of small companies exemption in case of group company 295
714. Conditions for exemption from audit for dormant companies 296
715. Companies excluded from dormant companies exemption 296
716. Exemption from audit for non-profit making companies 297
717. Appointment of auditors of private company: general 297
718. Appointment of auditors of private company: default power of the Cabinet Secretary 298
719. Term of office of auditors of private company 298
720. Members of private company may block automatic re-appointment of auditor 299
721. Appointment of auditors of public company: general 299
722. Appointment of auditors of public company: default power of the Cabinet Secretary 300
723. Term of office of auditors of public company 300
724. Fixing of auditor's remuneration 300
725. Company to disclose terms of audit appointment 301
726. Regulations to provide for safeguarding disclosure of nature of services provided by company's auditor 301
727. Auditor's report on annual financial statement of company 301

728. Auditor's report on directors' report 302
729. Auditor's report on auditable part of directors' remuneration report 303
730. Responsibilities of auditor 303
731. Auditor's right to information 304
732. Auditor's right to information from foreign subsidiaries 304
733. Auditor's rights to information: offences 305
734. Auditor's rights in relation to resolutions and meetings 305
735. Auditor to sign and date auditor's report 305
736. Name of auditor to be stated in published copies of auditor's report 306
737. Circumstances in which auditors' names may be omitted from published copies of auditors' report 306
738. Offences in connection with auditor's report 306
739. Resolution removing auditor from office 307
740. Special notice required for resolution removing auditor from office 307
741. Notice of resolution removing auditor from office 308
742. Rights of auditor who has been removed from office 308
743. Failure to re-appoint auditor: special procedure required for written resolution 308
744. Failure to re-appoint auditor: special notice required for resolution at general meeting 309
745. Resignation of auditor 310
746. Notice to Registrar of resignation of auditor 310
747. Rights of resigning auditor 311
748. Statement by auditor on ceasing to hold office to be lodged with company 312
749. Company's duties in relation to statement 312
750. Auditor to lodge copy of statement with Registrar 313
751. Duty of auditor to notify appropriate audit authority 313
752. Duty of company to notify appropriate audit authority if auditor ceases to hold office before end of auditor's term 313
753. Appropriate audit authority to notify prescribed account body of cessation of auditor's appointment 314
754. Meaning of "appropriate audit authority" for purpose of this Division 314
755. Effect of casual vacancies 315
756. Members' power to request website publication of audit concerns 315
757. Requirements as to website availability 315
758. Website publication: company's supplementary duties 316
759. Website publication: offences 316
760. Meaning of "quoted company" for purposes of sections 757 to 760 316
761. Provisions protecting auditors from liability to be void 317

762. Indemnity for costs of successfully defending proceedings 317
763. Power of Court to grant relief in certain cases 317
764. Liability limitation agreements 318
765. Terms of liability limitation agreement 318
766. Authorisation of agreement by members of the company 318
767. Effect of liability limitation agreement 319
768. Company to disclose liability limitation agreement 319
769. Quoted Companies: audit committee 320
770. Quoted companies: corporate governance 320
Part XXVIII – STATUTORY AUDITORS 320
771. Purpose of Part XXVIII 320
772. Eligibility for appointment as a statutory auditor 321
773. Ineligible person prohibited from acting as a statutory auditor 321
774. Statutory auditor to be independent 321
775. Effect of lack of independence of statutory auditor 322
776. Effect of appointment of a partnership as statutory auditor 322
777. Appropriate qualifications for appointment as a statutory auditor. 323
778. Power of Cabinet Secretary to recognise qualifications of foreign auditors for purposes of this Act 323
779. Cabinet Secretary's power to require eligible person to provide certain information 324
Part XXIX – PROTECTION OF MEMBERS AGAINST OPPRESSIVE CONDUCT AND UNFAIR PREJUDICE 324
780. Application to Court by company member for order under section 796 324
781. Application to Court by Attorney General for order under section 783 325
782. Power of Court to make orders for protection of members against oppressive conduct and unfair prejudice 325
783. Copy of order affecting company's constitution to be lodged with Registrar 326
784. Supplementary provisions applicable if company's constitution altered 326
Part XXX – COMPANY INVESTIGATIONS 326
785. Interpretation: Part XXX 327
786. Investigation of company's affairs on application of members 327
787. Investigation of company's affairs in other cases 327
788. Power of inspectors to carry investigation into affairs of related companies 328
789. General powers of Court to give directions to inspector 328
790. Power of Court to direct conduct of investigation under this Division to be terminated 329
791. Resignation and revocation of appointment of inspector appointed by the Court 329
792. Power of Court to appoint replacement inspector 329

793. Production of documents and evidence to inspector appointed by the Court 329
794. Obstruction of inspectors appointed by Court to be contempt of Court 330
795. Power of inspector appointed by Court to apply to Court to conduct examination of person 330
796. Power of Court to obtain information from former inspectors etc. 331
797. Inspector appointed by the Court to submit reports to the Court 331
798. Power of Director of Public Prosecutions to bring prosecution for offences disclosed by inspectors' report 332
799. Expenses of investigation of company's affairs 332
800. Appointment of inspector to investigate ownership of company 333
801. Power of inspector appointed by Attorney General to investigate ownership, etc. of related companies 334
802. General powers of Attorney General to give directions to inspectors appointed by the Attorney General 334
803. Direction to terminate conduct of investigation under this Division 335
804. Resignation and revocation of appointment of inspectors appointed by the Attorney General 335
805. Appointment of replacement inspectors appointed by the Attorney General 335
806. Production of documents and evidence on investigation under this Division 335
807. Obstruction of inspectors appointed by the Attorney General to be contempt of Court 336
808. Inspector appointed by the Attorney General may apply to Court to conduct examination of person 337
809. Inspector appointed by the Attorney General to submit reports to the Attorney General 337
810. Power of Director of Public Prosecutions to bring prosecution for offences disclosed by inspectors' report made under section 810 338
811. Power of Attorney General to require information about persons interested in securities of a company 338
812. Power of Attorney General to impose restrictions on securities 339
813. Inspector's report to be evidence 339
814. Power to bring civil proceedings on company's behalf 339
815. Issue of warrants to enter and search premises 339
816. Protection in relation to certain disclosures: information provided to Attorney General 340
817. Prohibition on disclosure of information obtained under section 812 or 817 341
818. Offence to destroy, mutilate or falsify company documents 341
819. Offence to provide false information 342
820. Disclosure of information by Attorney General or inspector 342
821. Certain information protected from disclosure 343
822. Answers to questions put by inspector during examination admissible in legal proceedings as evidence 343
823. Application of this Part to foreign companies 344
824. Offences against this Part committed by bodies corporate 344
825. Consequence of order imposing restrictions 344
826. Offence to attempt to evade restriction imposed by or under this Part 345

827. Power of Court to order relaxation or removal of restrictions 345
828. Provisions applicable to sale by Court order of restricted securities 346
Part XXXI – REGISTRAR OF COMPANIES AND REGISTRATION OF COMPANY DOCUMENTS 347
829. Application of Part XXXI 347
830. Part to apply to foreign companies 347
831. Registrar and Deputy and Assistant Registrars of Companies 347
832. Register of Companies and functions of Registrar 348
833. Registrar's official seal 348
834. Fees payable to Registrar 348
835. Registrar to give public notice of issue of certificate of incorporation 349
836. Right to obtain certificate of incorporation 349
837. Registrar to allocate number to each company 349
838. Registrar to allocate unique number to each foreign company registered under this Act 350
839. Power of Registrar to impose requirements with respect to lodgement of documents 350
840. Regulations may require documents to be lodged by electronic means 350
841. Agreement for lodgement of documents by electronic means 351
842. Document not lodged for purposes of this Act until received by Registrar 351
843. Requirements for proper lodgement 351
844. Powers of Registrar to correct documents in certain cases 352
845. Power of Registrar to accept replacement for document previously lodged 352
846. Power of Registrar to exclude unnecessary information 353
847. Registrar's notice to remedy defective lodgement 353
848. Annotation of the Register 353
849. Allocation of unique identifiers for purpose of identifying directors and certain other persons 354
850. Preservation of original documents 354
851. Power of Registrar to destroy records of dissolved company after lapse of two years 355
852. Right of members of public to inspect Register 355
853. Right of members of public to be provided with copies of records kept by Registrar 355
854. Certain records not to be made available for public inspection 355
855. Registrar can be required to make address unavailable for public inspection 356
856. Form of application for inspection or copy 356
857. Form and manner in which copies to be provided 356
858. Certification of copies of records by Registrar 356
859. Issue of legal process for production of records kept by the Registrar 357
860. Registrar's notice to resolve inconsistency on the Register 357

861. Administrative removal of information from the Register 357
862. Rectification of Register on application to Registrar 358
863. Rectification of the Register under Court order 359
864. Powers of Court on ordering removal of entry from the Register 359
865. Documents to be prepared and lodged in the English language 359
866. Documents that may be prepared and lodged in other languages 360
867. Voluntary lodgement of translations 360
868. Certified translations 360
869. Transliteration of names and addresses: permitted characters 360
870. Transliteration of names and addresses: voluntary translation into Roman characters 360
871. Translation of names and addresses: certification 361
872. Offence to lodge false or misleading documents or to make false or misleading statements to Registrar 361
873. Enforcement of company's lodgement obligations 361
874. Supplementary provisions relating to electronic communications 361
875. Provision for publishing notices by alternative means 361
876. Registrar's power to make Rules 362
Part XXXII – COMPANY CHARGES 362
877. Interpretation: Part XXXII 362
878. Charges created by a company 362
879. Charges existing on property acquired 363
880. Lodgement for registration of charge in series of debentures 364
881. Additional registration requirement for commission, allowance or discount in relation to debentures 364
882. Certificate of registration to be endorsed on debentures 365
883. Charges created in, or over property located outside Kenya 365
884. Registrar to keep register of charges 365
885. Deadline for registering a charge 366
886. Holder of floating charge to lodge with Registrar notice of appointment and cessation of appointment of administrator of company 366
887. Registrar to record memorandum of satisfaction or release 367
888. Rectification of register of charges 367
889. Consequences of failure to register charges created by a company 368
890. Companies to keep copies of documents creating charges 368
891. Company's register of charges 368
892. Right of creditors, members and others to inspect documents that create company's charges and to inspect company's register of charges 369

Part XXXIII – DISSOLUTION AND RESTORATION TO THE REGISTER 369
893. Interpretation: Part XXXIII 369
894. Power of Registrar to strike off company not carrying on business or in operation 369
895. Duty of Registrar to act in case of company that has been liquidated or no liquidator is acting 370
896. Supplementary provisions as to service of letter or notice 371
897. Striking off company on company's application 371
898. Circumstances in which application not to be made: activities of company 371
899. Circumstances in which application not to be made: other proceedings not concluded 372
900. Copy of application to be given to members, employees, etc 373
901. Copy of application to be given to new members, employees, etc 373
902. Copy of application: provisions as to service of documents 374
903. Circumstances in which application taken to be withdrawn 375
904. When withdrawal of application takes effect 376
905. Property of dissolved company to vest in the State 376
906. Disclaimer of property vesting in the State 377
907. Effect of State disclaimer 377
908. General effect of disclaimer 377
909. Disclaimer of leaseholds 378
910. Power of Court to make vesting order 378
911. Protection of persons holding under a lease 378
912. Application for administrative restoration to the Register 379
913. Requirements for administrative restoration 379
914. Registrar's decision on application for administrative restoration 379
915. Effect of administrative restoration 380
916. Application to Court for restoration to the Register 380
917. When application to the Court may be made 381
918. Decision on application for restoration by the Court 382
919. Effect of Court order for restoration to the Register: power of Court to make consequential directions 382
920. Company's name on being restored to the Register 383
921. Effect of restoration to the Register if property has vested in the State under section 919 383
Part XXXIV – COMPROMISES, ARRANGEMENTS, RECONSTRUCTIONS AND AMALGAMATIONS 384
922. Part XXXIV: Application and interpretation 384
923. Court may order meeting of company's creditors or members to be held 384
924. Explanatory statement setting out effect of arrangement or compromise to be circulated or made available to company's creditors and members of company 384

925. Duty of directors and trustees to provide information 385
926. Court order sanctioning compromise or arrangement 385
927. Powers of the Court to facilitate reconstruction or amalgamation 386
928. Copy of order to be lodged with the Registrar for registration 387
929. Obligations of company with respect to its constitution 387
Part XXXV – MERGERS AND DIVISIONS OF PUBLIC COMPANIES 388
930. Interpretation: Part XXXV 388
931. Application of this Part 388
932. Relationship of this Part to Part XXXIV 389
933. Introductory: mergers and merging companies 389
934. Draft terms of scheme for proposed merger 389
935. Draft terms of proposed merger to be published 390
936. Scheme not effective unless approved by members of merging companies 390
937. Directors of merging companies to prepare explanatory report relating to proposed merger 390
938. Merging companies to arrange for preparation of experts' reports 391
939. Supplementary financial statement for merger in certain cases 391
940. Members of merging companies entitled to inspect merger documents 392
941. Articles of transferee company involved in merger to be approved 392
942. Protection of holders of securities to which special rights attached (merger) 392
943. Allotment of shares to transferor company (or its nominee) prohibited 393
944. Circumstances in which certain particulars and reports not required in relation to merger 393
945. Circumstances in which meeting of members of transferee company not required for merger 393
946. Circumstances in which meeting of members of transferee company not required in relation to merger 394
947. Other circumstances in which meeting of members of transferee company not required in relation to merger 395
948. Introductory: companies and involvement of companies in division 395
949. Draft terms of scheme to be prepared and adopted in relation to division 395
950. Draft terms relating to division to be published 396
951. Approval of members of companies involved in division 396
952. Directors to prepare explanatory report in relation to division 397
953. Expert's report to be prepared for each company involved in division 397
954. Supplementary financial statement to be prepared in relation to division in certain cases 398
955. Members of companies involved in division entitled to inspect certain documents 398
956. Report on material changes of assets of transferor company involved in division 399
957. Articles of transferee company involved in division to be approved by transferor company 399

958. Protection of holders of securities to which special rights attached (division) 399
959. Allotment of shares to transferor company (or its nominee) prohibited 399
960. Circumstances in which meeting of members of transferor company involved in division is not required ... 400
961. Other exceptions: circumstances in which meeting of members of transferee company not required in relation to division 400
962. Members of companies involved in division can agree to dispense with reports, etc 401
963. Power of the Court to exclude certain requirements in the case of division 401
964. Experts's report: valuation by another person 402
965. Experts and valuers: independence requirement 402
966. Power of the Court to convene meeting of members or creditors of existing transferee company 404
967. Court to fix date for transfer of undertaking etc of transferor company 404
968. Liability of transferee companies for each other's defaults 404
Part XXXVI – COMPANIES NOT FORMED UNDER THIS ACT 405
969. Companies not formed under companies legislation can be registered under this Act 405
970. Regulations providing for registration of companies to which section 983 applies. 405
971. Provisions of this Act may be applied to unregistered companies. 405
972. Application of this Part to certain existing companies 406
Part XXXVII – FOREIGN COMPANIES 406
973. Interpretation: Part XXXVII 406
974. When foreign company may carry on business in Kenya. 406
975. Application for registration of foreign companies 407
976. Requirements with respect to names of foreign companies 408
977. Foreign company can be registered under alternative name under which it will carry on business in Kenya 408
978. Registrar to issue certificate of registration on change of name of registered foreign company 409
979. Foreign company required to have local representative 409
980. Appointment and termination of appointment of local representation 409
981. Liability of local representative 410
982. Particulars of places of businesses of registered foreign companies to be notified to Registrar 410
983. Registered foreign company to have registered office 411
984. Registered foreign company to display its name at office and places of business 411
985. Registered foreign company to state its name and other information in documents and communications relating to its business in Kenya 412
986. Registered foreign company to give notice of certain changes relating to its constitution, directors and business in Kenya 412
987. Copies of registered foreign company's financial statements and other documents to be lodged with Registrar 413

988. Provision for registration of charges over Kenyan property of foreign company 413
989. Registered foreign company to lodge certain returns with Registrar 414
990. Natural person's residential address to be protected from disclosure 414
991. Local representative of registered foreign company to notify Registrar of certain events affecting the company 414
992. Power of Registrar to strike registered foreign company's name from Register of Foreign Companies in certain circumstances 415
993. Restoration of foreign company to Foreign Companies Register in certain circumstances 416
994. Registrar to keep Foreign Companies Register 417
995. Power of Cabinet Secretary to make foreign companies regulations 417
Part XXXVIII – OFFENCES AND LEGAL PROCEEDINGS 417
996. Liability of officers who are in default 417
997. Application of section 1010 to bodies other than companies 418
998. Proceedings against unincorporated bodies 418
999. Legal professional privilege 418
1000. Production and inspection of documents if offence suspected 418
1001. Power to enter and search of premises under warrant 419
1002. Offence of fraudulent trading 420
1003. Power of the Court to prohibit payment or transfer of money, financial products or other property 420
1004. Power of the Court to grant injunctions in certain cases 422
1005. Power of a court to grant relief in certain cases 423
Part XXXIX – COMPANY RECORDS 423
1006. Form of company records 423
1007. Power to make regulations about where certain company records can be kept 424
1008. Power to make regulations about the inspection of records and the provision of copies 425
1009. Duty of company to take precautions against falsification of its records 425
Part XL – SERVICE OF DOCUMENTS ON AND BY COMPANIES 425
1010. Service of documents on companies 425
1011. Service of documents on directors, secretaries and others 426
1012. Requirement for service addresses 426
1013. Companies Communications Regulations 426
1014. Right to require company to provide hard copy version of company document or information 427
1015. Requirements for authentication of documents and information 427
1016. When documents and information are taken to have been sent or supplied by company 427
Part XLI – GENERAL PROVISIONS RELATING TO INDEPENDENT VALUATION AND REPORT 428
1017. Part XLI: Application and interpretation of valuation requirements 428

1018. Valuation to be carried out only by qualified valuer 428
1019. Valuer to satisfy independence requirement 429
1020. Meaning of “associate” for purposes of section 1034 429
1021. Valuer entitled to full disclosure 430
Part XLII – MISCELLANEOUS PROVISIONS 430
1022. Power of Cabinet Secretary to make regulations for purposes of this Act 430
1023. Repeals and revocation 432
1024. Continuity of the law 432
1025. Sixth Schedule: savings and transitional provisions 434
1026. Power to make savings and transitional regulations 434
FIRST SCHEDULE 434
SECOND SCHEDULE 436
THIRD SCHEDULE 437
FOURTH SCHEDULE 438
FIFTH SCHEDULE 439
SIXTH SCHEDULE 440

COMPANIES ACT

CAP. 486

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Commenced
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AN ACT of Parliament to consolidate and reform the law relating to the incorporation, registration, operation, management and regulation of companies; to provide for the appointment and functions of auditors; to make other provision relating to companies; and to provide for related matters

1. Short title and commencement

(1) This Act may be cited as the Companies Act, 2015.

(2) This section comes into operation on the date on which this Act is published in *Gazette*.

(3) The Cabinet Secretary shall, by notice published in the *Gazette*, bring into operation the remaining provisions of this Act on such date or such different dates as the Cabinet Secretary appoint.

(4) If the Cabinet Secretary has failed to bring all of the remaining provisions into operation within nine months after the date on which this section has come into operation, the Parliament may, by resolution of each of its Houses, bring into operation such of those provisions as have not yet been commenced.

2. Objects of this Act

The objects of this Act are to facilitate commerce, industry and other socio-economic activities by enabling one or more natural persons to incorporate as entities with perpetual succession, with or without limited liability, and to provide for the regulation of those entities in the public interest, and in particular in the interests of their members and creditors.

3. Interpretation of provisions of this Act

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

"address" includes—

(a) a fax number, e-mail address or any other electronic address used for the purposes of sending or receiving documents or information by electronic means; and

(b) a postal and physical address;

"**administrator"**, in relation to a company, means an administrator appointed under the laws relating to insolvency;

"**allotted share capital**", in relation to a company, means shares of the company that have been allotted;

"**approved securities exchange**" means a securities exchange approved by the Capital Markets Authority in accordance with the Capital Markets Act (Cap. 485A);

"articles" means the articles of association of a company;

"associate"—

(a) in relation to a natural person means—

(i) that person's spouse or child;

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

(iii) an employee or partner of that person;

(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 not a legal person under the law by which it is governed, means any person who is an associate of any of the partners;

"auditor" means—

(a) a person or firm appointed as an auditor of a company under Part XXVII; or

(b) a person or firm appointed as an auditor of a body of a kind prescribed by the regulations for the purposes of this definition;

"authorised signatory" in relation to a company, means a director of the company and also means —

(a) in the case of a public company, the secretary or a joint secretary of the company; and

(b) in the case of a private company that has a secretary, the secretary;

"body corporate" includes a firm that is a legal person under the law by which it is governed;

"**Cabinet Secretary**" means the Cabinet Secretary for the time being responsible for matters relating to companies;

"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;

"company" means a company formed and registered under this Act or an existing company;

"company limited by guarantee" has the meaning given by section 7;

"company records" (or "**records of a company**") means—

(a) any register, index, accounting records, agreement, memorandum, minutes or other document required by or under this Act to be kept by the company; or

(b) any register kept by the company of its debenture holders;

"**the Court**" means (unless some other court is specified) the High Court;

"**credit sale agreement**" means an agreement for the sale of goods under which payment of the whole or a part of the purchase price is deferred and a security interest in the goods is created or provided for in order to secure the payment of the whole or a part of the purchase price;

"**debenture**", in relation to a company, includes debenture stock, bonds and any other securities of a company (whether or not constituting a charge on the assets of the company);

"**deed**" means a legal document that grants a right by transferring the right from one person to another;

"**direction**" means direction in writing;

"director", in relation to a body corporate, includes—

(a) any person occupying the position of a director of the body (by whatever name the person is called); and

(b) any person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors of the body are accustomed to act;

"document" means information recorded in any form; and in particular includes a summons, notice, order or other legal process and a register (whether in hard copy or electronic form);

"dormant company" means a company that is dormant during any period in which it has no significant accounting transaction;;

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

"electronic copy" in relation to a document or information, means a copy of the document or information that is stored or kept in electronic form;

"electronic form" in relation to a document or information, means the storage or keeping of the document or information in the form of data, text or images by means of guided or unguided electromagnetic energy, or both;

"electronic means", in relation to a document or information, means—

(a) sending, supplying or delivering the document or information initially, and receiving it at its destination, by means of electronic equipment for the processing (including by digital compression) or storage of data; and

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

"electronic money" means electronically (including magnetically) stored monetary value as represented by a claim on the electronic money issuer that—

(a) is issued on receipt of funds for the purpose of making payment transactions;

(b) is accepted by a person other than the electronic money issuer; and

(c) is not excluded by the regulations;

"electronic money issuer" means a person authorised by the regulations to issue electronic money;

"**eligible member**", in relation a resolution of a company, means a member who, under the articles of the company, is entitled to vote on the resolution;

"**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 those employees or former employees;

"**equity share capital**" means a company's issued share capital excluding any part of that capital that does not confer 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;

"**excluded from consolidation**", in relation to a group financial statement, means that the undertaking concerned is not included or liable to be included in that statement;

"**expenses**" includes costs; and "expenses" (of an investigation) includes expenses incidental to the investigation;

"**expression**" includes sign, symbol, logo and mark;

"**existing company**" means—

(a) a company formed and registered under the repealed Act; or

(b) a company that was formed and registered under either of the repealed Ordinances (as defined by that Act);

"**firm**" means an entity, whether or not a legal person, that is not a natural person; and includes a body corporate, sole proprietorship, partnership or other unincorporated association;

"**Foreign Companies Register**" means the register kept under section 994;

"**foreign company**" means a company incorporated outside Kenya;

"**foreign companies regulations**" means regulations made under section 995 and in force;

"**former name**" means a name by which a natural person was formerly known for business purposes;

"**general meeting**", in relation to a company, means a general meeting of the company;

"**group**", in relation to a body corporate, means the body corporate, any other body corporate that is its holding company or subsidiary and any other body corporate that is a subsidiary of that holding company;

"**group undertaking**", in relation to an individual undertaking, means an undertaking that is—

(a) a parent undertaking or subsidiary undertaking of the individual undertaking; or

(b) a subsidiary undertaking of any parent undertaking of the individual undertaking;

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

"**hire-purchase agreement**" means a hire-purchase agreement as defined in section 2(1) of the Hire Purchase Act (Cap. 507);

"**holding company**" (of another company) means a company of which the other company is a subsidiary company of the company;

"**holding company**" in relation to another company, means a company that—

(a) controls the composition of that other company's board of directors;

(b) controls more than half of the voting rights in that other company;

(c) holds more than half of that other company's issued share capital; or

(d) is a holding company of a company that is that that other company's holding company;

"**in default**", in relation to an officer of a company, has the meaning given by section 996;

"**in liquidation**" has the same meaning as the meaning provided under the laws relating to insolvency;

"**intellectual property**" means—

(a) any patent, trade mark, registered design, copyright or design right; or

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

"**issued share capital**", in relation to a company, means shares of the company that have been issued;

"**key performance indicators**", in relation to a company, means factors by reference to which the development, performance or position of the company's business can be measured effectively;

"**liabilities**" includes duties;

"**limited company**" has the meaning given by section 5;

"**lodge**", in relation to a document or information required or permitted to be registered, includes deliver, file, send, submit the document or information or, in the case of a notice, give the notice;

"**member**" means a member of a company;

"**name**", in relation to a natural person, means the person's given name and family name, or if the person is usually known by a title, the person's title, either in addition to or instead of the person's given name or family name, or both;

"**notice**" means notice in writing;

"**notify**" means notify in writing;

"**net assets**", in relation to a company, means the aggregate of the assets less the aggregate of its liabilities, and for the purpose of this definition, "liabilities" includes provisions of any kind;

"**officer**", in relation to a company or other body corporate, means—

(a) any director, manager or secretary of the company or body; and

(b) any other person who is, because of a provision of this Act, to be treated as an officer of the company or body for the purposes of the provision;

"**ordinary shares**" means shares other than shares that, with respect to dividends and capital, confer a right to participate only up to a specified amount in a distribution;

"**parent undertaking**" (of another undertaking) means an undertaking

that—

(a) holds a majority of the voting rights in the other undertaking;

(b) is a member of the other 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 other undertaking—

(i) because of provisions contained in the other undertaking's articles; or

(ii) because of a control contract;

(d) has the power to exercise, or actually exercises, dominant influence or control over the other undertaking; or

(e) is a member of the other undertaking and controls alone, under an agreement with other shareholders or members, a majority of the voting rights in it;

"**pension scheme**" means a scheme for the provision of benefits consisting of or including a pension, lump sum benefit, gratuity or other similar benefit given or to be given on the retirement or death, or in anticipation of the retirement of employees or former employees or, in connection with the past service of employees or former employees, either after their retirement or death;

"**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;

"**private company**" has the meaning given by section 9;

"prescribed financial accounting standards" means statements of standard accounting practice issued by the Institute of Certified Public Accountants of Kenya in accordance with the Accountants Act (No. 15 of 2008);

"**profit and loss account**" includes an income statement or other equivalent financial statement required to be prepared in accordance with the prescribed financial accounting standards;

"**property**" includes all rights and interests in property;

"**public company**" has the meaning given by section 10;

"publish", in relation to a document or information, means to issue or circulate the document or information 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) on a company's financial statement, means that the report or statement does not state the auditor's unqualified opinion that the financial statement has been properly prepared—

(a) in accordance with this Act; or

(b) if an undertaking not required to prepare financial statements in accordance with this Act —in accordance with any corresponding written law under which the undertaking is, or its directors are, required to prepare financial statements or accounts;

"qualifying person" in relation to a meeting of a company means—

(a) a natural person who is a member of the company;

(b) a person authorised under section 297 to act as the representative of a corporation in relation to the meeting; or

(c) a person appointed as proxy of a member of the company 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;

"register" (when used as a verb) means register under this Act;

"Register" means the Register of Companies kept under this Act, but does not include the Foreign Companies Register;

"registered foreign company" means a foreign company registered, or taken to be registered, in accordance with Part XXXVII;

"**the Registrar**" means the person for the time being holding office as Registrar of Companies under section 831;

"**the regulations**" means the companies general regulations made and in force under this Act, but does not, unless expressly provided, include the foreign companies regulations or savings and transitional regulations;

"the repealed Act" means the Companies Act (Cap. 486) repealed by this Act;

"resolution for reducing share capital", in relation to a company that has a share capital, means a special resolution passed by the company in accordance with section 407;

"**retention of title agreement**" means an agreement for the sale of goods to a company, being an agreement—

(a) that does not constitute a charge on the goods; but

(b) under which, if the seller is not paid and the company is wound up, the seller will have priority over all other creditors of the company with respect to the goods or any property representing the goods;

"securities" includes—

(a) options;

(b) futures; and

(c) contracts for differences, and rights or interests in those investments;

"service address", in relation to a person, means an address at which documents may be effectively served on that person for the purposes of this Act;

"services" means anything other than goods or land;

"shares" —

(a) in relation to an undertaking with a share capital, means shares in the share capital of the undertaking;

(b) in relation to an undertaking with capital but no share capital, means rights to share in the capital of the undertaking; and

(c) in relation to an undertaking without capital, means interests—

(i) conferring a right to share in the profits, or the 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 liquidation;

"sign" includes sign by means of an electronic signature;

"**significant accounting transaction**", in relation to a dormant company, means a transaction that is required by section 638 to be entered in the company's accounting records;

"**subsidiary"** means a company of which another company is its holding company;

"**subsidiary undertaking"** (of another undertaking) means an undertaking of which the other undertaking is its parent;

"**traded company**", means a company whose securities are admitted to trading on a securities exchange or other regulated market operating in Kenya;

"**turnover**", in relation to a company, means the amounts derived from the provision of goods or services, or goods and services, in the course of the company ordinary business, after deducting—

(a) trade discounts;

(b) value added tax; and

(c) any other taxes based on the amounts so derived;

"uncalled share capital", in relation to a company, means so much means so much of the company's share capital as is not called-up share capital of the company;

"under administration" has the same meaning as provided for in the laws related to insolvency;

"undertaking" means—

(a) a body corporate or partnership; or

(b) an unincorporated association carrying on a trade or business, with or without a view to profit;

"**undistributable reserves**" (of a company) means those reserves of the company that comprise—

(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;

"unlimited company" has the meaning given by section 8;

"wholly-owned subsidiary company" (of another company) means a company that has no members other than that other company and that other company's wholly owned subsidiaries (or persons acting on behalf of that other company or its wholly-owned subsidiaries;

"working day" means any day between Monday and Friday, but does not include a public holiday.

(2) In this Act, a reference to a company having a share capital is to a company that has power under its constitution to issue shares.

(3) In this Act, a reference to issued or allotted shares, or to issued or allotted share capital, includes shares taken on the formation of the company by the subscribers to the company's memorandum.

(4) For the purposes of this Act, shares in a company are allotted when a person acquires the unconditional right to be included in the company's register of members in respect of the shares.

(5) In the case of an undertaking not trading for profit, a reference in this Act to a profit and loss account is a reference to an income and expenditure account, and a reference—

(a) to profit and loss; and

(b) in relation to a group financial statement—to a consolidated profit and loss account, is to be construed accordingly.

(6) The reference in paragraph (c) of the definition of "**undistributable reserves**" in subsection (1) to capitalisation does not include a transfer of profits of the company to its capital redemption reserve.

(7) In a provision of this Act in which a reference to the laws relating to insolvency occurs, the reference includes, so far as relevant to a matter existing before the commencement of the provision, a reference to the corresponding provision (if any) of the repealed Act.

(8) The regulations may, for the purposes of this Act, explain and circumscribe the definitions of "**parent undertaking**" and "**subsidiary undertaking**" in subsection (1) and otherwise supplement those definitions.

4. Provisions supplementing definition of “holding company” in section 3

(1) For the purposes of paragraph (a) of the definition of "holding company" in section 3(1), a company controls the composition of another company's board of directors if it has power to appoint or remove all, or a majority, of that other company's directors without any other person's consent.

(2) For the purposes of subsection (1), a company has the power to make such an appointment if—

(a) without the exercise of the power in a person's favour by the company, the person cannot be appointed as a director of that other company; or

(b) it necessarily follows from a person being a director or other officer of the company that the person is appointed as a director of that other company.

(3) In paragraph (c) of that definition, a reference to a company's issued share capital excludes any part of it that carries no right to participate beyond a specified amount in a distribution of profits or capital.

(4) For the purposes of that definition—

(a) if any share is held, or any power is exercisable, by a company in a fiduciary capacity, the share or power is to be regarded as not being held or exercisable by the company; and

(b) subject to subsections (5) and (6), if any share is held, or any power is exercisable, by a subsidiary of a company, or by a person as nominee for a company or such a subsidiary, the share or power is to be regarded as being held or exercisable by the company.

(5) For the purposes of that definition, any share in another company held, or any power in relation to another company exercisable, by a person by virtue of a debenture of that other company, or of a trust deed for securing an issue of such a debenture, is to be regarded as not being held or exercisable by the person.

(6) For the purposes of that definition, any share held, or any power exercisable, by a company or a subsidiary of a company, or by a person as nominee for a company or such a subsidiary, is to be regarded as not being held or exercisable by the body corporate or subsidiary if—

(a) the ordinary business of the company or subsidiary includes the lending of money; and

(b) the share or power is held or exercisable by way of security only for the purpose of a transaction entered into in the ordinary course of that business.

(7) In subsection (4)(b), a reference to a company or subsidiary excludes a company or subsidiary that is concerned only in a fiduciary capacity.

Part II – COMPANIES AND COMPANY FORMATION

Division 1 — Types of companies

5. Limited companies

For the purposes of this Act, a company is a limited company if it is a company limited by shares or by guarantee.

6. Companies limited by shares

(1) For the purposes of this Act, a company is a company limited by shares if the liability of its members is limited by the company's articles to any amount unpaid on the shares held by the members.

(2) For the purposes of subsection (1), the liability of the members of an existing company is taken to be limited by the company's articles to any amount unpaid on the shares held by the members if a condition of the memorandum of association of the company stating that the liability of the members is limited is regarded as a provision of the articles by virtue of section 70.

7. Companies limited by guarantee

(1) For the purposes of this Act, a company is a company limited by guarantee if—

(a) it does not have a share capital;

(b) the liability of its members is limited by the company's articles to the amount that the members undertake, by those articles, to contribute to the assets of the company in the event of its liquidation; and

(c) its certificate of incorporate states that it is a company limited by guarantee.

(2) Subsection (1) does not prohibit a company limited by guarantee from having a share capital if it was formed and registered before the commencement of this section.

8. Unlimited companies

For the purposes of this Act, a company is an unlimited company if—

(a) there is no limit on the liability of its members; and

(b) its certificate of incorporation states that the liability of its members is unlimited.

9. Private companies

(1) For the purposes of this Act, a company is a private company if—

(a) its articles—

(i) restrict a member's right to transfer shares;

(ii) limit the number of members to fifty; and

(iii) prohibit invitations to the public to subscribe for shares or debentures of the company;

(b) it is not a company limited by guarantee; and

(c) its certificate of incorporation states that it is a private company.

(2) In subsection (1)(a)(ii), “member” excludes—

(a) a member who is an employee of the company; and

(b) a person who was a member while being an employee of the company and who continues to be a member after ceasing to be such an employee.

(3) For the purposes of this section, two or more persons who hold shares in a company jointly are taken to be a single member.

10. Public companies

For the purposes of this Act, a company is a public company if—

(a) its articles allow its members the right to transfer their shares in the company;

(b) its articles do not prohibit invitations to the public to subscribe for shares or debentures of the company; and

(c) its certificate of incorporation states that it is a public company.

Division 2 — Formation and registration of companies

11. Method of forming company

(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 13 to 16 with respect to registration.

(2) A company formed for an unlawful purpose may not be registered.

12. Memorandum of association

(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) A company may not be registered unless its memorandum of association is—

(a) in the form prescribed by the regulations; and

(b) authenticated by each subscriber.

13. Registration documents

(1) A person who wishes to register a company shall lodge with the Registrar—

(a) an application for registration of the company that complies with subsections (2) and (4);

(b) a memorandum of association of the company; and

(c) except as provided by section 21, a copy of the proposed articles of association.

(2) An application for registration complies with this subsection if it states—

(a) the proposed name of the company;

(b) the proposed location of the registered office of the company;

(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 agent shall include in the application the name and address of the agent.

(4) An application for registration complies with this subsection if it contains or is accompanied by—

(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 14;

(b) in the case of a company that is to be limited by guarantee, a statement of guarantee in accordance with section 15; and

(c) a statement of the company's proposed officers in accordance with section 16.

(5) In order to be registered, the articles of association of a company are required to—

(a) be contained in a single document;

(b) be printed;

(c) be divided into paragraphs numbered consecutively;

(d) be dated; and

(e) be signed by each subscriber to the articles.

(6) A subscriber's signature is required to be attested by a witness, whose name, occupation and postal address are required to be written or printed below the subscriber's signature.

14. Statement of capital and initial shareholdings

(1) If the company is to have a share capital, the applicants for registration shall ensure that the requisite statement of capital and initial shareholding comply with subsections (2) and (3).

(2) The statement of capital and initial shareholding complies with this subsection if it states—

(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 particulars of the rights attached to the shares prescribed by the regulations for the purposes of this subsection;

(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 in the form of a premium.

(3) The statement of capital and initial shareholding complies with this subsection if it—

(a) contains such information as may be prescribed for the purpose of identifying the subscribers to the memorandum of association; and

(b) states, 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 in the form of a premium.

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

15. Statement of guarantee

(1) The applicant for registration of a company to be limited by guarantee shall ensure that the requisite statement of guarantee contains the prescribed information to enable the subscribers to the memorandum of association to be identified.

(2) The applicant shall also ensure that the statement of guarantee states that each person who is a member undertakes, if the company is liquidated while the person is a member or within twelve months after the person ceases to be a member, to contribute to the assets of the company such amount as may be required for—

(a) paying the debts and liabilities of the company contracted before the person ceases to be a member;

(b) paying the costs, charges and expenses of liquidation; and

(c) adjusting the rights of the contributories among themselves.

16. Statement of proposed officers

(1) The applicant for registration shall ensure that the requisite statement of the company's proposed officers complies with subsections (2) and (4).

(2) The statement complies with this subsection if it contains 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.

(3) 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.

(4) The statement of the company's proposed officers complies with this subsection if it contains 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.

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

17. Registrar to register company if requirements of Act are complied with

If satisfied that an application for registration complies with the requirements of this Act relating to registration, the Registrar shall register the company and allocate to it a unique identifying number.

18. Registrar to issue company with certificate of incorporation

(1) On the registration of a company in accordance with section 17, the Registrar shall issue to the company a certificate of incorporation that complies with this section.

(2) A certificate of incorporation complies with this section if it states—

(a) the name of the company and its unique identifying number;

(b) the date of the company's incorporation;

(c) whether the company's liability is limited or unlimited, and if it is limited, whether it is limited by shares or by guarantee; and

(d) whether the company a private or a public one.

(3) The Registrar shall sign the certificate of incorporation and authenticate it with the Registrar's official seal.

(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.

19. Effect of registration

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, become a body corporate by the name stated in the certificate of incorporation;

(b) the company can do all of the things that an incorporated company can do;

(c) the registered office of the company is as stated in the application for registration;

(d) the status of the company is as stated in its certificate of incorporation;

(e) in the case of a company having a share capital, the subscribers to the memorandum of association become holders of the shares specified in the statement of capital and initial shareholdings; and

(f) the persons named in the statement of proposed officers—

(i) as directors of the company;

(ii) in the case of a public company, as the secretary or as a joint secretary of the company; or

(iii) as an authorised signatory of the company, become holders of those offices.

Part III – A COMPANY'S CONSTITUTION

Division 1 — Articles of Association

20. Regulation may prescribe model articles

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

(2) Different versions of model articles may be prescribed for different descriptions of companies.

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

(4) An amendment to regulations prescribing a version of model articles does not affect a company registered before the amendment took effect.

21. Default application of model articles

(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, 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) In subsection (1), "relevant model articles" means the model articles prescribed for a company of that kind in force on the date the company is registered.

22. Amendment of articles

A company may amend its articles only by special resolution.

23. Effect of amendment of articles on company's members

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

(a) requires the person to take or subscribe for more shares than the number held by the person at the date on which the amendment is made; or

(b) in any way increases the person 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 if the member agrees in writing, either before or after the amendment is made, to be bound by the amendment.

24. Amended articles to be sent to Registrar

(1) If a company amends its articles, the company shall lodge with the Registrar for registration a copy of the articles as amended not later than fourteen days after the resolution containing the amendment is passed.

(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 because of section 2.

(3) If a company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(4) If, after a company or any of its officers is convicted of an offence under subsection (3), the company continues to fail to lodge an amended copy of its articles, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

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

(1) On being satisfied that a company has failed to comply with any provision requiring it—

(a) to lodge with the Registrar a document making or evidencing an amendment in the company's articles; or

(b) to lodge with 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 Registrar shall in such a notice—

(a) specify the date on which it is issued; and

(b) require the company to comply with the notice within twenty eight days from that date.

(3) If a company fails to comply with a notice under subsection (2) within the required period, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(5) If, after a company or any of its officers is convicted of an offence under subsection (4), the company continues to fail to comply with the notice, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

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

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 referred to in section 12 become provisions of the company's articles on that commencement.

Division 2 — Resolutions and agreements affecting company's constitution

27. Copies of resolutions or agreements recorded by Registrar

(1) Within fourteen days after a resolution or agreement to which this section applies is passed or made, the company concerned shall lodge with the Registrar for registration—

(a) a copy of the resolution or agreement; or

(b) in the case of a resolution or agreement that is not in writing, a written memorandum setting out the terms of the resolution or agreement.

(2) This section applies to the following kinds of resolutions and agreements—

(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 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 451;

(f) a resolution conferring, varying, revoking or renewing authority following market purchase of a company's own shares;

(g) a resolution for voluntary liquidation;

(h) a resolution of the director of an old public company that the company should be converted into a public company; or

(i) a resolution passed regarding transfer of securities.

(3) The Registrar shall record a resolution or agreement lodged under subsection (1).

(4) If a company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(5) If, after a company or any of its officers is convicted of an offence under subsection (4), the company continues to fail to lodge the relevant copy or written memorandum, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

(6) For the purposes of this section, a liquidator of the company is treated as an officer of the company.

28. Statement of company's objects

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

(2) If a company amends its articles so as to add, remove or alter a statement of the company's objects —

(a) it shall lodge with the Registrar for registration a notice giving particulars of the amendment;

(b) on receipt of the notice, the Registrar shall register it; and

(c) the amendment is not effective until the notice is recorded on the Register.

(3) An amendment to the company's objects does not affect rights or obligations of the company or render defective legal proceedings by or against it.

Division 3 — Supplementary provisions

29. Documents to be provided to members

(1) A company shall, on being requested to do so by a member of the company, 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 27;

(c) a copy of any court order under this Act that alters the company's constitution;

(d) a copy of any court order under Part XXXIV that sanctions a compromise or arrangement involving the company or facilitating its reconstruction or amalgamation;

(e) copy of any court order under section 782 that alters the company's constitution;

(f) copy of the current certificate of incorporation of the company and of any past certificates of incorporation;

(g) in the case of a company with a share capital, a current statement of the company's capital;

(h) the case of a company limited by guarantee, a copy of the statement of guarantee.

(2) The statement of capital of the company required by subsection (1)(g) 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) the particulars of the rights attached to the shares prescribed by the regulations for the purposes of this subsection;

(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 in the form of a premium.

(3) A company is not required to comply with a request under subsection (1) unless the member meets the costs of preparing and sending the documents.

(4) If a company fails to comply with a request made under subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(5) If, after a company or any of its officers is convicted of an offence under subsection (4), the company continues to fail to comply with the request or a further request made by the member concerned, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

30. Effect of company's constitution

(1) A company's constitution binds the company and its members to the same extent as if the company and its members had covenanted agreed with each other to observe the constitution.

(2) Money payable by a member to the company under its constitution is recoverable in a court of competent jurisdiction as a debt due from the member to the company.

31. Right to participate is profits otherwise than a member is void

In the case of a company limited by guarantee, a provision in the articles of the company, or in a 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.

32. Application to single member companies of enactment and rules of law

Any enactment or rule of law applicable to companies formed by two or more persons or having two or more members applies with any necessary modification in relation to a company formed by one person or having only one person as a member.

Part IV – CAPACITY OF COMPANY

33. Company's capacity

The validity of an act or omission of a company may not be called into question on the ground of lack of capacity because of a provision in the constitution of the company.

34. Power of directors to bind company

(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 free of any is limitation contained in the company's constitution.

(2) For purposes of subsection (1)—

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

(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 to 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 having acted in bad faith only because the person knew that a particular act is beyond the powers of the directors under the constitution of the company.

(3) The references in subsection (2) to limitations on the directors' powers under the company's constitution include limitations deriving—

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

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

(4) This section does not affect a right of a member of the company to bring proceedings to restrain the doing of an act that is beyond the powers of the directors, but no such proceedings lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.

(5) This section does not affect a liability incurred by the directors, or by any other person, because the directors have exceeded their powers.

(6) This section has effect subject to section 36.

35. Company contracts

(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 its authority, express or implied.

(2) Any formalities required by law for a contract made by a natural person also apply, unless a contrary intention appears, to a contract made by or on behalf of a company.

36. Constitutional limitations: transactions involving directors or their associates

(1) This section applies to a transaction if or to the extent that its validity depends on section 34.

(2) Nothing in this section precludes the operation of any other written law under which the transaction can be questioned or any liability to the company may arise.

(3) If—

(a) a company enters into such a transaction; and

(b) the parties to the transaction include —

(i) a director of the company or of its holding company; or

(ii) a person connected with any such director, the transaction is voidable at the instance of the company.

(4) Whether or not it is avoided, any such party to the transaction as is referred to in subsection (3)(b)(i) or (ii), and any director of the company who authorised the transaction, is liable—

(a) to account to the company for any gain the director has made from the transaction (whether directly or indirectly); and

(b) to indemnify the company for any loss or damage resulting from the transaction.

(5) The transaction ceases to be voidable if—

(a) restitution of any money or other asset which was the subject matter of the transaction is no longer possible;

(b) the company is indemnified for any loss or damage resulting from the transaction;

(c) rights acquired in good faith for value and without actual notice of the directors' exceeding their powers by a person who is not party to the transaction would be affected by the avoidance; or

(d) the transaction is affirmed by the company.

(6) A person other than a director of the company is not liable under subsection (4) if the person shows that, at the time the transaction was entered into, the person did not know that the directors were exceeding their powers.

(7) Nothing in the preceding provisions of this section affects the rights of any party to the transaction not within subsection (3)(b)(i) or (ii).

(8) But the Court may, on the application of the company or any such party, make an order affirming, severing or setting aside the transaction on such terms as appear to the Court to be just.

(9) In this section—

(a) "transaction" includes any act; and

(b) the reference to a person connected with a director has the same meaning as in Part IX.

37. Execution of documents

(1) A document is executed by a company—

(a) by the affixing of its common seal (if any) and witnessed by a director; or

(b) 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 in favour of a purchaser is effectively executed by a company if it purports to be signed in accordance with subsection (2).

(4) For purpose of subsection (3), "purchaser" means a purchaser in good faith for valuable consideration, and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property.

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

(6) A reference in this section to a document being, or purporting to be, signed by a director or secretary is, if that office is held by a firm, to be read as a reference to its being, or purporting to be, signed by a natural person 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).

38. Company may have common seal for execution of documents

(1) A company may have a common seal.

(2) A company that has a common seal shall ensure that its name is engraved on the seal in legible characters.

(3) If a company fails to comply with subsection (2), the company, and each officer of the company who is in default, commits an offence.

(4) A person to whom this subsection applies who uses or authorises the use of a seal that purports to be a seal of a company commits an offence if the company's name is not engraved on the seal as required by subsection (2).

(5) Subsection (4) applies to being an officer of the company or a person acting, or purporting to act, on behalf of the company.

(6) A person found guilty of an offence under this section is on conviction liable to a fine not exceeding five hundred thousand shillings.

39. Execution of deeds by companies

(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 when it is executed, unless a contrary intention is proved.

40. Execution of deeds or other documents by attorney

(1) A company may, in writing, authorise 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 by a person authorised under subsection (1) has effect as if executed by the company.

41. Authentication of documents

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.

42. Official seal for use outside Kenya

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

(2) A company that has an official seal shall ensure that it is a facsimile of the company's common seal, with the addition on its face of the place or places where it is to be used.

(3) A company's official seal has, when duly affixed to a document, the same effect as the common seal of the company.

(4) A company that has an official seal may, in writing, authorise any person appointed for the purpose to affix it to a deed or other document to which the company is a party and which is to be executed in a place specified on its face.

(5) If 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 document 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—

(a) the date on which; and

(b) the place at which,

it is affixed.

(7) Failure to comply with subsection (6) renders the deed or other document void so far as the company is concerned.

43. Official seal for share certificates etc

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

(a) securities issued by the company; or

(b) documents creating or evidencing securities so issued.

(2) A seal is effective as a company's official seal for the purpose of subsection (1) only if it is a facsimile of the company's common seal with the addition on its face of the word "securities".

(3) When duly affixed to a document, an official seal has the same effect as the company's common seal.

44. Pre-incorporation contracts, deeds and obligations

(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 the person is personally liable on the contract accordingly.

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

45. Execution of bills of exchange and promissory notes by companies

A bill of exchange or promissory note is binding on 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 its authority.

46. Company to have registered office

A company shall at all times ensure that it has a registered office to which all communication and notices registered office may be addressed.

47. Company to notify change of address of registered office

(1) A company may change the address of its registered office by lodging with the Registrar for registration a notice of the change.

(2) The change of address takes effect only when it is registered by the Registrar.

(3) A person is entitled to serve a document on the company at the previously registered address within fourteen days after the new address is registered by the Registrar.

(4) In relation to a duty of a company—

(a) to keep available for inspection at its registered office any records; or

(b) to state the address of its registered office in any document,

a 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 company is notified that the Registrar has registered the change.

(5) A company that unavoidably ceases to keep available for inspection at its registered office any records 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 is not to be regarded as having failed to comply with its duty to keep those records available for inspection at its registered office if it—

(a) makes the records available at other premises as soon as practicable; and

(b) gives notice accordingly to the Registrar of the change of the location of its registered office within fourteen days after doing so.

Part V – NAME OF COMPANY

Division 1 —General Requirements

48. Reservation of name

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

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

49. Prohibited names

(1) The Registrar may not register a company by a particular name if—

(a) the use of the name would constitute an offence;

(b) the name consists of abbreviations or initials not authorised by or under this Act; or

(c) the Registrar is, after taking into account the relevant criteria, of the opinion that the name is offensive or undesirable.

(2) For the purposes of subsection (1)(c), the relevant criteria are the criteria (if any) prescribed by the regulations.

50. Name suggesting connection with the State or local or public authority

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) a State organ;

(b) a county government; or

(c) any public authority prescribed by the regulations.

51. Applicant to seek views of specified public officer or body if regulations so require

(1) If the regulations so require, an applicant for the Registrar's approval for the use of a specified name, or a name of a specified description, shall seek the views of a specified public officer or body.

(2) If an applicant for the use of a specified name, or a name of a specified description, is required to seek the views of a specified public officer or public body, that officer or body may, in addition to giving those views, veto the use of the name, but only on reasonable grounds and on providing the applicant with a written statement setting out 0 those grounds.

(3) In subsection (1), "specified" means specified in the regulations.

52. Regulations may permit or prohibit the use of certain characters, signs or symbols

(1) The regulations may—

(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 to be 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 regulations may prohibit the use of specified characters, signs or symbols when appearing in specified positions, in particular, at the beginning of a name.

(3) The Registrar may not register a company by a 40 name that consists of or includes anything that is not permitted in accordance with the regulations.

Division 2— Indications of type of company, etc

53. Registration of public limited companies

A company that is both a limited company and a public company may only be registered with a name that ends with the words "public limited company" or the abbreviation "plc".

54. Registration of private limited companies

A company that is both a limited company and private company may be registered only with a name that ends with the word "limited" or the abbreviation "ltd."

55. Exemption from requirement to use of “limited”

The Cabinet Secretary may, by notice given to the company, exempt a private company from using the word "limited" or "ltd" as required by section 54.

56. Inappropriate use of company type or legal form

(1) The regulations may 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 kind of organisation; or

(b) that are similar to words, expressions or other indications associated with a particular type of company or kind 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 or expressions as may be specified.

(3) The Registrar may not register a company by a name that consists of or includes words or expressions prohibited by the regulations.

Division 3 — Similarity to names of other companies

57. Name not to be the same a another in the index

(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 regulations may provide—

(a) that registration of a company by a name that would otherwise be prohibited under this section be permitted-

(i) in specified circumstances; or

(ii) with a specified consent; and

(b) that, if those circumstances are existing 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.

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

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

(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) A direction under subsection (1) may be given only within twelve months after the date on which the company concerned was registered or within such extended period as the Registrar may specify in writing in a particular case.

(3) In giving a direction under subsection (1), the Registrar shall specify the period within which the company is required to comply with the direction.

(4) The regulations may further provide—

(a) that no direction is to be given under this section in respect of a name—

(i) in specified circumstances; or

(ii) if specified consent is given; and

(b) that a subsequent change of circumstances or withdrawal of consent does not give rise to grounds for a direction under this section.

59. Power to make regulations for purposes of sections 57 and 58

For the purposes of sections 57 and 58, the regulations may provide for either or both of the following.

(a) matters that are to be disregarded in deciding whether or not names are the same or are too similar;

(b) words or expressions that are to be, or are not to be regarded as the same or too similar.

Division 4 — Powers of Registrar to direct company to change its name in specified circumstances

60. Power of Registrar to direct company to change its name because of misleading information given for registration of company or because its name gives misleading indication of company's activities

(1) The Registrar may direct a company to change its name if of the opinion—

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

(b) that the name by which a company is registered gives an indication of the nature of its activities that is so misleading as to be likely to cause harm to the public.

(2) Any such direction is ineffective if it—

(a) is not given within five years after the company's registration by that name; and

(b) does not specify the period within which the company is to comply with it.

(3) The Registrar may, by a further direction, extend the period within which the company is required to change its name, but shall ensure that any such direction is given before the end of the period for the time being specified.

(4) The company shall comply with the direction within twenty-one days after the date of the direction or within such extended period as the Registrar may allow.

(5) Subsection (4) does not have effect if the outcome of an application made to the Court under subsection is pending.

(6) If a company fails to comply with a direction given to it under this section, the company, and each officer of the company who is in default, commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

(7) If, after a company or any of its officers is convicted of an offence under subsection (6), the company continues to fail to comply with the direction, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

61. Company may apply to court for order to quash direction under section 60

(1) A company that is dissatisfied with a direction given to it under section 60 may apply to the Court to quash the direction.

(2) An application under subsection (1) is ineffective if not made within twenty-one days after the date on which the direction is notified to the company.

(3) On the hearing of an application made under subsection (1), the Court may either quash the direction or confirm it.

(4) If the direction is confirmed, the Court shall specify the period within which the company is required to comply with the direction.

Division 5— Changes of company names

62. Company may change the name

A company may change its name—

(a) by special resolution or as may be provided for by the articles of the company;

(b) by resolution of the directors acting in accordance with a direction by the Registrar under section 60;

(c) on the restoration of the company to the Register in accordance with Part XXXIII; or

(d) in any other circumstance prescribed by the regulations for the purpose of this subsection.

63. Change of name by special resolution

(1) Within fourteen days after a change of name has been agreed to by a company by special resolution, the company shall lodge with the Registrar for registration a notice of change, together with a copy of the resolution.

(2) If a change of name by special resolution is conditional on the occurrence of an event, the company shall, in the notice of change lodged with the Registrar—

(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, the Registrar may not register the change of name until the event has occurred.

(4) Within fourteen days after the event occurs, the company shall lodge with the Registrar for registration a notice stating that it has occurred.

(5) The Registrar is entitled to rely on the contents of a notice lodged under this section as sufficient evidence of the matters stated in it.

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

(1) Within fourteen days after a company changes its name by other means provided for in its articles, it shall lodge with the Registrar for registration notice of the change, together with a statement that the change has been made in accordance with the company's articles.

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

65. Change of name: registration and issue of certificate of change of name

(1) On receiving a notice of a change of company's name and on being

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.

(2) As soon as practicable after registering the new name, the Registrar shall issue a certificate of change of name to the company.

66. Effect of change of name

(1) A change of a company's name has effect from the date on which the certificate of change of name is issued.

(2) The change does not affect any rights or obligations of the company or invalidate any legal proceedings by or against it.

(3) Any legal proceedings that might have been continued or commenced against it by its former name may be continued or started against it by its new name.

Division 6— Requirement of company to disclose name

67. Company to display its company name etc

(1) A company shall—

(a) display its name and other prescribed information in specified places;

(b) state prescribed information in prescribed kinds of the company's documents and communications; and

(c) provide prescribed information on request to those with whom the company deals with in the course of its business.

(2) The regulations may prescribe the manner in which prescribed information is to be displayed, stated or provided.

(3) For the purposes of a requirement to disclose the name of a company, any variations between a word or words are to be disregarded.

(4) If a company contravenes subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(5) A person who claims to have sustained financial loss as a result of a contravention by a company of subsection (1) may bring civil proceedings against the company and, if in any such proceedings, the person is able to substantiate the claim, the person is entitled to be awarded damages as compensation for the loss.

68. Minor variations in form of name

(1) In relation to 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; or

(c) the name is in the same format or style as is specified under section 52(1) for the purposes of registration, so long as there is no real likelihood of names differing only in those respects being taken to be different names.

(2) This section does not affect the operation of regulations referred to in section 52 (2) prohibiting specified characters, diacritical marks or punctuation.

Part VI – ALTERATION OF STATUS OF COMPANIES

Division 1 — Conversion of companies: overview

69. How companies may alter their status

A company can, in accordance with this Part, convert itself—

(a) from being a private company into being a public company;

(b) from being a public company into being a private company;

(c) from being a private limited company into being an unlimited company;

(d) from being an unlimited private company to a limited company; or

(e) from being a public company into being an unlimited private company.

Division 2 — Conversion of private company into public company

70. Conversion of private company to public company

(1) A private company, whether limited or unlimited, can convert itself into a public company limited by shares if (but only if)—

(a) it passes a special resolution to that effect;

(b) the conditions specified in subsection (2) are satisfied; and

(c) an application for registration of the conversion is lodged with the Registrar in accordance with section 74, together with the documents required by that section.

(2) The conditions are—

(a) that the company has a share capital;

(b) that the requirements of section 71 are satisfied as regards its share capital;

(c) that the requirements of section 72 are satisfied as regards its net assets;

(d) if section 73 applies, that the requirements of that section are satisfied;

(e) that the company has not previously been converted itself into an unlimited company;

(f) that the company has made such changes to its name and to its articles as are necessary in order for it to become a public company; and

(g) if the company is unlimited, that it has also made such changes to its articles as are necessary in order for it to become a company limited by shares.

71. Requirement as to share capital

(1) A company that has resolved to convert itself into a public company may lodge an application for registration of the conversion only if the following requirements are satisfied—

(a) the nominal value of the company's allotted share capital are not less than the authorised minimum;

(b) each of the company's allotted shares is be paid up at least as to one-quarter of the nominal value of that share and the whole of any premium on it;

(c) if any shares in the company or any premium on them have been fully or partly paid up by an undertaking given by a person that the person or another person should do work or perform services (whether for the company or any other person)—the undertaking has performed or otherwise discharged; and

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

(i) the undertaking has been performed or otherwise discharged; or

(ii) a contract exists between the company and some other person under which the undertaking is to be performed within five years after the date on which the special resolution is passed.

(2) For the purpose of determining whether the requirements of subsection (1)(b), (c) and (d) are satisfied, shares allotted in accordance with an employees' share scheme are to be disregarded if they would, but for this subsection, prevent the company from being converted to a public company because the requirement of subsection (1)(b) could not be satisfied.

(3) Shares disregarded under subsection (2) do not form part of the allotted share capital for the purposes of subsection (1)(a).

(4) The Registrar may not register the conversion of a private company into a public company if it appears to the Registrar that—

(a) the company has resolved to reduce its share capital;

(b) the reduction—

(i) is made under section 407;

(ii) has been confirmed by an order of the Court under section 410; or

(iii) is supported by a solvency statement in accordance with section; and

(c) the effect of the reduction is, or will be, that the nominal value of the company's allotted share capital is below the authorised minimum.

72. Requirements as to net assets

(1) A private company that has resolved to convert itself into a public company may not apply to have the conversion registered unless—

(a) a balance sheet prepared as at a date not more than seven months before the date on which the application is lodged with the Registrar;

(b) an unqualified report by the company's auditor on that balance sheet; and

(c) a written statement by the company's auditor that in the auditor's opinion at the balance sheet date the amount of the company's net assets was not less than the aggregate of its called-up share capital and undistributable reserves.

(2) The Registrar may refuse the application if, between the balance sheet date and the date on which the application is lodged with the Registrar, the company's financial position is found to have changed so that the amount of the company's net assets has become less than the aggregate of its called-up share capital and undistributable reserves.

(3) In subsection (1)(b), “unqualified report" means—

(a) if the balance sheet was prepared for a financial year of the company—a report stating without material qualification the auditor's opinion that the balance sheet has been properly prepared in accordance with the requirements of this Act; or

(b) if the balance sheet was not prepared for a financial year of the company—a report stating without material qualification the auditor's opinion that the balance sheet has been properly prepared in accordance with the provisions of this Act that would have applied had it been prepared for a financial year of the company.

(4) For the purposes of an auditor's report on a balance sheet that was not prepared for a financial year of the company, the provisions of this Act apply with such modifications as are necessary because of that fact.

(5) For the purposes of subsection (3), a qualification is material unless the auditor states in the auditor's report that the matter giving rise to the qualification is not material for the purpose of determining by reference to the company's balance sheet whether at the balance sheet date the amount of the company's net assets was not less than the aggregate of its called-up share capital and undistributable reserves.

73. Recent allotment of shares for non-cash consideration

(1) This section applies to shares that are allotted by a company during the period between the date as at which the balance sheet required by section 72 is prepared and the passing of the resolution converting the company into a public company if the shares are allotted as fully or partly paid up as to their nominal value or any premium on them otherwise than in cash.

(2) The Registrar may not register the conversion of a private company into a public company, unless the application for registration—

(a) an independent valuation of non-cash consideration has been conducted not more than six months before an allotment of shares; or

(b) the allotment is in connection with—

(i) a share exchange; or

(ii) a proposed merger with one or more other companies.

(3) An allotment is in connection with a share exchange for the purpose of subsection (2)(b) if—

(a) the shares are allotted in connection with an arrangement under which the whole or part of the consideration for the shares allotted is provided by—

(i) the transfer to the company allotting the shares of shares, or shares of a particular class, in another company; or

(ii) the cancellation of shares, or shares of a particular class, in another company; and

(b) the allotment is open to all the holders of the shares of the other company, or, if the arrangement applies only to shares of a particular class, to all the holders of the company's shares of that class, to take part in the arrangement in connection with which the shares are allotted.

(4) In determining whether a person is a holder of shares for the purposes of subsection (3), the following are to be disregarded—

(a) shares held by, or by a nominee of, the company allotting the shares;

(b) shares held by, or by a nominee of—

(i) the holding company of the company allotting the shares;

(ii) a subsidiary of the company allotting the shares; or

(iii) a subsidiary of the holding company of the company allotting the shares.

(5) For the purposes of deciding whether an allotment is in connection with a share exchange, it does not matter whether the arrangement in connection with which the shares are allotted involves the issue to the company allotting the shares of shares, or shares of a particular class, in the other company or companies.

(6) A proposed merger between two or more companies exists for the purposes of this section if one of the companies proposes to acquire all the assets and liabilities of the other or others in exchange for the issue of its shares or other securities to shareholders of the other or others, whether or not the issue is accompanied by a cash payment.

(7) For the purposes of this section—

(a) "another company" or "other companies" includes a body corporate that is not a company within the meaning of this Act;

(b) the consideration for an allotment does not include an amount standing to the credit of any of the company's reserve accounts, or of its profit and loss account, that has been applied in paying up (to any extent) any of the shares allotted or any premium on those shares; and

(c) "arrangement" means any agreement, scheme or arrangement, including an arrangement sanctioned under this Act or under the law relating to insolvency.

74. Requirements for registration of conversion of private company

(1) The Registrar shall refuse an application for the registration of the conversion of a company into public company if the application does not comply with subsection (2).

(2) An application for the registration of the conversion of the company into a public company complies with this subsection if it—

(a) contains—

(i) a statement of the company's new name after conversion; and

(ii) if the company does not have a secretary, a statement of the company's proposed secretary that complies with section 75; and

(b) is accompanied by—

(i) a copy of the special resolution converting the company into a public company, unless a copy has already been lodged with the Registrar;

(ii) a copy of the company’s articles as proposed to be amended;

(iii) a copy of the balance sheet and other documents referred to in section 72(1); and

(iv) if section 73 applies, a copy of the valuation report (if any) referred to in subsection (2)(a) of that section.

75. Statement of proposed secretary

(1) The statement of the company's proposed secretary complies with this section only if—

(a) it contains the required particulars of the person who is or the persons who are to be the secretary or joint secretaries of the company; and

(b) a consent by the person named as secretary, or each of the persons named as joint secretaries, to act as such.

(2) The required particulars are the particulars that would be required to be included in the company's register of secretaries.

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

76. Registrar to issue certificate of incorporation on registration of conversion

(1) The Registrar shall register the conversion of a company into a public company if satisfied that the registration of application for registration complies with the requirements of this Division.

(2) If the company does not already have a unique identifying number, the Registrar shall allocate such a number to the company.

(3) The Registrar shall issue to the company a certificate of incorporation stating the company’s unique identifying number and that the company is a public company.

(4) The Registrar shall specify in the certificate of incorporation that the certificate is issued on registration of the conversion and the date on which the certificate is issued.

(5) The Registrar shall sign the certificate of incorporation and authenticate it with the Registrar's official seal.

(6) On the issue of the certificate of incorporation—

(a) the conversion of the company into a public company takes effect;

(b) the changes in the company's name and articles take effect; and

(c) if the application contained a statement complying with section 75, the person or persons named in the statement as secretary or joint secretary of the company assume that office.

(7) The certificate of incorporation is conclusive evidence that the requirements of this Act as to conversion of the company into a public company have been complied with.

Division 3— Conversion of public company into private company

77. Conversion of public company into private limited company

(1) A public company can convert itself into a private limited company if (but only if)—

(a) a special resolution to that effect is passed;

(b) the conditions specified in subsection (2) are satisfied; and

(c) an application for registration of the conversion is lodged with the Registrar in accordance with section 80.

(2) The conditions are as follows—

(a) if no application under section 78 for cancellation of the resolution has been made—

(i) having regard to the number of members who consented to or voted in favour of the resolution, no such application could be made; or

(ii) the period within which such an application could be made has expired;

(b) if such an application has been made—

(i) the application has been withdrawn; or

(ii) an order has been made confirming the resolution and a copy of that order has been lodged with the Registrar;

(c) the company has made such changes to its name and to its articles as are necessary in order for it to convert itself into a private company limited by shares or into a private company limited by guarantee.

78. Application to Court to cancel conversion resolution

(1) If a special resolution by a public company to convert itself into a private limited company has been passed, an application to the Court for the cancellation of the resolution may be made—

(a) by the holders of not less in the aggregate than five per cent in nominal value of the company's issued share capital or any class of the company's issued share capital, disregarding any shares held by the company as treasury shares;

(b) if the company is not limited by shares, by not less than five per cent of its members; or

(c) by not less than fifty of the company's members,

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

(2) The Court may hear such an application only if it—

(a) is made within twenty eight days after the passing of the resolution; and

(b) is made on behalf of the persons entitled to make it by such one or more of their number as they may appoint for the purpose.

(3) On the hearing of the application, the Court shall make an order either cancelling or confirming the resolution.

(4) The Court may—

(a) make that order on such terms and conditions as it considers appropriate;

(b) if it considers it appropriate to do so, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissenting members; and

(c) give such directions, and make such orders, as it thinks expedient for facilitating or carrying into effect any such arrangement.

(5) If the Court considers it appropriate to do so, it may, by further order—

(a) direct the purchase by the company of the shares of any of its members and provide for the consequential reduction of the company’s capital; and

(b) make such alteration to the company's articles as may be required in consequence of that direction.

79. Notices of application to Court and court order application or order to be given to Registrar

(1) On making an application under section 78, the applicants, or the person making the application on their behalf, shall immediately give notice to the Registrar.

(2) Subsection (1) applies without affecting any provision of rules of the Court as to service of notice of the application.

(3) On being served with notice of any such application, the company shall immediately give notice to the Registrar.

(4) Within fourteen days after the Court makes an order on the application, or such extended period as the Court directs, the company shall lodge with the Registrar a copy of the order.

(5) If a company fails to comply with subsection (4), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(6) If, after a company or any of its officers is convicted of an offence under subsection (4), the company continues to fail to lodge a copy of the Court's order, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

80. Requirements for registration of conversion of public company into private company

The Registrar may not register the conversion of a public company as a private limited company unless the application for registration—

(a) contains a statement of the company's new name on conversion; and

(b) is accompanied by—

(i) a copy of the resolution converting the company into a private limited company, unless a copy has already been forwarded to the Registrar; and

(ii) a copy of the company's articles as proposed to be amended.

81. Registrar to issue certificate of incorporation on registration of conversion

(1) The Registrar shall register the conversion of a public company into a private limited company if satisfied that the application for registration complies with the requirements of this Division.

(2) If the company does not already have a unique identifying number, the Registrar shall allocate such a number to the company.

(3) The Registrar shall issue a certificate of incorporation stating the company's unique identifying number and that the company is registered as a private limited company.

(4) The Registrar shall specify in the certificate of incorporation that the certificate is issued on registration of the conversion and the date on which the certificate is issued.

(5) The Registrar shall sign the certificate of incorporation and authenticate it with the Registrar's official seal.

(6) On the issue of the certificate of incorporation—

(a) the company becomes a private limited company; and

(b) the changes in the company's name and articles take effect.

(7) The certificate of incorporation is conclusive evidence that the requirements of this Act as to registration of the conversion have been complied with.

Division 4— Conversion of private limited company into unlimited company

82. Registration of conversion of private limited company into unlimited company

(1) A private limited company may convert itself into an unlimited company if—

(a) all the members of the company have assented to its conversion;

(b) the company has not previously been registered as an unlimited company; and

(c) an application for registration of the conversion is lodged with the Registrar in accordance with section 83.

(2) The company shall make such changes in its name and its articles—

(a) as are necessary in connection with its becoming an unlimited company; and

(b) if it is to have a share capital, as are necessary in connection with its becoming an unlimited company having a share capital.

(4) For the purposes of this section—

(a) a bankruptcy trustee in respect of the estate of a bankrupt member of the company is entitled, to the exclusion of the member, to assent to the company's becoming unlimited; and

(b) the executor or administrator of a deceased member of the company may assent on behalf of the deceased.

83. Requirements for application for registration of conversion of company into unlimited company

The Registrar may not register the conversion of a company as an unlimited company unless the application for registration—

(a) contains a statement of the company's new name on conversion; and

(b) is accompanied by—

(i) the prescribed form of assent to the company's being registered as an unlimited company, authenticated by or on behalf of all the members of the company; and

(ii) a copy of the company's articles as proposed to be amended.

84. Registrar to issue certificate of incorporation on registration of conversion

(1) The Registrar shall register the conversion of a private limited company into an unlimited company if satisfied that the application for registration complies with the requirements of this Division.

(2) If the company does not already have a unique identifying number, the Registrar shall allocate such a number to the company.

(3) The Registrar shall issue a certificate of incorporation to the company stating the company's unique identifying number and that the company is an unlimited company.

(4) The Registrar shall specify in the certificate of incorporation that the certificate is issued on registration of the conversion and the date on which the certificate is issued.

(5) The Registrar shall sign the certificate of incorporation and authenticate it with the Registrar's official seal.

(6) On the issue of the certificate of incorporation—

(a) the company becomes an unlimited company; and

(b) the changes in the company's name and articles take effect.

(7) The certificate of incorporation is conclusive evidence that the requirements of this Act as to registration of the conversion have been complied with.

Division 5 — Conversion of unlimited company into private limited company

85. Conversion of unlimited company into a private limited company

(1) An unlimited company may convert itself into a private limited company if (but only if) the conditions specified in subsection (2) are complied with.

(2) The conditions are that—

(a) a special resolution that it should be so converted has been passed that complies with subsection (3);

(b) the company has not previously been registered as a private limited company;

(c) an application for registration of the conversion is lodged with the Registrar in accordance with section 86; and

(d) the company has made such changes to its, name and to its articles as are necessary in connection with its becoming a private company limited by shares or a private company limited by guarantee.

(3) A special resolution has no effect unless it states whether the company is to be limited by shares or by guarantee.

86. Requirements for registration of unlimited company as private limited company

The Registrar may not register the conversion of an unlimited company as a private limited company unless the application for registration—

(a) contains a statement of the company's new name on registration of the conversion; and

(b) is accompanied by—

(i) a copy of the resolution converting the company into a private limited company, unless a copy has already been forwarded to the Registrar;

(ii) if the company is to be limited by guarantee, a statement of guarantee that complies with subsection (2); and

(iii) a copy of the company's articles as proposed to be amended.

(2) A statement of guarantee complies with this subsection if it states that each person who is a member undertakes that, if the company is liquidated while the person is a member, or within one year after the person ceases to be a member, the person 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 the person ceases to be a member;

(b) payment of the costs, charges and expenses of liquidation; and

(c) adjustment of the rights of the contributories among themselves,

not exceeding a specified amount.

87. Registrar to issue certificate of incorporation on registration of conversion

(1) The Registrar shall register the conversion an unlimited company into a private limited company if satisfied that the application for registration complies with the requirements of this Division.

(2) If the company does not already have a unique identifying number, the Registrar shall allocate such a number to the company.

(3) The Registrar shall issue a certificate of incorporation stating the company's unique identifying number and that the company is incorporated as a limited company.

(4) The Registrar shall specify in the certificate of incorporation that the certificate is issued on registration of the conversion and the date on which the certificate is so issued.

(5) The Registrar shall sign the certificate of incorporation and authenticate it with the Registrar's official seal.

(6) On the issue of the certificate of incorporation—

(a) the company becomes a limited company; and

(b) the changes in the company's name and articles take effect.

(7) The certificate of incorporation is conclusive evidence that the requirements of this Act as to registration of the conversion have been complied with.

88. Statement of capital required if company already has share capital

(1) If, in the case of a company whose conversion has been registered under section 87, the company has already allotted share capital, it shall, within fourteen days after the registration, lodge with the Registrar a statement of capital that complies with subsection (3).

(2) Subsection (1) does not apply if the information that would be included in the statement has already been included in a notice lodged with the Registrar in—

(a) a statement of capital and initial shareholdings; or

(b) a statement of capital contained in an annual return.

(3) A statement of capital complies with this subsection if it states with respect to the company's share capital on registration of the conversion—

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

(b) the aggregate nominal value of those shares;

(c) for each class of shares—

(i) the prescribed particulars (if any) 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 in the form of a premium.

(4) If a company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(5) If, after a company or any of its officers is convicted of an offence under subsection (4), the company continues to fail to lodge a statement of capital with the Registrar, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

Division 6 — Conversion of public company into unlimited private company with share capital

89. Conversion of public company into private and unlimited company

(1) A public company limited by shares may convert itself into an unlimited private company with a share capital if—

(a) all the members of the company have assented to its being so converted;

(b) the condition specified in subsection (2) is satisfied; and

(c) an application for registration of the conversion is lodged with the Registrar in accordance with section 90, together with the other documents required by that section.

(2) The condition is that the company has not previously been registered as a limited company or as an unlimited company.

(3) The company shall make such changes—

(a) in its name; and

(b) in its articles,

as are necessary in connection with its becoming an unlimited private company.

(4) For the purposes of this section—

(a) a bankruptcy trustee in respect of the estate of a bankrupt member of the company is entitled, to the exclusion of the member, to assent to the company's conversion; and

(b) the executor or administrator of a deceased member of the company may assent on behalf of the deceased.

90. Registrar not to register conversion unless application for registration complies with prescribed requirements

The Registrar may not register the conversion of a private limited company into an unlimited company unless the application for registration —

(a) contains a statement of the company's new name on conversion; and

(b) is accompanied by —

(i) the assent to the company's conversion, authenticated by, or on behalf of all the members of the company; and

(ii) a copy of the company's articles as proposed to be amended.

91. Registrar to issue certificate of incorporation on registration of conversion

(1) The Registrar shall register the conversion of a public company into an unlimited private company if satisfied that the application for registration complies with the requirements of this Division.

(2) If the company does not already have a unique identifying number, the Registrar shall allocate such a number to the company.

(3) The Registrar shall issue a certificate of incorporation stating the company's unique identifying number and that the company is incorporated as an unlimited private company.

(4) The Registrar shall specify in the certificate of incorporation that the certificate is issued on registration of the conversion and the date on which the certificate is so issued.

(5) The Registrar shall sign the certificate of incorporation and authenticate it with the Registrar's official seal.

(6) On the issue of the certificate of incorporation—

(a) the company becomes an unlimited private company; and

(b) the changes in the company's name and articles take effect.

(7) The certificate of incorporation is conclusive evidence that the requirements of this Act as to registration of the conversion have been complied with.

Part VII – COMPANY MEMBERS

Division 1 — Members of company

92. How persons become members of company

(1) The subscribers to the memorandum and articles become members of the company on the registration of the company.

(2) As soon as practicable after the registration of the company, it shall enter in its register of members the names and addresses of persons who subscribed to its memorandum and the date on which they became members of the company.

(3) Any other person who later agrees to become a member of a company becomes a member of the company when the person's name is entered into the register of members.

Division 2 — Register of members

93. Company to keep register of members

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

(2) A company shall enter in its register of members—

(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) If a company has a share capital, the company shall enter in its register of members, along with the name and address of each member, a statement of—

(a) the shares held by the member, distinguishing each share—

(i) by its number if the share has a number; and

(ii) if 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 the member.

(4) If the shares of a company are held jointly, the company shall ensure that the name of each joint holder is entered in its register of members.

(5) If a company does not have a share capital but has more than one class of members, it shall enter in its register of members, along with the names and address of each member, a statement of the class to which the member belongs.

(6) If a company purchases its own shares in circumstances in which section 526 applies—

(a) the applicable requirements of this section need not be complied with if the company cancels all of the shares immediately after the purchase; and

(b) if the company does not cancel all of the shares immediately after the purchase, any share that is so cancelled is to be disregarded for the purposes of this section.

(7) Subject to subsection (6), if a company holds shares as treasury shares, the company shall ensure that it is entered in its register of members as the member holding those shares.

(8) A company shall lodge with the Registrar a copy of its register of members within fourteen days after completing its preparation.

(9) A company shall lodge with the Registrar a copy of any amendment to its register of members within fourteen days after making the amendment.

(10) If a company fails to comply with a requirement of this section, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(11) If, after a company or any of its officers is convicted of an offence under subsection (10), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure

continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

94. Company to keep register of members of its registered office

(1) Except in so far as the regulations otherwise provide, a company shall ensure that its register of members is—

(a) kept at its registered office; and

(b) lodged with the Registrar.

(2) If a company fails to comply with a subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

95. Certain companies to keep index of members

(1) A company that 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) A company shall ensure that the index contains in respect of each member, a sufficient indication to enable the account of that member in the register to be readily found.

(4) Except in so far as the regulations otherwise provide, a company shall keep its index of the names of members of the company at its registered office and shall, within twenty-eight days after establishing it, lodge a copy with the Registrar.

(5) If a company fails to comply with a requirement of this section, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(6) If, after a company or any of its officers is convicted of an offence under subsection (5), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit a further offence, on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

96. Rights of persons to inspect register of members and require copies

(1) A public company shall keep its register of members and its index of members (if any) open for inspection by—

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

(b) any other person on payment of the fee (if any) prescribed by the regulations for the purposes of this section.

(2) On being requested to do so by a person and on receipt of the prescribed fee (if any), a public company shall issue to the person a copy of the company's register of members or such part of it as the person specifies.

(3) If required to do so by the company, a person seeking to inspect the company's register of members, or a copy of the register or of any part of it, shall provide the company with the following information—

(a) in the case of a natural person, the person's 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) if the person is a natural person, the person's name and address;

(ii) if the 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.

97. Consequences of company refusing inspection of its register or to provide copy of its register of members

(1) Within five working days after receiving a request under section 96, a company shall either—

(a) comply with the request or decline it by giving sufficient reasons in writing; or

(b) apply to the Court.

(2) If the company applies to the Court, it shall notify the person who made request and that person is entitled to be heard.

98. Offence to refuse inspection of register of members or to fail to provide copy

(1) If a company—

(a) refuses to allow an inspection required under section 96; or

(b) fails to provide a copy required under that section,

otherwise than in accordance with an order of the Court, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding seven hundred and fifty thousand shillings.

(2) If, after a company or any of its officers is convicted of an offence under subsection (1), the company continues to refuse to allow an inspection or to fail provide. the required copy, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding seventy-five thousand shillings for each such offence.

99. Register of members: offences in connection with request for or disclosure of information

(1) A person who makes a request under section 96 that contains a statement that the person knows, or has reason to suspect, is false or misleading in a material respect commits an offence.

(2) A person who has possession of information obtained by exercise of either of the rights conferred by section 96—

(a) to do anything that results in the information being disclosed to another person; or

(b) to fail to do anything with the result that the information is disclosed to another person,

knowing, or having reason to suspect, that person may use the information for a purpose that is not a proper purpose.

(3) A person found guilty of an offence under this section is on conviction liable to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding two years, or to both.

100. Company to provide information as to state of register of members and index of members' names

(1) When a person inspects a company's register of members, or a company provides the person with a copy of the register or any part of it, the company shall inform the person of the most recent date (if any) on which amendments were made to the register and (if that is the case) that there were no further amendments to be made.

(2) When a person inspects a company's index of the names of its members, the company shall inform the person whether any amendment has been made to the register of members that is not reflected in the index.

(3) If a company fails to provide the information required under subsection (1) or (2), the company, and each officer of the company who is in default commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

101. Removal of entries relating to former members

(1) A company may expunge from its register of members an entry relating to a person who was formerly a member of the company after the expiry of ten years after the date on which the person ceased to be a member.

(2) If a company expunges from its register of members an entry relating to a person who was formerly a member of the company before the expiry of ten years after the date on which the person ceased to be a member, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

102. Single member companies

(1) If a limited company is formed under this Act with only one member, the Registrar shall enter 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 is reduced to one, the company shall enter in its register of members—

(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, the company shall enter 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.

(4) If a company fails to comply with subsection (2) or (3), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(5) If, after a company or any of its officers is convicted of an offence under subsection (4), the company continues to fail to comply with the relevant subsection, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

103. Power of Court to rectify register

(1) If—

(a) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or

(b) the cessation of membership of a person who has ceased to be a member of the company has not been entered in that register,

the person affected, or the company or any member of the company, may apply to the Court for rectification of the register

(2) On hearing an application made under subsection (1), the Court shall either refuse the application or order rectification of the register and payment by the company of any damages sustained by any party affected by the error or is failure.

(3) On hearing such an application, the Court may—

(a) decide any question relating to the title of a person who is a party to the application to have the person's name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand; and

(b) generally decide any question that it considers should be decided in order to rectify the register.

(4) In the case of a company required by this Act to lodge a list of its members with the Registrar, the Court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the Registrar, who shall on receipt of the notice make such adjustments to the Register as the Registrar considers appropriate.

104. Trusts not to be entered on register

(1) A company shall not accept, and shall not enter in its register of members, notice of any trust, expressed, implied or constructive.

(2) If a company contravenes subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

105. Register to be evidence

Until the contrary is proved, the register of members of a company is evidence of the matters required or authorised to be included in it.

106. Time limit for claims arising from entry in register

(1) Liability incurred by a company—

(a) from making or deleting an entry in the register of members; or

(b) from failing 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 the failure first occurred.

(2) Subsection (1) does not affect the application of a shorter period of limitation that would apply apart from this section.

Division 3 — Prohibition on subsidiary being member of its holding company

107. Interpretation: Division 3

(1) In relation to a company other than a company limited by shares, a reference in this Division to shares is a reference to the interest of its members as such, whatever the form of that interest.

(2) If a nominee is acting on behalf of a subsidiary, a reference in this Division to a subsidiary includes a reference to a nominee of the subsidiary.

108. Prohibition on subsidiary being a member of its holding company

(1) Except as provided in sections 109 and 110—

(a) a body corporate may 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.

(2) An allotment of shares or other transaction that would, but for this section, have the effect of making a body corporate a member of a company that is its holding company is void.

109. Subsidiary acting as executor, administrator or trustee

(1) The prohibition in section 108(1)(a) does not apply if the subsidiary is acting only in the capacity of —

(a) executor or administrator; or

(b) trustee unless the subsidiary's holding company or any of its other subsidiaries is beneficially interested under the trust.

(2) For the purpose of ascertaining whether the holding company or a subsidiary is beneficially interested under a trust, the following are to be disregarded:

(a) an interest held only as security for the purposes of a transaction entered into by the holding company or subsidiary in the ordinary course of business that includes the lending of money;

(b) an interest under section 110;

(c) an interest under section 111;

(d) rights that the company or subsidiary has in its capacity as trustee, including—

(i) a right to recover its expenses or to be remunerated out of the trust property; and

(ii) a right to be indemnified out of the trust property for a liability incurred because of an act or omission in the performance of its duties as trustee.

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

(1) If shares in a company are held in trust for the purposes of a pension scheme or an employees' share scheme, any residual interest that has not yet vested in possession. is to be disregarded for the purposes of section 109.

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

(a) all the liabilities arising under the scheme have been satisfied or provided for;

(b) the company or subsidiary ceases to participate in the scheme; or

(c) the trust property at any time exceeds what is necessary for satisfying the liabilities arising or expected to arise under the scheme.

(3) In the 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) for the purpose of subsection (2)(a), when the relevant liabilities have been satisfied or provided for, whether or not the amount of the property receivable pursuant to the right is ascertained; and

(b) for the purpose of subsection (2)(b) or (c), when the company or subsidiary becomes entitled to require the trustee to transfer any of the property in accordance with the right.

111. Employers' rights of recovery under pension scheme or employees' share scheme

(1) For purposes of section 110, if shares in a company are held in trust for the purposes of a pension scheme or an employees' share scheme, of any charge or lien on, or set-off against, any benefit or other right or interest under the scheme is to be disregarded 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 from the member to the employer or former employer.

(2) In the case of a trust for the purposes of a pension scheme, any right—

(a) to receive from the trustee of the scheme; or

(b) 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 to the premiums paid in connection with the scheme is to be disregarded.

(3) For the purpose of this section, a director of a company is to be regarded as an employee of the company.

112. Subsidiary acting as authorised dealer in securities

(1) The prohibition in section 108 does not apply if the shares are held by the subsidiary in the ordinary course of its business as an intermediary.

(2) For the purposes of subsection (1), a subsidiary carries on business as an intermediary if it—

(a) carries on a genuine business of dealing in securities;

(b) is a member of an approved securities 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 the purposes of subsection (2), the following are excluded businesses—

(a) a business that consists wholly or mainly in the making or managing of investments;

(b) a business that consists wholly or mainly of, or is carried on wholly or mainly for the purposes of, providing services to persons who are associates of the person carrying on the business;

(c) an insurance business;

(d) a business that involves 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) a business that consists of operating or acting as trustee in relation to a collective investment scheme, or that is carried on by the manager or trustee of such a scheme in connection with, and for the purposes of, the scheme.

(4) In this section—

(a) "collective investment scheme" has the meaning given by section 2 of the Capital Markets Act (Cap. 485A); and

(b) "insurance business" means business that involves effecting or carrying out of contracts of insurance.

113. Protection of third parties in cases if subsidiary acting as dealer in securities

If—

(a) a subsidiary that is a dealer in securities has purportedly acquired shares in its holding company in contravention of the prohibition in section 108; 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—

(i) 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 referred to in paragraph (a) has the same effect as it would have had if their original acquisition by the subsidiary had not contravened the prohibition.

Part VIII – EXERCISE OF RIGHTS OF MEMBERS

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

(1) This section applies to a provision in the articles of a company that enables 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 a provision of a company's articles to which this section applies—

(a) anything required by or under this Act to be done by or in relation to a member of the company is instead to be done; and

(b) anything authorised by or under this Act to be done by or in relation to a member of the company may instead be done, by or in relation to the nominated person as if that person were a member of the company.

(3) This section applies to the following rights—

(a) the right to be sent a proposed written resolution;

(b) the right to require circulation of a written resolution;

(c) the right to require directors to call a general meeting;

(d) the right to receive notices of general meetings;

(e) the right to require circulation of a statement;

(f) the right to appoint a proxy to act at a meeting;

(g) the right to be sent a copy of the company's annual financial statement and reports; and

(h) if the company is a public company, the right to require the circulation of a resolution for the annual general meeting of the company.

(4) This section does not—

(a) confer rights enforceable against the company by anyone, other than the member; or

(b) affect the requirements for an effective transfer or other disposition of the whole or part of a member's interest in the company.

115. Traded companies: nomination of persons to enjoy information rights

(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) The following are information rights for the purpose of subsection (1)—

(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;

(b) the right to be sent copies of the company's annual financial statement and reports;

(c) the right to receive 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.

116. Information rights: form in which copies to be provided

(1) If the person to be nominated under section 115 wishes to receive copies of documents or other information in hard copy form, that person shall, before the nomination is made—

(a) request the person making the nomination to notify the company of that fact; and

(b) provide an address to which those 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

(b) provide an address to which such copies may be sent,

the company shall provide the nominated person with hard copy versions of the relevant documents and other information.

(3) If no notification is received or no address is provided, the nominated person is taken to have agreed that documents or information may be sent or supplied to the person by means of a website.

(4) A nominated person may, by notice given to the company concerned—

(a) revoke the agreement taken to have been made under subsection (3); and

(b) require the company to provide the person with hard copy versions of the relevant documents or information.

(5) On receiving a notice under subsection (4), the company shall provide the nominated person with hard copy versions of the relevant documents and other information.

117. Information on possible rights in relation to voting

(1) When a company sends a copy of a notice of a meeting to a person nominated under section 115, it shall also send to that person a statement that—

(a) the nominated person may have a right under an agreement between the person and the member by whom the person 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, the person may have a right under such an agreement to give instructions to the member as to the exercise of voting rights.

(2) Section 299 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.

118. Information rights and status of rights

(1) This section has effect as regards the rights conferred by a nomination under section 115.

(2) Enjoyment by the nominated person of the rights conferred by the nomination is enforceable against the company by the member as if they were rights conferred by the company's articles.

(3) An enactment, or a provision of the company's articles, having effect in relation to communications with members has a corresponding effect (subject to any necessary modification) in relation to communications with the nominated person.

(4) In particular—

(a) if under an enactment, or any provision of the company's articles, the members of a company entitled to receive a document or information are determined as at a date or time before it is sent or supplied, the company need not send or supply it to a nominated person—

(i) whose nomination was received by the company after that date or time; or

(ii) if that date or time occurs during a period of suspension of the nomination; and

(b) if under an enactment, or a provision of the company's articles, the right of a member to receive a document or information depends on the company having a current address for the member, the same applies to any person nominated by the member.

(5) The rights conferred by the nomination—

(a) are in addition to the rights of the member; and

(b) do not affect any rights exercisable under section 114.

(6) A failure to give effect to the rights conferred by the nomination does not affect the validity of anything done by or on behalf of the company.

(7) A reference in this section to the rights conferred by the nomination is—

(a) the rights referred to in section 115; and

(b) if applicable, the rights conferred by sections 116(2) and 117.

119. Termination or suspension of nomination

(1) The nomination of a person under section 115 may be terminated at the request of the member or of the nominated person.

(2) The nomination ceases to have effect on the occurrence in relation to the member or the nominated person if—

(a) in the case of a natural person, the person dies or is adjudicated bankrupt; or

(b) in the case of a body corporate, the body is dissolved or an order is made for the liquidation of the body otherwise than for the purposes of reconstruction.

(3) In subsection (2)—

(a) the reference to bankruptcy includes the sequestration of a person's estate; and

(b) the reference to the making of an order for liquidation is to the making of such an order under the law relating to insolvency, or any corresponding proceeding under the law of a country or territory outside Kenya.

(4) The effect of any nominations made by a member is suspended at any time when there are more nominated persons than the member has shares in the company.

(5) If—

(a) the member holds different classes of shares with different information rights; and

(b) there are more nominated persons than the member has shares conferring a particular right,

the effect of any nominations made by the member is suspended to the extent that they confer that right.

(6) If the company—

(a) requests a nominated person to specify whether the person wishes to retain information rights; and

(b) does not receive a response within twenty eight days from and including the date on which the company's request was sent, the nomination ceases to have effect at the end of that period.

(7) Such a request may not be made of a person more than once in any twelve-month period.

(8) Although the termination or suspension of a nomination means that the company is no longer required to act on it, it does not prevent the company from continuing to do so, to such extent or for such period as it considers appropriate.

120. Exercise of rights if shares held on behalf of others

(1) If 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 because 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 referred to in subsection (1) but does not exercise all those rights shall inform the company to what extent the member is exercising the rights.

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

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

(a) is not exercising all the member's rights; or

(b) is exercising those rights in different ways, the company is entitled to assume that the member is exercising all of those rights and is exercising them in the same way.

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

(1) This section applies to sections 289, 312 and 766.

(2) A company is required to act under a section to which this section applies if it receives a request that complies with the following conditions—

(a) it is made by at least one hundred persons;

(b) it is authenticated by all the persons making it;

(c) if any of those persons is not a member of the company, it is accompanied by a statement—

(i) specifying the full name and address of a person who is the member of the company and holds shares on behalf of that person;

(ii) stating that the member is holding the shares on behalf of that person in the course of a business;

(iii) specifying the number of shares in the company that the member holds on behalf of that person;

(iv) specifying the total amount paid up on the shares;

(v) stating 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) stating that some or all of the shares confer voting rights that are relevant for the purposes of making a request under the relevant section; and

(vii) stating that the person has the right to instruct the member how to exercise the rights;

(d) if any of those persons is a 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 referred to in paragraphs (c) and (d);

(f) the total amount of the sums paid up on—

(i) shares held as referred to in paragraph (c); and

(ii) shares held as referred to in paragraph (d), divided by the number of persons making the request, is not less than ten thousand shillings;

(g) the request complies with any other requirements of the section.

Part IX – COMPANY DIRECTORS

Division 1 — Interpretation for purposes of this Part

122. Persons who are connected with a director for purposes of this Part

(1) For the purposes of this Part, a person is connected with a director of a company if the person is—

(a) a member of the director's family as defined in section 123;

(b) a body corporate with which the director is connected as defined in section 124;

(c) a person acting as trustee of a trust—

(i) the beneficiaries of which include the director or a person who because of paragraph (a) or (b) is connected with the person; 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 as a partner—

(i) of the director; or

(ii) of a person who, because of paragraph (a), (b) or (c), is connected with that director; or

(e) a firm that is a legal person under the law by which it is governed and in which—

(i) the director is a partner;

(ii) a partner is a person who, because of paragraph (a), (b) or (c) is connected with the director; or

(iii) a partner is a firm in which the director is a partner or in which there is a partner who, because of paragraph (a), (b) or (c), is connected with the director.

(2) A reference in this Part to a person connected with a director of a company does not include a person who is himself or herself a director of the company.

123. Members of a director’s family

For the purposes of this Part, a person is member of a director's family if the person is—

(a) the director's spouse;

(b) a child or step-child of the director;

(c) a child or step-child of the director's spouse who lives with the director and has not reached eighteen years of age; or

(d) a parent of the director.

124. When director connected with a body corporate for purposes of this Part

(1) In this Part, a director is connected with a body corporate if, but only if, the director and the persons connected with the director together—

(a) are interested in shares comprised in the equity share capital of the 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.

(3) The rules set out in the First Schedule apply for the purposes of this section.

(4) A reference in this section to voting power the exercise of which is controlled by a director includes voting power whose exercise is controlled by a body corporate controlled by the director.

(5) Shares in a company held as treasury shares, and any voting rights attached to those shares, are to be disregarded for the purposes of this section.

(6) To avoid circularity in the application of section 122—

(a) a body corporate with which a director is connected is not, for the purposes of this section, connected with the director unless it is also connected with the director because of subsection (1)(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, for the purposes of this section, connected with a, director only because of that fact.

125. When a director is to be regarded as controlling a body corporate for purposes of this Part

(1) For the purposes of this Part, a director of a company is taken to control a body corporate if, but only if—

(a) the director or any person connected with the director—

(i) has an interest 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) the director, 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 that voting power.

(2) The rules set out in the First Schedule (references to interest in shares or debentures) apply for the purposes of this section.

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

(4) Shares in a company held as treasury shares, and any voting rights attached to those shares, are to be disregarded for the purposes of this section.

(5) To avoid circularity in the application of section 122—

(a) a body corporate with which a director is connected is not, for the purposes of this section, connected with the director unless it is also connected with the director because of subsection (1)(c) or (d) of that section (connection as trustee or partner); 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, for the purposes of this section, connected with a, director only because of that fact.

126. When bodies corporate are to be treated as being associated for purposes of this Part

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.

127. References to company's constitution

A reference in this Part to a company's constitution includes—

(a) any resolution or other decision made in accordance with the constitution; and

(b) any decision by the members of the company, or a class of members, that is, because of any enactment or rule of law, treated as equivalent to a decision by the company.

Division 2 — Appointment and removal of directors under this Part

128. Company required to have directors

(1) A private company is required to have at least one director.

(2) A public company is required to have at least two directors.

129. Company required to have at least one natural person as a director

(1) A company is required to have at least one director who is a natural person.

(2) Subsection (1) is complied with if the office of director is held by a natural person as a corporation sole or otherwise by holding a specified office.

130. Direction requiring company to make appointment

(1) On forming the opinion that a company is in breach of section 128 or 129, the Registrar may give the company a direction in accordance with subsection (2).

(2) A direction is in accordance with this subsection if it specifies—

(a) the statutory requirement of which the company appears to be in breach;

(b) the action that the company is required to take in order to comply with the direction;

(c) the period within which the company is required to comply with the direction; and

(d) the consequences of the company failing to comply with the direction.

(3) The period referred to in subsection (2)(c) may not be shorter than one month, or longer than three months, after the date on which the direction is given.

(4) A company that is in breach of section 128 or 129 shall comply with the direction given by the Registrar is by—

(a) making the necessary appointment or appointments; and

(b) giving notice of the appointment under section 138,

before the end of the period specified in the direction.

(5) If the company has already made the necessary appointment or appointments, it shall comply with the direction by giving notice of the appointment under section 138 before the end of the period specified in the direction.

(6) If a company fails to comply with a direction given under this section, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(7) If, after a company or any of its officers is convicted of an offence under subsection (6), the company continues to fail to comply with the direction, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

131. Minimum age for director

(1) A person who has not reached eighteen years of age may not be appointed to be a director of a company.

(2) An appointment made in contravention of subsection (1) is void.

132. Appointment of director of public company

(1) A public company shall ensure that at a general meeting of the company a motion for the appointment of two or more persons as directors of the company by a single resolution is moved only if a resolution that it should be so moved has first been agreed to by the meeting without any vote being cast against it.

(2) A resolution moved in contravention of subsection (1) is void, whether or not any objection to its being so moved was made at the relevant time.

(3) If such a resolution is passed, any provision of the company's constitution for the automatic reappointment of retiring directors in default of another appointment does not apply.

(4) For the purposes of this section, a motion for approving a person's appointment, or for nominating a person for appointment, is taken to be a motion for the person's appointment.

133. Validity of acts of directors

(1) The acts of a director are valid even if it is later discovered that—

(a) the appointment of the director was defective; or

(b) the director—

(i) was disqualified from holding office;

(ii) had ceased to hold office; or

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

(2) The acts of a director are valid even if the resolution for director's appointment is void under section 132.

134. Company to keep register of directors

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

(2) A company shall ensure that its register of directors complies with sections 135 and 136.

(3) A company shall keep its register of directors open for inspection at its registered office or at some other place prescribed or authorised by the regulations.

(4) A company shall ensure that its register of directors is kept open during its ordinary hours of business for inspection by—

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

(b) any other person on payment of a fee (if any) not exceeding the amount prescribed for the purposes of this subsection.

(5) If a company refuses to allow a person to inspect the register, that person may apply to the Court for an order under subsection (6).

(6) If, on the hearing of an application made under subsection (5), the Court is satisfied that the company's refusal was without justification, it shall make an order directing the company to allow the applicant or the applicant's representative to inspect the company's register and, if it does so, it may make a further order directing the company to pay the applicant's costs in the matter.

(7) If a company fails to comply with a requirement of this section, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding one million shillings.

(8) If, after a company or any of its officers is convicted of an offence under subsection (7), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding one hundred thousand shillings for each such offence.

135. Particulars of directors to be registered: natural persons

(1) A company's register of directors is required to contain the following particulars in respect of a director who is a natural person—

(a) the person's name and any former name;

(b) a service address;

(c) the country or state (or part of Kenya) in which the person is usually resident;

(d) the person's nationality;

(e) the person's business or occupation (if any);

(f) the person's date of birth.

(2) For the purposes of this section—

(a) "name" means a person's forename and surname; and

(b) "former name" means a name by which the natural person was formerly known for business purposes.

(3) If a person is or was formerly known by more than one such name, each of them has to be stated.

(4) It is not necessary for the register of directors to contain particulars of a former name if the former name—

(a) was changed or disused before the person attained the age of eighteen years; or

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

(5) A person's service address may be stated to be "The company's registered office".

136. Particulars of directors to be registered: corporate directors

If a director of a company is a body corporate, a company’s register of directors is required to contain the following particulars in respect of the body—

(a) the body's corporate name;

(b) the registered or principal office of the body;

(c) particulars of—

(i) the legal form of the body and the law by which it is governed; and

(ii) if applicable, the register in which it is entered (including details of the country or territory) and its registration number in that register.

137. Company to keep register of directors' residential addresses

(1) Every company shall keep a register of directors' residential addresses that contains the usual residential address of each of the company's directors.

(2) If a director's usual residential address is the same as the director's service address (as stated in the company's register of directors), the register of directors', residential addresses need only contain an entry to that effect.

(3) Subsection (2) does not apply if the director's service address is stated to be "The company's registered office".

(4) If a company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit and offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(5) If, after a company or any of its officers is convicted of an offence under subsection (4), the company continues to fail to comply with subsection (1), the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings, for each such offence.

(6) This section applies only to directors who, are natural persons, not if the director is a body corporate.

138. Duty of company to notify Registrar of changes of directors and directors' addresses

(1) Within fourteen days after—

(a) a person is appointed or ceases to hold appointment as a director of a company; or

(b) any change occurs in the particulars contained in a company's register of directors or its register of directors' residential addresses, the company shall give notice to the Registrar of the appointment, cessation of appointment or change of particulars and of the date on which it occurred.

(2) The company shall—

(a) include in a notice of the appointment of a new director of the company a statement of the particulars of that director that are required to be included in the company's register of directors and its register of directors' residential addresses; and

(b) attach to or enclose with the notice a written consent by that director to act in that capacity.

(3) If a company fails to comply with subsection (1) or (2), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(4) If, after a company or any of its officers is convicted of an offence under subsection (3), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

139. Resolution to remove directors from office

(1) A company may, by ordinary resolution at a meeting, remove a director before the end of the director's period of office, despite anything to the contrary in any agreement between the company and the director.

(2) However, a special notice is required for a resolution to remove a director under this section or to appoint a person to replace the director so removed at the meeting at which the director is removed.

(3) A person appointed to replace a director who is removed under this section is, for the purpose of determining the time at which the person is to retire from office, taken to have become a director on the day on which the director in whose place the person is appointed was last appointed as a director.

(4) A vacancy created by the removal of a director under this section, if not filled at the meeting at which the director is removed, can be filled as a casual vacancy.

(5) 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 that the person became aware of while a director; and

(b) not to accept benefits from third parties with regard to things done or omitted to be done by that person before ceasing to be a director

(6) This section does not—

(a) deprive a person removed under it of compensation or damages payable in respect of the termination of the person's appointment as director; or

(b) limit any power to remove a director that may exist apart from this section.

Division 3 — Directors' duties

140. Scope and nature of general duties

(1) The general duties specified in this Division are owed by a director of a company to the company.

(2) A person who ceases to be a director continues to be subject to—

(a) the duty in section 146 with respect to the exploitation of any property, information or opportunity of which the person became aware while a director; and

(b) the duty in section 147 with respect to things done or omitted by the person before ceasing to be a director,

and to that extent those duties apply to a former director as they do to a director.

(3) The general duties of directors are based on common law rules and equitable principles that apply in relation to directors and have effect in place of those rules and principles with respect to the duties owed to a company by a director.

(4) The general duties of directors are to be interpreted and applied in the same way as common law rules or equitable principles, and those interpreting and applying those rules and principles are required to have regard to the corresponding common law rules and equitable principles.

141. Director's right to protest against removal

(1) On receipt of notice of a motion for a resolution to remove a director under section 139, the company shall send a copy of the notice to the director concerned.

(2) The director, whether or not a member of the company may be heard on the discussion of the motion at the meeting.

(3) Subsection (4) applies when notice is given of a proposed resolution to remove a director under section 139.

(4) Within twenty-one days after the notice is given, the director may make, with respect to the motion representations in writing to the company and request that the members of the company be notified of the director's representations.

(5) On receipt of any such a request, 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.

(6) If a copy of the representations is not sent as required by subsection (5) because the representations were received too late or because of the company's default, the director may orally require the representations to be read out at the meeting.

(7) If the company or a person affected claims that the representations made by the director contain defamatory matter, the company or the person may apply to the Court for an order under subsection (9).

(8) The director is entitled to be served with a copy of such an application and to be heard at the hearing of the application by the Court.

(9) On the hearing of such an application, the Court shall, if satisfied that the representations of the director contain defamatory matter, make an order that they need not be sent out to the company's members and need not be read out at the meeting, but if not so satisfied, it shall dismiss the application.

(10) If the Court has made an order under subsection (9)—

(a) copies of the director's representations need not be sent out to the company's members; and

(b) those representations need not be read out at the meeting.

142. Duty of director to act within powers

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.

143. Duty of director to promote the success of the company

(1) A director of a company shall act in the way in which the director considers, in good faith, would promote the success of the company for the benefit of its members as a whole, and in so doing the director shall have regard to—

(a) the long term consequences of any decision of the directors;

(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 as between the directors and the members of the company.

(2) If, 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.

144. Duty of director to exercise independent judgement

(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.

145. Duty of director to exercise reasonable care, skill and diligence

In performing the functions of a director, a director of a company shall exercise the same care, skill and diligence that would be exercisable by a reasonably diligent person with—

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

(b) the general knowledge, skill and experience that the director has.

146. Duty of director to avoid conflicts of interest

(1) A director of a company shall avoid a situation in which the director 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 does not matter 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) An authorisation under subsection (3)(b) may, in the case of a private company, be given by the directors by the matter concerned being proposed to and authorised by them, so long as nothing in the company's constitution invalidates the giving of such an authorisation.

(5) An authorization under subsection (3)(b) may, in the case of a public company, be given by the directors of the company by the matter concerned being proposed to and authorised by them, but only if the company's constitution includes a provision enabling the directors to give such an authorisation and the directors comply with the requirements of the provision.

(6) An authorisation given under subsection (3)(b) is effective only if—

(a) any requirement relating to the quorum at the meeting at which the matter is considered is satisfied without counting the director concerned or any other interested director; and

(b) the matter was agreed to without that director or any other interested director voting.

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

147. Duty not to accept benefits from third parties

(1) A person who is a director of a company shall not accept a benefit from a third party if the benefit attributable—

(a) to the fact that the person is a director of the company; or

(b) to any act or omission of the person as a director.

(2) Benefits received by a director from a person by whom his or her services (as a director or otherwise) are provided to the company are not regarded as conferred by a third party.

(3) The duty imposed by subsection (1) is not infringed if the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

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

(5) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one million shillings.

(6) On the conviction of a person for an offence under subsection (2), the benefit or its equivalent accepted by the person under subsection (1) is forfeited to the company.

(7) In this section, "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.

148. Civil consequences of breach of general duties

(1) The consequences of breach (or threatened breach) of the general duties of directors set out in this Division are the same as would apply if the corresponding common law rule or equitable principle applied.

(2) Those duties (with the exception of the duty set out in section 145) are enforceable in the same way as any other fiduciary duty owed to a company by its directors.

149. Cases within more than one of the general duties

Except as otherwise provided, more than one of the general duties may apply to a director in any given case.

150. Consent, approval or authorisation by members

(1) If—

(a) section 146 is complied with by authorisation by the directors; or

(b) section 151 is complied with, the transaction or arrangement is not liable to be set aside because of any common law rule or equitable principle requiring the consent or approval of the members of the company.

(2) Subsection (1) does not affect the operation of any enactment, or provision of the company's constitution, that requires any such consent or approval.

(3) The application of the general duties to a director is not affected by the fact that the case also falls within Division 5, except that if that Division applies and—

(a) approval is given under that Division; or

(b) the matter is one as to which it is provided that approval is not needed, it is not necessary also for the director to comply with section 146 or 147.

(4) Compliance by a director with the general duties does not remove the need for approval under any applicable provision of Division 5.

(5) The general duties applicable to directors—

(a) have effect subject to any rule of law enabling the company to give authority, specifically or generally, for anything to be done (or omitted) by the directors, or any of them, that would otherwise be a breach of duty; and

(b) if the company's articles contain provisions for dealing with conflicts of interest — are not infringed by anything done or omitted to be done by the directors (or by any of them) in accordance with those provisions.

(6) Except as provided by this section, the general duties of directors have effect (except as otherwise provided or the context otherwise requires) irrespective of any other enactment or rule of law.

Division 4 — Declaration of interest in existing transaction or arrangement

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

(1) If 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—

(a) to the other directors; and

(b) if the company is a public company, to the members of the company.

(2) If, in the case of a public company, a proposed transaction or arrangement with the company, or a transaction or arrangement that the company has already entered into, is for an amount, or for goods or services valued at an amount, that exceeds ten percent of the value of the assets of the company, the declaration shall also be made to the members of the company either—

(a) at a general meeting of the company; or

(b) by notice given to the members, in accordance with section 152.

(3) A declaration is not effective for the purpose of subsection (2) unless the valuation of the goods or services and the valuation of the assets of the company are certified by the company's auditors as being the true market value of those goods or services and those assets.

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

(5) A director shall make a declaration required by this section before the company enters into the transaction or arrangement concerned.

(6) This section does not require a director to make a declaration of an interest if the director—

(a) is not aware of the interest; or

(b) is not aware of the transaction or arrangement to which the interest relates.

(7) For the purpose of subsection (6), a director is taken to be aware of matters of which the director ought reasonably to be aware.

(8) 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 are 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 the director's 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.

(9) For the purpose of subsection (8)(b), the other directors are treated as being aware of anything of which they ought reasonably to be aware.

(10) A director who contravenes this section commits an offence and is liable on conviction to a fine not exceeding one million shillings.

152. Director to make declaration by notice in writing

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

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

(3) A notice required by subsection (1) may be given—

(a) by hand or by post; or

(b) if the recipient has agreed to receive such notices by electronic means, by the agreed electronic means.

(4) If a director declares an interest by notice given in accordance with this section—

(a) the making of the declaration forms part of the proceedings at the next meeting of the directors after the notice is given; and

(b) section 210 applies as if the declaration had been made at that meeting.

153. General notice to be regarded as sufficient declaration

(1) A general notice given 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 a 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, 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) A general notice is not effective unless it states the nature and extent of the director's interest in the body corporate or firm or the nature of the director's 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 brought to the attention of the directors and read aloud at the next meeting of the directors after it is given.

154. Declaration of interest in case of company with sole director

(1) If a declaration of interest under section 151 is required of a sole director of a company that is required to have more than one director—

(a) the company shall record the declaration in writing;

(b) the making of the declaration forms part of the proceedings at the next meeting of the directors after the notice is given; and

(c) section 210 applies as if the declaration had been made at that meeting.

(2) This section does not affect the operation of section 193.

Division 5 — Transactions with directors requiring approval of members

155. Definition of credit transaction for purposes of Division 5

(1) In this Division, "credit transaction" means a transaction under which one party (a creditor)—

(a) supplies any goods under a hire-purchase agreement, a conditional sale agreement or retention of title agreement;

(b) leases or hires goods in return for periodical payments;

(c) otherwise disposes supplies goods or services on the terms that payment (whether in a lump sum or by means of periodical payments or otherwise) is to be deferred;

(d) sells land on terms under which the buyer will mortgage the land to the seller or a third person;

(e) leases land; or

(f) otherwise disposes of land on the terms that payment (whether in a lump sum or by means of periodical payments or otherwise) is to be deferred.

(2) In subsection (1), a reference to the person for whose benefit a credit transaction is entered into is to the person to whom goods, land or services are supplied, sold, leased, hired or otherwise disposed of under the transaction.

(3) In subsection (1) and (2)—

(a) "**conditional sale agreement**" means a contract or agreement under which a buyer takes possession of goods but the title to the goods and the right to repossess them remains with the seller until the buyer has paid the full purchase price for the goods; and

(b) "**services**" means anything other than goods or land.

156. Meaning of "quasi-loan" and related expressions

(1) For the purposes of this Division, a quasi-loan is a transaction under which one party (a creditor)—

(a) agrees to pay, or pays otherwise than in accordance with an agreement, an amount for another person (a borrower); or

(b) agrees to reimburse, or reimburses otherwise than in accordance with an, agreement, expenditure incurred by another party for another person (also. a borrower)—

(i) on terms that the borrower, or a third person on the borrower's behalf, will reimburse the creditor; or

(ii) in circumstances giving rise to a liability on the borrower to reimburse the creditor.

(2) A reference in subsection (1) to the person to whom a quasi-loan is made is a reference to the borrower

(3) The liabilities of the borrower under a quasi-loan include the liabilities of any person who has agreed to reimburse the creditor on behalf of the borrower.

157. Director's long-term service contracts: requirement of members' approval

(1) This section applies to a contract under which the employment of a person as a director of company is guaranteed—

(a) with the company; or

(b) if the person is the director of a holding company — within the group that comprises the company and its subsidiaries,

for a period exceeding, or that could exceed, two years.

(2) A company may not enter into such a contract unless it has been approved—

(a) by resolution of the members of the company; and

(b) in the case of a director of a holding company, by a resolution of the members of that company.

(3) The guaranteed term of a director's employment is—

(a) the period (if any) during which the director's employment—

(i) is to continue, or could be continued, otherwise than at the instance of the company, whether under the original contract or under a new contract entered into under it; and

(ii) cannot be terminated by the company by notice, or can be so terminated only in specified circumstances; or

(b) in the case of employment that can be terminated by the company by notice — the period of notice required to be given,

or, in the case of employment having a period within paragraph (a) and a period within paragraph (b), the aggregate of those periods.

(4) If, more than six months before the end of the guaranteed term of a director's employment, the company enters into a further service contract, otherwise than in accordance with a right conferred, by or under the original contract, on the other party to it, this section applies as if there were added to the guaranteed term of the new contract the unexpired period of the guaranteed term of the original contract.

(5) A resolution approving a contract to which this section applies may not be passed unless a memorandum setting out the proposed contract is made available to members—

(a) in the case of a written resolution – by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to member; or

(b) in the case of a resolution at a meeting – by being made available for inspection by members of the company both—

(i) at the company's registered office for not less than fourteen days ending with the date of the meeting; and

(ii) at the meeting itself.

(6) An approval is not required to be given under this section by the members of a body corporate that —

(a) is not a company registered under this Act; or

(b) is a wholly-owned subsidiary of another body corporate.

(7) In this section, "employment" means any employment under a director's service contract.

(8) If a company agrees to a provision in the contract in contravention of this section—

(a) the contract is void to the extent of the contravention; and

(b) the contract is taken to include a term entitling the company to terminate it at any time by giving reasonable notice.

158. Substantial property transactions: requirement of members' approval

(1) A company may not enter into an arrangement under which—

(a) a director of the company or of its holding company, or a person connected with such a director, acquires or is to acquire from the company (directly or indirectly) a substantial non-cash asset; or

(b) the company acquires or is to acquire a substantial non-cash asset (directly or indirectly) from such a director or a person so connected, unless the arrangement has been approved by a resolution of the members of the company or is conditional on such an approval being obtained.

(2) If the director or connected person is a director of the company's holding company or is a person connected with such a director, the arrangement also needs to have been approved by a resolution of the members of the holding company or be conditional on such an approval being obtained.

(3) A company is not subject to a liability only because it has failed to obtain an approval required by this section.

(4) An approval is not required to be obtained under this section from the members of a body corporate —

(a) that is not a company registered under this Act; or

(b) that is a wholly-owned subsidiary of another body corporate.

(5) For the purposes of this section—

(a) an arrangement involving more than one non-cash asset; or

(b) an arrangement that is one of a series involving non-cash assets, is to be treated as if it involved a non-cash asset of a value equal to the aggregate value of all the non-cash assets involved in the arrangement, or the series.

(6) This section does not apply to a transaction so far as it relates—

(a) to anything to which a director of a company is entitled under the director's service contract; or

(b) to payment for loss of office as defined in section 180.

(7) For the purpose of this section, an asset is a substantial non-cash asset if its value—

(a) exceeds ten per cent of the company's asset value and is more than five million shillings; or

(b) exceeds ten million shillings.

(8) For the purpose of subsection (7), a company's asset value at any time is—

(a) the value of the company's net assets determined by reference to its most recent statutory financial statement; or

(b) if no such statement has been prepared—the amount of the company's called-up share capital.

(9) For the purpose of subsection (8)—

(a) a company's statutory financial statement is its annual financial statement as prepared in accordance with Part XXV; and

(b) its most recent statutory financial statement is that in relation to which the time for sending it to members is most recent.

(10) Whether a non-cash asset is substantial for the purposes of this section is to be determined as at the time when relevant arrangement is entered into.

159. Exception for transactions with members or other group companies

An approval is not required to be obtained under section 158—

(a) for a transaction between a company and a person as a member of the company; or

(b) for a transaction between—

(i) a holding company and its wholly-owned subsidiary; or

(ii) two wholly-owned subsidiaries of the same holding company.

160. Exception in case of company in liquidation or under administration

(1) This section applies to a company—

(a) that is in liquidation, unless the liquidation is a members' voluntary liquidation; or

(b) that is under administration.

(2) An approval is not required to be obtained under section 158—

(a) from the members of a company to which this section applies; or

(b) for an arrangement entered into by a company to which this section applies.

161. Exception for transactions on recognised investment exchange

(1) An approval is not required to be obtained under section 158 for a transaction on an approved securities exchange that is effected by a director, or a person connected with the director, through the agency of a person who, in relation to the transaction, acts as an independent broker.

(2) For the purposes of this section, "independent broker" means a person who, independently of the director or any person connected with the director, selects the person with whom the transaction is to be effected.

162. Property transactions: civil consequences of contravening section 159

(1) An arrangement entered into by a company in contravention of section 158 and any transaction entered into in accordance with the arrangement (whether by the company or any other person) is voidable at the instance of the company, unless—

(a) restitution of any money or other asset that was the subject matter of the arrangement or transaction is no longer possible;

(b) the company has been indemnified in accordance with this section by other persons for the loss or damage suffered by it; or

(c) rights acquired in good faith, for value and without actual notice of the contravention by a person who is not a party to the arrangement or transaction would be affected by the avoidance.

(2) Whether or not the arrangement or any such transaction has been avoided, each of the persons specified in subsection (3) is liable—

(a) to account to the company for any gain that the person has made (directly or indirectly) as a result of the arrangement or transaction; and

(b) jointly and severally with any other person so liable under this section, to indemnify the company for any loss or damage resulting from the arrangement or transaction.

(3) The persons so liable are—

(a) any director of the company or of its holding company with whom the company entered into the arrangement in contravention of section 158;

(b) any person with whom the company entered into the arrangement in contravention of that section who is connected with a director of the company or of its holding company;

(c) the director of the company, or of its holding company, with whom any such person is connected; and

(d) any other director of the company who authorised the arrangement, or a transaction entered into in accordance with such an arrangement.

(4) Subsections (2) and (3) are subject to subsections (5) and (6).

(5) A director of a company, or of its holding company, is not, in relation to an arrangement entered into by the company in contravention of section 158 with a person connected with the director, liable because of subsection (3)(c) if the director shows that all reasonable steps were taken by the director to ensure that the company did not contravene that section.

(6) A person so connected is not liable because of subsection (3)(b) if the person shows that, at the time the arrangement was entered into, the person was unaware of the relevant circumstances constituting the contravention.

(7) A director is not liable because of subsection (3)(d) if the director shows that, at the time the arrangement was entered into, the director was unaware of the relevant circumstances constituting the contravention.

(8) This section does not preclude the operation of any other enactment or rule of law under which the arrangement or transaction could be questioned, or any liability to the company could arise.

163. Property transactions: effect of subsequent affirmation

(1) If a transaction or arrangement is entered into by a company in contravention of section 158 but within a reasonable period, it is affirmed—

(a) in the case of a contravention of subsection (1) of that section—by resolution of the members of the company; and

(b) in the case of a contravention of subsection (2) of that section—by resolution of the members of the holding company, the transaction or arrangement can no longer be avoided under section 162.

(2) A period that exceeds three months is not a reasonable period for the purposes of subsection (1).

164. Loans to directors to be approved by members

(1) A company may not—

(a) make a loan to a director of the company or of its member, holding company; or

(b) give a guarantee or provide security in connection with a loan made by any person to such a director, unless the transaction has been approved by a resolution of the members of the company.

(2) If the director is a director of the company's holding company, the transaction also needs to have been approved by a resolution of the members of the holding company.

(3) A resolution approving a transaction to which this section applies can be passed only if a memorandum setting out the matters referred to in subsection (4) is made available to members—

(a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to the member; or

(b) in the case of a resolution at a meeting, by being made available for inspection by members of the company both—

(i) at the company's registered office for not less than fourteen days ending with the day before the date of the meeting; and

(ii) at the meeting itself.

(4) The matters to be disclosed are—

(a) the nature of the transaction;

(b) the amount of the loan and the purpose for which it is required; and

(c) the extent of the company's liability under any transaction connected with the loan.

(5) An approval is not required to be obtained under this section from the members of a body corporate —

(a) that is not a company registered under this Act; or

(b) that is a wholly-owned subsidiary of another body corporate.

165. Quasi-loans to directors: requirement of members' approval

(1) This section applies to a company that is—

(a) a public company; or

(b) a company associated with a public company.

(2) A company to which this section applies may not—

(a) make a quasi-loan to a director of the company or of its holding company; or

(b) give a guarantee or provide security in connection with a quasi-loan made by any person to such a director, unless the transaction has been approved by a resolution of the members of the company.

(3) If the director is a director of the company's holding company, the transaction also needs to have been approved by a resolution of the members of the holding company.

(4) A resolution approving a transaction referred to in subsection (2) can be passed only if a memorandum is setting out the matters referred to in subsection (5) is made available to members —

(a) in the case of a written resolution—by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to the member; or

(b) in the case of a resolution at a meeting — by being made available for inspection by members of the company both—

(i) at the company's registered office for not less than fourteen days ending with the date of the meeting; and

(ii) at the meeting itself.

(5) The matters to be disclosed are—

(a) the nature of the transaction;

(b) the amount of the quasi-loan and the purpose for which it is required; and

(c) the extent of the company's liability under any transaction connected with the quasi-loan.

(6) An approval is not required to be obtained under this section from the members of a body corporate that—

(a) is not a company registered under this Act; or

(b) is a wholly-owned subsidiary of another body corporate.

166. Loans or quasi-loans to persons connected with directors: requirement of members' approval

(1) This section applies to a company that is—

(a) a public company; or

(b) a company associated with a public company.

(2) A company to which this section applies may not—

(a) make a loan or quasi-loan to a person connected with a director of the company or of its holding company; or

(b) give a guarantee or provide security in connection with a loan or quasi-loan made by any person to a person connected with such a director, unless the transaction has been approved by a resolution of the members of the company.

(3) If the connected person is a person connected with a director of the company's holding company, the transaction also needs to have been approved by a resolution of the members of the holding company.

(4) A resolution approving a transaction to which this section applies can be passed only if a memorandum setting out the matters referred to in subsection (5) is made available to members—

(a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to the member; and

(b) in the case of a resolution at a meeting, by being made available for inspection by members of the company both—

(i) at the company's registered office for not less than fourteen days ending with the day before the date of the meeting; and

(ii) at the meeting itself.

(5) The matters to be disclosed are—

(a) the nature of the transaction;

(b) the amount of the loan or quasi-loan and the purpose for which it is required; and

(c) the extent of the company's liability under any transaction connected with the loan or quasi-loan.

(6) An approval is not required to be obtained under this section from the members of a body corporate that—

(a) is not a company registered under this Act; or

(b) is a wholly-owned subsidiary of another body corporate.

167. Credit transactions: requirement of members' approval

(1) This section applies to a company that is—

(a) a public company; or

(b) a company associated with a public company.

(2) A company to which this section applies may not—

(a) enter into a credit transaction as creditor for the benefit of a director of the company or of its holding company; and a person connected with such a director; or

(b) a transaction involving the giving of a guarantee or the provision of security in connection with a credit transaction entered into by a person for the benefit of such a director, or a person connected with such a director, unless the transaction has been approved by a resolution of the members of the company.

(3) If the director or connected person is a director of its holding company or a person connected with such a director, the transaction also needs to have been approved by a resolution of the members of the holding company.

(4) A resolution approving a transaction to which this section applies can be passed only if a memorandum setting out the matters referred to in subsection (5) is made available to members—

(a) in the case of a written resolution — by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;

(b) in the case of a resolution at a meeting, by being made available for inspection by members of the company both—

(i) at the company's registered office for not less than fourteen days ending with the day before the date of the meeting; and

(ii) at the meeting itself.

(5) The matters to be disclosed are—

(a) the nature of the transaction;

(b) the value of the credit transaction and the purpose for which the land, goods or services sold or otherwise disposed of, leased, hired or supplied under the credit transaction are required; and

(c) the extent of the company's liability under any transaction connected with the credit transaction.

(6) An approval is not required to be obtained under this section from the members of a body corporate that—

(a) is not a company registered under this Act; or

(b) is a wholly-owned subsidiary of another body corporate.

168. Related arrangements: requirement of members' approval

(1) A company may not—

(a) participate in an arrangement under which—

(i) another person enters into a transaction that, if it had been entered into by the company, would have required approval under this Act; and

(ii) that person, in accordance with the arrangement, obtains a benefit from the company or a body corporate associated with it; and

(b) arrange for the assignment to it, or assumption by it, of any rights, obligations or liabilities under a transaction that, if it had been entered into by the company, would have required such an approval, unless the arrangement has been approved by a resolution of the members of the company.

(2) If the director or connected person for whom the transaction is entered into is a director of its holding company or a person connected with such a director, the arrangement also needs to have been approved by a resolution of the members of the holding company.

(3) A resolution approving an arrangement to which this section applies can be passed only if a memorandum setting out the matters referred to in subsection (4) is made available to members—

(a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;

(b) in the case of a resolution at a meeting, by being made available for inspection by members of the company both—

(i) at the company's registered office for not less than fourteen days ending with the day before the date of the meeting; and

(ii) at the meeting itself.

(4) The matters to be disclosed are—

(a) the matters that would have to be disclosed if the company were seeking approval of the transaction to which the arrangement relates;

(b) the nature of the arrangement; and

(c) the extent of the company's liability under the arrangement or any transaction connected with it.

(5) An approval is not required to be obtained under this section from the members of a body corporate that—

(a) is not a company registered under this Act; or

(b) is a wholly-owned subsidiary of another body corporate.

(6) In determining for the purposes of this section whether a transaction is one that would have required approval under section 164, 165, 166 or 167 if it had been entered into by the company, the transaction is taken to have been entered into on the date of the arrangement.

169. Exceptions for expenditure on company business

(1) An approval is not required under section 164, 165, 166 or 167 for anything done by a company—

(a) to provide a director of the company or of its holding company, or a person connected with any such director, with funds to meet expenditure incurred or to be incurred by the director —

(i) for the purposes of the company; and

(ii) for the purpose of enabling the director properly to perform the director's duties as an officer of the company; and

(b) to enable any such person to avoid incurring such expenditure.

(2) This section does not authorise a company to enter into a transaction if the aggregate of—

(a) the value of the transaction; and

(b) the value of any other relevant transactions or arrangements,

exceeds ten million shillings.

170. Exception for expenditure on defending proceedings etc

(1) An approval is not required under section 164, 165, 166 or 167 for anything done by a company—

(a) to provide a director of the company or of its holding company with funds to meet expenditure incurred or to be incurred by the director—

(i) in defending any criminal or civil proceedings in connection with any alleged negligence, default, breach of duty or breach of trust by the director in relation to the company or an associated company; and

(ii) in connection with an application for relief; or

(b) to enable any such director to avoid incurring such expenditure, if it is done on the terms prescribed by subsection (2).

(2) The terms prescribed are—

(a) that the loan is to be repaid, or any liability of the company incurred under any transaction connected with the thing done is to be discharged, if—

(i) the director is convicted in the proceedings;

(ii) judgment is given against the director in the proceedings; and

(iii) the Court refuses to grant the director relief on the application; and

(b) that it is to be so repaid or discharged not later than—

(i) the date on which the conviction becomes final;

(ii) the date on which the judgment becomes final; or

(iii) the date on which the refusal of relief becomes final.

(3) The reference in subsection (1)(a)(ii) to an application for relief is to an application for relief under —

(a) section 426 (3) and (4) in the case of acquisition of shares by an innocent nominee; or

(b) section 1005 in the case of honest and reasonable conduct.

171. Exception for expenditure in connection with regulatory action or investigation

An approval is not required under section 164, 165, 166 or 167 for anything done by a company—

(a) to provide a director of the company or of its holding company with funds to meet expenditure incurred or to be incurred by the director in defending himself—

(i) in an investigation by a regulatory authority; and

(ii) against action proposed to be taken by a regulatory authority, in connection with any alleged negligence, default, breach of duty or breach of trust by the director in relation to the company or an associated company; and

(b) to enable any such director to avoid incurring such expenditure.

172. Exceptions for minor and business transactions

(1) An approval is not required under section 164, 165 or 166 for a company to make a loan or quasi-loan, or to give a guarantee or provide security in connection with a loan or quasi-loan, if the aggregate of—

(a) the value of the transaction; and

(b) the value of any other relevant transactions or arrangements, does not exceed one million shillings.

(2) An approval is not required under section 167 for a company to enter into a credit transaction, or to give a guarantee or provide security in connection with a credit transaction, if the aggregate of—

(a) the value of the transaction, that is, of the credit transaction, guarantee or security; and

(b) the value of any other relevant transactions or arrangements, does not exceed seven million five hundred thousand shillings,

(3) An approval is not required under section 167 for a company to enter into a credit transaction, or to give a guarantee or provide security in connection with a credit transaction, if—

(a) the transaction is entered into by the company in the ordinary course of the company's business; and

(b) the value of the transaction is not greater, and the terms on which it is entered into are not more favourable, than it is reasonable to expect the company would have offered to, or in respect of, a person of the same financial standing but unconnected with the company.

173. Exceptions for intra-group transactions

(1) An approval is not required under section 164, 165 or 166 for—

(a) the making of a loan or quasi-loan to an associated body corporate; and

(b) the giving of a guarantee or provision of security in connection with a loan or quasi-loan made to an associated body corporate.

(2) An approval is not required under section 167—

(a) to enter into a credit transaction as creditor for the benefit of an associated body corporate; and

(b) to give a guarantee or provide security in connection with a credit transaction entered into by any person for the benefit of an associated body corporate.

174. Exceptions for money-lending companies

(1) An approval is not required under section 164, 165 or 166 for the making of a loan or quasi-loan, or the giving of a guarantee or provision of security in connection with a loan or quasi-loan, by a money-lending company if—

(a) the transaction, that is, the loan, quasi-loan, guarantee or security, is entered into by the company in the ordinary course of the company's business; and

(b) the value of the transaction is not greater, and its terms are not more favourable, than it is reasonable to expect the company would have offered to a person of the same financial standing but unconnected with the company.

(2) A company is a money lending company for the purpose of subsection (1) if its ordinary business comprises or includes making loans or quasi-loans, or giving guarantees or providing security in connection with loans or quasi-loans.

(3) The condition specified in subsection (1)(b) does not of itself prevent a company from making a home loan—

(a) to a director of the company or of its holding company; and

(b) to an employee of the company, if the company normally makes loans of that description to its employees and the terms of the loan are no more favourable than those on which it normally makes such loans.

(4) For the purposes of subsection (3), "home loan" means—

(a) a loan made for the purpose of facilitating the purchase, for use as the only or main residence of the person to whom the loan is made, of the whole or part of any dwelling-house together with any land to be occupied and enjoyed with it;

(b) a loan made for the purpose of improving a dwelling-house or part of a dwelling-house so used or any land occupied and enjoyed with it; and

(c) a loan made in substitution for a loan made for the purpose of paragraph (a) or (b).

175. Other relevant transactions or arrangements

(1) This section has effect for determining what are "other relevant transactions or arrangements" for the purposes of an exception to section 164, 165, 166 or 167.

(2) In subsections (3) to (6), "the relevant exception" means the exception for the purposes of which that exception is to be determined.

(3) Other relevant transactions or arrangements are those previously entered into, or entered into at the same time as the transaction or arrangement in relation to which the conditions set out in subsections (4) to (6) are satisfied.

(4) If the transaction or arrangement is entered into—

(a) for a director of the company entering into it; and

(b) for a person connected with such a director, the conditions are that the transaction or arrangement was entered into for that director, or a person connected with the director, because of the relevant exception by that company or by any of its subsidiaries.

(5) If the transaction or arrangement is entered into—

(a) for a director of the company that enters into it; and

(b) for a person connected with such a director, the conditions are that the transaction or arrangement was (or is) entered into for that director, or person connected with the director, because of the relevant exception by the holding company or by any of its subsidiaries.

(6) A transaction or arrangement entered into by a company that at the time it was entered into—

(a) was a subsidiary of the company entering into the transaction or arrangement; and

(b) was a subsidiary of that company's holding company, is not a relevant transaction or arrangement if, at the time the question arises whether the relevant transaction or arrangement is within a relevant exception, it is no longer such a subsidiary.

176. The value of transactions and arrangements

(1) For the purposes of this Division—

(a) the value of a transaction or arrangement is to be determined in accordance with subsections (2) to (7); and

(b) the value of any other relevant transaction or arrangement is taken to be the value so determined reduced by the amount (if any) by which the liabilities of the person for whom the transaction or arrangement was made have been reduced.

(2) The value of a loan is the amount of its principal.

(3) The value of a quasi-loan is the amount, or maximum amount, that the person to whom the quasi-loan is made is liable to reimburse the creditor.

(4) The value of a credit transaction is the price that it is reasonable to expect could be obtained for the goods, services or land to which the transaction relates if they had been supplied (at the time the transaction is entered into) in the ordinary course of business and on the same terms (apart from price) as they have been supplied, or are to be supplied under the relevant transaction.

(5) The value of a guarantee or security is the amount guaranteed or secured.

(6) The value of an arrangement to which section 169 applies is the value of the transaction to which the arrangement relates.

(7) If, for whatever reason, the value of a transaction or arrangement is not capable of being expressed as a specific amount of money, its value is taken to exceed five million shillings.

177. The person for whom a transaction or arrangement is entered into

For the purposes of this Division, the person for whom a transaction or arrangement is entered into is—

(a) in the case of a loan or quasi-loan, the person to whom it is made;

(b) in the case of a credit transaction, the person to whom goods, land or services are supplied, sold, hired, leased or otherwise disposed of under the transaction;

(c) in the case of a guarantee or security, the person for whom the transaction is made in connection with which the guarantee or security is entered into; and

(d) in the case of an arrangement within section 168, the person for whom the transaction is made to which the arrangement relates.

178. Loans etc: civil consequences for contravention

(1) This section applies to a transaction or arrangement entered into by a company in contravention of section 164, 165, 166 or 167.

(2) A transaction or arrangement to which this section applies is voidable on the initiative of the company, unless—

(a) restitution of any money or other asset that was the subject-matter of the transaction or arrangement is no longer possible;

(b) the company has been indemnified for any loss or damage resulting from the transaction or arrangement; and

(c) rights acquired in good faith, for value and without actual notice of the contravention by a person who is not a party to the transaction or arrangement would be affected by the avoidance.

(3) Whether or not the transaction or arrangement has been avoided, each of the persons specified in subsection (4)—

(a) is liable to account to the company for any gain that the person has made directly or indirectly by the transaction or arrangement; and

(b) is jointly and severally liable with any other person so liable under this section, to indemnify the company for any loss or damage resulting from the transaction or arrangement.

(4) The persons so liable are as follows—

(a) any director of the company or of its holding company with whom the company entered into the transaction or arrangement in contravention of section 164, 165, 166 or 168;

(b) any person with whom the company entered into the transaction or arrangement in contravention of any of those sections who is connected with a director of the company or of its holding company;

(c) the director of the company or its holding company with whom any such person is connected;

(d) any other director of the company who authorised the transaction or arrangement.

(5) Subsections (3) and (4) are subject to subsections (6) and (8).

(6) If a company has entered into a transaction with a person connected with a director of the company, or with a director of its holding company, in contravention of section 166, 167 or 168, the director is not liable because of subsection (4)(c) if the director establishes that all practicable steps were taken to secure the company's compliance with the section concerned.

(7) Subsection (8) applies to—

(a) a person referred to in subsection (4)(b); and

(b) a director referred to in subsection (4)(d).

(8) A person to whom this subsection applies is not liable because of subsection(4) if the person establishes that, at the time the transaction or arrangement was entered into, the person was not aware, and had no reason to be aware, of the circumstances that constituted the contravention.

(9) This section does not preclude the operation of any other enactment or rule of law as a result of which a transaction or arrangement to which this section applies could be questioned, or a company involved in the transaction or arrangement could become liable.

179. Loans etc: effect of subsequent affirmation

If a transaction or arrangement is entered into by a company in contravention of section 164, 165, 166, 167 or 168 but, within a reasonable period, it is ratified—

(a) in the case of a contravention of the requirement for a resolution of the members of the company—by a resolution of the members of the company; and

(b) in the case of a contravention of the requirement for a resolution of the members of the company's holding company—by a resolution of the members of the holding company,

the transaction or arrangement can no longer be avoided under section 178.

Division 6 — Payments for loss of office

180. Payment for loss of office

(1) In this Division, "payment for loss of office" means a payment made to a director or past director of a company—

(a) as compensation for loss of office as a director of the company;

(b) as compensation for loss, while a director of the company or in connection with ceasing to hold office as such, of—

(i) any other office or employment in connection with the management of the affairs of the company; and

(ii) any office or employment in connection with the management of the affairs of a subsidiary undertaking of the company;

(c) as consideration in connection with the director's retirement from office as such; or

(d) as consideration for or in connection with the director's retirement or ceasing to hold office as such, from—

(i) any other office or employment in connection with the management of the affairs of the company; and

(ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company.

(2) In this Division—

(a) a reference to compensation and consideration include benefits otherwise than in cash; and

(b) a reference to a payment has a corresponding meaning.

(3) For the purposes of this Division—

(a) a payment to a person connected with a director; or

(b) a payment to any person at the direction of, or for the benefit of, a director or a person connected with the director, is taken to be a payment to the director.

(4) A reference in this Division to a payment by a person includes a payment by another person at the direction of, or on behalf of, the first-mentioned person.

181. Amounts taken to be payments for loss of office

(1) This section applies if, in connection with a transfer of the kind referred to in section 183 or 184, a director of the company—

(a) is to cease to hold office; and

(b) is to cease to be the holder—

(i) of any other office or employment in connection with the management of the affairs of the company; and

(ii) of any office or employment in connection with the management of the affairs of any subsidiary undertaking of the company.

(2) If in connection with any such transfer—

(a) the price to be paid to the director for shares in the company held by the director is in excess of the price that could at the time have been obtained by other holders of similar shares; and

(b) any valuable consideration is given to the director by a person other than the company, the excess, or the money value of the consideration, is taken for the purposes of those sections to be a payment for loss of office.

182. Members' approval required for payment by company

(1) A company may not make a payment for loss of office to a director of the company unless the payment has been approved by a resolution of the members of the company.

(2) A company may not make a payment for loss of office to a director of its holding company unless the payment has been approved by a resolution of the members of the company and each of the companies that are associated with it.

(3) A resolution approving a payment to which this section applies can be passed only if a memorandum setting out particulars of the proposed payment (including the amount) is made available to the members of the company whose approval is sought—

(a) in the case of a written resolution—by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to the director;

(b) in the case of a resolution at a meeting—by being made available for inspection by the members both—

(i) at the company's registered office for not less than fourteen days ending with the date of the meeting; and

(ii) at the meeting itself.

(4) An approval is not required to be obtained under this section from the members of a body corporate that—

(a) is not a company registered under this Act; or

(b) is a wholly-owned subsidiary of another body corporate.

183. Members' approval required for payment in connection with transfer of undertaking etc

(1) A person may not make a payment for loss of office to a director of a company in connection with the transfer of the whole or any part of the undertaking or property of the company unless the payment has been approved by a resolution of the members of the company.

(2) A person may not make a payment for loss of office to a director of a company in connection with the transfer of the whole or any part of the undertaking or property of a subsidiary of the company, unless the payment has been approved by a resolution of the members of each of the companies.

(3) A resolution approving a payment to which this section applies can be passed only if a memorandum setting out particulars of the proposed payment (including is its amount) is made available to the members of the company whose approval is sought—

(a) in the case of a written resolution—by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to the director;

(b) in the case of a resolution at a meeting —by being made available for inspection by the members both —

(i) at the company's registered office for not less than fourteen days ending with the day before the date of the meeting; and

(ii) at the meeting itself.

(4) An approval is not required to be obtained under this section from the members of a body corporate that—

(a) is not a company registered under this Act; or

(b) is a wholly-owned subsidiary of another body corporate.

(5) A payment made in accordance with an arrangement—

(a) entered into as part of the agreement for the relevant transfer, or within one year before or two years after the date on which that agreement is entered into; and

(b) to which the company whose undertaking or property is transferred, or any person to whom the transfer is made, is privy, is presumed, except in so far as the contrary is shown, to be a payment to which this section applies.

184. Members' approval required for payment in connection with share transfer

(1) A person may not make a payment for loss of office to a director of a company in connection with a transfer of shares in the company, or in a subsidiary of the company, resulting from a takeover bid, unless the payment has been approved by a resolution of the relevant shareholders.

(2) The relevant shareholders are the holders of the shares to which the bid relates and any holders of shares of the same class as any of those shares.

(3) A resolution approving a payment to which this section applies can be passed only if a memorandum setting out particulars of the proposed payment (including its amount) is made available to the members of the company whose approval is sought-—

(a) in the case of a written resolution—by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to the director;

(b) in the case of a resolution at a meeting —by being made available for inspection by the members both—

(i) at the company's registered office for not less than fourteen days ending with the day before the date of the meeting; and

(ii) at the meeting itself.

(4) Neither the person making the offer, nor any associate of that person, is entitled to vote on the resolution, but—

(a) if the resolution is proposed as a written resolution, they are entitled (if they would otherwise be so entitled) to be sent a copy of it; and

(b) at any meeting to consider the resolution they are entitled, if they would otherwise be so entitled, to be given notice of the meeting, to attend and speak and if present, either in person or by proxy, to count towards the quorum.

(5) If at a meeting to consider the resolution a quorum is not present, and after the meeting has been adjourned to a later date a quorum is again not present, the payment is, for the purposes of this section, taken to have been approved.

(6) An approval is not required to be obtained under this section from shareholders in a body corporate that—

(a) is not a company registered under this Act; or

(b) is a wholly-owned subsidiary of another body corporate.

(7) A payment made in accordance with an arrangement—

(a) entered into as part of the agreement for the relevant transfer and within one year before or two years after the date that agreement is entered into; and

(b) to which the company whose shares are the subject of the bid, or any person to whom the transfer is made, is privy, is presumed, except in so far as the contrary is shown, to be a payment to which this section applies

185. Exception for payments in discharge of legal obligations etc

(1) An approval is not required under section 182, 183 or 184 for a payment made in good faith—

(a) in discharge of an existing legal obligation;

(b) as damages for breach of such an obligation;

(c) in settling or compromising any claim arising in connection with the termination of a person's office or employment; or

(d) as a pension for past services.

(2) In relation to a payment referred to in section 182, an existing legal obligation is an obligation of the company, or any body corporate associated with it, that was not entered into in connection with, or in consequence of, the event giving rise to the payment for loss of office.

(3) In relation to a payment to which either section 183 or 184 applies, an existing legal obligation is an obligation of the person making the payment that was not entered into for the purposes of, in connection with or in consequence of, the relevant transfer.

(4) In the case of a payment—

(a) to which both sections 182 and section 183 apply; or

(b) to which both sections 182 and section 184 apply, subsection (2) applies and not subsection (3).

(5) A payment part of which is within subsection (1) applies and part of which is not is to be treated as if the parts were separate payments.

186. Exception for small payments

(1) An approval is not required under section 182, 183 or 184 if—

(a) the relevant payment is made by the company or any of its subsidiaries; and

(b) the amount or value of the payment, together with the amount or value of any other relevant payments, does not exceed thirty thousand shillings.

(2) For the purpose of subsection (1), "other relevant payments" are payments for loss of office in relation to which the relevant conditions are satisfied.

(3) If the payment is one to which section 182 applies, the relevant conditions are that the other payment was or is paid—

(a) by the company making the relevant payment or any of its subsidiaries;

(b) to the director to whom that payment is made; and

(c) in connection with the same event

(4) If the payment is one to which section 183 or 184 applies, the conditions are that the other payment was, or is, paid in connection with the same transfer—

(a) to the director to whom the relevant payment was made; and

(b) by the company making that payment or any of its subsidiaries.

187. Payments made without approval: civil consequences

(1) If a payment is made in contravention of section 182—

(a) the payment is held by the recipient on trust for the company making the payment; and

(b) any director who authorised the payment is jointly and severally liable to indemnify the company that made the payment for any loss resulting from it.

(2) If a payment is made in contravention of section 183, the payment is held by the recipient on trust for the company whose undertaking or property is or is proposed to be transferred.

(3) If a payment is made in contravention of section 184—

(a) the payment is held by the recipient on trust for persons who have sold their shares as a result of the offer made; and

(b) the expenses incurred by the recipient in distributing the amount of the payment among those persons are to be borne by the director and not retained out of that amount.

(4) If a payment contravenes both sections 182 and 183, subsection (2) applies instead of subsection (1).

(5) If a payment contravenes both sections 182 and 184, subsection (3) applies instead of subsection (1), unless the Court directs otherwise.

188. Approval by written resolution: accidental failure to send memorandum

(1) If—

(a) approval under this Division is sought by written resolution; and

(b) a memorandum is required under this Division to be sent or submitted to every eligible member before the resolution is passed, an accidental failure to send or submit the memorandum to one or more members is to be disregarded for the purpose of determining whether the requirement has been satisfied.

(2) Subsection (1) has effect subject to the company's articles.

189. What happens if approval is required under more than one provision

(1) An approval may be required under more than one section of this Division.

(2) If an approval is required under more than one section of this Division, the company shall comply with each applicable section.

(3) Subsection (2) does not require a separate resolution for the purposes of each provision.

(4) If a company fails to comply with subsection (2), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

Division 7 — Requirements with respect to directors' service contracts

190. Directors' service contracts

(1) For the purposes of this Division, a contract is a director's service contract if it is a contract under which—

(a) a director of a company undertakes personally to perform services (as director or otherwise) for the company, or for a subsidiary of the company; or

(b) services (as director or otherwise) that a director of a company undertakes personally to perform are made available by a third party to the company, or to a subsidiary of the company.

(2) The provisions of this Part relating to directors' service contracts apply to the terms of a person's appointment as a director of a company and are not restricted to contracts for the performance of services outside the scope of the ordinary duties of a director.

191. Company to keep copy of contract or memorandum of terms available for inspection

(1) A company shall keep available for inspection—

(a) a copy of each director's service contract with the company or with a subsidiary of the company; or

(b) if the contract is not in writing – a written memorandum setting out the terms of the contract.

(2) Except in so far as the regulations otherwise provide, the company shall keep the copy of the service contract or the memorandum available for inspection at the company's registered office.

(3) The company shall retain the copy of the service contract or the memorandum for not less than one year from the date of termination or expiry of the relevant contract and shall keep it available for inspection during that period.

(4) If a company fails to comply with a requirement of this section, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(5) If, after a company or any of its officers is convicted of an offence under subsection (4), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

(6) This section applies to a variation of a director's service contract as it applies to the original contract.

192. Right of member to inspect and to obtain copy of memorandum

(1) This section applies to a company that is required to keep a copy of a director's service contract, or a memorandum setting out the terms of the contract, available in accordance with section 191.

(2) A company to which this section applies shall, on being requested to do so by a member of the company, make the copy of the service contract, or the memorandum, available for inspection by the member without charge.

(3) A company to which this section applies shall, within seven days after being requested to do so by a member of the company, provide the member with a copy of the relevant service contract or memorandum, subject to payment of the prescribed fee if any.

(4) If the company fails without reasonable excuse to comply with a request made under subsection (2) or (3), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(5) If, after a company or any of its officers is convicted of an offence under subsection (4), the company continues to fail to comply with the relevant request, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

(6) If a company refuses to allow an inspection as requested under subsection (2), or to provide a copy of the service contract or memorandum requested under subsection (3), the Court may, on the application of a person affected by the refusal, make an order compelling the company to allow an immediate inspection of the service contract or memorandum, or to provide that person 40 with a copy of it.

Division 8— Contracts with sole directors

193. Contract with sole member who is also a director

(1) If—

(a) a limited company having only one member enters into a contract with the sole member;

(b) the sole member is also a director of the company; and

(c) the contract is not entered into in the ordinary course of the company's business. the company shall, unless the contract is in writing, ensure that the contract complies with subsection (2).

(2) A contract complies with this subsection if the terms are either—

(a) set out in a written memorandum; or

(b) recorded in the minutes of the first meeting of the directors of the company following the making of the contract.

(3) If a company fails to comply with this section, the company and the director commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(4) Failure to comply with this section in relation to a contract does not affect the validity of the contract.

(5) This section does not affect the operation of any other enactment or rule of law applying to contracts between a company and a director of the company.

Division 9 — Directors' liabilities

194. Provisions protecting directors from liability

(1) This section applies to the following provisions—

(a) a provision of a company's constitution;

(b) a provision of any contract, scheme or arrangement to which the company or a related company is a party;

(c) a provision of any other document of a class prescribed by the regulations for the purposes of this section.

(2) A provision that purports to exempt a director of a company, to any extent, from any liability that would otherwise attach to the director 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 provides (directly or indirectly) an indemnity for a director of the company, or of an associated company, against a liability attaching to the director in connection with any negligence, default, breach of duty or breach of trust in relation to the company concerned is void, except as permitted under this Act.

195. Provision of insurance not prevented

Section 194(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 a director of an associated company.

196. Qualifying third party indemnity provision not affected

(1) Section 194(3) does not apply to a qualifying third party indemnity provision.

(2) In this section, "third party indemnity provision", in relation to a director, 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 is void to the extent that it provides an indemnity against—

(a) a liability of the director to pay—

(i) a fine imposed in criminal proceedings; or

(ii) an amount payable to a regulatory authority as a penalty in respect of non-compliance with a requirement of a regulatory nature; or

(b) a liability incurred by the director—

(i) in defending criminal proceedings in which the director is convicted; or

(ii) in defending civil proceedings brought by the company, or an associated company, in which judgment is given against the director.

(4) The reference in subsection (3)(b) to a conviction or judgment is a reference to the final decision in the proceedings.

(5) For purpose of subsection (4)—

(a) a conviction or judgment becomes final—

(i) if not appealed against—at the end of the period for bringing an appeal; or

(ii) if appealed against—at the time when the appeal, or any further appeal, is disposed of; and

(b) an appeal is disposed of—

(i) if it is determined and the period for bringing any further appeal has ended; and

(ii) if it is abandoned or otherwise ceases to have effect.

197. Directors to disclose qualifying indemnity provision in directors' report

(1) In this section, "qualifying indemnity provision" means—

(a) a qualifying third party indemnity provision; and

(b) a qualifying pension scheme indemnity provision.

(2) If, when a directors' report is approved, a qualifying indemnity provision (whether made by the company or otherwise) has effect for the benefit of one or more directors of the company, the directors shall state in the report that the provision has effect.

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

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

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

198. Copy of qualifying indemnity provision to be available for inspection

(1) This section has effect if a qualifying indemnity provision is made for a director of a company and—

(a) applies to the company (whether the provision is made by the company or by an associated company); and

(b) if the provision is made by an associated company, also applies to that company.

(2) Except in so far as the regulations otherwise provide, the company, or each of the companies concerned, shall keep available for inspection at its registered office—

(a) a copy of the qualifying indemnity provision; or

(b) if the provision is not in writing, a written memorandum setting out its terms.

(3) A company to which this section applies shall retain the copy or memorandum for at least one year from the date of termination or expiry of the relevant provision and shall keep it available for inspection during that period.

(4) If a company fails to comply with subsection (2) or (3), the company, and each officer of the company who is in default commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(5) If, after a company or any of its officers is convicted of an offence under subsection (4), the company continues to fail to comply with the requirement referred to in subsection (2) or (3), the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

(6) This section applies to a variation of a qualifying indemnity provision as it applies to the original provision.

199. Right of member to inspect and request copy of qualifying indemnity provision

(1) This section applies to a company that is required to keep available for inspection a copy of a qualifying indemnity provision or memorandum in accordance with section 198.

(2) A company to which this section applies shall, on being requested to do so by a member of the company, allow the member to inspect a copy of the qualifying indemnity provision or memorandum without charge.

(3) A company to which this section applies shall, within seven days after being requested to do so by a member of the company, provide the member with a copy of the qualifying indemnity provision or the memorandum, subject to payment of the prescribed fee (if any).

(4) If a company fails to comply with subsection (1) or (2), the company, and every officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(5) If, after a company or any of its officers is convicted of an offence under subsection (4), the company continues to fail to comply with the relevant request, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

(6) If a company refuses to allow an inspection as requested under subsection (2), or to provide a copy of a qualifying indemnity provision or memorandum as requested under subsection (3), the Court may, on the application of a person affected by the refusal, make an order compelling the company to allow an immediate inspection of the copy or memorandum, or to provide that person with a copy of it.

Division 10 — Protection of information relating to directors

200. Interpretation: Division 10

(1) The purpose of this Division is to protect—

(a) information about a director's usual residential address; and

(b) the information that the director's service address is the director's usual residential address.

(2) In this Division—

"**director**" includes a former director but does not include a director who is not a natural person;

"**protected information**" is information of the kind referred to in subsection (1).

(3) Information does not cease to be protected information only because a person ceases to be a director of the company.

201. Protected information: restriction on use or disclosure by company

(1) A company shall not use or disclose protected information about any of its directors, except—

(a) for communicating with the director concerned;

(b) in order to comply with any requirement of this Act concerning particulars to be lodged with the Registrar for registration; or

(c) in accordance with section 204.

(2) Subsection (1) does not prohibit protected information relating to a director from being used or disclosed with the consent of the director.

202. Protected information: restriction on use or disclosure by Registrar

(1) The Registrar shall omit protected information from the material on the register that is available for inspection if—

(a) it is contained in a document lodged with the Registrar in which the information is required to be stated; and

(b) in the case of a document having more than one part, it is contained in a part of the document in which the information is required to be stated.

(2) The Registrar is not obliged—

(a) to check other documents, or other parts of the document, to ensure the absence of protected information; or

(b) to omit from the material that is available for public inspection anything registered before this Division came into force.

(3) The Registrar may not use or disclose protected information except as permitted by section 203 or in accordance with section 204.

203. Permitted use or disclosure by the Registrar

(1) The Registrar may use protected information relating to a director for communicating with the director.

(2) The Registrar may disclose protected information—

(a) to a prescribed public authority; or

(b) to a credit reference agency.

(3) The Regulations may—

(a) specify conditions for the disclosure of protected information in accordance with this section;

(b) provide for fees to be charged.

(4) The regulations may also require the Registrar, on application, to refrain from disclosing protected information relating to a director to a credit reference agency.

(5) Regulations under subsection (4) may specify—

(a) who may make such an application;

(b) the grounds on which an application can be made;

(c) the information to be included in and documents to accompany an application; and

(d) how an application is to be determined.

(6) Regulations made for subsection (5)(d) may in particular—

(a) confer a discretion on the Registrar; and

(b) provide for a question to be referred to a person other than the Registrar for the purposes of determining the application.

(7) In this section—

“credit reference agency" means a person carrying on a business that comprises or includes the provision of information relevant to the financial standing of natural persons, being information collected by the agency for that 40 purpose; and

"public authority" includes any person or body that has functions of a public nature.

204. Disclosure under Court order

(1) The Court may make an order for the disclosure of protected information by the company or by the Registrar if—

(a) there is evidence that service of documents at a service address other than the director's usual residential address is not effective to bring them to the notice of the director; or

(b) it is necessary or expedient for the information to be provided in connection with the enforcement of an order or decree of the Court,

and the Court is otherwise satisfied that it is appropriate to make the order.

(2) The Court may make an order for disclosure by the Registrar only if the company—

(a) does not have the director's usual residential address; or

(b) has been dissolved.

(3) The order is required to specify the persons to whom, and purposes for which, disclosure is authorised.

(4) Any of the following persons may make an application for an order under this section:

(a) a liquidator of the company;

(b) a creditor or member of the company;

(c) any other person appearing to the Court to have a sufficient interest in the matter concerned.

205. Circumstances in which Registrar may place address on the public record

(1) The Registrar may place a director's usual residential address on the public record if—

(a) communications sent by the Registrar to the director and requiring a response within a specified period remain unanswered; or

(b) there is evidence that service of documents at a service address provided instead of the director's usual residential address is not effective to bring them to the notice of the director.

(2) The Registrar shall give notice of the proposal to place a director's usual residential address on the public record—

(a) to the director; and

(b) to every company of which the Registrar has been notified that the person is a director.

(3) The Registrar shall in the notice—

(a) state the grounds on which it is proposed to place the director's usual residential address on the public record; and

(b) specify a period within which representations may be made to the Registrar before that is done.

(4) The Registrar shall ensure that the notice is sent to the director at the director's usual residential address, unless it appears to the Registrar that service at that address may be ineffective to bring it to the person's notice, in which case it may be sent to any service address provided instead of that address.

(5) The Registrar shall take account of any representations received within the specified period.

(6) For the purposes of this section, the period specified is to be a period not less that fifteen days and not more than thirty days after the relevant communication is sent to the director.

206. Placing the director’s address on the public record

(1) On deciding in accordance with section 205 that a director's usual residential address is to be placed on the public record, the Registrar shall proceed as if notice of a change of registered particulars had been given—

(a) stating that address as the director's service address; and

(b) stating that the director's usual residential address is the same as the director's service address.

(2) The Registrar shall give notice of having done so—

(a) to the director; and

(b) to the company.

(3) On receipt of the notice, the company shall—

(a) enter the director's usual residential address in its register of directors as the director's service address; and

(b) state in its register of directors' residential addresses that the directors' usual residential address is the same as the director's service address.

(4) A company that has been notified by a director of a more recent address as the director's usual residential address shall—

(a) enter that address in its register of directors as the director's service address; and

(b) lodge with the Registrar for registration a notice of the director's new residential address.

(5) If a company fails to comply with subsection (3) or (4), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(6) A director whose usual residential address has been placed on the public record by the Registrar under this section may not register a service address other than the director's usual residential address for a period of five years from the date of the Registrar's decision.

Division 11 — Supplementary provisions

207. Ratification of acts of directors

(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 can be taken only by the members. However, unless the company's articles require unanimity or a higher majority, such a decision can be approved by an ordinary resolution of the members.

(2) A resolution to ratify the conduct of a director of a company is passed at a meeting of the members only if the required majority is obtained after disregarding the votes (if any) cast in favour of the resolution by the director, and by any member connected with the director.

(3) Subsection (2) does not prevent the director or any such member from—

(a) attending the meeting at which the decision is considered; and

(b) being counted as part of the quorum for the meeting and taking part in its proceedings.

(4) If the resolution is proposed as a written resolution, neither the director (if a member of the company) nor any member who is connected with the director is eligible to vote on the resolution.

(5) For the purposes of this section—

(a) "conduct" includes acts and omissions;

(b) "director" includes a former director; and

(c) in section 122, subsection (3) does not apply.

(6) This section does not affect—

(a) the validity of a decision taken by unanimous consent of the members of the company; and

(b) any power of the directors to agree not to sue, or to settle or release a claim made by them on behalf of the company; or

(c) the operation of any other enactment or rule of law imposing additional requirements for valid ratification or of any rule of law as to acts that are incapable of being ratified by the company.

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

(1) The powers of the directors of a company include a power to provide for the benefit of persons employed or formerly employed by the company, or any subsidiary 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 despite the general duty imposed by section 143 on a director to promote the success of the company.

(3) The power conferred by subsection (1) may be exercised only if approved by—

(a) an ordinary resolution of the company or, if the company's articles require a higher majority or unanimity, a resolution passed by that majority or unanimously; or

(b) a resolution of the directors authorised by the articles of a company.

209. Limitations on the exercise of the power to make provision for employees

(1) A resolution of the directors under section 208(3) is not sufficient authority for payments to or for the benefit of directors, or former directors.

(2) The power conferred by section 208(1) is subject to compliance with any other requirement specified by the company's articles.

(3) Any payment under section 208 is void unless it is made—

(a) before the liquidation of the company has commenced; and

(b) out of profits of the company that are available for the payment of dividends.

210. Minutes of directors' meetings

(1) A company shall ensure that minutes of all proceedings at meetings of its directors are recorded.

(2) A company shall keep the minutes of each meeting of its directors' for at least ten years from the date of the meeting.

(3) If a company fails to comply with subsection (1) or (2), the company, and each director of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(4) If a prosecution for an offence under subsection (3) is brought, every person who was a director at the time the meeting was held is taken to be a director of the company for the purposes of the prosecution and disposal of the offence, even if the person is no longer a director of the company.

211. Minutes taken to be evidence of proceedings at meeting of company until contrary proved

(1) Minutes of a meeting of the directors recorded in accordance with section 210 are, if authenticated by the person presiding at the meeting or by the person presiding at the next directors' meeting, evidence of the proceedings of the meeting.

(2) If minutes of a meeting are recorded in accordance with section 210—

(a) the meeting is presumed to have been duly held and convened;

(b) all proceedings at the meeting are presumed to have duly taken place; and

(c) all appointments at the meeting are presumed to have been validly made.

212. Transactions under foreign law

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

Part X – DISQUALIFICATION OF DIRECTORS

Division 1 —Introductory provision

213. Interpretation: Part X

In this Part, unless the context otherwise requires "disqualification order" means a disqualification order made under this Part or insolvency related laws or any other enactment prescribed by the regulations for the purposes of this section.

Division 2 —Disqualification orders and disqualification undertakings

214. Effect of order disqualifying person from being a director or secretary

(1) If a court makes a disqualification order against a person, the person is, unless the court gives leave to the contrary, disqualified from—

(a) being or acting as a director or secretary of a company;

(b) being or acting as a liquidator, provisional liquidator or administrator of a company;

(c) being or acting as a supervisor of a voluntary arrangement approved by a company; or

(d) in any way, whether directly or indirectly, being concerned in the promotion, formation or management of a company, for such period as may be specified in the order.

(2) A period of disqualification specified in a disqualification order begins at the end of twenty-one days from and including the date of the order, unless the relevant court otherwise orders.

(3) If a disqualification order is made against a person who is already subject to another such order, or to a disqualification undertaking, the periods specified in those orders or in the order and the undertaking run concurrently.

(4) A disqualification order may be made on grounds that are or include matters other than criminal convictions, whether or not the person in respect of whom it is to be made may be criminally liable in respect of those matters.

215. Disqualification on conviction for offence

(1) On convicting a person of an offence relating to the promotion, formation, management, liquidation or administration of a company, the court may make a disqualification order against the person.

(2) The maximum period of disqualification that can be imposed in a disqualification order made under this section is—

(a) if the disqualification order is made by a magistrate's court, five years; and

(b) in any other case, fifteen years.

(3) In this section, "court" includes a magistrate's court.

(4) The application of this section is not limited to offences under this Act.

216. Disqualification for fraud or breach of duty committed while company in liquidation or under administration

(1) This section applies to holders of the following offices of, or in relation to, a company:

(a) an officer of the company;

(b) a liquidator or provisional liquidator of the company;

(c) if the company is under administration — the administrator,

(2) A court may make a disqualification order against a person who holds or formerly held an office to which this section applies if, while the company was under administration or in liquidation, it is satisfied that the person has, been found guilty of—

(a) fraud in relation to the company; or

(b) any breach of duty as the holder of such an office.

(3) The maximum period that can be imposed in a disqualification order made under this section is fifteen years

217. Disqualification on conviction of offence involving failure to lodge returns or other documents with Registrar

(1) This section applies to offences of which a person is convicted in consequence of a failure to comply with any provision of this Act or the insolvency related laws requiring—

(a) a return, financial statement or other document to be lodged with, or sent to; or

(b) a matter to be notified to, the Registrar, whether the failure is by the person or any company of which the person is an officer.

(2) If a person is convicted of an offence to which this section applies, the convicting court may make a disqualification order against the person if, during the five years ending with the date of the conviction, the person has been convicted of no fewer than three such offences.

(3) The offences referred to in subsection (2) may include the one of which the person is convicted and any other offence to which this section applies of which the person is convicted on the same occasion.

(4) The maximum period that can be imposed in a disqualification order made under this section is five years.

218. Duty of court to disqualify unfit directors and secretaries of insolvent companies

(1) A court shall make a disqualification order against a person if satisfied, on an application made to it under section 219—

(a) that the person is or has been a director or secretary of a company that has at any time become insolvent whether while the person was a director or secretary or subsequently; and

(b) that the conduct of the person as a director or secretary of that company either taken alone or taken together with the person's conduct as a director or secretary of any other company or companies makes the person unfit to take part in the management of a company.

(2) If a court is required to determine whether a person's conduct as a director or secretary of any particular company or companies makes the person unfit to be concerned in the management of a company, the Court shall, in relation to the director's conduct as a director or secretary of that company, or each of those companies, have regard in particular—

(a) to the matters referred to in Part 1 of the Second Schedule; and

(b) if the company has become insolvent, to the matters referred to in Part 2 of that Schedule, and references in that Schedule to the director or secretary and the company are to be read accordingly.

(3) For the purposes of this section , a company becomes insolvent if—

(a) the company is placed in liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the liquidation; or

(b) the company is under administration.

(4) A reference in this section to the conduct of a person as a director or secretary of a company or companies include, if 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.

(5) The maximum period that can be imposed in a disqualification order made under this section is fifteen years and the minimum period is two years.

219. Applications to court under section 219

(1) If the Attorney General is satisfied that it would be in the public interest for a disqualification order under section 218 to be made against a person—

(a) the Attorney General; or

(b) if the Attorney General so directs in the case of a person who is or has been a director or secretary of a company that is being liquidated by the Court—the Official Receiver, may make an application to a court for such an order.

(2) Except with the leave of the relevant court, an application for the making of an order under section 218 of a disqualification order against a person may not be made after the expiry of two years from and including the day on which the company of which the person is or has been a director or secretary became insolvent.

(3) If satisfied that the conditions referred to in section 218(1) are complied with in relation to a person who has offered to enter into a disqualification undertaking, the Attorney General may accept the undertaking if of the view that it would be in the public interest to do so, instead of applying, or proceeding with an application, for a disqualification order.

(4) Subsections (5) to (7) apply to the following office holders:

(a) in the case of a company that is being liquidated by the Court—the Official Receiver;

(b) in the case of a company that is being liquidated otherwise that by the Court—the liquidator;

(c) in the case of a company that is under administration —the administrator.

(5) If an office holder is satisfied that the conditions specified in section 218(1) are complied with in relation to a person who is or has been a director or secretary of the company concerned, the office-holder shall immediately report the matter to the Attorney General.

(6) The Attorney General or the Official Receiver may request an office holder or former office holder—

(a) to provide the Attorney General or Official Receiver with such information with respect to the conduct of a person as a director or secretary of the company; and

(b) to produce and permit inspection of such records relevant to the conduct of the person as a director or secretary, as the Attorney General or the Official Receiver may reasonably require for the purpose of determining whether to make an application under subsection (1).

(7) As soon as practicable after receiving a request under subsection (6), an office holder or former office holder shall comply with the request so far as it is possible to do so.

(8) An officer holder or former office holder who, without reasonable excuse, fails to comply with subsection (5) or (6) commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

220. Disqualification undertakings

(1) In the circumstances specified in section 218, the Attorney General may accept a disqualification undertaking by any person that, for a period specified in the undertaking, the person—

(a) will not, without the leave of a court of competent jurisdiction—

(i) act or accept an appointment as a director or secretary of a company; or

(ii) in any way (whether directly or indirectly) be concerned in the promotion, formation or management of a company; and

(b) will not act as a liquidator, provisional liquidator or administrator of a company.

(2) The maximum period that may be specified in a disqualification undertaking is fifteen years and the minimum period that may be so specified is two years.

(3) If a disqualification undertaking by a person who is already subject to such an undertaking or to a disqualification order is accepted, the periods specified in those undertakings or the undertaking and the order run concurrently.

(4) In determining whether to accept a disqualification undertaking by any person, the Attorney General may take account of matters other than criminal convictions even if the person may be criminally liable in respect of those matters.

221. Disqualification after investigation of company

(1) If, as result of a report of an investigation conducted under Part XXX, the Attorney General considers that it would be in the public interest for a disqualification order to be made against a person who is or has been a director or secretary of any company, the Attorney General 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 if, on an application under this section, it is satisfied that the person's conduct in relation to the company makes that person unfit to take part in the management of a company.

(3) The maximum period that can be imposed in a disqualification order made under this section is fifteen years.

(4) If, in consequence of such an investigation—

(a) the Attorney General is of the opinion that the conduct of a person in relation to a company of which the person is or has been a director or secretary makes the person unfit to be concerned in the management of a company; and

(b) the person has offered to provide a disqualification undertaking, the Attorney General may, instead of applying, or proceeding with an application, for a disqualification order, accept the undertaking if of the view that it would be in the public interest to do so.

222. Variation of disqualification undertaking

(1) The relevant court may, on the application of a person who is subject to a disqualification undertaking—

(a) reduce the period for which the undertaking is to be in force; and

(b) provide for it to cease to be in force.

(2) On the hearing of an application under subsection (1), the Attorney General shall appear and draw the attention of the Court to any matters that appear to the Attorney General to be relevant, and may personally give evidence or call witnesses.

(3) In this section, "relevant court" means a court to which, if the Attorney General had applied for a disqualification order under the relevant section at the time when the disqualification order under the relevant section at the time when the disqualification undertaking was provided, the application could have been made.

223. Offence for undischarged bankrupts to act as director or secretary of company

(1) A person who, except with the leave of a court—

(a) acts as a director or secretary of a company; and

(b) directly or indirectly participates in its promotion, formation or management, while an undischarged bankrupt commits an offence

(2) A court may not give leave under subsection (1) unless notice of intention to apply for it has been served on the Official Receiver.

(3) If of the opinion that it would be contrary to the public interest for the application to be granted, the Official Receiver shall attend the hearing of the application and oppose it.

(4) A person found guilty of offence under subsection (1) is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both.

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

(1) For the purposes of this section, a person is personally responsible for all the relevant debts of a company if at any time—

(a) the person is concerned in the management of the company in contravention of a disqualification order or of section 223; or

(b) as a person who is involved in the management of the company, the person acts or is willing to act on instructions given without the leave of the Court by another person whom the person knows at that time to be the subject of a disqualification order or to be an undischarged bankrupt.

(2) A person who is personally liable under this section for the relevant debts of a company 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 referred to in that paragraph.

(4) For the purposes of this section, a person is involved in the management of a company if the person —

(a) is a director or secretary of the company; or

(b) is concerned, whether directly or indirectly, or participates, 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, without the leave of the Court, at any time acted on instructions given by another person -whom the person 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 afterwards to act on any instructions given by that other person.

225. Application for leave under an order or undertaking

(1) A person may make an application to the Court for a disqualification order only if the person has given the person against whom the order is sought a notice of intention to apply for such an order.

(2) At the hearing of the application, the person against whom a disqualification order is sought is entitled to appear as respondent to the application.

(3) An application to a court for a disqualification order may be made by the Attorney General, the Registrar, 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.

(4) On the hearing of an application made by the Attorney General, the Registrar, the Official Receiver the liquidator, the applicant shall appear and draw the attention of the Court to any matters that appear to be relevant, and may give evidence or call witnesses.

Division 3 — Foreign restrictions

226. Application for leave under an order or undertaking

(1) If a person is subject to a disqualification order made by the Court, an application for leave for the purposes of section 214(1) may be made only to the Court.

(2) If—

(a) a person is subject to a disqualification order made under section 215 by a court other than the Court; and

(b) a person is subject to a disqualification order made under section 217, an application for leave for the purposes of section 214(1) may be made only to the court that convicted the person of the relevant offence or, if the person was convicted of more than one such offence, of any of those offences.

(3) If a person is subject to a disqualification undertaking, any application for leave for the purposes of section 222(1) may be made only to a court to which, if the Attorney General had applied for a disqualification order under the relevant section at that time, the application could have been made.

(4) If a person is subject—

(a) to two or more disqualification orders or undertakings; or

(b) to one or more disqualification orders and to one or more disqualification undertakings, an application for leave for the purposes of section 214(1) or 222(1) may be made only to a court to which any such application relating to the latest order to be made, or undertaking to be accepted, could be made.

(5) On the hearing of an application for leave for the purposes of section 214(1) or 222(1), the Attorney General shall appear and draw the attention of the court to any matters that appear to the Attorney General to be relevant, and may personally give evidence or call witnesses.

227. Register of disqualification orders and disqualification undertakings

(1) The Registrar shall establish and maintain a register of disqualification orders and disqualification undertakings in which the Registrar shall enter all particulars, provided in accordance with subsection (2) or (3).

(2) Whenever a court—

(a) makes a disqualification order;

(b) takes action in consequence of which such an order is varied or is cancelled; or

(c) grants leave for a person who is subject to such an order to do anything that the order would otherwise prohibit or restrict the person from doing, the prescribed officer of the court shall, within fourteen days after the order is made, the action is taken or leave is granted, lodge with the Registrar for registration under this section a copy of the order or written particulars of the action or leave.

(3) As soon as practicable after accepting a disqualification undertaking, the Attorney General shall lodge with the Registrar a copy of the undertaking for registration under this section.

(4) On becoming aware that a disqualification order or disqualification undertaking particulars of which are entered in the register has been cancelled or otherwise ceased to be in force, the Registrar shall delete the entry from the register and all particulars relating to it that have been lodged with the Registrar under subsection (2) or (3).

(5) The Registrar shall keep the register required by this section open for inspection by members of the public on payment of the prescribed fee (if any).

(6) In this section, "prescribed officer", in relation to a court, means the registrar of the court or, if the court does not have a registrar, the clerk or other officer of the court responsible for the administration of the court's day-to-day business.

228. Offence to breach of disqualification order or undertaking

A person who, while subject to a disqualification order or disqualification undertaking, contravenes the order or undertaking commits an offence and on conviction liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding five years, or to both.

229. Disqualified person may apply to the Court for permission to act in way that would otherwise breach disqualification

(1) A person who is disqualified under this Part may apply to the Court for permission to act in a way that would otherwise be a breach of the disqualification.

(2) The Attorney General is entitled to appear or be represented at the hearing of an application made under subsection (1) and to give evidence or call witnesses at the hearing of such an application.

230. Statements from persons who are disqualified

(1) The regulations may require a statement or notice lodged with the Registrar under section 16, 135 or 248 that relates (wholly or partly) to a person who is a person subject to a disqualification order or disqualification undertaking from being a director or secretary of a company to be accompanied by an additional statement.

(2) The additional statement is a statement that the person has obtained permission from a court, on an application under regulations made for the purpose of section 229, to act as a director or secretary of a company.

231. Statements to be made public

(1) A statement that is lodged with the Registrar in accordance with regulations made for the purpose of section 230 is to be treated as a record relating to a company for the purposes of the Register.

(2) The regulations may prescribe the circumstances in which such a statement is to be, or may be—

(a) withheld from public inspection; or

(b) removed from the Register.

(3) The regulations may require such a statement 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 by the regulations.

232. Offence relating to statement

A person who—

(a) fails to comply with a requirement to lodge a statement with regulations made for the purpose of section 230; or

(b) lodges with the Registrar such a statement that the person knows, or who ought reasonably to know, is false or misleading in a material respect, commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both.

Division 3 — Foreign restrictions

233. Persons who are subject to foreign restrictions

(1) For the purposes of this Division, a person is subject to foreign restrictions if, under the law of a country or territory outside Kenya, the person—

(a) is, because of misconduct, incompetence or mental or physical incapacity—

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

(ii) required to obtain permission from a court or regulatory authority, or satisfy any other condition or requirement, before acting in connection with the affairs of a company; or

(b) has, because of misconduct, incompetence or mental or physical incapacity, 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, the person may act in connection with the affairs of a company.

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

(a) being a director of the company; or

(b) being concerned or taking part in the promotion, formation or management of the company.

(3) In this section—

(a) "company" means a company incorporated or formed under the law of the country or territory outside Kenya; and

(b) in relation to such a company, "director" means the holder of an office corresponding to that of director of a Kenyan company.

234. Disqualification of persons who are subject to foreign restrictions

(1) A person who is subject to foreign restrictions is disqualified from—

(a) being a director or secretary of a Kenyan company; or

(b) in any way, whether directly or indirectly, being concerned in the promotion, formation or management of a Kenyan company.

(2) A person ceases to be disqualified under subsection (1) on ceasing to be subject to foreign restrictions.

235. Persons subject to foreign restrictions to be personally liable for debts of company

(1) A person who—

(a) is a director or secretary of a company registered in Kenya; and

(b) is involved in the management of a Kenyan company, is personally responsible for all debts and other liabilities of the company incurred during a time when the person is subject to foreign restrictions.

(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 because 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 the person directly or indirectly participates in the management of the company.

(4) The regulations may provide for different cases under this section and, in particular, may distinguish between cases by reference to all or any of the following factors:

(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.

236. Registrar to establish and maintain Register of foreign restrictions

(1) The Registrar shall establish and maintain a register of foreign restrictions in which the Registrar shall enter particulars of foreign restrictions relating to a persons who is or may become a director or secretary of a Kenyan company or a local representative of a registered foreign company.

(2) On becoming aware that a person is or may be a person who is or may become a director or secretary of a Kenyan company or a local representative of a registered foreign company, the Registrar shall enter in the register particulars of, and of the foreign restrictions relating to, the person.

(3) On becoming aware that foreign restrictions recorded in the register in respect of a person have ceased to apply to the person, the Registrar shall cancel the entry and all particulars relating to it.

(4) The Registrar shall keep the register required by this section open for inspection by members of the public on payment of the prescribed fee (if any).

Division 4 — Supplementary provision

237. Admissibility in evidence of statements

(1) In any legal proceedings (whether or not under this Act), any statement made in compliance or purported compliance with a requirement imposed by or under this Part or the Fourth Schedule, or by or under any regulations made for the purposes of this Part, are admissible in evidence against any person making or concurring in making the statement.

(2) However, in criminal proceedings in which any such person is charged with an offence to which this subsection applies—

(a) no evidence relating to the statement may be adduced; and

(b) no question relating to it may be asked, by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(3) Subsection (2) applies to any offence other than—

(a) an offence (if any) that is created by the regulations for the purposes of this section; or

(b) an offence under—

(i) section 107 of the Penal Code (Cap. 63) (perjury and subornation of perjury); or

(ii) section 114 of that Code (false swearing).

Part XI – DERIVATIVE ACTIONS

238. Interpretation: Part XI

(1) In this Part, "derivative claim" means proceedings by a member of a company—

(a) in respect of a cause of action vested in the company; and

(b) seeking relief on behalf of the company.

(2) A derivative claim may be brought only—

(a) under this Part; or

(b) in accordance with an order of the Court in proceedings for protection of members against unfair prejudice brought under this Act.

(3) A derivative claim under this Part may be brought only in respect of a cause of action arising from an actual or proposed act or omission involving negligence, default, breach of duty or breach of trust by a director of the company.

(4) A derivative claim may be brought against the director or another person, or both.

(5) It is immaterial whether the cause of action arose before or after the person seeking to bring or continue the derivative claim became a member of the company.

(6) For the purposes of this Part—

(a) **"director"** includes a former director;

(b) a reference to a member of a company includes a person who is not a member but to whom shares in the company have been transferred or transmitted by operation of law.

239. Application for permission to continue derivative claim

(1) In order to continue a derivative claim brought under this Part by a member, the member has to apply to the Court for permission to continue it.

(2) If satisfied that the application and the evidence adduced by the applicant in support of it do not disclose a case for giving permission, the Court—

(a) shall dismiss the application; and

(b) may make any consequential order it considers appropriate.

(3) If the application is not dismissed under subsection (2), the Court—

(a) may give directions as to the evidence to be provided by the company; and

(b) may adjourn the proceedings to enable the evidence to be obtained.

(4) On hearing the application, the Court may—

(a) give permission to continue the claim on such terms as it considers appropriate;

(b) refuse permission and dismiss the claim; or

(c) adjourn the proceedings on the application and give such directions as it considers appropriate.

240. Application to Court for permission to continue claim as a derivative claim: how disposed of

(1) If—

(a) a company has brought a claim; and

(b) the cause of action on which the claim is based could be pursued as a derivative claim under this Part, a member of the company may apply to the Court for permission to continue the claim as a derivative claim on the ground specified in subsection (2).

(2) The ground is that—

(a) the manner in which the company commenced or continued the claim amounts to an abuse of the process of the Court;

(b) the company has failed to prosecute the claim diligently; and

(c) it is appropriate for the member to continue the claim as a derivative claim.

(3) If satisfied that the application and the evidence adduced by the applicant in support of it do not disclose a case for giving permission, the Court—

(a) shall dismiss the application; and

(b) may make any consequential order that it considers appropriate.

(4) If the application is not dismissed under subsection (3), the Court—

(a) may give directions as to the evidence to be provided by the company; and

(b) may adjourn the proceedings to enable the evidence to be obtained.

(5) On hearing the application, the Court may—

(a) give permission to continue the claim as a derivative claim on such terms as it considers appropriate;

(b) refuse permission and dismiss the application; or

(c) adjourn the proceedings on the application and give such directions as it considers appropriate.

241. Application for permission to continue claim as a derivative action

(1) If a member of a company applies for permission under section 239 or 240, the Court shall refuse permission if satisfied—

(a) that a person acting in accordance with section 144 would not seek to continue the claim;

(b) if the cause of action arises from an act or omission that is yet to occur–that the act or omission has been authorised by the company; or

(c) if the cause of action arises from an act or omission that has already occurred — that the act or omission—

(i) was authorised by the company before it occurred; or

(ii) has been ratified by the company since it occurred.

(2) In considering whether to give permission, the Court shall take into account the following considerations:

(a) whether the member is acting in good faith in seeking to continue the claim;

(b) the importance that a person acting in accordance with section 143 would attach to continuing it;

(c) if the cause of action results from an act or omission that is yet to occur, whether the act or omission could be, and in the circumstances would be likely to be—

(i) authorised by the company before it occurs; or

(ii) ratified by the company after it occurs;

(d) if the cause of action arises from an act or omission that has already occurred—whether the act or omission could be, and in the circumstances would be likely to be, ratified by the company;

(e) whether the company has decided not to pursue the claim;

(f) whether the act or omission in respect of which the claim is brought gives rise to a cause of action that the member could pursue in the member's own right rather than on behalf of the company.

(3) In deciding whether to give permission, the Court shall have particular regard to any evidence before it as to the views of members of the company who have no personal interest (direct or indirect) in the matter.

242. Application for permission to continue derivative claim brought by another member

(1) If a derivative claim—

(a) has been brought by a member of a company;

(b) was brought by a company and is continued by a member of the company as a derivative claim; or

(c) has been continued by a member of the company as a derivative claim, another member of the company may apply to the Court for permission to continue a derivative claim to which this section applies on the ground specified in subsection (2).

(2) The ground is that—

(a) the manner in which the proceedings have been commenced or continued by the claimant amounts to an abuse of the process of the Court;

(b) the claimant has failed to prosecute the claim diligently; and

(c) it is appropriate for the applicant to continue the claim as a derivative claim.

(3) If it appears to the Court that the application and the evidence provided by the applicant in support of it does not disclose a case for giving permission or leave, the Court—

(a) shall dismiss the application; and

(b) may make any consequential order that it considers appropriate.

(4) If the application is not dismissed under subsection (3), the Court—

(a) may give directions as to the evidence to be provided by the company; and

(b) may adjourn the proceedings to enable the evidence to be obtained.

(5) On hearing the application, the Court may—

(a) give permission to continue the claim on such terms as it considers appropriate;

(b) refuse permission and dismiss the application; and

(c) adjourn the proceedings on the application and give such directions as it considers appropriate.

Part XII – COMPANY SECRETARIES

243. Private company not required to have secretary

(1) A private company is required to have a secretary only if it has a paid up capital of five million shillings or more.

(2) If a private company does not have a secretary—

(a) anything authorised or required to be given or sent to, or served on, the company by being given or sent to, or served on its secretary —

(i) may be given or sent to, or served on, the company itself; and

(ii) if addressed to the secretary, is taken to 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 for that purpose by the directors.

244. Public company required to have secretary

(1) Every public company is required to have at least one secretary.

245. Direction requiring public company to appoint secretary

(1) If satisfied that a public company is failing to comply with section 244, the Attorney General may give the company a direction under this section.

(2) The Attorney General shall state in the direction that the company appears to be failing to comply with section 244 and—

(a) what the company is required to do in order to comply with the direction;

(b) the period within which it is to comply; and

(c) the consequence of failing to comply with the direction.

(3) The period specified under subsection (2)(b) may not be less than one month or more than three months after the date the direction is given.

(4) Unless the company is in fact complying with section 244, the company shall comply with the direction by—

(a) making the necessary appointment; and

(b) giving notice of the appointment under section 249, before the end of the period specified in the direction.

(5) If the company has already made the necessary appointment, it shall comply with the direction by giving notice of the appointment under section 249 before the end of the period specified in the direction.

(6) If a company fails to comply with a direction given to it under this section, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(7) If, after a company or any of its officers is convicted of an offence under subsection (6), the company continues to fail to comply with the direction, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

246. Qualifications of secretaries of public companies

(1) 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 tp them to have the requisite knowledge and experience to discharge the functions of a secretary of the company; and

(b) is the holder of a practising certificate issued under the Certified Public Secretaries of Kenya Act.

(2) A director of a public company who fails to comply with subsection (1) commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

247. Discharge of functions if office vacant or secretary unable to act

If, in the case of a public company, the office of secretary is vacant, or for any other reason there is no secretary capable of acting, anything required or authorised to be done by or to the secretary can 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 for the purpose by the directors.

248. Duty to keep register of secretaries

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

(2) The company shall ensure that its register of secretaries—

(a) contains the required particulars of the person who is, or persons who are, the secretary or joint secretaries of the company; and

(b) except in so far as the regulations otherwise provide, is kept available for inspection at the registered office of the company.

(3) The company shall ensure that its register of secretaries is kept open for the inspection by—

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

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

(4) If a company fails to comply with a requirement of this section, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable on conviction to a fine not exceeding five hundred thousand shillings.

(5) If, after a company or any of its officers is convicted of an offence under subsection (4), the company continues to fail to comply with the requirement, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

249. Duty to notify Registrar of change of secretary or joint secretary

(1) A public company shall, within fourteen days after—

(a) a person is appointed to be its secretary or one of its joint secretaries;

(b) ceases to be appointed as such; or

(c) any change occurs in the particulars contained in its register of secretaries,

lodge with the Registrar for registration a notice of the appointment, cessation of appointment or change and of the date on which it occurred.

(2) A public company shall ensure that a notice that a person has been appointed as a secretary, or a joint secretary, of the company is accompanied by a written consent by the person to act as secretary or joint secretary.

(3) If a public company fails to comply with a requirement of this section, the company, and each officer of the company who is in default commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(4) If, after a company or any of its officers is convicted of an offence under subsection (3), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

250. What particulars of secretaries are required to be registered: natural persons

(1) If the secretary of a public company is a natural person, the company shall ensure that its register of secretaries contains the following particulars:

(a) the name and any former name of the secretary; and

(b) the address of the secretary.

(2) A public company's register of secretaries is not required to contain particulars of a person's former name if—

(a) the person's former name was changed or disused before the person reached eighteen years of age; or

(b) the person's name 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.

251. What particulars of secretaries are required to be registered: corporate secretaries and firms

(1) If the secretary of a public company is a company or a firm, the company shall ensure that its register of secretaries contains 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) in the case of a company or a firm that is incorporated, register in which it is recorded (including the place where the register is kept) and its registration number in the 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 regulations may provide for the addition or removal of particulars required to be contained in a public company's register of secretaries.

252. Offence to include misleading, false or deceptive particulars in register of secretaries

A person who knowingly or recklessly authorises or permits the inclusion of misleading, false or deceptive particulars in a register of secretaries commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or a fine not exceeding one million shillings, or to both.

253. Offence to fail to keep register of secretaries

(1) If a public company fails to comply with a requirement of section 250 or 251, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(2) If, after a company or any of its officers is convicted of an offence under subsection (2), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

254. Acts done by person in dual capacity

A provision requiring or authorising a thing to be done by or to a director and the secretary of a public 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 XIII – RESOLUTIONS AND MEETINGS

Division 1 — General provisions about company resolutions

255. Requirements for passing company resolutions

(1) A resolution of the members, or of a class of members of a private company may be passed either—

(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 may be passed only at a meeting of the members.

256. Requirements for passing an ordinary resolution of a company

(1) A resolution is an ordinary resolution of the members (or of a class of members) of a company if it 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.

(5) Anything that may be done by ordinary resolution may also be done by special resolution if the company's so provide.

257. Requirements for the passing of special resolution

(1) A resolution is a special resolution of the members (or of a class of members) of a company if it passed by a majority of not less than seventy-five percent.

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

(3) If 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 percent if it is passed by not less than seventy-five percent 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 percent if it is passed by members representing not less than seventy-five percent of the total voting rights of the members who (being entitled to do so) vote in person or by proxy on the resolution.

(6) If a resolution is passed at a meeting, the resolution is a special resolution only if the notice of the meeting—

(a) included the text of the resolution; and

(b) specified an intention to propose the resolution as a special resolution,

but if the notice of the meeting specified such an intention, the resolution may be passed only as a special resolution.

258. General rules for voting on company resolutions

(1) When a vote on a written resolution put to the members of a company is taken, then—

(a) if the company has a share capital — each member has one vote for each share, or each one hundred shillings of stock, held by the member; and

(b) if the company does not have a share capital — each member has one vote.

(2) When a vote on a resolution is to be taken by the members of a company at a meeting on a show of hands—

(a) each member present in person has one vote; and

(b) each proxy present who has been duly appointed by a member entitled to vote on the resolution has one vote.

(3) When a vote on a resolution is to be taken by the members of a company by a poll—

(a) if the company has a share capital—each member present in person, or each proxy present who has been duly appointed by a member, has one vote for each share, or each one hundred shillings of stock, held by the member; and

(b) if the company does not have a share capital — each member present in person, or each proxy present who has been duly appointed by a member, has one vote.

(4) This section has effect subject to provisions of the company's articles to the contrary.

259. Specific requirements for voting on company resolutions

(1) If 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 the member were present in person—

(a) the provision of the articles 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 the proxy would have if the member were present at the meeting.

(2) If 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.

260. Votes of joint holders of shares

(1) If two or more persons hold a share jointly, only the vote of the senior holder who votes and any proxies duly authorised by that holder are eligible for counting 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 Provisions of the company's articles to the contrary.

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

If a person who was not entitled to vote on a resolution of a company purports to vote on the resolution and the company's articles provide that objections to the entitlement of the person to vote are to be determined in accordance with a procedure specified in those articles, the person's vote is nonetheless valid if—

(a) no objection to the person's entitlement to vote is made in accordance with the procedure; or

(b) one or more objections to the person's entitlement to vote is made in accordance with the procedure, but the objection is rejected in compliance with the procedure.

Division 2 — Written resolutions

262. Written resolutions of private companies

(1) For the purpose of this Division, a resolution is a written resolution of a private company if it is proposed and passed by the company in accordance with this Division.

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

(a) a resolution under section 139 removing a director from office before the end of the director's period of office; or

(b) a resolution under section 739 removing an auditor before, the end of the auditor's term of office.

(3) Either the directors or members of a company may propose a resolution as a written resolution.

(4) A written resolution 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.

263. Who is entitled to vote on a written resolution

(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 40 when the first copy of the resolution was sent or delivered to members for their agreement.

264. Circulation date for written resolutions

A reference in this Part to the circulation date of a written resolution is to the date on which copies of the written resolution are sent or delivered to members or, if copies are sent or delivered to members on different days, to the first of those days.

265. Circulation of written resolutions proposed by directors

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

(2) The company shall send or deliver a copy of a written resolution of the directors of the company to every eligible member—

(a) by sending copies at the same time, so far as it is 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 delivering 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 company shall attach to, or enclose with, the copy of the written resolution a statement informing the member—

(a) how to signify agreement to the resolution; and

(b) of the date by which the resolution is required to 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.

(5) If a requirement of this section is not complied with, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(6) If, after a company or any of its officers is convicted of an offence under subsection (5), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

266. Right of members to require circulation of written resolution

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

(a) it would, if passed, be void (whether because of inconsistency with a written 'law or the company's constitution or otherwise);

(b) it defames a person; or

(c) it is frivolous or vexatious.

(3) If 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 as soon as practicable after 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, if a lower percentage is specified for this purpose in the articles of the company, that percentage.

(6) A request made under subsection (3) is not effective unless—

(a) it is in hard copy form or in electronic form;

(b) it identifies the resolution and any accompanying statement; and

(c) it is authenticated by the person or persons making it.

267. Circulation of written resolution proposed by members

(1) A company that is required under section 266 to circulate a resolution shall, subject to section 268, or an application not to circulate a members' statement, send to every eligible member of the company—

(a) a copy of the resolution; and

(b) a copy of any accompanying statement.

(2) The requirement under subsection (1) is subject to sections 268 and 269.

(3) The company shall send or deliver 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;

(b) if it is possible to do so without undue delay—by delivering the same copy to each eligible member in turn or different copies to each of a number of eligible members in turn; or

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

(4) The company shall send or deliver the copies of the written resolution or, if copies are sent or delivered 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.

(5) The company shall attach to, or enclose with, the copy of the resolution that is sent or delivered to members under this section information specifying—

(a) how they are to signify their agreement (or disagreement) with the resolution; and

(b) the deadline, for passing the resolution if it is not to lapse.

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

(7) If a company fails to comply with a requirement of this section, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

268. Requisitioning members to meet expenses of circulation

(1) The members who requested the circulation of the resolution shall meet the cost of circulating the resolution unless the company otherwise resolves.

(2) Unless the company has previously so resolved, it is not bound to comply with section 267 unless there is deposited with or tendered to the company an amount reasonably sufficient to meet the expenses of the company in circulating the resolution.

269. Application not to circulate members’ statement

(1) A company is not required to circulate a members’ statement under section 268 if, on an application by the company or another person who claims to be dissatisfied, the Court is satisfied that the rights conferred by section 266 and that section are being abused.

(2) The Court may order the members who requested the circulation of the statement to pay the whole or part of the company's costs on such an application, even if they are not parties to the application.

270. Procedure for signifying agreement to written resolution

(1) A member signifies agreement to a proposed written resolution when the company receives from that member, or from someone acting on the members's behalf, an authenticated document—

(a) identifying the resolution to which the agreement or the document relates; and

(b) indicating agreement to the resolution.

(2) To be effective, the authenticated document is to be delivered or sent to the company in hard copy form or in electronic form.

(3) The agreement of a member to a written resolution may not be revoked after it has been signified.

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

271. Deadline for agreeing to written resolution

(1) A proposed written resolution lapses if it is not passed before—

(a) the deadline specified for this purpose in the company's articles; or

(b) if no deadline is specified the expiry of twenty eight days from and including the circulation date.

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

272. Sending documents relating to written resolutions by electronic means

If a company has given an electronic address in a document containing, or enclosed with or attached to, a proposed written resolution, any document or information relating to that resolution may be validly sent by electronic means to that address, subject to any conditions or limitations specified in the document.

273. Publication of written resolution on website

(1) If a company sends to a person by means of a website—

(a) a written resolution; or

(b) a statement relating to a written resolution, the resolution or statement is not validly sent unless the resolution is available on the website throughout the period from and including the circulation date and ending on the date on which the resolution lapses under this Division.

274. Relationship between this Division and provisions of company's articles

A provision of the articles of a private company is void to the extent that it would have the effect that a resolution that is required by or otherwise provided for in an enactment could not be proposed and passed as a written resolution.

Division 3 —Procedure for convening and holding company general meetings

Subdivision 1 —Convening of general meetings and passing resolutions

275. Resolutions at general meetings

A resolution of 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 this Act and the company's articles.

276. Power of directors to convene general meetings

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

277. Right of members to require directors to convene general meeting

(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 as soon as practicable after 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 for the purpose of subsection (2) is ten percent, except as provided by subsection (4).

(4) In the case of a private company, the required percentage is five percent if—

(a) more than twelve months has elapsed since the end of the last general meeting convened in accordance with a requirement under this section; or

(b) in relation to which members had, in accordance with an enactment or the company's articles, exercised a right to require the circulation of a resolution in respect of the meeting at their request.

(5) A request for the directors to convene a general meeting is only effective if it states the general nature of the business to be dealt with at the meeting. However, such a request may include the text of a resolution that is proposed to be put to the meeting.

(6) A resolution may not be moved at a general meeting if—

(a) it would, if passed, be void because of inconsistency with any written law or the constitution of the company or otherwise;

(b) it defames a person; or

(c) it is frivolous or vexatious.

(7) A request for the directors to convene a general meeting is not effective unless it is—

(a) in hard copy form or in electronic form; and

(b) authenticated by the person or persons making it.

278. Directors' duty to convene general meeting required by members

(1) If requested to convene a general meeting of the company, the directors shall —

(a) do so within twenty-one days from the date on which request was made; and

(b) hold the meeting on a date not more than twenty eight days after the date of the notice convening the meeting.

(2) If such a request includes a resolution intended to be moved at the meeting, the directors shall include in the notice of the meeting a copy of the proposed 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 taken not to have duly convened the meeting if they do not give the required notice of the resolution in accordance with this section

279. Power of members to convene general meeting at the expense of the company

(1) If, after having been required to convene a general meeting under section 277, the directors fail to do as required by section 278, the members who requested the meeting, or any of them representing more than one half of the total voting rights of all them, may convene a general meeting.

(2) If the requests received by the company included the text of a resolution intended to be moved at the meeting, the members concerned shall include in the notice convening the meeting the text of the intended resolution.

(3) The members concerned shall ensure that the meeting is convened for a date not more than three months after the date on which the directors were requested to convene a meeting.

(4) The members concerned shall convene the meeting, as nearly as practicable, in the manner in which meetings are required to be convened by directors of the company.

(5) The business that may be dealt with at the meeting includes a resolution of which notice is given in accordance with this section.

(6) The company shall reimburse the members concerned for all reasonable expenses incurred by them because the directors failed to convene a meeting as required by section 278.

(7) The company shall deduct from the remuneration payable to the directors who were in default the amount of expenses reimbursed to members under subsection (6).

280. Power of Court to order general meeting to be convened

(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 required by the articles of the company or this Act.

(2) The Court may, either on its own initiative, 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,

make an order requiring a meeting to be convened, held and conducted in any manner the Court considers appropriate.

(3) If an order is made under subsection (2), the Court may give such ancillary or consequential directions as it considers appropriate.

(4) Directions given by the Court under subsection (3) may include a direction that one member of the company present at the meeting be regarded as constituting a quorum.

(5) A meeting convened, held and conducted in accordance with an order under this section is taken for all purposes to be a meeting of the company properly convened held and conducted.

281. Amount of notice to be given for general meetings

(1) In convening a general meeting (other than an adjourned meeting), a private company shall give a least twenty-one days' notice.

(2) In convening a general meeting, a public company shall give—

(a) in the case of its annual general meeting—at least twenty-one days' notice to members; or

(b) in the case of any other general meeting—at least fourteen days notice to members.

(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 it is agreed by the members.

(5) The shorter notice referred to in subsection (4) is valid only if it is agreed to by the required majority of members.

(6) For the purpose of subsection (5), the required majority of members is a majority of members who, having a right to attend and vote at a general meeting—

(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 that does not have a share capital—together represent not less than the requisite percentage of the total voting rights at that meeting of all the members.

(7) The requisite percentage for the purpose of 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.

(8) The proceedings of a meeting that do not comply with the requirements of this section are void.

282. Manner in which notice of general meeting to be given

(1) A company shall give notice of a general meeting—

(a) in hard copy form;

(b) in electronic form;

(c) by means of a website; or

(d) partly by one such means and partly by one or more of the other such means.

283. Publication of notice of general meeting on company's website

(1) Notice of a general meeting that is given by a company by means of a website is not effective unless it is complies with this section.

(2) In notifying its members of the presence on a website of a notice convening a general meeting, a company 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 company shall ensure that the notice of the general meeting is available on the website throughout the period from and including the date of that notification and ending with the conclusion of the meeting.

284. Persons entitled to receive notice of general meetings

(1) A company shall send a notice of a general meeting of the company to—

(a) each member of the company; and

(b) each director.

(2) In subsection (1), the reference to a member 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 to the contrary.

285. Contents of notices of general meetings

(1) In giving notice of a general meeting, a company shall specify—

(a) the time and date of the meeting;

(b) the place of the meeting; and

(c) the general nature of the business to be dealt with at the meeting.

286. Offence for company to fail to comply with section 281, 282, 283, 284 or 285

(1) If a company fails to comply with a requirement of section 281(1) or (2), 282, 283 (2) or (3), 284 (1) or 285, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(2) If, after a company or any of its officers is convicted of an offence under subsection (1), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

287. Resolution requiring special notice.

(1) If a provision of this Act requires a special notice of a resolution to be given, 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, if 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) If it is not practicable to give that notice, the company shall give its members notice of the resolution at least fourteen days before the meeting—

(a) by advertisement in a newspaper having a wide circulation in the area in which the company carries on business; 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 nevertheless taken to have been effectively given even though it was not given within the required period.

288. Accidental failure to give notice of resolution or general meeting

(1) If a company gives notice of—

(a) a general meeting; or

(b) a resolution intended to be moved at a general meeting, an accidental failure to give notice to one or more persons is to be disregarded for the purpose of determining whether notice of the meeting or resolution has been duly given.

(2) With the exception of a notice given under section 275, 279 or 312, subsection (1) has effect subject to any provision of the company's articles.

289. Power of members to require circulation of statements

(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), "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) is effective only if it—

(a) is in hard copy form or in electronic form,

(b) identifies the statement to be circulated;

(c) is authenticated by the person or persons making it; and

(d) is received by the company at least seven days before the meeting to which it relates.

290. Duty of company to circulate members' statements

(1) A company that, in accordance with section 289, is required by its members to circulate a statement shall send to each of its members who is entitled to receive notice of the meeting a copy of the statement—

(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 has given notice of the meeting.

(2) Subsection (1) has effect subject to section 291(2) and section 292.

(3) If a company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

291. Who is liable to meet cost of circulating members' statements

(1) The members who requested the statement to be circulated need not pay the expense incurred by the company in complying with section 290 if—

(a) the meeting to which the requests relate is an annual general meeting of a public company; and

(b) the company receives requests sufficient to require the company to circulate the statement before the end of the financial year preceding the meeting.

(2) If subsection (1) does not apply, then—

(a) unless the company resolves otherwise — the members who requested the statement to be circulated are liable to meet the expenses of the company in complying with section 290; and

(b) unless the company has previously resolved not to circulate statements to its members as required by section 289, it is bound to comply with section 290 only if, not later than seven days before the meeting, an amount reasonably sufficient to meet its expenses in doing so is deposited or tendered to it.

Subdivision 2— Procedure at company general meetings

292. Quorum for general meetings

(1) In the case of a company limited by shares or guarantee and having only one member, one qualifying person present at a meeting constitutes a quorum.

(2) In any other case, (subject to the articles of the company) two qualifying persons present at a meeting are a quorum, unless—

(a) each is a qualifying person only because the person is authorised under section 297 to act as the representative of a body corporate in relation to the meeting, and they are representatives of the same body corporate; or

(b) each is a qualifying person only because the person is appointed as proxy of a member in relation to the meeting, and they are proxies of the same member.

293. Members present may elect person to preside at general meeting

(1) The members present at a general meeting of the company may, by ordinary resolution, elect one of the members to preside at the meeting.

(2) Subsection (1) is subject to a provision of the company's articles that states who may or may not be chairperson or preside at a general meeting of the company.

294. Person presiding at general meeting may declare result of voting on a show of hands

(1) On a vote on a resolution at a meeting with a show of hands, the person presiding at the meeting may declare that the resolution—

(a) has or has not been passed; or

(b) has passed with a particular majority

(2) Such a declaration is conclusive evidence of the result of the voting without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(3) An entry in respect of such a declaration in the minutes of the meeting recorded in accordance with section 292 is also conclusive evidence of that fact without further proof.

(4) This section does not have effect if a poll is demanded for passing the resolution and the demand is not subsequently withdrawn.

295. Right of members to demand a poll at general meeting

(1) A provision of a company's articles is void to the extent that it would have the effect of excluding the right to demand a poll at a general meeting on a resolution other than one for—

(a) electing the member who is to preside at the meeting; or

(b) adjourning the meeting.

(2) Except as provided by subsection (1), a provision of a company's articles is void to the extent that it would have the effect of making ineffective a demand for a poll on a resolution made—

(a) by no fewer than five members having the right to vote on the resolution;

(b) by a member or members representing no 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 amount has been paid up equal to not less than ten percent of the total amount paid up on all the shares conferring that right.

296. Member not obliged to use all votes when voting on a poll at general meeting

A member who is entitled to cast two or more votes at a poll taken at a general meeting of a company is not obliged to use all of those votes or to cast them all in the same way.

297. Representation of bodies corporate at general meetings

(1) If a body corporate 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 a meeting of the company.

(2) If the body corporate authorises only one person to act as its representative at a meeting of the company, that person is entitled to exercise the same powers on behalf of the body as the body could exercise if it were a natural person who is a member of the company.

(3) If the body corporate authorises two or more persons to act as its representatives at a meeting of the company, any one of them is entitled to exercise the same powers on behalf of the body as the body could exercise if it were a natural person who is a member of the company.

(4) If the body corporate authorises two or more persons to act as its representatives at a meeting of the company and more than one of them purports to exercise a power under subsection (3)—

(a) they purport to exercise the power in the same way—power is taken to be exercised in that way; and

(b) if they do not purport to exercise the power in the same way—power is taken not to be exercised.

Subdivision 3 — Use of proxies at company general meetings

298. Right of members to appoint proxies

(1) A member of a company is entitled to appoint another person as the member's proxy to exercise all or any of the member's rights to attend and to speak and vote at a meeting of the company.

(2) A member of a company that has a share capital may appoint more than one proxy for a meeting provided each proxy is appointed to exercise the rights attached to a different share or different shares held by the member.

299. Notice of general meeting to contain statement of rights of members to appoint proxies

(1) In every notice convening a meeting of a company, the company shall include a prominently displayed statement informing the member of—

(a) the member's rights under section 298; 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.

(3) If a company fails to comply with this section in relation to a meeting of a company, the company, and each officer of the company who is in default, commit an offence, and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

300. Company sponsored invitations to appoint proxies

(1) If, for the purposes of a meeting, invitations are issued at the expense of the company to members to appoint as a proxy a specified person, or a number of specified persons, the company shall issue the invitations to all members entitled to vote at the meeting.

(2) A company complies with subsection (1) if—

(a) there is issued to a member, at the member's 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.

(3) If a company fails to comply with subsection (1) in relation to a meeting of a company, the company, and each officer of the company who is in default, commit an offence, and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

301. Notice of appointment of proxy to be given to company

(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) A provision of the company's articles is void to the extent that it would have the effect of requiring any such appointment or document to be received by the company or another person earlier than whichever of the following periods is applicable—

(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 referred to in subsection (2), a day or part of a day that is not a working day is to be disregarded.

302. Proxy can be elected to preside at general meeting

(1) A proxy may be elected to preside at 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 chairperson.

303. Right of proxy to demand a poll at general meeting

(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 section 295 to a proxy of a member of a company—

(a) for the purpose of subsection (2)(a) of that section—a demand by a proxy counts as a demand by the member;

(b) for the purpose of subsection (2)(b) of that section—a demand by the proxy counts as a demand by the member representing the voting rights that the proxy is authorised to exercise; and

(c) for the purposes of subsection (2)(c),a demand by the proxy counts as a demand by the member holding the shares to which those rights are attached.

304. Notice to be given to company of termination of proxy’s authority

(1) A member of a company who has appointed a person to act as a proxy of the member may terminate the appointment by notice.

(2) The termination of the appointment of a person to act as proxy does not affect—

(a) whether the person counts in deciding whether there is a quorum at a meeting of the company;

(b) the validity of anything that the person does in presiding at the meeting; or

(c) the validity of a poll demanded by the person at the meeting, unless the company has received notice of the termination before the start 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 start of the meeting or adjourned meeting at which the vote is cast; or

(b) in the case of a poll taken more than forty-eight hours after it is demanded—before the time fixed 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, this section has effect as if the references in this section to a company included references to that person.

(5) Subject to subsection (6), subsections (2) and (3) have effect subject to any provision of the company's articles that 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) A provision of the company's articles is void to the extent that it would have the effect of requiring notice of termination to be received by the company or another person earlier than whichever of the following periods is applicable:

(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 is to be taken of any part of a day that is not a working day.

305. Articles may confer more extensive rights on members and proxies

Sections 298 to 304 do not prevent a company’s articles from conferring more extensive rights on members or proxies than those conferred by those sections.

Subdivision 4 – Other matters relating to company general meetings

306. Resolutions passed at adjourned general meeting

If a resolution is passed at an adjourned general 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 may not be treated as having been passed on an earlier date.

307. Sending to members documents relating to general meetings in electronic form

(1) If a company has given an electronic address in a notice convening a general meeting, any document or information relating to proceedings at the meeting can be sent by electronic means to that address subject to the conditions or limitations (if any) specified in the notice.

(2) If a company has given an electronic address—

(a) in a document 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, any document or information relating to proxies for that meeting can 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 for a meeting;

(b) any document necessary to establish the validity of the appointment of a proxy; and

(c) a notice terminating the appointment of a proxy.

Division 4 — Application of Division 3 to meetings of classes of members of companies

308. Application of Division 3 to meetings of holders of classes of shares

(1) Subject to subsection (2) and (3), Division 3 applies, with necessary modifications, to a meeting of holders of a class of shares of a company as it applies to a general meeting of the company.

(2) Sections 277 to 280 do not apply to a meeting of holders of a class of shares.

(3) In addition to the sections specified in subsection (2), sections 292 and 295 do not apply to a meeting convened to pass a resolution to vary rights attached to a class of shares.

(4) The quorum for a meeting referred to in subsection (3) is—

(a) for a meeting other than an adjourned meeting, at least two persons who are present and holding at least one-third in nominal value of the issued shares of the relevant class; and

(b) for an adjourned meeting, one person who is present and holding shares of the relevant class.

(5) For the purpose of subsection (4), a person who is present as a holder of one or more proxies is taken to hold only the shares in respect of which those proxies are authorised to exercise voting rights.

(6) At such a meeting, a holder of shares of the relevant class may demand a poll if present at the meeting.

(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 taken to be a variation of those rights; and

(b) a reference to the variation of rights attached to a class of shares includes a reference to the abrogation of those rights.

309. Application of Division to meetings of classes of members of company having no share capital

(1) Subject to subsection (2) and (3), Division 3 applies, with necessary modifications, to a meeting of holders of a class of members of a company having no share capital as it applies to a general meeting of the company.

(2) Sections 277 to 280 do not apply to a meeting of class of members of a company having no share capital.

(3) In addition to the sections specified in subsection (2), sections 292 and 295 do not apply to a meeting convened to pass a resolution to vary rights of a class of members of a company having no share capital.

(4) The quorum for a meeting referred to in subsection (3) is—

(a) for a meeting other than an adjourned meeting, at least 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; and

(b) for an adjourned meeting, one member of the class present in person or by proxy.

(5) At such a 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 taken to be a variation of those rights; and

(b) a reference to the variation of rights of a class of members includes a reference to the abrogation of those rights.

Division 5 — Additional requirements for general meetings of public companies

310. Public companies: annual general meeting

(1) Every public company shall hold a general meeting as its annual general meeting within six months from and including the day following its accounting reference date in each year, whether or not it holds other meetings during that period.

(2) A company that fails to comply with subsection (1) as a result of giving notice under section 634—

(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,

is nonetheless taken to have complied with that subsection if it holds a general meeting as its annual general meeting within three months after giving that notice.

(3) If a public company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding one million shillings.

(4) If, after a company or any of its officers is convicted of an offence under subsection (3), the company continues to fail to comply with the requirement to hold its annual general meeting, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding one hundred thousand shillings for each such offence.

311. Public companies: notice of annual general meeting

(1) A public company shall state in the notice convening an annual general meeting of the company that the meeting is an annual general meeting.

(2) An annual general meeting may be convened by shorter notice than that required by section 281(2) or by the company's articles, if all the members entitled to attend and vote at the meeting agree to the shorter notice.

(3) If a public company fails to comply with subsection (1), the company, and each officer of the company who is in default commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

312. Public companies: members' power to require circulation of resolutions for annual general meeting

(1) The members of a public company may require the company to give to members of the company who are entitled to receive notice of the next annual general meeting a notice of a resolution that is proposed to be moved at that meeting.

(2) A public company is not required to give notice of a resolution if—

(a) it would, if passed, be void (whether because of inconsistency with this Act or any other written law or the company's constitution or otherwise);

(b) it defames a 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 ten thousand shillings.

(4) A request is effective for the purpose of this section only if—

(a) it is in hard copy form or in electronic form;

(b) identifies the resolution of which notice is to be given;

(c) is authenticated by the person or persons making it; and

(d) is received by the company not later than—

(i) six weeks before the annual general meeting to which the request relate; or

(ii) if later, the time at which notice is given of that meeting.

(5) If a public company fails to comply with subsection (3), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

313. Public companies; company's duty to circulate members' resolutions for annual general meetings

(1) A company that is required under section 312 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 314(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.

(4) If a public company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

314. Public companies; expenses of circulating members' resolutions for annual general meeting

(1) The members who requested the circulation of the resolution need not pay the expenses of the company in complying with section 313 if requests sufficient to require the company to circulate it are received before the end of the financial year preceding the meeting.

(2) If subsection (1) does not apply, then—

(a) unless the company otherwise resolves, the members who requested the circulation of the resolution shall pay the expenses of the company in complying with section 313; and

(b) unless the company has previously so resolved, it is not bound to comply with section 313 unless not later than—

(i) six weeks before the annual general meeting to which the request relates; or

(ii) if later, the time at which the notice is given of that meeting, an amount reasonably sufficient to meet its expenses in complying with that section is deposited with or tendered to it.

315. Results of poll to be made available on website

(1) If a poll is taken at a general meeting of 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 a description of the subject matter of the poll;

(c) the number of votes cast in favour of the resolution;

(d) the number of votes cast against the resolution.

(2) Section 316 applies to this section.

(3) Failure to comply with subsection (1) or a requirement of section 316 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.

(4) If a quoted company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

316. Requirements as to website availability

(1) A quoted company shall make the information referred to in section 315 (1) available on a website that—

(a) is maintained by or on behalf of the company; and

(b) identifies the company.

(2) The company shall not make access to the information on the website, and the ability to obtain a hard copy of the information from the website, conditional on the payment of a fee or compliance with any other requirement.

(3) The company shall ensure that the information referred to in subsection (3) is—

(a) made available as soon as reasonably practicable after the date of the meeting at which the poll was taken; and

(b) kept continuously available on a website that complies with subsection (1) for not less than two years from and including the date on which it is first made available on the website.

(4) A failure to make information available on a website continuously during the two years specified in subsection (3)(b) is to 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 expect the company to have prevented or avoided.

(5) If a quoted company fails to comply with a requirement of this section, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(6) If, after a quoted company or any of its officers is convicted of an offence under subsection (5), the company continues to fail to comply with the requirement concerned, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

Division 6 — Records relating to resolutions and company meetings

317. Records of resolutions and meetings, etc

(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 319.

(2) The company shall keep the records for at least ten years from the date of the relevant resolution, meeting or decision.

(3) If a company fails to comply with subsection (1) or (2), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(4) If, after a company or any of its officers is convicted of an offence under subsection (3), the company continues to fail to comply with subsection (1), the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

318. Records as evidence of resolutions, etc

(1) This section applies to the records kept in accordance with section 317.

(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) If a record of a written resolution of a private company exists, the requirements of this Act with respect to the passing of the resolution are presumed 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 person presiding at that meeting or by the person presiding at the next general meeting, are evidence of the proceedings at the meeting.

(5) If a record of proceedings of a general meeting of a company exists, then, until the contrary is proved—

(a) the meeting is presumed to have been duly held and convened;

(b) all proceedings at the meeting are presumed to have duly taken place; and

(c) all appointments at the meeting are presumed to be valid.

319. Records of decisions by sole member

(1) This section applies to a company that is limited by shares or by guarantee and has only one member.

(2) If a company to which this section applies takes a decision that—

(a) can be taken by the company at a general meeting; and

(b) has effect as if agreed by the company at a general meeting, the member of the company shall, unless the decision is in the form of a written resolution, provide the company with details of the decision.

(3) Failure to comply with this section does not affect the validity of a decision referred to in subsection (2).

(4) A member of a company to which this section applies who, without reasonable excuse, fails to comply with subsection (2) commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

320. Inspection of records of resolutions and meetings

(1) This section applies—

(a) to a company that is required to keep records in accordance with section 317; and

(b) to those records.

(2) Except in so far as the regulations otherwise provide, a company to which this section applies shall keep its records available for inspection at its registered office.

(3) The company shall, on being requested to do so by a member of the company, make the records available for inspection by the member without charge.

(4) If a member of the company requests the company to provide the member with a specified record, the company shall comply with the request within seven days after receiving the request, subject to payment of the prescribed fee (if any).

(5) If the company fails without reasonable excuse to comply with—

(a) subsection (2); or

(b) a request made under subsection (3) or (4), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(6) If, after a company or any of its officers is convicted of an offence under subsection (5), the company continues to fail to comply with subsection (2), or with the relevant request, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

(7) If a company refuses to allow an inspection as requested under subsection (3), or to provide a copy of a record requested under subsection (4), the Court may, on the application of a person affected by the refusal, make an order compelling the company to allow an immediate inspection of the records, or to provide that person with a copy of the requested record.

321. Records of resolutions and meetings of class of members

(1) This Division applies, with necessary modification, 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 it applies in relation to resolutions of members generally and to general meetings.

Part XIV – SHARE CAPITAL OF COMPANY

Division 1 —Shares and share capital of a company

322. Shares no longer capable of being converted into stock

(1) The shares of a company may not be converted into stock.

(2) An attempt to convert a company's shares into stock has no effect.

323. Nature of shares

The shares or other interest of a member in a company are personal property and are not in the nature of real estate.

324. Nominal value of shares

(1) Shares in a limited company having a share capital are each required to have a fixed nominal value.

(2) Shares in a limited company having a share capital are required to be denominated in shillings.

(3) An allotment of shares that does not comply with subsection (1) or (2) is void.

(4) If, at the commencement of this section, an existing company's capital consists of stock, the amount of stock is converted to shares of one shilling each.

(5) If a company purports to allot shares in contravention of this section, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

325. Shares to be numbered

(1) Except as provided by subsections (2) and (3), a company that has a share capital shall ensure that each of its shares is distinguished by an appropriate distinguishing number.

(2) If all of the issued shares in a company are fully paid up and rank equally for all purposes, they do not require distinguishing numbers so long as they remain fully paid up.

(3) If all of the issued shares of a particular class in a company are fully paid up and rank equally for all purposes, those shares do not require distinguishing numbers so long as they remain fully paid up and rank equally for all purposes with all other shares of the same class that are currently issued and fully paid up.

(4) If a company allots shares that do not comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

326. Transferability of shares

The shares and any other interests of a member in a company are transferable in accordance with the company's articles.

Division 2 — Allotment of shares: general provisions

327. Exercise by directors of power to allot shares, etc

(1) The directors of a company shall not 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, except in accordance with section 328 or 329.

(2) Subsection (1) does not apply—

(a) to the allotment of shares under a 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.

(3) If this section applies in relation to the grant of a right to subscribe for, or to convert a security into, shares, it does not apply in relation to the allotment of shares in accordance with that right.

(4) A director who—

(a) is knowingly a party to a contravention of subsection (1); or

(b) authorises a contravention of that subsection, commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(5) Nothing in this section affects the validity of an allotment or other transaction.

328. Power of directors to allot shares etc: private company with only one class of shares

If 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.

329. Power of directors to allot shares etc: authorisation by company

(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, only if they are authorised to do so by the company's articles or by a resolution of the company.

(2) An 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) An authorisation under subsection (1) is not effective unless it—

(a) states the maximum amount of shares that may be allotted under it; and

(b) specifies the date on which it will expire, which may not be 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 authorising resolution is passed.

(4) An 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 an authorisation is not effective unless—

(a) states or restates the maximum amount of shares that may be allotted under the authorisation or, the amount remaining to be allotted under it; and

(b) specifies the date on which the renewed authorisation will expire.

(6) In relation to rights to subscribe for or to convert a security into shares in the company, a reference in this section to the maximum amount of shares that may be allotted under the authorisation is to the maximum number of shares that may be allotted under the rights.

(7) The directors may allot shares, or grant rights to subscribe for or to convert any security into shares, after an authorisation has expired if—

(a) the shares are allotted, or the rights are granted, in accordance with 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 that would or might require shares to be allotted, or rights to be granted, after the authorisation had expired.

(8) A resolution of a company to give, vary, revoke or renew an authorisation may be by an ordinary resolution.

(9) If a resolution under subsection (8) purports to amend the articles of a company, the resolution is effective only if it is a special resolution.

330. General prohibition of commissions, discounts and allowances

(1) Except as permitted by section 331, 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 the person—

(a) subscribing or agreeing to subscribe, whether absolutely or conditionally, for shares in the company; or

(b) procuring or agreeing to procure subscriptions, whether absolutely or conditional, for shares in the company.

(2) For the purpose of subsection (1), it is does not matter how the shares or money are so applied.

(3) Nothing in this section affects the payment of brokerage the payment of which was previously lawful.

(4) If a company contravenes subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(5) An application of shares or capital money in contravention of subsection (1) is void.

331. Permitted commission

A company may pay a commission to a person in consideration of the person—

(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.

(c) subscribing or agreeing to subscribe (either absolutely or conditionally) for shares in the company; or

(d) procuring or agreeing to procure subscriptions (either absolute or conditional) for any such shares, but only if the conditions specified are satisfied;

(e) the payment of the commission is authorised by the company's articles; and

(f) 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.

332. Registration of allotment

(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) If a company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(3) If, after a company or any of its officers is convicted of an offence under subsection (2), the company continues to fail to register the allotment of shares, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

333. Return of allotment by limited company

(1) Within one month after making an allotment of shares, a limited company shall lodge with the Registrar for registration a return of the allotment.

(2) The company shall ensure that the return—

(a) contains the information prescribed by the regulations; and

(b) is accompanied by a statement of capital.

(3) The company shall specify in the statement of capital as 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) the particulars prescribed by the regulations 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 in the form of a premium).

334. Return of allotment by unlimited company allotting new class of shares

(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 after making such an allotment, lodge with the Registrar for registration a return of the allotment.

(2) The company shall ensure that the return specifies the particulars of the rights attached to the shares prescribed by the regulations for the purposes of this subsection.

(3) For the purposes of this section, shares are not to be regarded as different from previously allotted shares only because they do not carry the same rights to dividends as the previously allotted shares so long as they were allotted during the twelve months immediately following the allotment of the previously issued shares.

335. Offence for company to fail to lodge return of allotment for registration

(1) If a company fails to lodge a return of allotment as required by section 333 or 334, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(2) If, after a company or any of its officers is convicted of an offence under subsection (1), the company continues to fail to lodge the relevant return for registration, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

336. Provisions about allotment not applicable to shares taken on formation

The provisions of this Part on allotment do not apply to the taking of shares by the subscribers to the memorandum on the formation of the company.

Division 3 — Allotment of equity securities: existing shareholders' right of pre-emption

337. Interpretation: Division 3

In this Division, a reference to the allotment of equity securities includes—

(a) the grant of a right to subscribe for, or to convert any securities into, ordinary shares in the company; and

(b) the sale of ordinary shares in the company that immediately before the sale are held by the company as treasury shares.

338. Existing shareholders' right of pre-emption

(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 the person 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 the person 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) If a company has offered to allot securities to a holder of ordinary shares, the conditions specified in subsection (1)(b) is not contravened by the allotment of the securities to that holder or to anyone in whose favour that holder has renounced the right to their allotment.

(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 under that right.

(4) Shares held by the company as treasury shares are to be disregarded for the purposes of this section, so that—

(a) the company is not treated as a person who holds ordinary shares; and

(b) the shares are not treated as forming part of the ordinary share capital of the company.

(5) This section is subject to sections 341 to 344, 345, 346 to 348 and section 353.

339. Communication of pre-emption offers to shareholders

(1) This section has effect as to the manner in which offers required by section 338 are to be made to holders of the shares of a company.

(2) An offer made under section 338 may be made in hard copy or electronic form.

(3) The offer is effective only if it states that the offer may be accepted within a period of not less than twenty-one days and that the offer will not be withdrawn before the end of that period.

(4) The period may not be less than twenty-one days beginning—

(a) in the case of an offer made in hard copy form — with the date on which the offer is sent or supplied;

(b) in the case of an offer made in electronic form — with the date on which the offer is sent; or

(c) in the case of an offer made by publication in the *Gazette* — with the date of publication.

(5) The regulations may—

(a) reduce the period specified in subsection (4), but not to less than fourteen days; or

(b) increase that period.

340. Liability of company and officers in case of contravention

(1) If a company contravenes section 338 or 339, the company and each officer of the company who is in default, are jointly and severally liable to compensate any person to whom an offer should have been made in accordance with those sections for any loss, damage or expenses that the person has sustained or incurred because of the contravention.

(2) Proceedings to recover any such loss, damage, costs or expenses may not be commenced after the end of three years—

(a) from the date on which the return of allotment was lodged with the Registrar for registration; or

(b) if equity securities other than shares are granted, from the date of the grant.

341. Exception to pre-emption right; issue for non-cash consideration

Section 338(l) does not apply in relation to the allotment of bonus shares.

342. Exception to preemption right: securities held under employees' share scheme

Section 338(1) does not apply to a particular allotment of equity securities if these are, or are to be, wholly or partly paid up otherwise than in cash

343. Exception to preemption right: securities held under employees' share scheme

Section 338 does not apply to the allotment of securities that would, apart from any renunciation or assignment of the right to their allotment, be held under an employees' share scheme.

344. Exclusion of requirements by private companies.

(1) The articles of a private company may provide that all or any of the provisions of section 338 or 339 do not apply to the company.

(2) Any such provisions 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 section 338 or 339 is to be treated for the purposes of this section as a provision excluding that section.

(4) A provision to which section 345 applies (exclusion of pre-emption right: corresponding right conferred by articles) is not to be treated as inconsistent with section 338.

345. Exclusion of pre-emption right: articles conferring corresponding right

(1) This section applies when, in a case in which section 338 would otherwise apply—

(a) a company's articles contain provision prohibiting the company from allotting ordinary shares of a particular class unless it has complied with the condition that it makes such an offer as is described in section 338(1) to each person who holds ordinary shares of that class; and

(b) in accordance with that provision—

(i) the company makes an offer to allot shares to such a holder; and

(ii) the holder, or anyone in whose favour the holder has renounced the right to their allotment, accepts the offer.

(2) In that case, section 338 does not apply to the allotment of those shares and the company may allot them accordingly.

(3) Section 339 applies in relation to offers made in accordance with the pre-emption provision of the company's articles, subject to section 344.

(4) If there is a contravention of the pre-emption provision of the company's articles, the company, and every officer of it who knowingly authorised or permitted the contravention, are jointly and severally liable to compensate any person to whom an offer should have been made under the provision for any loss, damage, costs or expenses which the person has sustained or incurred because of the contravention.

(5) Proceedings to recover any such loss, damage, costs or expenses may not be commenced after the expiration of three years—

(a) from the lodgement with the Registrar of the return of allotment; or

(b) if equity securities other than shares are granted, from the date of the grant of the securities.

346. Disapplication of pre-emption rights: private company with only one class of shares

(1) The articles of a private company that has only one class of shares, or a resolution passed by the company, may confer on the directors of the company power to allot equity securities of that class as if section 339—

(a) did not apply to the allotment; or

(b) applied to the allotment with such modifications as the directors may determine.

(2) If the directors make an allotment under subsection (1), the provisions of this Part relating to existing shareholders' pre-emption rights have effect accordingly.

347. Disapplication of pre-emption rights: directors acting under general authorisation

(1) If the directors of a company are generally authorised for the purposes of section 329, they may be given power by the articles, or by a special resolution of the company, to allot equity securities pursuant to that authorisation as if section 338—

(a) did not apply to the allotment; or

(b) applied to the allotment with such modifications as the directors may determine.

(2) If the directors make an allotment under this section, this Division has effect accordingly.

(3) The power conferred by this section ceases to have effect when the authorisation to which it relates —

(a) is revoked; or

(b) would if not renewed expire.

(4) If the authorisation is renewed the power may also be renewed, for a period not longer than that for which the authorisation is renewed, by a special resolution of the company.

(5) Even though the power conferred by this section has expired, the directors may allot equity securities in accordance with an offer or agreement previously made by the company if the power enabled the company to make an offer or agreement that would or might require equity securities to be allotted after it expired.

348. Disapplication of pre-emption rights by special resolution

(1) If the directors of a company are authorised for the purposes of section 329 (whether generally or otherwise), the company may by special resolution resolve that section 338—

(a) does not apply to a specified allotment of equity securities to be made in accordance with that authorisation; or

(b) applies to such an allotment with such modifications as may be specified in the resolution.

(2) If such a resolution is passed, this section has effect accordingly.

(3) A special resolution under this section ceases to have effect when the authorisation to which it relates—

(a) is revoked; or

(b) would if not renewed expire.

(4) However, if the authorisation is renewed, the resolution may also be renewed by a special resolution of the company for a period not longer than that for which the authorisation is renewed.

(5) The directors may, even though such a resolution has expired, allot equity securities in accordance with an offer or agreement previously made by the company if the resolution enabled the company to make an offer or agreement that would or might require equity securities to be allotted after it expired.

(6) A special resolution under this section, or a special resolution to renew such a resolution, may not be proposed unless—

(a) it is recommended by the directors; and

(b) the directors have complied with the following provisions.

(7) Before such a resolution is proposed, the directors shall make a written statement setting out—

(a) their reasons for making the recommendation;

(b) the amount to be paid to the company in respect of the equity securities to be allotted; and

(c) the directors' justification of that amount.

(8) The directors shall ensure that their statement is—

(a) if the resolution is proposed as a written resolution, sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him; or

(b) if the resolution is proposed at a general meeting, circulated to the members entitled to notice of the meeting with that notice.

(9) If the directors fail to comply with subsection (7) or (8), each of the directors who is in default commits and offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

349. Disqualification of pre-emption rights: sale of treasury shares

(1) This section applies in relation to a sale of shares that is an allotment of equity securities because of section 337(b).

(2) The directors of a company may be given power by the articles, or by a special resolution of the company, to allot equity securities as if section 338—

(a) did not apply to the allotment; or

(b) applied to the allotment with such modifications as the directors may determine.

(3) Subsections (2) and (5) of section 347 apply in that case as they apply to a case to which subsection (1) of that section applies.

(4) The company may by special resolution resolve that section 348—

(a) do not apply to a specified allotment of securities; or

(b) apply to the allotment with such modifications as may be specified in the resolution.

(5) Subsections (2) and (4) to (8) of section 348 apply in that case as they apply to a case to which subsection (1) of that section applies.

350. References to holder of shares in relation to offer

(1) In relation to an offer to allot securities required by section 338, 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) A specified date is not effective unless it is within the period of twenty-eight days immediately before the date of the offer.

351. Provisions about pre-emption not applicable to shares taken on formation

The provisions of this Division relating to shareholders' pre-emption rights do not apply to the taking of shares by the subscribers to the memorandum on the formation of the company.

352. Saving for other restrictions on offer or allotment

(1) This Division does not limit the application of any other written law under which a company is prohibited (whether generally or in specified circumstances) from offering or allotting equity securities to a person.

(2) If a company cannot because a written law offer or allot equity securities to a holder of ordinary shares of the company, those shares are to be disregarded for the purposes of section 338, so that—

(a) the person is not taken to be a person who holds ordinary shares; and

(b) the shares are not to be regarded as forming part of the ordinary share capital of the company.

353. Saving for certain older pre-emption requirements

(1) This Division does not apply to an allotment of equity securities of a public company that are subject to a pre-emption requirement in relation to which the repealed Act applied immediately before the commencement of this Division.

(2) A pre-emption requirement to which the repealed Act applied in respect of a private company immediately before the commencement of this Division has effect, so long as the company remains a private company, as if it were contained in the company's articles.

(3) A pre-emption requirement to which the repealed Act applied immediately before the commencement of this Division is, for the purposes of this Division, taken to be included in the company's articles.

Division 4 — Public companies: allotment where issue not fully subscribed

354. Public companies: allotment if issue not fully subscribed

(1) A public company shall not allot shares of the company offered for public 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 satisfied.

(2) If shares are prohibited from being allotted by subsection (1) and forty days have elapsed since the offer was first made, the company shall, without delay but without interest, repay all money received from applicants for shares.

(3) If any of the money is not repaid within forty-eight days after the offer was first made, the directors of the company are jointly and severally liable to repay it, with interest at the prescribed rate from the end of the forty-eighth day.

(4) A director who proves that the default in the repayment of the money was not due to the director's misconduct or negligence is not liable under subsection (3).

(5) This section applies in the case of shares offered as wholly or partly payable otherwise than in cash as it applies in the case of shares offered for subscription. In that case—

(a) a reference in subsection (1) to subscription is modified accordingly;

(b) a reference in subsections (2) and (3) to the repayment of money received from applicants for shares includes—

(i) the return of any other consideration so received (including, if the case so requires, the release of the applicant from any undertaking); or

(ii) if it is not reasonably practicable to return the consideration — payment of money equal to its value at the time it was so received; and

(c) a reference to interest applies accordingly.

(6) Any condition requiring or binding an applicant for shares to waive compliance with any requirement of this section is void.

355. Public companies: effect of irregular allotment if issue not fully subscribed

(1) If an allotment of shares is made to an applicant in contravention of section 354, the applicant has a right to avoid the allotment at any time within one month after the date of the allotment, but not later.

(2) An allotment made in contravention of section 356 is voidable even if the company is in liquidation or under administration.

(3) If section 354 is contravened with respect to an allotment, each director of the company who is in default is liable to compensate the company and the allottee respectively for any loss, damages or expenses that the company or allottee may have sustained or incurred because of the contravention.

(4) Proceedings to recover any such loss, damages or expenses may not be brought more than three years after the date of the allotment.

Division 5 — Payment for shares

356. Shares not to be allotted at a discount

(1) A company shall not allot its shares at a discount.

(2) If shares are allotted in contravention of subsection (1), the allottee is liable to pay the company an amount equal to the amount of the discount, with interest at the appropriate rate.

357. Provision for different amounts to be paid on shares

A company may, if authorised to do so by its articles, pay dividends in proportion to the amount paid up on each share.

358. General rule as to means of payment

Shares allotted by a company, and any premium on them, may be paid up in money or in money's worth (including goodwill and know-how).

359. Meaning of payment in cash

For the purposes of this Act, a share in a company is paid up, as to its nominal value or any premium on it, in cash, or allotted for cash, if the consideration received for the payment or allotment is a cash consideration.

(2) In subsection (1), "cash consideration" means—

(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;

(d) an undertaking to pay cash to the company at a future date; or

(e) payment by any other means giving rise to a present or future entitlement of the company or a person acting on the company's behalf to a payment, or credit equivalent to payment, in cash.

(3) The regulations may provide that particular means of payment specified in the regulations are to be 40 regarded as being included in subsection (2)(e).

(4) In relation to the allotment or payment up of shares in a company—

(a) the payment of cash to a person other than the company; or

(b) an undertaking to pay cash to a person other than the company, counts as consideration other than cash.

(5) Subsection (4) does not apply to or in relation to those sections of this Part relating to the allotment of equity securities and to the existing shareholders' right of preemption.

(6) For the purpose of determining whether a share is or is to be allotted for cash, or paid up in cash, cash includes foreign currency.

360. Public companies: shares taken by subscribers of memorandum

(1) A subscriber to the memorandum of a public company who takes shares of the company as a result of an undertaking given in the memorandum shall pay for the shares, and any premium on the shares, in cash.

(2) A subscriber to the memorandum of a public company who fails to pay for shares of the company, or any premium on the shares, otherwise than in accordance with subsection (1), commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

361. Public companies: not to accept undertaking for work or services

(1) A public company shall not accept at any time, in payment up of its shares or any premium on them, an undertaking given by a person that the person or another person should work or perform services for the company or any other person.

(2) If a public company accepts such an undertaking in payment for its shares or any premium on them, the holder of the shares when they or the premium are treated as paid up in whole or in part by the undertaking is liable—

(a) to pay the company in respect of those shares an amount equal to their nominal value, together with the whole of any premium or, if the case so requires, such proportion of that amount as is, treated as paid up by the undertaking; and

(b) to pay interest at the appropriate rate on the amount payable under paragraph (a).

(3) The reference in subsection (2) to the holder of shares includes a person who has an unconditional right—

(a) to be included in the company's register of members in respect of those shares; or

(b) to have a document of transfer of them executed in the person's favour.

362. Public companies: shares to be at least one quarter paid up

(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 under 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 that 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.

(4) Subsection (3) does not apply to the allotment of bonus shares, unless the allottee knew or ought to have known the shares were allotted in contravention of this section.

363. Public companies: payment by long-term undertaking

(1) A public company shall not allot shares as fully or partly paid up as to their nominal value or any premium on them otherwise than in cash if the consideration for the allotment is or includes an undertaking that is to be, or could be, performed more than five years after the date of the allotment.

(2) If a company allots shares in contravention of subsection (1), the allottee is liable to pay the company an amount equal to the aggregate of their nominal value and the whole of any premium or (if the case so requires) so much of that aggregate as is treated as paid up by the 40 undertaking, with interest at the appropriate rate.

(3) Even if a contract for the allotment of shares does not contravene subsection (1), a variation of the contract is void if it has the effect that the contract would have contravened that subsection if the terms of the contract as varied had been its original terms. If in the case of a company that has converted itself into a public company, this subsection applies also to the variation by the company of the terms of a contract entered into before the registration of the conversion by the Registrar.

(4) If—

(a) a public company allots shares for a consideration which consists of or includes in accordance with subsection (1) an undertaking that is to be performed within five years of the allotment; and

(b) the undertaking is not performed within the period allowed by the contract for the allotment of the shares, the allottee is liable to pay the company, at the end of the period so allowed, an amount equal to the aggregate of the nominal value of the shares and the whole of any premium or, if the case so requires, so much of that aggregate as is treated as paid up by the undertaking, together with interest at the appropriate rate.

(5) A reference in this section to a contract for the allotment of shares includes an ancillary contract relating to payment in respect of the shares.

364. Liability of subsequent holders of shares

(1) Except as provided by subsection (2), a person who becomes a holder of shares in respect of which—

(a) there has been a contravention of a provision of this Division; and

(b) because of that contravention another person is liable to pay an amount under the provision contravened, is also liable to pay the amount (jointly and severally with the other person so liable).

(2) A person otherwise liable under subsection (1) is exempted from that liability if either the person—

(a) was, at the time of the purchase of the shares, a purchaser for value who did not have actual notice of the contravention; or

(b) derived title to the shares (directly or indirectly) from a person who became a holder of them after the contravention and was not liable under subsection (1).

(3) A reference in this section to a holder of shares in a company includes a person who has an unconditional right—

(a) to be included in the company's register of members in respect of those shares; or

(b) to have a document of transfer of the shares executed in the person's favour.

(4) This section applies in relation to a failure to carry out a term of a contract as referred to in section 363(4) as it applies in relation to a contravention of a provision of this Division.

365. Power of the Court to grant relief

(1) This section applies in relation to liability under section 360(2), 362(3) or (4) or 366 as it applies in relation to a contravention of those sections.

(2) A person who—

(a) is subject to any such liability to a company in relation to payment in respect of shares in the company; or

(b) is subject to any such liability to a company because of an undertaking given to it in, or in connection with, payment for shares in the company, may apply to the Court to be exempted in whole or in part from the liability.

(3) In the case of a liability within subsection (2)(a), the Court may exempt the applicant from the liability only if, and to the extent that, it appears to the Court just and equitable to do so having regard to—

(a) whether the applicant has paid, or is liable to pay, any amount in respect of—

(i) any other liability arising in relation to those shares under any provision of this Division or Division 6; or

(ii) any liability arising because of any undertaking given in or in connection with payment for those shares;

(b) whether any person other than the applicant has paid or is likely to pay, whether in accordance with any order of the Court or otherwise, any such amount;

(c) whether the applicant or any other person—

(i) has performed in whole or in part, or is likely so to perform any such undertaking; or

(ii) has done or is likely to do any other thing in payment or part payment for the shares.

(4) In the case of a liability within subsection (2)(b), the Court may exempt the applicant from the liability only if and to the extent that it appears to the Court just and equitable to do so having regard to—

(a) whether the applicant has paid or is liable to pay any amount in respect of liability arising in relation to the shares under any provision of this Division or Division 6;

(b) whether any person other than the applicant has paid or is likely to pay (whether in accordance with any order of the Court or otherwise) any such amount.

(5) In determining whether the applicant should be exempted wholly or partly from any liability, the Court shall give effect to the following overriding principles-

(a) a company that has allotted shares should receive money or money s' worth at least equal in value to the aggregate of the nominal value of those shares and the whole of any premium or, if the case so requires, so much of that aggregate as is treated as paid up;

(b) subject to paragraph (a), if a company would, if the Court did not grant the exemption, have more than one remedy against a particular person, it should be for the company to decide which remedy it wishes to pursue.

(6) If a person brings proceedings against another person for a contribution in respect of liability to a company arising under any provision of this Division or Division 6 and it appears to the Court that the other person is liable to make such a contribution, the Court may (if and to the extent that it appears to it just and equitable to do so having regard to the respective culpability for the liability to the company of the other person and the person bringing the proceedings)—

(a) exempt the other person wholly or partly from liability to make such a contribution; or

(b) order the other person to make a larger contribution than that which, but for this subsection, that person would be liable to make.

366. Offences involving contravention of section 358, 363, 364 and 365

If a company contravenes a provision of section 356, 361, 362 or 362, the company, and each officer of the company who is in default, commits an offence and on conviction are each liable to a fine not exceeding one million shillings.

367. Meaning of “appropriate rate of interest” for purpose of this Division

(1) For the purpose of this Division, the appropriate rate of interest is—

(a) five percent; or

(b) if some other rate is fixed under subsection (2), that rate of interest.

(2) The Cabinet Secretary may, by order published in the *Gazette*, vary the rate specified in subsection (1)(a) or fixed under subsection (1)(b).

Division 6 — Public companies: independent valuation of non-cash consideration

368. Restrictions on public company allocating shares for non-cash consideration

(1) A public company shall not allot shares as fully or partly paid up (as to their nominal value or any premium on them) otherwise than in cash unless—

(a) the consideration for the allotment has been independently valued in accordance with the provisions of this Division;

(b) the valuer's report has been made to the company during the six months immediately preceding the allotment of the shares; and

(c) a copy of the report has been sent to the proposed allottee.

(2) For the purpose of subsection (1), the application of an amount standing to the credit of—

(a) any of a company's reserve accounts; or

(b) its profit and loss account, in paying up (to any extent) shares allotted to members of the company; or premiums on shares so allotted, does not count as consideration for the allotment, and that subsection does not apply in that case.

(3) If a company allots shares in contravention of subsection (1) and either—

(a) the allottee has not received the valuer's report required to be sent to the allottee; or

(b) there has been some other contravention of the requirements of this section or section 371 that the allottee knew or ought to have known amounted to a contravention, the allottee is liable to pay the company an amount equal to the aggregate of the nominal value of the shares and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the consideration), with interest at the appropriate rate.

(4) This section has effect subject to sections 369 and 370.

369. Exception to valuation requirement: arrangement with another company

(1) Section 368 does not apply to the allotment of shares by a company in connection with an arrangement for the allotment of shares in the company on terms that the whole or part of the consideration for the shares allotted is to be provided—

(a) by the transfer to the company; or

(b) by the cancellation, of all or some of the shares (or of all or some of the shares of a particular class) in another company.

(3) It does not matter whether the arrangement provides for the issue to the allotting company of shares (or shares of a particular class) in the other company.

(4) This section applies to an arrangement only if, under the arrangement—

(a) all the holders of the shares in the other company; or

(b) if the arrangement applies only to shares of a particular class — all the holders of shares of that class, can take part in the arrangement.

(5) In determining whether this section applies to an arrangement, the following are to be disregarded:

(a) shares held by or by a nominee of the allotting company;

(b) shares held by or by a nominee of a company that is related to that company;

(c) shares held as treasury shares by the other company.

(6) In this section—

(a) "arrangement" means an agreement, scheme or arrangement, including an arrangement sanctioned in accordance with—

(i) Part XXXIV; or

(ii) a prescribed provision of laws relating to insolvency; and

(b) "company", except in relation to the allotting, includes a body corporate of any kind.

370. Exception to valuation requirement: merger

(1) Section 368 does not apply to the allotment of shares by a company in connection with a proposed merger with another company.

(2) For the purpose of subsection (1), a proposed merger exists when one company proposes to acquire all the assets and liabilities of another company in exchange for the issue of shares or other securities of the acquiring company to shareholders of the other company (with or without any cash payment to those shareholders).

(3) In this section, "another company" or "other company" includes a body corporate of any kind.

371. Non-cash consideration for shares: requirements as to valuation and report

(1) Part XLI applies to the valuation and report required by section 368.

(2) The valuer shall specify in the report—

(a) the nominal value of the shares to be wholly or partly paid for by the relevant consideration;

(b) the amount of any premium that is payable on the shares;

(c) the description of the consideration and, in relation to so much of the consideration as the value has personally valued—

(i) a description of that part of the consideration;

(ii) the method used to value it; and

(iii) the date of the valuation; and

(d) the extent to which the nominal value of the shares and any premium are to be treated as paid up-

(i) by the consideration; and

(ii) in cash.

(3) The valuer shall include in, or attach to or enclose with, the report a note—

(a) in the case of a valuation made by a person other than personally, that it appeared to the valuer reasonable to arrange for it to be so made or to accept a valuation so made;

(b) whoever made the valuation, that the method of valuation was reasonable in all the circumstances;

(c) that it appears to the valuer that there has been no material change in the value of the relevant consideration since the valuation; and

(d) that, on the basis of the valuation, the value of that consideration, together with any cash by which the nominal value of the shares or any premium payable on them is to be paid up, is not less than so much of the aggregate of the nominal value and the whole of any such premium as is treated as paid up by the consideration and any such cash.

(4) If the consideration to be valued is accepted partly in payment up of the nominal value of the shares and any premium and partly for some other consideration given by the company, section 368 and subsections (1) to (3) of this section apply as if references to the consideration accepted by the company included the proportion of that consideration that is properly attributable to the payment up of that value and any premium.

(5) In such a case—

(a) the valuer shall carry out, or arrange for, such other valuations as will enable the valuer to determine that proportion; and

(b) the valuer shall prepare a report that states what valuations have been made under this subsection and also the reason for; and method and date of, any such valuation and any other matters that could be relevant to that determination.

372. Copy of report to be lodged with Registrar

(1) A company to which a report is made under section 368 as to the value of any consideration for which, or partly for which, it proposes to allot shares shall lodge a copy of the report to the Registrar for registration.

(2) The company shall lodge the copy at the same time as it lodges the return of the allotment of those shares under section 333.

(3) If a company fails to lodge a copy of a report with the Registrar as required by subsections (1) and (2), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(4) If, after a company or any of its officers is convicted of an offence under subsection (3), the company continues to fail to lodge the requisite copy of the report, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

(5) If a company has failed to lodge with the Registrar a copy of a report as required by subsections (1) and (2), the company or any of its officers may apply to the Court for relief.

(6) If, on the hearing of an application made under subsection (5), the Court is satisfied—

(a) that the omission to lodge the copy was accidental or due to inadvertence; or

(b) that it is just and equitable to grant relief, it may make an order extending the time for delivery of the copy for such period as it considers appropriate.

373. Public company: agreement for transfer of non-cash asset in initial period

(1) A public company formed as such shall not enter into an agreement—

(a) with a person who is a subscriber to the company's memorandum;

(b) for the transfer by the person to the company or another, before the end of the company's initial period; and

(c) under which the consideration for the transfer to be given by the company is at the time of the agreement equal in value to one-tenth or more of the company's issued share capital,

unless the relevant conditions have been complied with.

(2) For the purpose of subsection (1), a company's initial period is the period of two years from and including the date on which the company is issued with a certificate under section 516.

(3) For the purpose of subsection (1), the conditions are those specified in sections 374 and 376.

(4) This section does not apply if—

(a) it is part of the company's ordinary business to acquire; or arrange for other persons to acquire, assets of a particular description; and

(b) the agreement is entered into by the company in the ordinary course of that business.

(5) This section does not apply to an agreement entered into by the company under the supervision of the Court or of an officer authorised by the Court for the purpose.

374. Agreement for transfer of non-cash asset: requirement of independent valuation

(1) The following conditions are conditions that are required to be complied with for the purpose of section 373—

(a) that the consideration to be received by the company, and any consideration other than cash to be given by the company, has been independently valued in accordance with this Division;

(b) that the valuer's report has been made to the company during the six months immediately preceding the date of the agreement;

(c) that a copy of the report has been sent to the other party to the proposed agreement not later than the date on which copies are required to be circulated to members under section 376 (3).

(2) The reference in subsection (1)(a) to the consideration to be received by the company is to the asset to be transferred—

(a) to the company; or

(b) to another person in circumstances that are beneficial to the company.

(3) The reference in subsection (1)(c) to the other party to the proposed agreement is to the person referred to in section 374 (1)(a).

(4) If the person has received a copy of the report under section 377 in the person's capacity as a member of the company, it is not necessary to send another copy under this section.

(5) This section does not affect a requirement to value any consideration for purposes of section 368.

375. Agreement for transfer of non-cash asset: requirements as to valuation and report

(1) Part XLI applies to the valuation and report required by section 374.

(2) In the report, the valuer shall specify—

(a) the consideration to be received by the company, describing the relevant asset (specifying the amount to be received in cash) and the consideration to be given by the company (specifying the amount to be given in cash); and

(b) the method and date of valuation.

(3) If the valuation was made by a person other than the valuer, the valuer shall include in or attach to the report a note that it appeared to the valuer reasonable to arrange for the report to be so made or to accept a valuation made by that person.

(4) Irrespective of whether the report was made by the valuer or by some other person, the valuer shall include in, or attach to, the report a statement to the effect that the method of valuation was reasonable in all the circumstances.

(5) The valuer shall also include in, or attach to, the report—

(a) a statement that it appears to the valuer that there has been no material change in the value of the relevant consideration since the valuation; and

(b) a statement that, on the basis of the valuation, the value of the consideration to be received by the company is not less than the value of the consideration to be given by it.

(6) A reference in section 374 or this section to consideration given for the transfer of an asset includes consideration given partly for its transfer.

(7) For the purposes of subsection (5)—

(a) the value of any consideration partly so given is to be taken as the proportion of the consideration properly attributable to its transfer;

(b) the valuer shall carry out, or arrange to be carried out, such valuations of any other thing that will enable the valuer to determine that proportion; and

(c) the valuer shall state in the report what valuations have been made for that purpose and also the reason for, and method and date of, any such valuation and any other matters that may be relevant to that determination.

376. Agreement for transfer of non-cash asset: requirement of approval by members

(1) The following conditions are further conditions that are required to be complied with for the purpose of section 374—

(a) that the terms of the agreement have been approved by an ordinary resolution of the company;

(b) that the requirements of subsection (3) relating to the circulation to members of copies of the valuer's report under section 377 have been complied with;

(c) that a copy of the proposed resolution has been sent to the other party to the proposed agreement.

(2) The reference in subsection (1)(c) to the other party to the proposed agreement is to the person referred to in section 374(1)(a).

(3) The requirements relating to the circulation of copies of a valuer's report are as follows—

(a) if the resolution was proposed as a written resolution — that copies of the valuer's report have been sent or submitted to every eligible member at or before the time at which the proposed resolution was sent or submitted to the member;

(b) if the resolution was proposed at a general meeting, that copies of the valuer's report have been circulated to the members entitled to notice of the meeting not later than the date on which notice of the meeting was given.

377. Copy of resolution to be lodged with Registrar

(1) Within fourteen days after a company passes a resolution with respect to the transfer of a non-cash asset, the company shall lodge with the Registrar for registration a copy of the resolution, together with a copy of the relevant valuer’s report.

(2) If a company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(3) If, after the company or any of its officers is convicted of an offence under subsection (1), the company continues to fail to lodge with the Registrar the documents referred to in that section, the company, and each officer of the company who is in default, commit a further office on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

378. Modification of provisions in relation to company whose conversion into a public company has been registered

Sections 373 to 377 apply with the following modifications in relation to a company whose conversion into a public company has been registered by the Registrar—

(a) the reference in section 373(1)(a) to a person who is a subscriber to the company's memorandum is a reference to a person who is a member of the company on the date of registration;

(b) the reference in section 373(2) to the date of the company being issued with a trading certificate under section 516 is a reference to the date of registration.

379. Agreement for transfer of non-cash inset; effect of contravention

(1) If a public company enters into an agreement in contravention of section 373 and either—

(a) the other party to the agreement has not received the valuer's report required to be sent to that party; or

(b) there has been some other contravention of the requirements of this Division that the other party to the agreement knew or ought to have known amounted to a contravention. the company is entitled to recover from that person any consideration given by it under the agreement; or an amount equal to the value of the consideration at the time of the agreement.

(2) Such an agreement, to the extent that it is not carried out, is void.

(3) If such an agreement is or includes an agreement for the allotment of shares in the company, then—

(a) whether or not the agreement also contravenes section 368, this section does not apply to it in so far as it is for the allotment of shares; and

(b) the allottee is liable to pay the company an amount equal to the aggregate of the nominal value of the shares and the whole of any premium (or, if the case so requires, so much of that aggregate as is treated as paid up by the consideration), with interest at the appropriate rate.

380. Liability of subsequent holders of shares

(1) If a person becomes a holder of shares in respect of which—

(a) section 368 has been contravened; and

(b) because of that contravention another person is liable to pay an amount under the provision contravened, that person is also liable to pay that amount (jointly and severally with any other person so liable), unless the person is exempted from liability under subsection (4).

(2) If a company enters into an agreement in contravention of section 374 and—

(a) the agreement is or includes an agreement for the allotment of shares in the company;

(b) a person becomes a holder of shares allotted under the agreement; and

(c) because of the agreement and the allotment under it, another person is liable to pay an amount under section 380(1), the person who becomes the holder of the shares is also liable to pay that amount (jointly and severally with any other person so liable), unless the person is exempted from liability under subsection (4).

(3) Subsection (2) applies whether or not the agreement also contravenes section 368.

(4) A person otherwise liable under subsection (1) or (2) is exempted from that liability if either—

(a) the person is a purchaser for value and, at the time of the purchase, the person did not have actual notice of the contravention concerned; or

(b) the person derived title to the shares (directly or indirectly) from a person who became a holder of them after the contravention and was not liable under subsection (1) or (2).

(5) A reference in this section to a holder, in relation to shares in a company, includes a person who has an unconditional right—

(a) to be included in the company's register of members in respect of those shares; or

(b) to have a transfer of the shares executed in the person's favour.

381. Power of Court to grant relief

(1) A person who—

(a) is liable to a company under a provision of this Division make a payment for shares in the company; or

(b) is liable to a company because of an undertaking given to it in; or in connection with, a payment for shares in the company, may apply to the Court to be exempted from the liability (either wholly or in part).

(2) In the case of a liability within subsection (1)(a), the Court may exempt the applicant from the liability only if, and to the extent that, it appears to the Court just and equitable to do so having regard to—

(a) whether the applicant has paid; or is liable to pay, any amount in respect of—

(i) any other liability arising in relation to those shares under a provision of this Division or Division 5; or

(ii) any liability arising because of any undertaking given in or in connection with payment for those shares;

(b) whether any person other than the applicant has paid or is likely to pay (whether in accordance with an order of the Court or otherwise) any such amount;

(c) whether the applicant or any other person—

(i) has performed, or is likely so to perform, any such undertaking in whole or in part; or

(ii) has done or is likely to do any other thing in payment or part payment for the shares.

(3) In the case of a liability within subsection (1)(b), the Court may exempt the applicant from the liability only if and to the extent that it appears to the Court just and equitable to do so having regard to—

(a) whether the applicant has paid or is liable to pay any amount in respect of liability arising in relation to the shares under a provision of this Division or Division 5; and

(b) whether any person other than the applicant has paid or is likely to pay (whether in accordance with any order of the Court or otherwise) any such amount.

(4) In determining whether it should exempt the applicant in whole or in part from any liability, the Court shall have regard to the following overriding principles—

(a) that a company that has allotted shares should receive money or money’s worth at least equal in value to the aggregate of the nominal value of those shares and the whole of any premium or, if the case so requires, so much of that aggregate as is treated as paid up;

(b) subject to paragraph (a), that if such a company would, if the Court did not grant the exemption, have more than one remedy against a particular person, it should be for the company to decide which remedy it should remain entitled to pursue.

(5) Subsection (6) applies if—

(a) a person brings proceedings against another person for a contribution in respect of liability to a company arising under a provision of this Division or Division 5; and

(b) it appears to the Court that the contributor is liable to make such a contribution.

(6) When this subsection applies, the Court may, if and to the extent that it appears to it, just and equitable to do so having regard to the respective culpability (in respect of the liability to the company) of the contributor and the person bringing the proceedings—

(a) exempt the contributor in whole or in part from liability to make such a contribution; or

(b) order the contributor to make a larger contribution than, but for this subsection, the person would be liable to make.

(7) If a person is liable to a company under section 380(1), the Court may, on application, exempt the person in whole or in part from that liability if and to the extent that it appears to the Court to be just and equitable to do so having regard to any benefit accruing to the company because of anything done by the person towards the carrying out of the agreement mentioned in that subsection.

382. Offence to contravene section 368 or 373

If a company contravenes section 368 or 373, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

383. Enforceability of undertakings to do work etc

(1) An undertaking given by any person, in or in connection with payment for shares in a company, to do work or perform services or to do any other thing, if it is enforceable by the company apart from this Division, is so enforceable by the company apart from this Division, is so enforceable even though a provision of this Division or Division 5 has been contravened in relation to it.

(2) Subsection (1) does not prevent the Court from granting relief under section 381.

384. What is the appropriate rate of interest for the purposes of this Division?

(1) For the purposes of this Division the "appropriate rate" of interest is—

(a) five percent per year; or

(b) if some other rate is specified by order made under subsection (2), that other rate.

(2) The Cabinet Secretary may, by order published in the *Gazette*, specify a rate for the purpose of subsection (1)(b) and may from to time, by a similar order so published, substitute another rate for the rate currently specified.

Division 7 — Share premiums

385. Interpretation: Division 7

In this Division—

"arrangement" includes any agreement or scheme, and in particular includes an arrangement approved in accordance with—

(a) Part XXXIV; or

(b) any provision of laws relating to insolvency prescribed by the regulations for the purposes of this Division;

"company", except in relation to an issuing company, includes any kind of body corporate;

"equity shares", means shares comprised in a company's equity share capital; and "non-equity shares" means shares (of any class) that are not so comprised;

"holding company", in relation to an issuing company, the company of which the issuing company is a subsidiary;

"issuing company", means a company that issues shares as referred to in section 387(1);

"share premium account", in relation to a company, means the account established by the company under section 386;

"transferor company", in relation to an issuing company, means the company whose non-cash assets are transferred to the issuing company as referred to in section 387(1).

(2) In this Division—

(a) a reference (however expressed) to the acquisition by a company of shares in another company includes the acquisition of shares by a nominee of that company;

(b) a reference to the issue or allotment of shares to, or the transfer of shares to or by, a company, includes the issue or allotment or transfer of shares to or by, a nominee of that company; and

(c) a reference to the transfer of shares in a company includes the transfer of a right to be included in the company's register of members in respect of those shares.

386. Company's share premium account and application of share premiums

(1) If a company issues shares at a premium (whether for cash or otherwise), the company shall—

(a) if it has not already done so, establish an account to be called the share premium account; and

(b) transfer to that account an amount equal to the aggregate amount or value of the premiums on those shares.

(2) If, on issuing shares, a company has transferred an amount to its share premium account, it may use the amount to write off—

(a) the expenses of the issue of those shares; and

(b) any commission paid on the issue of those shares.

(3) The company may use its share premium account to pay up new shares that are to be allotted to members as fully paid bonus shares.

(4) Subject to subsections (2) and (3), the provisions of this Act relating to the reduction of a company's share capital apply as if the company's share premium account were part of its paid up share capital.

(5) This section has effect subject to sections 387, 388 and 390.

(6) If a company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

387. Relief from requirements as to share premiums: Group reconstruction relief

(1) This section applies if an issuing company that is a wholly-owned subsidiary of a holding company allots shares—

(a) to the holding company; or

(b) to another wholly-owned subsidiary of the holding company,

in consideration for the transfer to the issuing company of non-cash assets of a company that is a member of the group of companies that comprises the holding company and all its wholly-owned subsidiaries.

(2) If the shares in the issuing company allotted in consideration for the transfer are issued at a premium, the issuing company is not required by section 386 to transfer any amount in excess of the minimum premium value to the share premium account.

(3) For the purpose of (2), the minimum premium value is the amount (if any) by which the base value of the consideration for the shares allotted exceeds the aggregate nominal value of the shares.

(4) The base value of the consideration for the shares allotted is the amount by which the base value of the assets transferred exceeds the base value of any liabilities of the transferor company assumed by the issuing company as."^ part of the consideration for the assets transferred.

(5) For the purposes of this section—

(a) the base value of assets transferred is taken to be—

(i) the cost of those assets to the transferor company; or

(ii) if less, the amount at which those assets are stated in the transferor company's accounting records immediately before the transfer; and

(b) the base value of the liabilities assumed is taken to be the amount at which those liabilities are stated in the transferor company's accounting records immediately before the transfer.

388. Merger relief

(1) This section applies if an issuing company acquires at least a ninety percent equity holding in another company under an arrangement providing for the allotment of equity shares in the issuing company on terms that the consideration for the shares allotted is to be provided—

(a) by the issue or transfer to the issuing company of equity shares in the other company; or

(b) by the cancellation of any such shares not held by the issuing company.

(2) If, in a case to which this section applies, the equity shares in the issuing company allotted under the arrangement in consideration for the acquisition or cancellation of equity shares in the other company are issued at a premium, section 386 does not apply to the premiums on those shares.

(3) If the arrangement also provides for the allotment of shares in the issuing company on terms that the consideration for those shares is to be provided—

(a) by the issue or transfer to the issuing company of non-equity shares in the other company; or

(b) by the cancellation of any such shares not held by the issuing company,

relief under subsection (2) extends to shares (if any) in the issuing company allotted on those terms under the arrangement.

(4) This section does not apply to a case to which section 387 applies.

389. Merger relief: meaning of ninety percent equity holding

(1) This section applies for the purpose of determining whether a company has, for the purposes of section 388, acquired at least a ninety percent equity holding in another company under an arrangement referred to in subsection (1) of that section.

(2) For the purpose referred to in subsection (1), a company acquires at least a ninety percent equity holding in another company if, as a result of an acquisition or a cancellation of equity shares in another company (under an arrangement referred to in section 388(1), it holds equity shares in the other company of an aggregate amount equal to ninety percent or more of the nominal value of the other company's equity share capital.

(3) For the purpose of subsection (2)—

(a) it does not matter whether any of the shares were acquired under the arrangement; and

(b) shares in the other company held by the acquiring company as treasury shares are to be disregarded in determining the nominal value of the other company's share capital.

(4) If the equity share capital of the other company is divided into different classes of shares, the acquiring company is taken to have acquired at least a ninety percent equity holding in the other company only if the requirements of subsection (2) are satisfied in relation to each of those classes of shares taken separately.

(5) For the purposes of this section, shares held by—

(a) a company that is the acquiring company's holding company or subsidiary;

(b) a subsidiary of the acquiring company’s holding company; or

(c) its or their nominees,

are taken to be held by the acquiring company.

390. Power to make further provision by regulations for the purposes of this Division

The regulations may prescribe provisions for either or both of the following—

(a) for relieving companies from the requirements of section 386 in relation to premiums other than cash premiums;

(b) for restricting or otherwise modifying any relief from those requirements provided by this Division.

391. Relief may be reflected in company’s balance sheet

If an amount that corresponds to the amount representing the premiums, or part of the premiums, on shares issued by a company that, as a result of relief (if any) under this Division, is not included in the company’s share premium account, the amount can also be disregarded in determining the amount at which shares or other consideration provided for the shares issued is to be included in the company’s balance sheet.

Division 8 — Classes of shares and variation of classes

392. Classes of shares

(1) For the purposes of this Act, 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 to be regarded as different only because they do not carry the same rights to dividends during the twelve months immediately following their allotment.

393. Variation of class rights: companies having a share capital

(1) This section is concerned with the variation of the rights attached to a class of shares in a company having a share capital.

(2) Rights attached to a class of a company's shares may be varied only—

(a) in accordance with the provisions of the company's articles providing for the variation of those rights; or

(b) if if the company's articles contain no such provision- if the holders of shares of that class consent to the variation in accordance with this section.

(3) Subsection (2) does not affect any other restrictions varying the rights.

(4) The consent required for the purpose of this section to be given by the holders of a class of a company's shares is—

(a) consent in writing from the holders o at least three-quarters in nominal value of the issued shares of that class (excluding any shares held as treasury shares); or

(b) a special resolution passed at a separate general meeting of the holders of that classes sanctioning the variation.

(5) An 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 a variation of those rights for the purpose of this section.

(6) In this section, and (except when the context otherwise requires) in any provision of a company's articles for the variation of the rights attached to a class of shares, a reference to the variation of those rights includes a reference to their abrogation.

394. Variation of class rights: companies without a share capital

(1) This section is concerned with the variation of the rights of a class of members of a company that does not have a share capital.

(2) Rights of a class of members may be varied only—

(a) in accordance with the provisions of the company's articles providing for the variation of those rights; or

(b) where the company's articles contain no such provision — if the members of that class consent to the variation in accordance with this section.

(3) Subsection (2) does not affect any other restriction varying the rights.

(4) The consent required for the purposes of this section by the members of a class is—

(a) consent in writing from at least three-quarters of the members of the class; or

(b) a special resolution passed at a separate general meeting of the members of that class sanctioning the variation.

(5) An 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 a variation of those rights for the purposes of this section.

(6) In this section, and (except when the context otherwise requires) in any provision in a company's articles for the variation of the rights of a class of members, a reference to the variation of those rights includes a reference to their abrogation.

395. Section 393 and 394 not to affect powers of Court under certain provisions

Neither section 393 nor section 394 affects the powers of the Court under section 78, Part XXIX or XXXIV.

396. Right to object to variation: companies having a share capital

(1) This section applies if the rights attached to any class of shares in a company are varied under section 393.

(2) The holders of not less in the aggregate than fifteen percent of the issued shares of the relevant class (being persons who did not consent to or vote in favour of the resolution for the variation) may apply to the Court to have the variation cancelled.

(3) For the purpose of subsection (2), any of the company's share capital held as treasury shares is disregarded.

(4) If such an application is made, the variation has no effect unless and until it is confirmed by the Court.

(5) An application to the Court can be made only within twenty-one days after the date on which the consent was given or the resolution was passed, or within such extended period as the Court may in special circumstances allow.

(6) An application to the Court may be made by all of the shareholders entitled to make the application or on their behalf by such one or more of their number as they may appoint in writing for the purpose.

(7) If, at the hearing of the application, the Court shall, if satisfied that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation, but, if it is not so satisfied, it shall confirm it.

(8) The applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested in the application are entitled to be heard at the is hearing of the application and to have their representations taken into consideration at the hearing.

(9) The decision of the Court on any such application is final.

(10) A reference in this section to the variation of the rights of holders of a class of shares includes a reference to their abrogation.

397. Right to object to variation: companies having a share capital

(1) This section applies if the rights of any class of members of a company are varied under section 394.

(2) Members comprising not less than fifteen percent of the members of the relevant class (being persons who did not consent to or vote in favour of the resolution for the variation) may apply to the Court to have the variation cancelled.

(3) If such an application is made, the variation has no effect unless and until it is confirmed by the Court.

(4) An application to the Court can be made only within twenty-one days after the date on which the consent was given or the resolution was passed, or within such extended period as the Court may in special circumstances allow.

(5) An application to the Court may be made by all of the members entitled to make the application or on their behalf by such one or more of their number as they may appoint in writing for the purpose.

(6) If, at the hearing of the application, the Court shall, if satisfied that the variation would unfairly prejudice the members of the class represented by the applicant, disallow the variation, but, if it is not so satisfied, it shall confirm it.

(7) The applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested in the application are entitled to be heard at the hearing of the application and to have their representations taken into consideration at the hearing.

(8) The decision of the Court on any such application is final.

(9) A reference in this section to the variation of the rights of a class of members includes a reference to their abrogation.

398. Copy of Court order to be lodged with Registrar

(1) Within fourteen days after the making of an order by the Court on an application under section 396 or 397, the company concerned shall lodge a copy of the order with the Registrar for registration.

(2) If a company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(3) If, after a company or any of its officers is convicted of an offence under subsection (2), the company continues to fail to lodge the requisite copy, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

399. Notice of name or other designation of class of shares

(1) If a company assigns a name or other designation, or a new name or other designation, to any class or description of its shares, it shall, within fourteen days after doing so, lodge with the Registrar a notice giving particulars of the name or designation so assigned.

(2) If a company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each 40 liable to a fine not exceeding two hundred thousand shillings.

(3) If, after a company or any of its officers is convicted of an offence under subsection (2), the company continues to fail to lodge the requisite notice, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

400. Notice of particulars of variation of rights attached to shares to be lodged with Registrar

(1) If the rights attached to shares of a company are varied, the company shall, within fourteen days after the date on which the variation is made, lodge with the Registrar for registration a notice giving particulars of the variation.

(2) If a company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(3) If, after a company or any of its officers is convicted of an offence under subsection (2), the company continues to fail to lodge the requisite notice, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

401. Notice of new class of members to be lodged with Registrar

(1) If a company not having a share capital creates a new class of members, the company shall, within fourteen days after the date on which the new class is created, lodge with the Registrar for registration a notice containing particulars of the rights attached to that class.

(2) If a company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(3) If, after a company or any of its officers is convicted of an offence under subsection (2), the company continues to fail to lodge the requisite notice, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

402. Notice of name or other designation of class of members to be lodged with Registrar

(1) If a company not having a share capital assigns a name or other designation, or a new name or other designation, to any class of its members, it shall, within fourteen days after doing so, lodge with the Registrar for registration a notice giving particulars of the name or designation so assigned.

(2) If a company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(3) If, after a company or any of its officers is convicted of an offence under subsection (2), the company continues to fail to lodge the requisite notice, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

403. Notice of particulars of variation of class rights

(1) If the rights of any class of members of a company not having a share capital are varied, the company shall, within fourteen days after the date on which the variation is made, lodge with the Registrar for registration a notice containing particulars of the variation.

(2) If a company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(3) If, after a company or any of its officers is convicted of an offence under subsection (2), the company continues to fail to lodge the requisite notice, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

Part XV – REORGANISATION OF COMPANY'S SHARE CAPITAL

Division 1 —Alteration and consolidation of share capital

404. Alteration of share capital of limited company

(1) A limited company having a share capital may alter its share capital only—

(a) by increasing its share capital by allotting new shares; or

(b) reducing its share capital in accordance with this Part.

(2) Such a company may subdivide or consolidate all or any of its share capital in accordance with section 405.

405. Sub-division or consolidation of shores

(1) A limited company having a share capital may—

(a) subdivide 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) When subdividing, consolidating or dividing its shares, a company shall ensure that the proportion between the amount paid and the amount if any unpaid on each resulting share is 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.

(6) If a company contravenes any of the provisions of this section, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding one million shillings.

406. Notice to Registrar of sub-division or consolidation

(1) Within one month after subdividing, consolidating or dividing its shares, a company shall lodge with the Registrar for registration a notice specifying the shares that are affected, and accompanied by a statement of capital that complies with subsection (2).

(2) A statement of capital complies with this subsection if it states 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) the particulars of the rights attached to the shares prescribed by the regulations for the purposes of this subsection;

(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 as a premium.

(3) If a company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred and fifty thousand shillings.

(4) If, after a company or any of its officers is convicted of an offence under subsection (3), the company continues to fail to lodge with the Registrar any of the documents required by subsection (1) or (2), the company, and each officer of the company who is in default, commits a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty-five thousand shillings for each such offence.

Division 2 — Reduction of share capital

407. Special resolution for reduction of share capital

(1) A limited company that has a share capital may reduce its share capital by special resolution.

(2) A special resolution under subsection (1) takes effect as provided by section 411(3).

(3) A company may reduce its share capital under this section in any way.

(4) In particular, a company may—

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or

(b) either with or without extinguishing or reducing liability on any of its shares—

(i) cancel any paid-up share capital that is lost or unrepresented by available assets; or

(ii) repay any paid-up share capital in excess of the company's requirements.

408. Application to Court for confirming order

(1) As soon as practicable a company has passed a resolution for reducing its share capital, it shall apply to the Court for an order confirming the reduction.

(2) If the proposed reduction of capital involves either—

(a) diminution of liability in respect of unpaid share capital; or

(b) the payment to a shareholder of any paid-up share capital, section 409 (creditors entitled to object to reduction) applies unless the Court directs otherwise.

(3) The Court may, if having regard to any special circumstances of the case it considers it appropriate to do so, direct that section 409 is not to apply in relation to a specified class or specified classes of creditors.

(4) The Court may direct that section 409 is to apply in any other case.

409. Creditors entitled to object to reduction

(1) When this section applies, each creditor of the company who, at the date fixed by the Court, is entitled to a debt or claim that, if that date were the commencement of the liquidation of the company would be admissible in proof against the company, is entitled to object to the reduction of capital.

(2) The Court is required to settle a list of creditors entitled to object and for that purpose it—

(a) shall ascertain, as far as possible without requiring an application from any of the creditors, the names of those creditors and the nature and amount of their debts or claims; and

(b) may publish notices fixing a day or days within which creditors whose names are not entered on the list-

(i) can claim to have their names so entered; or

(ii) are to be excluded from the right to object.

(4) If a creditor entered on the list whose debt or claim has not been not discharged, or has been established but not terminated, does not consent to the reduction, the Court may, if it considers it appropriate to do so, dispense with the consent of that creditor on the company securing payment of the debt or claim.

(5) For the purpose of subsection (4), the company shall secure the debt or claim by appropriating (as the Court may direct)—

(a) if the company admits the full amount of the debt or claim (or, although not admitting it, is willing to provide for it) — the full amount of the debt or claim; or

(b) 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—an amount fixed by the Court after conducting the same kind of inquiry and adjudication as would be conducted if the company were being liquidated by the Court.

410. Order confirming reduction and powers of Court on making such order

(1) The Court may make an order confirming the reduction of capital on such terms and conditions as it considers appropriate.

(2) The Court may not confirm the reduction unless it is satisfied, in relation to each creditor of the company who is entitled to object to the reduction of capital that either—

(a) the creditor's consent to the reduction has been obtained; or

(b) the creditor's debt or claim has been discharged, has terminated or has been secured.

(3) If the Court confirms the reduction, it may order the company to publish as the Court directs—

(a) the reasons for reduction of capital, or such other information as the Court considers necessary in order to provide the public with full and detailed information about the reduction; and

(b) if the Court considers it is in the public interest to do so—the causes that led to the reduction.

(4) If, for any special reason, the Court considers it appropriate to do so, it may make an order directing the company, during a specified period, to add at the end of its name the words "and reduced".

(5) If a company is ordered to add to its name the words "and reduced", those words form part of the name of the company until the end of the period specified in the Court's order.

(6) In subsection (4), "specified period", in relation to an order of the Court, means a period specified by the Court beginning on the date of the order or on such later date as the Court specifies in the order.

411. Registration of Court order and statement of capital

(1) On production of an order of the Court confirming the reduction of a company’s share capital and the lodgement of a copy of the order and of a statement of capital approved by the Court, the Registrar shall register the order and statement.

(2) The company shall ensure that the statement of capital specifies with respect to the company's share capital as amended by the order—

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

(b) the aggregate nominal value of those shares;

(c) for each class of shares—

(i) the particulars of the rights attached to the shares prescribed by the regulations for the purposes of this subsection;

(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 in the form of a premium.

(3) The resolution for reducing share capital, as confirmed by the Court's order, takes effect—

(a) in the case of a reduction of share capital that forms part of a compromise or arrangement sanctioned by the Court under the laws relating to insolvency;

(i) on lodgement of the order and statement of capital with the Registrar for registration; or

(ii) if the Court so orders—on the registration of the order and statement of capital;

(b) in any other case —on the registration of the order and statement of capital.

(4) The company shall publish notice of the registration in such manner as the Court directs.

(5) The Registrar shall—

(a) certify the registration of the order and statement of capital; and

(b) sign the certificate or authenticate it with the Registrar's official seal.

(6) The certificate is conclusive evidence that—

(a) the requirements of this Act with respect to the reduction of share capital have been complied with; and

(b) the company's share capital is as stated in its statement of capital.

412. Liability of members following reduction of capital

(1) If a company’s share capital is reduced, a member of the company (past or present) is not liable in respect of any share to any call or contribution exceeding the amount of difference (if any) between —

(a) the nominal amount of the share as notified to the Registrar in the statement of capital delivered under section 411; and

(b) the amount paid on the share, or the reduced amount (if any), that is treated as having been paid on it.

(2) This section is subject to section 411.

(3) This section does not affect the rights of the contributories among themselves.

413. Liability to creditors omitted from list of creditors

(1) This section applies to a creditor who, in the case of a reduction of capital confirmed by the Court, was entitled to object to the reduction of share capital but who, as a result of being unaware—

(a) of the proceedings for reduction of share capital; or

(b) of their nature and effect with respect to the creditor's debt or claim, was not entered on the list of creditors.

(2) Each person who was a member of the company at the date on which the resolution for reducing capital took effect in accordance with section 411(3) is liable to contribute for the payment of the debt or claim an amount not exceeding that which the person would have been liable to contribute if the proceedings for the liquidation of the company had commenced on the day before that date.

(3) If, after a reduction of capital, the company is unable to pay the amount of a debt or claim of a creditor to whom this section applies and the liquidation of the company has been completed, the creditor may apply to the Court for an order under subsection (4).

(4) If, on the hearing of an application made under subsection (3), the Court is satisfied that the creditor was unaware of the proceedings for reduction of the company's share capital, or of their nature or effect, it may make an order—

(a) settling a list of persons liable to contribute under this section; and

(b) providing for the making and enforcing of calls and orders on them as if they were ordinary contributories in a liquidation.

414. Offence to conceal name of creditor, etc

An officer of a company who—

(a) intentionally or recklessly—

(i) conceals the name of a creditor entitled to object to the reduction of capital; or

(ii) misrepresents the nature or amount of the debt or claim of a creditor; or

(b) is knowingly concerned in any such concealment or misrepresentation, commits an offence and is on conviction liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both.

415. Shares no bar to damages against company

A person is not precluded from seeking or obtaining damages or other compensation from a company only because the person—

(a) is holding or has held shares in the company;

(b) has a right to apply or subscribe for shares in the company; or

(c) has a right to be included in the company's register of members in respect of shares in the company.

416. Public companies: duty of directors to convene a meeting on loss of capital

(1) If 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 day on which a director of the company first became aware of that fact.

(3) The date for which the meeting is to be convened may not be later than fifty six days from the day referred to in subsection (2).

(4) This section does not authorise any matter to be considered at the meeting other than the situation referred to in subsection (1).

(5) If the directors fail to convene a meeting as required by this section, each of the directors who —

(a) authorised the failure;

(b) being aware of the requirement, failed to take all practical measures to ensure that the requirement was complied with; or

(c) after the last date by which the meeting should have been convened—

(i) authorises the failure to continue; or

(ii) fails to take all practical measures to ensure that the meeting is convened, commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(6) If, after a director is convicted of an offence under subsection (5), the directors continue to fail to convene a meeting as required by this section, each of the directors commits and offence on each day on which the failure continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.

417. Public company reducing capital below authorised minimum

(1) If the Court makes an order confirming a reduction of a public company's capital that has the effect of bringing the nominal value of its allotted share capital below the authorised minimum, the Registrar may register the order only if—

(a) the Court so directs; or

(b) the company first converts itself into a private company and applies to the Registrar for registration of the conversion.

(2) Section 418 prescribes an expedited procedure for registering a company as a private company in the circumstances referred to in subsection (1).

418. Expedited procedure for registration of conversion of company into a private company

(1) The Court may authorise a public company to be converted into a private company without its having passed the special resolution required by section 77.

(2) If the Court does so, it shall specify in the order the changes to the company's name and articles to be made in connection with the conversion.

(3) The company may then lodge with the Registrar an application for the registration of the conversion.

(4) The application is to be accompanied by—

(a) a copy of the Court's order; and

(b) notice of the company's name, and a copy of the company's articles, as altered by the Court's order.

(5) On receipt of such an application, the Registrar shall issue a certificate of incorporation stating the company's unique identifying number and that the company is registered as a private company.

(6) If the company does not already have a unique identifying number, the Registrar shall allocate such a number to the company.

(7) The Registrar shall specify in the certificate of incorporation that the certificate is issued on registration of the conversion and the date on which the certificate is so issued.

(8) The Registrar shall sign the certificate of incorporation and authenticate it with the Registrar's official seal.

(9) On the issue of the certificate of incorporation—

(a) the company becomes a private company; and

(b) the changes in the company's name and articles take effect.

(10) The certificate of incorporation is conclusive evidence that the requirements of this Act as to registration of the conversion have been complied with.

Division 3 — Private companies: reduction of capital supported by solvency statement

419. Reduction of capital of private company supported by solvency statement

(1) A resolution for reducing share capital of a private company limited by shares is supported by a solvency statement if—

(a) the directors of the company make a statement of the solvency of the company in accordance with section 420 not more than fourteen days before the date on which the resolution is passed; and

(b) the resolution and solvency statement are registered in accordance with section 421.

(2) If the resolution is proposed as a written resolution, the directors of the company shall send or submit a copy of the solvency statement to each eligible member at or before the time at which the proposed resolution is sent or submitted to the member.

(3) If the resolution is proposed at a general meeting, the directors of the company shall make a copy of the solvency statement available for inspection by members of the company throughout that meeting.

(4) The validity of a resolution is not affected by a failure to comply with subsection (2) or (3).

420. What is a solvency statement?

(1) A solvency statement is a statement that each of the directors—

(a) has formed the opinion, as regards the company's situation at the date of the statement, that no ground exists on which the company could then be found to be unable to pay (or otherwise discharge) its debts; and

(b) has also formed the opinion—

(i) if it is intended to commence the liquidation of the company within twelve months after that date—that the company will be able to pay (or otherwise discharge) its debts in full within twelve months of the commencement of the liquidation; or

(ii) in any other case, that the company will be able to pay (or otherwise discharge) its debts as they fall due during the year immediately following that date.

(2) In forming those opinions, the directors shall take into account all the company’s liabilities (including any contingent or prospective liabilities).

(3) The directors shall ensure that the solvency statement contains the prescribed information (if any) and states—

(a) the date on which it is made; and

(b) the name of each director of the company.

(4) If the directors make a solvency statement without having reasonable grounds for the opinions expressed in it, and the statement is lodged with the Registrar, each of the directors who is in default commits an offence and on conviction is liable to a fine not exceeding one million shillings.

421. Registration of resolution and supporting documents

(1) Within fourteen days after the resolution for reducing share capital is passed the company shall lodge with the Registrar for registration a statement of capital that complies with subsection (3).

(2) The requirement under subsection (1) is in addition to the copy of the resolution itself that is required to be lodged with the Registrar for registration.

(3) A statement of capital complies with this subsection if it states with respect to the company's share capital as reduced by the resolution—

(a) copy of the solvency statement; and

(b) a statement of the total number of shares of the company;

(c) the aggregate nominal value of those shares;

(d) for each class of shares—

(i) the particulars of the rights attached to the shares prescribed by the regulations for the purposes of this subsection;

(ii) the total on each share (whether on account of the nominal value of the which the resolution was passed; and

(iii) the aggregate nominal value of shares of that class; and

(e) provided to members in accordance with section 419(2) or number of shares of that class; and

(f) the amount paid up and the amount (if any) unpaid on shares or in the form of a premium).

(4) The Registrar shall register the documents lodged under subsection (1) as soon as practicable after receiving them.

(5) The resolution does not take effect until the Registrar has registered the lodged documents.

(6) Within fourteen days after the resolution is passed, the company shall also lodge with the Registrar for registration a statement by the directors confirming that the solvency statement was made not more than fourteen days before the date under subsection (3).

(6) The validity of a resolution is not affected by—

(a) a failure to lodge the documents required to be lodged with the Registrar under subsection (1) within the time specified in that subsection; or

(b) a failure to comply with subsection (5).

(7) If the company lodges with the Registrar a solvency statement that was not provided to members in accordance with section 419(2) or (3), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(8) If a company fails to comply with subsection (1) or (6), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(9) If, after a company or any of its officers is convicted of an offence under subsection (8), the company continues to fail to lodge with the Registrar any of the documents required by subsection (1) or (6), the company, and each officer of the company who is in default, commits a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

Division 4 — Supplementary provision

422. General power to make further provision by regulations

The regulations may make further provision for the implementation of this Part.

Part XVI – ACQUISITION BY LIMITED COMPANY OF ITS OWN SHARES

Division 1 — General provisions

423. Interpretation: Part XVI

(1) In this Part—

"**distributable profits**", in relation to the giving of any financial assistance—

(a) means those profits out of which the company could lawfully make a distribution equal in value to that assistance; and

(b) if the financial assistance consists of or includes, or is treated as arising in consequence of, the sale, transfer or other disposition of a non-cash asset—includes any profit that, if the company were to make a distribution of that kind, would be available for that purpose;

"**distribution**" has the same meaning as in Part XVII (How company's assets are to be distributed).

(2) In this Part—

(a) a reference to a person incurring a liability includes circumstances in which the person's financial position changes because of an agreement or arrangement (whether enforceable or unenforceable, and whether made on the person's own account or with another person); and

(b) a reference to a company giving financial assistance for the purpose of reducing or discharging a liability incurred by a person in order to acquire shares includes giving assistance for the purpose of wholly or partly restoring the person's financial position to what it was before the acquisition took place.

(3) For the purposes of this Part, a director of a company is an employee of the company for the purposes of a pension scheme or an employees' share scheme.

424. General rule against limited company acquiring its own shares

(1) A limited company shall not acquire its own shares, whether by purchase, subscription or otherwise, except in accordance with this Part.

(2) Subsection (1) does not prevent a limited company from acquiring any of its own fully paid shares otherwise than for valuable consideration.

(3) Subsection (1) does not prohibit a company from—

(a) acquiring shares in a reduction of capital duly made; or

(b) forfeiting shares, or accepting the surrender of shares, in accordance with a company's articles, for a failure to pay an amount payable for the shares.

(4) An acquisition in contravention of this section is void.

(5) If a company contravenes this section, the company, and each officer of the company who is in default, commit an offence.

(6) A company found guilty of an offence under subsection (5) is liable on conviction to a fine not exceeding one million shillings.

(7) An officer of a company who is found guilty of an offence under subsection (5) is liable on conviction to a fine not exceeding five hundred thousand shillings.

425. Treatment of shares held by nominee

(1) This section applies to shares in a limited company that—

(a) are taken by a subscriber to the memorandum as nominee of the company;

(b) are issued to a nominee of the company; or

(c) are acquired by a nominee of the company, partly paid up, from a third person.

(2) Shares to which this section applies are for all purposes taken to be held by the nominee on the nominee's own account, in which case the company has no beneficial interest in them.

(3) This section does not apply—

(a) to shares acquired otherwise than by subscription by a nominee of a public company; if—

(i) a person acquires shares in the company with financial assistance given to the person (directly or indirectly) by the company for the purpose of, or in connection with, the acquisition; and

(ii) the company has a beneficial interest in the shares; or

(b) to shares acquired by a nominee of the company when the company has no beneficial interest in the shares.

426. Liability of others if nominee fails to make payment in respect of shares

(1) This section applies to shares in a limited company that—

(a) are taken by a subscriber to the memorandum as a nominee of the company;

(b) are issued to a nominee of the company; or

(c) are acquired by a nominee of the company, partly paid up, from a third person.

(2) If the nominee, having been called on to pay an amount for the purposes of paying up, or paying any premium on, shares to which this section applies, fails to pay the amount within twenty-one days after being requested to do so, the following persons are jointly and severally liable with the nominee to pay the amount—

(a) in the case of shares that the nominee has agreed to take as subscriber to the memorandum —the other subscribers to the memorandum;

(b) in any other case—the persons who were directors of the company when the shares were issued to, or acquired by, the nominee.

(3) If, in proceedings for the recovery of an amount under subsection (2), it appears to the Court that the subscriber or director—

(a) has acted honestly and reasonably; and

(b) having regard to all the circumstances of the case, ought fairly to be relieved from liability, the Court may make an order relieving the subscriber or director wholly or partly from the liability on such terms as the Court considers just.

(4) A subscriber to a company's memorandum or a director of a company who reasonably believes that a claim will or might be made for the recovery of such an amount—

(a) may apply to the Court for relief; and

(b) the Court has the same power to grant relief as it would have had in proceedings for recovery of the amount.

(5) This section does not apply to shares acquired by a nominee of the company if the company has no beneficial interest in the shares.

427. Duty to cancel shares in public company held by or for the company

(1) This section applies to a public company if—

(a) shares of the company are forfeited, or are surrendered to the company instead of forfeiture, as provided by the company's articles for a failure to pay an amount payable for the shares;

(b) shares of the company are acquired by it otherwise than in accordance with this Part or Part XVI and the company has a beneficial interest in the shares;

(c) a nominee of the company acquires shares of the company from a third person without financial assistance being given (directly or indirectly) by the company and the company has a beneficial interest in the shares; or

(d) a person acquires shares in the company with financial assistance given to the person (directly or indirectly) by the company for the purpose of, or in connection with, the acquisition and the company has a beneficial interest in the shares.

(2) Except when the shares or the company's interest in the shares have or has been already disposed of, a company to which this section applies shall—

(a) cancel the shares and diminish the amount of the company's share capital by the nominal value of the cancelled shares; and

(b) if the effect is that the nominal value of the company's allotted share capital is brought below the authorised minimum—apply to the Registrar for the registration of the conversion of the company into a private company, stating the effect of the cancellation.

(3) The deadline for complying with subsection (2)—

(a) in a case within subsection (1)(a) or (b), three years from the date of the forfeiture or surrender;

(b) in a case within subsection (1)(c) or (d), three years from the date of the acquisition; or

(c) in a case within subsection (1)(e), one year from the date of the acquisition.

(4) The directors of the company may take any measures necessary to enable the company to comply with this section, and may do so without complying with the provisions of Part XV relating to the reduction of a company's share capital.

(5) Neither the company nor, in a case within subsection (1)(d) or (e), the nominee or other shareholder may exercise voting rights in respect of the shares.

(6) Any purported exercise of those rights is invalid.

428. Notice of cancellation of shares

(1) Within one month after cancelling shares in order to comply with section 427, a company shall lodge with the Registrar for registration a notice giving details to the cancelled shares.

(2) The company shall attach to, or enclose with, the notice a statement of capital that complies with subsection (3).

(3) The statement complies with this subsection if it states with respect to the company's share capital immediately following the cancellation—

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

(b) the aggregate nominal value of those shares;

(c) for each class of shares—

(i) the particulars of the rights attached to the shares prescribed by the regulations for the purposes of this subsection;

(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 in the form of a premium).

(4) If the company fails to comply with a requirement of this section, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(5) If, after a company or any of its officers is convicted of an offence under subsection (4), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

429. Conversion of public company into private company in consequence of cancellation of shares

(1) If a public company is obliged to convert itself into a private company in order to comply with section 427, the directors may resolve that the company should be so converted.

(2) Such a resolution may make such changes—

(a) to the company's name; and

(b) to the company's articles, as are necessary in connection with its becoming a private company.

(3) The company shall—

(a) include in the application for registration of the conversion a statement of the company's new name on conversion; and

(b) attach to, or enclose with, it—

(i) a copy of the resolution, unless a copy has already been forwarded under this Act; and

(ii) a copy of the company's articles as amended by the resolution.

430. Issue of certificate of incorporation on registration of conversion of public company into private company

(1) The Registrar shall register the conversion of a company into a private limited company if satisfied that the application for registration complies with the requirements of section 429.

(2) If the company does not already have a unique identifying number, the Registrar shall allocate such a number to the company.

(3) On the registration of the conversion of a public company into a private limited company, the Registrar shall issue a certificate of incorporation stating the company's unique identifying number and that the company is registered as a private company.

(4) The Registrar shall state in the certificate of incorporation that it is issued on registration of the conversion and the date on which the certificate is issued.

(5) The Registrar shall sign the certificate of incorporation and authenticate it with the Registrar's official seal.

(6) On the issue of the certificate of incorporation—

(a) the company specified in the certificate becomes a private company; and

(b) the changes in the company's name and articles take effect.

(5) The certificate of incorporation is conclusive evidence that the requirements of this Act as to registration of the conversion have been complied with.

431. Effect of failure to apply for registration of company's conversion into private company

(1) If a public company that is required by section 427 to apply to the Registrar for the registration of the conversion of the company into a private company fails to do so before the deadline specified in subsection (3) of that section, Part XIX applies to it as if it were a private company.

(2) Except as provided by subsection (1), the company continues to be treated as a public company until its conversion into a private company is registered.

432. Offence to fail to cancel shares or apply for registration of company's conversion into private company

(1) If a company that is required to do so by section 427—

(a) fails to cancel specified shares; or

(b) fails to make an application for the registration of the conversion of the company into a private company,

before the deadline specified in subsection (3) of that section, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(2) If, after a company or any of its officers is convicted of an offence under subsection (1), the company continues to fail to cancel the relevant shares or to make the required application for the registration of the conversion of the company into a private company, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

433. Application of sections 437 to 442 to private company that applies for registration of conversion into public company

(1) This section applies to a private company that is registered as a public company—

(a) after shares in the company have been forfeited in accordance with the company's articles or have been surrendered to the company instead of forfeiture;

(b) after shares in which the company had a beneficial interest have been acquired by the company (otherwise than by any of the methods permitted by this Part or Part XVI;

(c) after shares in which the company had a beneficial interest have been acquired by a nominee of the company from a third party without financial assistance being given directly or indirectly by the company; or

(d) after shares in which the company had a beneficial interest have been acquired by a person with financial assistance given (directly or indirectly) by the company for the purpose of or in connection with the acquisition.

(2) When this section applies to a private company whose conversion into a public company has been registered, sections 427 to 432 apply to the company as if it had been a public company at the time of the forfeiture, surrender or acquisition, except that, in the application of section 427, the deadline specified in subsection (3)(a), (b) or (c) of that section runs from the date of the registration of the conversion of the company into a public company.

434. Transfer to reserve on acquisition of shares by public company or nominee

(1) If—

(a) a public company, or a nominee of a public company, acquires shares in the company; and

(b) those shares are shown in a balance sheet of the company as an asset,

the company shall transfer to a reserve account from profits available for the payment of dividends an amount equal to the value of the shares.

(2) The company shall not distribute the amounts so transferred.

(3) Subsection (1) applies to an interest in shares as it applies to shares and as it so applies the reference to the value of the shares is a reference to the value to the company of its interest in the shares.

(4) If a company contravenes subsection (1) or (2), the company, and each officer of the company who is in default, commit an offence.

(5) A company found guilty of an offence under section (4) is liable on conviction to a fine not exceeding one million shillings.

(6) An officer of a company who is found guilty of an offence under subsection (4) is liable on conviction to a fine not exceeding five hundred thousand shillings.

435. Public companies: general rule against lien or charges on own shares

(1) A lien or other charge of a public company on its own shares(whether taken expressly or otherwise) is void, except as permitted by this section.

(2) In the case of any description of company, a charge is permitted if the shares are not fully paid up and the charge is for an amount payable in respect of the shares.

(3) In the case of a company whose ordinary business—

(a) includes lending money; or

(b) consists of or includes providing credit or hiring or selling goods under hire-purchase, conditional sale or retention of title agreements, a charge is permitted (whether the shares are fully paid or not) if it arises in connection with a transaction entered into by the company in the ordinary course of that business.

(4) In the case of a company whose conversion into a public company has been registered, a charge is permitted if it was in existence immediately before the application for registration was lodged with the Registrar.

436. Interests to be disregarded in determining whether company has beneficial interest

In determining for the purposes of this Part whether a company has a beneficial interest in shares, the interests referred to in sections 437, 438 and 439 are to be disregarded.

437. Residual interest under pension scheme or employees' share scheme

(1) When the shares are held in trust for the purposes of a pension scheme or an employees' share scheme, any residual interest of the company that has not vested in possession is to be disregarded.

(2) For the purpose of subsection (1), "residual interest" means a right of the company to receive any of the trust property if—

(a) all the liabilities arising under the scheme are satisfied or provided for;

(b) the company ceases to participate in the scheme; or

(c) the trust property at any time exceeds what is necessary to satisfy the liabilities arising, or that are 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 such a discretion.

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

(a) in a case within subsection (2)(a),on the occurrence of the event referred to there (whether the amount of the property receivable under the right is ascertained or not);

(b) in a case within subsection (2)(b) or (c),when the company becomes entitled to require the trustee to transfer to it any of the property receivable under that right.

(5) If, because of this section—

(a) shares are exempt from section 425 or 426 at the time they are taken, issued or acquired; but

(b) the relevant residual interest vests in possession before the shares are disposed of or fully paid up, those sections apply to the shares as if they had been taken, issued or acquired on the date on which the interest vests in possession.

(6) If, because of this section—

(a) shares are exempt from sections 427 to 433 at the time they are required; but

(b) the relevant residual interest vests in possession before they are disposed of, those sections apply to the shares as if they had been acquired on the date on which the interest vests in possession.

438. Employer's charges and other rights of recovery

(1) If the relevant shares are held on trust for the purposes of a pension scheme, the following are to be disregarded—

(a) a 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 the employer or former employer from the member;

(b) a 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 under a prescribed enactment relating to pensions or the provision of retirement benefits, or otherwise, as reimbursement or partial reimbursement for contributions equivalent premium paid in connection with the enactment.

(2) If the shares are held in trust for the purposes of an employees' share scheme, a charge or lien on, or set-off against, a benefit or other right or interest under the scheme is to be disregarded if it is designed to enable the employer or former employer of a member of the scheme to obtain the discharge of a monetary obligation due to the employee or former employee from the member.

439. Rights as executor, administrator or trustee

(1) If the company is an executor, administrator or trustee, rights that the company has in that capacity are to be disregarded.

(2) Those rights include—

(a) a right of the company to recover its expenses or be remunerated out of the estate or trust property; and

(b) a right of the company to be indemnified out of that property for a liability incurred because of an act or omission of the company in performing its duties as executor, administrator or trustee.

Division 2 — Financial assistance for purchase of own shares

440. Meaning of "financial assistance" for purposes of this Part

(1) In this Division, "financial assistance" means—

(a) financial assistance given in the form of a gift;

(b) financial assistance given—

(i) in the form of a guarantee, security or indemnity other than an indemnity in respect of the indemnifier's own neglect or default; or

(ii) in the form of a release or waiver;

(c) financial assistance given—

(i) in the form 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) in the form 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 if—

(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) In the case of a company that prepares an individual financial statement, the liabilities of the company include any provision that is made in that statement.

441. Assistance by public company for acquisition of shares in its private holding company.

(1) If 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 assistan e 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 for the purpose of the acquisition; or

(b) giving the assistance for the purpose of the acquisition is only incidental to achieving some larger purpose of the company, and the assistance is given in good faith in the interests of the company.

(3) If —

(a) a person has acquired shares in a private company; and

(b) the person or another person has incurred a liability for the purpose of the acquisition, a public company that is a subsidiary of the company shall not give financial assistance (directly or indirectly) for the purpose of

reducing or discharging the liability.

(4) If a company contravenes subsection (1) or (3), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding one million shillings.

442. Assistance for acquisition of shares in public company

(1) If a person is acquiring or proposing to acquire shares in a public company, neither the company nor any other company that is a subsidiary of the company may 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 assistan e for the acquisition of shares in it or its holding company if —

(a) the company's principal purpose in giving the assistance is not for the purpose of the acquisition; or

(b) giving assistance for that purpose is only incidental to achieving some larger purpose of the company, and the assistance is given in good faith in the interests of the company.

(3) If —

(a) a person has acquired shares in a company; and

(b) the person or another person has incurred a liability for the purpose of the acquisition, neither the company nor any other company that is a subsidia ry of the company may 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 in which the shares were acquired is a public

company.

(4) Subsection (3) does not prohibit a company from giving financial assistance if—

(a) the company's principal purpose 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 incidental to achieving some larger purpose of the company, and the assistance is given in good faith in the interests of the company.

(5) This section has effect subject to sections 445 and 446.

443. Assistance by public company for acquisition of shares in its private holding company

(1) If 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 assistan e for the acquisition of shares in its holding company if —

(a) the company's principal purpose in giving the assistance is not to give it for the purpose of the acquisition; or

(b) giving the assistance for that purpose is only incidental to achieving some larger purpose of the company, and the assistance is given in good faith in the interests of the company.

(3) If —

(a) a person has acquired shares in a private company; and

(b) the person or another person has incurred a liability 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 company's principal purpose in giving the assistance is not to reduce or discharge a liability incurred by a person for the purpose of the acquisition of shares in its holding company; or

(b) the reduction or discharge of the liability is only incidental to achieving some larger purpose of the company, and the assistance is given in good faith in the interests of the company.

(5) This section has effect subject to sections 445 and 446.

444. Offence to give prohibited assistance

(1) If a company contravenes section 452(1) or (3) or 453 (1) or (3), the company, and each officer of the company who is in default, commit an offence.

(2) A company that is found guilty of an offence under subsection (1) is liable on conviction to a fine not exceeding one million shillings.

(3) An officer of a company who is found guilty of an offence under subsection (1) is liable on conviction to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding two years, or to both.

445. Certain transactions excepted unconditionally from sections 442 and 443

Sections 442 and 443 do not prohibit any of the following transactions—

(a) a distribution of a company's assets in the form of—

(i) a dividend lawfully made; or

(ii) a distribution in the course of a company's liquidation;

(b) an allotment of bonus shares;

(c) a reduction of capital;

(d) a redemption of shares;

(e) anything done in accordance with an order of the Court sanctioning a compromise or arrangement with members or creditors;

(f) anything done under an arrangement under which the liquidator in the liquidation of a company accepts shares as consideration for sale of the company's property;

(g) anything done under a voluntary arrangement entered into under the laws relating to insolvency.

446. Certain transactions excepted from sections 442 and 443 conditionally

(1) This section applies to the following transactions—

(a) if the lending of money is part of the ordinary business of the company—the lending of money in the ordinary course of the company's business;

(b) the provision by the company — in good faith in the interests of the company or its holding company, of financial assistance for the purposes of an employees' share scheme;

(c) the provision of financial assistance by the company for the purposes or, or in connection with, anything done by the company (or another company in the same group) for the purpose of enabling or facilitating transactions in shares in the first-mentioned company or its holding company between, and involving the acquisition of beneficial ownership of those shares by—

(i) bona fide employees or former employees of that company (or another company in the same group); or

(ii) spouses, widows, widowers or surviving, or minor children or step-children of any such employees or former employees;

(d) the making by the company of loans to persons (other than directors) employed in good faith by the company with a view to enabling those persons to acquire fully paid shares in the company or its holding company to be held by them as beneficial owners.

(2) Sections 442 and 443 do not prohibit any of the transactions to which this section applies—

(a) if the company giving the assistance is a private company; or

(b) if the company giving the assistance is a public company and—

(i) the company has net assets that are not reduced by the giving of the assistance; or

(ii) to the extent that those assets are so reduced, the assistance is provided out of distributable profits.

(3) In this section, a reference to "net assets" is to the amount by which the aggregate of the company's assets exceeds the aggregate of its liabilities.

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

(a) the amounts of both assets and liabilities are as stated in the company's accounting records immediately before the financial assistance is given; and

(b) "liabilities" includes any amount retained as reasonably necessary for the purpose of providing for a liability the nature of which is clearly defined and that is either likely to be incurred or certain to be incurred but uncertain as to amount or as to the date on which it will arise.

(5) For the purposes of subsection (1)(c), a company is in the same group as another company if it is a holding company or subsidiary of that company or a subsidiary of a holding company of that company.

Division 3 — Purchase of own shares

447. Power of limited company to purchase own shares

(1) A limited company having a share capital may purchase its own shares (including any redeemable shares), subject to—

(a) the following provisions of this Division; and

(b) any restriction or prohibition in the company's articles.

(2) A limited company may not purchase its own shares if as a result of the purchase there would no longer be any issued shares of the company other than redeemable shares or shares held as treasury shares.

448. Purchase of company’s own shares

(1) A limited company may not purchase its own shares unless they are fully paid.

(2) A limited company that purchases its own shares shall pay for them on purchase.

(3) A purchase in contravention of this section is void.

449. Financing of purchase of company's own shares

(1) A private limited company may purchase its own shares out of capital in accordance with Division 4.

(2) Subject to subsection (1)—

(a) a limited company may purchase its own shares only out of—

(i) distributable profits of the company; or

(ii) the proceeds of a fresh issue of shares made for the purpose of financing the purchase; and

(b) any premium payable on the purchase by a limited company of its own shares is required to be paid out of distributable profits of the company, subject to subsection (3).

(3) If the shares to be purchased were issued at a premium, any premium payable on their purchase by the company may be paid out of the proceeds of a fresh issue of shares made for the purpose of financing the purchase, up to an amount equal to—

(a) the aggregate of the premiums received by the company on the issue of the shares purchased; or

(b) the current amount of the company's share premium account (including any sum transferred to that account in respect of premiums on the new shares), whichever is the less.

(4) The amount of the company's share premium account is reduced by an amount corresponding (or by sums in the aggregate corresponding) to the amount of any payment made under subsection (3).

(5) This section has effect subject to section 484(5).

450. Approval for company to purchase own shares

(1) A limited company may purchase its own shares only—

(a) by an off-market purchase, under a contract approved in advance in accordance with section 451; or

(b) by a market purchase, approved in accordance with section 458.

(2) A purchase is off-market if the shares either—

(a) are purchased otherwise than on an approved securities exchange; or

(b) are purchased on an approved securities exchange but are not subject to a marketing arrangement on the exchange.

(3) For the purpose of subsection (2), a company's shares are subject to a marketing arrangement on an approved securities exchange if the company has been given facilities for dealings in the shares to take place on the exchange—

(a) without prior permission for individual transactions from the authority governing the exchange; and

(b) without limit as to the time during which those facilities are to be available.

(4) A purchase is a market purchase for the purpose of this section if—

(a) it is made on an approved securities exchange; and

(b) it is not an off-market purchase because of subsection (2)(b).

(5) In this section "approved securities exchange" means a securities exchange approved by the Capital Markets Authority under the Capital Markets Act [Cap 485A].

451. Authorisation for off-market purchase

(1) A company may make an off–market purchase of its own shares under a contract but only if—

(a) the terms of the contract have been approved by a special resolution of the company before the contract was entered into; or

(b) the contract provides that no shares may be purchased under the contract until its terms have been approved by a special resolution of the company.

(2) The contract may be a contract, entered into by the company and relating to shares in the company, that does not amount to a contract to purchase the shares but under which the company may (subject to any conditions) become entitled or obliged to purchase the shares.

(3) The authority conferred by a resolution under this section may be varied or revoked or from time to time be renewed, but only by a special resolution of the company.

(4) In the case of a public company a resolution conferring, varying or renewing approval shall specify a date on which the approval is to expire, which may not be later than eighteen months after the date on which the resolution is passed.

(5) A resolution conferring, varying, revoking or renewing approval under this section is subject to sections 452 and 453.

452. Resolution authorising off-market purchase: exercise of voting rights

(1) This section applies to a resolution to confer, vary, revoke or renew an approval for the purposes of section 451.

(2) If the resolution is proposed as a written resolution, a member who holds shares to which the resolution relates is not an eligible member.

(3) A resolution proposed at a meeting of the company is not effective if—

(a) any member of the company holding shares to which the resolution relates exercises the voting rights conferred by any of those shares in voting on the resolution; and

(b) the resolution would not have been passed if the member had not done so.

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

(a) a member who holds shares to which the resolution relates is taken to have exercised the voting rights conferred by those shares not only if the member votes in respect of them on a poll on the question whether the resolution should be passed, but also if the member votes on the resolution otherwise than on a poll;

(b) any member of the company may demand a poll on that question; and

(c) a vote and a demand for a poll by a person as proxy for a member are the same respectively as a vote and a demand by the member.

453. Resolution approving off-market purchase: disclosure of details of contract

(1) This section applies to a resolution passed by a company to confer, vary, revoke or renew an approval to make a purchase under section 451.

(2) The company shall ensure that a copy of the relevant contract (if it is in writing) or a memorandum setting out its terms (if it is not in writing) is made available to its member of the company—

(a) in the case of a written resolution—by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to the member;

(b) in the case of a resolution passed at a meeting — by being made available for inspection by members of the company both—

(i) at the company's registered office for not less than fourteen days ending with the day before the date of the meeting; and

(ii) at the meeting itself.

(3) The company shall include in a memorandum of contract terms that are made available to the members of the company the names of the members holding shares to which the contract relates.

(4) The company shall attach to the copy of the contract made available to the members of the company a written memorandum specifying such of those names as do not appear in the contract itself.

(5) A resolution to which this section applies is not validly passed if the requirements of this section are not complied with.

454. Variation of contract for off-market purchase

(1) A company may agree to a variation of a contract approved under section 451 only if the variation is approved in advance in accordance with this section.

(2) The terms of the variation have effect only if they have been approved by a special resolution of the company.

(3) The approval may be varied, revoked or from time to time renewed by a special resolution of the company.

(4) In the case of a public company, a resolution conferring, varying or renewing the approval has effect only if it specifies a date on which the authority is to expire. That date may not be later than eighteen months after the date on which the resolution is passed.

(5) A resolution conferring, varying, revoking or renewing an approval under this section is subject to sections 455 and 456.

455. Resolution approving variation: exercise of voting rights

(1) This section applies to a resolution passed by a company to confer, vary, revoke or renew an approval to vary a contract under section 454.

(2) If the resolution is proposed as a written resolution, a member who holds shares to which the resolution relates is not an eligible member.

(3) A resolution proposed at a meeting of the company is not effective if—

(a) any member of the company holding shares to which the resolution relates exercises the voting rights conferred by any of those shares in voting on the resolution; and

(b) the resolution would not have been passed if the member had not done so.

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

(a) a member who holds shares to which the resolution relates is taken to have exercised the voting rights conferred by those shares not only if the member votes in respect of them on a poll on the question whether the resolution should be passed, but also if the member votes on the resolution otherwise than on a poll;

(b) any member of the company may demand a poll on that question; and

(c) a vote and a demand for a poll by a person as proxy for a member are the same respectively as a vote and a demand by the member.

456. Resolution approving variation: disclosure of details of variation

(1) This section applies to a resolution passed by a company under section 454.

(2) The company shall ensure that a copy of the proposed variation (if it is in writing) or a written memorandum giving details of the proposed variation (if it is not) is made available to the members of the company—

(a) in the case of a written resolution, by being sent or submitted to every eligible member of the company at or before the time at which the proposed resolution is sent or submitted to the member;

(b) in the case of a resolution at a meeting — by being made available for inspection by members of the company both—

(i) at the company's registered office for not less than fourteen days ending with the day before the date of the meeting; and

(ii) at the meeting itself.

(3) The company shall also ensure that a copy of the original contract or, a memorandum of its terms, together with any variations previously made, are made available to the members of the company.

(4) The company shall include in a memorandum of the proposed variation made available to its members the names of the members holding shares to which the variation relates.

(5) The company shall attach to the copy of the proposed variation made available to its members a written memorandum specifying such of those names as do not appear in the variation itself.

(6) A resolution to which this section applies is not validly passed if the requirements of this section are not complied with.

457. Release of company's rights under contract for off-market purchase

(1) An agreement by a company to release its rights under a contract approved under section 451 is void unless the terms of the release agreement are approved in advance in accordance with this section.

(2) The terms of the proposed agreement have effect only if they are approved by a special resolution of the company.

(3) The approval may be varied, revoked or from time to time renewed by a special resolution of the company.

(4) In the case of a public company, a resolution conferring, varying or renewing the approval has effect only if it specifies a date on which the authority is to expire. That date may not be later than eighteen months after the date on which the resolution is passed.

(5) Section 455 and 456 apply to a resolution authorising a proposed release agreement as they apply to a resolution authorising a proposed variation.

458. Approval for company to make market purchase

(1) A company may make a market purchase of its own shares only if the purchase has been approved by a resolution of the company.

(2) Such an approval—

(a) can be general or limited to the purchase of shares of a particular class or description; and

(b) can be unconditional or made subject to conditions.

(3) Such an approval is not effective unless it—

(a) specifies the maximum number of shares authorised to be acquired; and

(b) determines both the maximum and minimum prices that may be paid for the shares.

(4) The company may vary, revoke or renew such an approval only by a further resolution of the company.

(5) A resolution conferring, varying or renewing an approval is not effective unless it specifies a date on which it is to expire. That date may not be later than eighteen months after the date on which the resolution is passed.

(6) A company may make a purchase of its own shares after the expiry of the time limit specified if—

(a) the contract of purchase was entered into before the approval expired; and

(b) the terms of the approval permitted the company to enter into a contract of purchase that would or might be executed wholly or partly after its expiration.

(7) A resolution to confer or vary an approval under this section can determine either or both the maximum and minimum price for purchase by—

(a) specifying a particular amount; or

(b) providing a basis or formula for calculating the amount of the price (but without reference to any person's discretion or opinion).

(8) The provisions of Part III relating to resolutions affecting a company's constitution apply to a resolution passed in accordance with this section.

459. Copy of contract or memorandum to be available for inspection

(1) This section applies to a company that has entered into—

(a) a contract approved under section 451; or

(b) a contract for a purchase approved under section 458.

(2) The company shall keep available for inspection—

(a) a copy of the contract; or

(b) if the contract is not in writing, a written memorandum setting out its terms.

(3) The company shall keep the copy or memorandum available for inspection from the date on which the contract is entered into until the end of the period of ten years from and including—

(a) the date on which the purchase of all the shares under the contract is completed; or

(b) if the contract specifies some other date, the date specified.

(4) Except in so far as the regulations otherwise provide, the company shall keep the copy or memorandum available for inspection at the company's registered office.

(5) The company shall ensure that a copy or memorandum required to be kept under this section is kept open for inspection without charge—

(a) by any member of the company; and

(b) in the case of a public company — by any other person.

(6) This section applies to a variation of a contract as it applies to the original contract.

460. Enforcement of right to inspect copy or memorandum

(1) If a company fails to comply with a requirement of section 459, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(2) If, after a company or any of its officers is convicted of an offence under subsection (1), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

(3) If a company has failed to comply with section 459(5), a person aggrieved by the failure may apply to the Court for an order under subsection (4).

(4) If, on the hearing of an application made under subsection (3), the Court finds the application to be substantiated, it shall, by order, compel an immediate inspection of the relevant document. On the hearing of the application, the company is entitled to be heard as respondent.

461. Company's right to purchase own shares not assignable

The rights of a company under a contract authorised under section 451 or 458 are not capable of being assigned.

462. Payments apart from purchase price to be made out of distributable profits

(1) A payment made by a company in consideration of—

(a) acquiring any right with respect to the purchase of its own shares under a contingent purchase contract approved under section 451;

(b) the variation of any contract approved under that section; or

(c) the release of any of the company's obligations with respect to the purchase of any of its own shares under a contract approved under section 451 or 458,

may be made only out of the company's distributable profits.

(2) If subsection (1) is contravened, the following provisions apply—

(a) in a case within subsection (1)(a), a purchase by the company of its own shares under that contract cannot be made under this Division;

(b) in a case within subsection (1)(b), such a purchase following the variation cannot be made under this Division; and

(c) in a case within subsection (1)(c), purported release is void.

463. How shares purchased are to be treated

If a limited company makes a purchase of its own shares in accordance with this Division, then—

(a) if section 428 applies, the shares are to be held and dealt with in accordance with Part XVI, but;

(b) if that section does not apply—

(i) the shares are cancelled; and

(ii) the amount of the company's issued share capital is diminished by the nominal value of the shares cancelled.

464. Return of purchase of own shares to be lodged with Registrar

(1) Within fourteen days after a company purchases shares under this Division, it shall lodge with the Registrar for registration a return that complies with subsections (2) to (4).

(2) The return complies with this subsection if it distinguishes—

(a) shares in relation to which section 428 applies and shares in relation to which that section does not apply; and

(b) shares in relation to which that section applies—

(i) that are immediately cancelled under section 531; and

(ii) that are not so cancelled.

(3) The return complies with this subsection if it states, with respect to shares of each class purchased —

(a) the number and nominal value of the shares; and

(b) the date on which the shares were delivered to the company.

(4) In the case of a public company, the return complies with this subsection if it states—

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

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

(5) Particulars of shares delivered to the company on different dates and under different contracts can be included in a single return.

(6) If a company exercises the right conferred by subsection (5), the amount required to be stated under subsection (4)(a) is the aggregate amount paid by the company for all the shares to which the return relates.

(7) If a company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(8) If, after a company or any of its officers is convicted of an offence under subsection (7), the company continues to fail to lodge with the Registrar the requisite return, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

465. Notice to Registrar of cancellation of shares

(1) If, on the purchase by a company of any of its own shares in accordance with this Part—

(a) section 526 does not apply (so that the shares are treated as cancelled); or

(b) that section applies but the shares are immediately cancelled under section 531, the company shall, within one month after receiving the shares, lodge with the Registrar for registration a notice specifying the shares that are cancelled.

(2) The company shall attach to, or enclose with, the notice a statement of capital that complies with subsection (3).

(3) A statement of capital complies with this subsection if it states with respect to the company's share capital immediately following the cancellation—

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

(b) the aggregate nominal value of those shares;

(c) for each class of shares—

(i) the particulars of the rights attached to the shares prescribed by the regulations for the purposes of this subsection;

(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 in the form of a premium).

(4) If a company fails to comply with a requirement of this section, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(5) If, after a company or any of its officers is convicted of an offence under subsection (1), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

Division 4 — Redemption or purchase by private company out of capital

466. Interpretation: Division 4

In this Division—

(a) a reference to payment out of capital is to any payment so made, whether or not it would, apart from this section, be treated as a payment out of capital; and

(b) "**the permissible capital payment**", in relation to shares, is the amount required under section 468.

467. Power of private limited company to redeem or purchase own shares out of capital

A private limited company may in accordance with this Division, but subject to any restriction or prohibition in the company's articles, make a payment in respect of the redemption or purchase of its own shares otherwise than out of distributable profits or the proceeds of a fresh issue of shares.

468. The permissible capital payment

A payment that, in accordance with this Division, can be made by a company out of capital in respect of the redemption or purchase of its own shares is such amount as, after applying for that purpose—

(a) available profits of the company; and

(b) the proceeds of a fresh issue of shares made for the purposes of the redemption or purchase, is required to meet the price of redemption or purchase.

469. What profits are available

(1) For the purposes of this Division, the available profits of the company, in relation to the redemption or purchase of any of its shares, are the profits of the company that are available for distribution (within the meaning of Part XVII.

(2) Whether a company has any profits so available; and the amount of any such profits, are to be determined in accordance with section 480 instead of in accordance with Part XVII.

470. Determination of available profits

(1) The available profits of the company are determined as follows—

(a) first—

Determine the profits of the company by reference to the following items as stated in the relevant financial statements—

(i) profits, losses, assets and liabilities;

(ii) provisions of a kind specified for the purposes of this subsection by the regulations;

(iii) share capital and reserves (including undistributable reserves).

(b) Second—

Reduce the amount so determined by the amount of—

(i) each distribution lawfully made by the company; and

(ii) each other relevant payment lawfully made by the company out of distributable profits, after the date of the relevant accounts and before the end of the relevant period.

(2) For the purpose of subsection (1)(b)(i), "other relevant payment lawfully made" includes—

(a) financial assistance lawfully given out of distributable profits in accordance with Division 2;

(b) payments lawfully made out of distributable profits in respect of the purchase by the company of any shares in the company; and

(c) payments of any description specified in section 462.

(3) The resulting figure is the amount of available profits.

(4) For the purposes of this section, "the relevant financial statements" are any that—

(a) are prepared as at a date within the relevant period; and

(b) are such as to enable a reasonable judgment to be made as to the amounts of the items mentioned in subsection (2).

(7) In this section, "the relevant period" means the period of three months ending with the date on which the directors' statement is made in accordance with section 472.

471. Requirements for payment out of capital

(1) A payment out of capital by a private company for the redemption or purchase of its own shares is not lawful unless the requirements of section 472, 474, 477 and 478 are satisfied.

(2) Subsection (1) is subject to any order of the Court under section 479.

472. Directors' statement and auditor's report

(1) The company's directors shall make a statement that complies with subsection (2).

(2) A statement complies with this subsection only if it specifies the amount of the permissible capital payment for the relevant shares and states that, having made full inquiry into the affairs and prospects of the company, the directors have formed the opinion—

(a) with respect to its initial situation immediately following the date on which the payment out of capital is proposed to be made—that there will be no grounds on which the company could then be found unable to pay its debts; and

(b) with respect to the company's prospects for the year immediately following that date—that, having regard to—

(i) their intentions with respect to the management of the company's business during that year; and

(ii) the amount and character of the financial resources that will in their view be available to the company during that year, the company will be able to continue to carry on business as a going concern (and will accordingly be able to pay its debts as they fall due) throughout that year.

(3) In forming their opinion for the purposes of subsection (2)(a), the directors shall take into account all of the company's liabilities (including any contingent or prospective liabilities).

(4) The directors shall ensure that their statement contains such information with respect to the nature of the company's business as is prescribed by regulations made for the purposes of this section.

(5) The directors shall attach to their statement the report prepared by the company's auditor in accordance with subsection (6).

(6) To enable the directors to comply with subsection (5), the company's auditor shall prepare a report addressed to the directors stating that—

(a) the auditor has inquired into the company's financial position;

(b) the auditor is satisfied that the amount specified in the statement as the permissible capital payment for the relevant shares is properly determined in accordance with sections 468 to 471; and

(c) the auditor is not aware of anything to indicate that the opinion expressed by the directors in their statement as to any of the matters referred to in subsection (3) is unreasonable in all the circumstances.

473. Directors' statement: offence if no reasonable grounds for opinion

If the directors make a statement under sections 468 to 471 without having reasonable grounds for the opinion expressed in it, each of the directors who is in default commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding twelve months, or to both.

474. Payment to be approved by special resolution

(1) A payment out of capital is invalid unless it is approved by a special resolution of the company that complies with this section.

(2) Such a resolution is void unless it is passed on; or within the week immediately following, the date on which the directors make the statement required by section 472.

(3) A resolution under this section is subject to sections 475 and 476.

475. Resolution authorising payment: exercise of voting rights

(1) This section applies to a resolution passed by a company under section 474.

(2) If the resolution is proposed as a written resolution, a member who holds shares to which the resolution relates is not an eligible member.

(3) If the resolution is proposed at a meeting of the company, it is not effective if—

(a) any member of the company holding shares to which the resolution relates exercises the voting rights conferred by any of those shares in voting on the resolution; and

(b) the resolution would not have been passed if the member had not done so.

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

(a) a member who holds shares to which the resolution relates is taken to have exercised the voting rights conferred by those shares not only if the member votes in respect of them on a poll on the question whether the resolution should be passed, but also if the member votes on the resolution otherwise than on a poll;

(b) any member of the company may demand a poll on that question; and

(c) a vote and a demand for a poll by a person as proxy for a member are the same respectively as a vote and a demand by the member.

476. Resolution authorising payment: disclosure of directors' statement and auditor's report

(1) This section applies to a resolution passed by a company under section 474.

(2) The company shall ensure that a copy of the directors' statement and auditor's report under section 482 are made available to its members—

(a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to the member; or

(b) in the case of a resolution at a meeting, by being made available for inspection by members of the company at the meeting.

(3) The resolution is void if subsection (2) is not complied with.

477. Public notice of proposed payment

(1) Within the seven days immediately after the date of the resolution under section 474, the company shall cause to be published in the *Gazette* a notice—

(a) stating that the company has approved a payment out of capital for the purpose of acquiring its own shares by redemption or purchase, or both;

(b) specifying—

(i) the amount of the permissible capital payment for the relevant shares; and

(ii) the date of the resolution;

(c) stating where the directors' statement and auditor's report required by section 472 are available for inspection; and

(d) stating that any creditor of the company may, at any time within the five weeks immediately following the date of the resolution, apply to the Court under section 479 for an order preventing the payment.

(2) Within the seven days immediately following the date of the resolution the company shall also either—

(a) have published, in a newspaper of nationwide circulation in Kenya, a notice to the same effect as that required by subsection (1); or

(b) give notice to that effect to each of its creditors.

(3) Not later than the day on which the company—

(a) first publishes the notice required by subsection (1); or

(b) if earlier, first publishes or gives the notice required by subsection (2), the company shall lodge with the Registrar for registration a copy of the directors' statement and auditor's report required by section 472.

478. Company to make directors' statement and auditor's report to be available for inspection

(1) A company that passes a resolution in accordance with section 475 shall ensure that the directors' statement and auditor's report required by section 472 are kept available for inspection throughout the relevant period.

(2) For the purpose of subsection (1), the relevant period is the period—

(a) from and including the day on which the company—

(i) first publishes the notice required by section 477(1); or

(ii) if earlier, first publishes or gives the notice required by section 477(2); and

(b) ending five weeks after the date of the resolution for payment out of capital.

(3) Except in so far as the regulations otherwise provide, a company to which this section applies shall keep the directors' statement and auditor's report available for inspection at its registered office.

(4) The company shall, on being requested to do so by a member of the company, make the directors' statement and auditor's report available for inspection by the member without charge.

(5) If a member of the company requests the company to provide the member with a copy of the directors' statement or auditor's report, the company shall comply with the request within seven days after receiving the request, subject to payment of the prescribed fee (if any).

(6) If the company fails without reasonable excuse to comply with—

(a) subsection (3); or

(b) a request made under subsection (4) or (5), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(7) If, after a company or any of its officers is convicted of an offence under subsection (8), the company continues to fail to comply with subsection (3), or with the relevant request, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

(8) If a company refuses to allow an inspection as requested under subsection (4), or to provide a copy of a record requested under subsection (5), the Court may, on the application of a person affected by the refusal, make an order compelling the company to allow an immediate inspection of the records, or to provide that person with a copy of the requested record.

(9) At the hearing of an application made under subsection (8), the company is entitled to be heard as respondent in the proceedings.

479. Objection to payment by members or creditors: application to the Court to cancel resolution

(1) If a private company passes a special resolution approving a payment out of capital for the redemption or purchase of any of its shares—

(a) any member of the company (other than one who consented to or voted in favour of the resolution); and

(b) any creditor of the company, may apply to the Court for the cancellation of the resolution.

(2) Such an application may be made by the persons entitled to make it or by such one or more of their number as they may appoint in writing for the purpose, but is not effective unless made within five weeks after the passing of the resolution or within such extended period as the Court may in special circumstances allow.

(3) On hearing an application made under subsection (2), the Court shall, subject to subsection (4), make an order either cancelling or confirming the resolution, and may do so on such terms and conditions as it considers appropriate.

(4) At the hearing, the Court may—

(a) adjourn the proceedings in order that an arrangement can be made to the satisfaction of the Court—

(i) for the purchase of the interests of dissentient members; or

(ii) for the protection of dissentient creditors; and

(b) give such directions and make such orders as it thinks necessary in order to facilitate or implement such an arrangement.

(5) If the Court confirms the resolution, it may by order alter or extend any date or period of time specified—

(a) in the resolution; or

(b) in any provision of this Division applying to the redemption or purchase to which the resolution relates.

(6) In making an order under this section, the Court may—

(a) provide for the purchase by the company of the shares of any of its members and for the reduction accordingly of the company's capital; and

(b) make any alteration in the company's articles that may be required in consequence of that provision.

(7) The Court may also include in such an order direction directing the company not to amend, or to make any specified amendments to, its articles without the leave of the Court.

480. Notice of Court application or order to be lodged with Registrar

(1) Within fourteen days after making an application under section 479, the applicant shall lodge with the Registrar for registration a notice of the application.

(2) Subsection (1) does not affect the operation of any provision of rules of Court as to service of notice of the application.

(3) Within seven days after being served with notice of any such application, the company shall lodge with the Registrar for registration a notice of the application.

(4) Within fourteen days after the making of the Court's order on the application; or such extended period as the Court may at any time allow, the company shall lodge with the Registrar for registration a copy of the order.

(5) A person who fails to comply with subsection (1) commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

(6) If, after a person is convicted of an offence under subsection (5), the person continues to fail to comply with the relevant requirement, the person commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding twenty thousand shillings for each such offence.

(7) If a company fails to comply with subsection (3) or (4), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(8) If, after a company or any of its officers is convicted of an offence under subsection (7), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

481. When payment out of capital to be made

(1) A payment out of capital is invalid unless it is made—

(a) no earlier than five weeks after the date on which the resolution under section 475 is passed; and

(b) no later than seven weeks after that date.

(2) Subsection (1) is subject to any exercise of the Court's powers under section 479(5).

Division 5 — Supplementary provisions

482. Company whose shares are redeemed or purchased to transfer amount to capital redemption reserve

(1) In this section, "capital redemption reserve", in relation to a company, means the reserve referred to in subsection (2).

(2) If under this Part or Part XX, shares of a limited company are redeemed or purchased wholly out of the company's profits, the company shall transfer to a reserve an amount equal to the amount by which the company's issued share capital is diminished in accordance with section 463 or 524.

(3) If—

(a) the shares are redeemed or purchased wholly or partly out of the proceeds of a fresh issue; and

(b) the aggregate amount of the proceeds is less than the aggregate nominal value of the shares redeemed or purchased, the company shall transfer to the capital redemption reserve an amount equal to the difference.

(4) Subsection (3) does not apply to a private company that, in addition to the proceeds of the fresh issue, applies a payment out of capital in accordance with Division 4 in making the redemption or purchase.

(5) If a company's share capital is diminished in accordance with section 524, the company shall transfer to its capital redemption reserve an amount equal to that by which the company's share capital is diminished.

(6) A company may use its capital redemption reserve to pay up new shares that are to be allotted to members as fully paid bonus shares.

(7) Subject to subsection (6), the provisions of this Act relating to the reduction of a company's share capital apply as if the capital redemption reserve were part of its paid up share capital.

(8) If a company fails to comply with subsection (1) or (2), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding one million shillings.

483. Accounting consequences of payment out of capital

(1) This section applies if a payment out of capital is made in accordance with Division 4.

(2) If the permissible capital payment is less than the nominal amount of the shares redeemed or purchased, the company shall transfer an amount equal to the amount of the difference to the company's capital redemption reserve.

(3) If the permissible capital payment is greater than the nominal amount of the shares redeemed or purchased, the company can reduce—

(a) the amount of its capital redemption reserve, share premium account or fully paid share capital (if any); and

(b) any amount that represents unrealised profits of the company for the time being standing to the credit of any revaluation reserve maintained by the company, by an amount not exceeding (or by amounts in total not exceeding) the amount by which the permissible capital payment exceeds the nominal amount of the shares.

(4) If the proceeds of a fresh issue are applied by the company in making a redemption or purchase of its own shares in addition to a payment out of capital under this Division, the references in subsections (2) and (3) to the permissible capital payment refer to the aggregate of that payment and those proceeds.

(5) If a company fails to comply with subsection (2), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(6) If, after a company or any of its officers is convicted of an offence under subsection (5), the company continues to fail to transfer the requisite amount to the company's capital redemption reserve, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

484. Effect of company's failure to redeem or purchase

(1) This section applies to a company that—

(a) issues shares on terms that they are or are liable to be redeemed; or

(b) agrees to purchase any of its shares.

(2) A company to which this section applies is not liable in damages for failing to redeem or purchase any of the shares.

(3) Subsection (2) does not affect a right of the holder of the shares other than the holder's right to sue the company for damages in respect of its failure.

(4) The Court may not grant an order for specific performance of the terms of redemption or purchase if the company shows that it is unable to meet the costs of redeeming or purchasing the shares out of distributable profits.

(5) If the liquidation of the company has been completed and at the commencement of the liquidation any of the shares have not been redeemed or purchased, the terms of redemption or purchase are enforceable against the company.

(6) Shares redeemed or purchased under this subsection are cancelled by operation of this subsection.

(7) Subsection (5) does not apply if—

(a) the terms provided for the redemption or purchase to take place at a date later than that of the commencement of the liquidation; or

(b) during the relevant period the company could not at any time have lawfully made a distribution equal in value to the price at which the shares were to have been redeemed or purchased.

(8) For the purpose of subsection (7), the relevant period is the period—

(a) from and including the date on which the redemption or purchase was to have taken place; and

(b) ending with the commencement of the liquidation.

(9) The following are payable in priority to amounts that the company is liable to pay under subsection (5) in respect of shares—

(a) all other debts and liabilities of the company (other than any due to members in their character as such);

(b) if other shares confer rights (whether as to capital or as to income) that are preferred to the rights as to capital attaching to the first-mentioned shares—any amount due in satisfaction of those preferred rights.

(10) Subject to subsection (9), those amounts are payable in priority to amounts due to members in satisfaction of their rights as members (whether as to capital or income).

Part XVII – HOW COMPANY'S ASSETS ARE TO BE DISTRIBUTED

Division 1 — Introductory provision

485. Interpretation: Part XVII

(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 the exceptions in subsection (2).

(2) The following are not distributions for the purposes of this Part—

(a) an issue of shares as fully or partly paid bonus shares;

(b) a 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;

(c) 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);

(d) a distribution of assets to members of the company on its liquidation.

(3) This Part does not limit the application or effect of any enactment, or any provision of a company's articles, restricting the amounts out of which, or the cases in which, a distribution can be made.

(4) Except as provided by subsection (5), this Part does not limit the application or effect of any rule of law restricting the amounts out of which, or the cases in which, a distribution may be made.

(5) For the purposes of any rule of law requiring distributions to be paid out of profits or restricting the return of capital to members—

(a) section 492 (distributions in kind: determination of amount) applies to determine the amount of any distribution or return of capital 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; and

(b) section 493 (distributions in kind: treatment of unrealised profits) applies as it applies for the purposes of this Part.

(6) In this section, a reference to a distribution is to amounts regarded as distributions for the purposes of any rule of law of the kind referred to in subsection (4).

Division 2 — General rules for distributions

486. Distributions to be made only out of profits available for the purpose

(1) A company may make a distribution only out of profits available for the purpose.

(2) The profits of a company available for distribution are—

(a) its accumulated, realised profits (so far as not previously utilised by distribution or capitalisation), less—

(b) its accumulated, realised losses (so far as not previously written off in a lawfully made reduction or reorganisation of capital).

(3) If a company contravenes subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding one million shillings.

(4) A company may not apply an unrealised profit in paying up debentures or amounts unpaid on its issued shares.

(5) An application of an unrealised profit in contravention of subsection (4) is void.

487. Net asset restriction on distributions by public companies

(1) A public company may make a distribution only—

(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 purpose of subsection (1), a company's net assets are the aggregate of the company's assets less the aggregate of its liabilities.

(3) For the purpose of subsection (1), a company's undistributable reserves 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);

(d) any other reserve that the company is prohibited from distributing—

(i) by any enactment (other than one contained in this Part); or

(ii) by its articles.

(4) The reference in subsection (3)(c) to capitalisation does not include a transfer of profits of the company to its capital redemption reserve.

(5) A public company may not include any uncalled share capital as an asset in a financial statement that is relevant for purposes of this section.

(6) If a company contravenes subsection (1) or (5), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding one million shillings.

Division 3 — Justification of distribution by reference to financial statements

488. Justification of distribution by reference to relevant financial statements

(1) Whether a distribution may be made by a company without contravening this Part is determined by reference to the following items as stated in the relevant financial statements—

(a) profits, losses, assets and liabilities;

(b) provisions of a kind specified for the purposes of this section by the regulations;

(c) share capital and reserves (including undistributable reserves).

(2) The relevant financial statements are the company's last annual financial statements, except that—

(a) if the distribution would be found to contravene this Part by reference to the company’s last annual financial statements, it may be justified by reference to interim financial statements; and

(b) if the distribution is proposed to be declared during the company's first accounting reference period, or before any financial statements have been circulated in respect of that period, it may be justified by reference to initial financial statements.

(3) The company shall ensure that the requirements of the Fifth Schedule are complied with as and if applicable.

(4) If the company fails to comply with any applicable requirement of the Fifth Schedule, the relevant financial statements may not be relied on for the purposes of this Part and the distribution is accordingly treated as contravening this Part.

489. Successive distribution etc by reference to the same financial statements

(1) In determining whether a proposed distribution may be made by a company in a case in which—

(a) one or more previous distributions have been made in pursuance of a determination made by reference to the same relevant financial statements; or

(b) relevant financial assistance has been given, or other relevant payments have been made, since those financial statements were prepared,

this Part applies as if the amount of the proposed distribution was increased by the amount of the previous distributions, financial assistance and other payments.

(2) The financial assistance and other payments that are relevant for the purpose of subsection (1) are as follows—

(a) financial assistance lawfully given by the company out of its distributable profits;

(b) financial assistance given by the company in contravention of section 442 or 443 in a case where the giving of that assistance reduces the company's net assets or increases its net liabilities;

(c) payments made by the company in respect of the purchase by it of shares in the company, except a payment lawfully made otherwise than out of distributable profits;

(d) payments of any description specified in section 462.

(3) In this section, "financial assistance" has the same meaning as in section 450.

(4) For the purpose of applying subsection (2)(b) in relation to any financial assistance—

(a) "net assets" means the amount by which the aggregate amount of the company’s assets exceeds the aggregate amount of its liabilities; and

(b) "net liabilities" means the amount by which the aggregate amount of the company's liabilities exceeds the aggregate amount of its assets,

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

(5) For this purpose a company's liabilities include any amount retained as reasonably necessary for the purposes of providing for any liability—

(a) the nature of which is clearly defined; and

(b) which is either likely to be incurred or certain to be incurred but uncertain as to amount or as to the date on which it will arise.

Division 4 — Relevant accounting matters

490. Treatment of development costs

(1) If development costs are shown or included as an asset in a company's accounting records, any amount shown or included in respect of those costs is to be treated for the purposes of section 486 as a realised loss.

(2) Subsection (1) does not apply to any part of that amount representing an unrealised profit made on revaluation of those costs.

(3) Subsection (1) does not apply if—

(a) there are special circumstances in the company's case justifying the directors in deciding that the amount there mentioned is not to be treated as required by subsection (1);

(b) it is stated in the note required by regulations in force for the purposes of section 647 as to the reasons for showing development costs as an asset, that the amount is not to be so treated; and

(c) the note explains the circumstances relied upon to justify the decision of the directors to that effect.

491. Determination of profit or loss in respect of asset where records incomplete

In determining for the purposes of this Part whether a company has made a profit or loss in respect of an asset when—

(a) there is no record of the original cost of the asset; or

(b) a record cannot be obtained without unreasonable expense or delay,

its cost is taken to be the value ascribed to it in the earliest available record of its value made on or after its acquisition by the company.

Division 5 — Distributions in kind

492. Distribution in kind: determination of amount

(1) This section applies for determining the amount of a distribution consisting of or including, or including or treated as arising in consequency of, the sale, transfer or other disposition by a company of a non-cash asset if—

(a) at the time of the distribution, the company has profits available for distribution; and

(b) assuming 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) if the amount or value of the consideration for the disposal is not less than the book value of the asset—nil; and

(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) For the purposes of subsection (1)(a), 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 value stated in the relevant accounting records; or

(b) if no such value is stated in those records —nil.

493. Distributions in kind: treatment of unrealised profits

(1) This section applies if—

(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 accounts represents an unrealised profit.

(2) For the purpose of this Part, the profit is treated as a realised profit—

(a) for the purpose of determining the lawfulness of the distribution in accordance with this Part (whether before or after the distribution takes place); and

(b) in relation to anything done with a view to or in connection with the making of the distribution, for the purpose of the application of any provision of the regulations (if any) under which only realised profits are to be included in, or transferred to, the profit and loss account.

(b) if the regulations make provision in relation to the making of distributions —for the purpose of the application of any provision of the regulations under which only realised profits are to be included in, or transferred to, the profit and loss account.

Division 6 — Supplementary provision

494. Consequences of unlawful distribution

(1) This section applies to a distribution, or part of a distribution, that is made by a company to one of its members in contravention of this Part.

(2) If, at the time of the distribution, the member knew or had reasonable grounds for believing that a distribution to which this section applies was made in contravention of this Part, the member is liable—

(a) to repay to the company the amount of the distribution or the relevant part of it; or

(b) in the case of a distribution made otherwise than in cash, to pay the company an amount equal to the value of the distribution or part at that time.

(3) Subsection (2) does not affect any obligation imposed apart from this section on a member of a company to repay a distribution or part of a distribution that was unlawfully made to the member.

(4) This section does not apply in relation to—

(a) financial assistance given by a company in contravention of—

(i) section 441 (assistance by public company for acquisition of shares in its private holding company); or

(ii) section 442 (assistance for acquisition of shares in public company); or

(b) a payment made by a company in respect of the redemption or purchase by the company of shares in itself.

Part XVIII – CERTIFICATION AND TRANSFER OF SECURITIES

Division 1 — Certification and transfer of securities: general

495. Share certificate to be evidence of title

A certificate under the common seal of the company specifying any shares held by a member is, in the absence of proof to the contrary, evidence of the member's title to the shares.

496. Duty of company as to issue of certificates etc. on allotment

(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 if the conditions of issue of the shares, debentures or debenture stock provide otherwise.

(3) If a company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(4) If, after a company or any of its officers is convicted of an offence under subsection (3), the company continues to fail to complete and have ready for delivery the documents to which subsection (1) applies, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

497. Registration of transfer of shares and debentures

(1) A company may register a transfer of shares in or debentures of the company only if a proper document of transfer has been delivered to it.

(2) Except as provided by subsection (3), a purported registration of a transfer of shares or debentures in contravention of subsection (1) is void.

(3) Subsection (1) does not affect a power of the company to register as a shareholder or debenture holder a person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

498. Procedure on transfer being lodged

(1) As soon as practicable (and in any case not later than two months) after the date on which a transfer of a company's shares or debentures is lodged with it, the company shall either—

(a) register the transfer; or

(b) if it refuses to register the transfer, give the transferee a notice of the refusal, together with a statement specifying the reasons for the refusal.

(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 required 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 the transmission of shares or debentures by operation of law.

(5) If a company fails to comply with a requirement of this section, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(6) If, after a company or any of its officers is convicted of an offence under subsection (5), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence

499. Transfer of shares on application of transferor

(1) 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.

(2) A company that, without lawful justification, fails to comply with subsection (1) is liable to pay damages to the applicant.

500. Execution of share transfer by executor or administrator

A document of transfer of the share or other interest of a deceased member of a company—

(a) can be made by the deceased member's executor or administrator even though the executor or administrator is not a member of the company; and

(b) is as effective as if the executor or administrator had been such a member at the time of the execution of the document.

501. Evidence of grant of probate, etc

(1) If a document produced to a company is by law sufficient evidence of the grant of—

(a) probate of the will of a deceased person;

(b) letters of administration, of the estate of a deceased person; or

(c) confirmation as executor of a deceased person, the company is obliged to accept the document as sufficient evidence of the grant.

(2) A company that refuses to comply with subsection (1) is liable to pay damages to any person who sustains loss in consequence of the refusal.

502. Certification of document of transfer of shares or debentures

(1) A certificate issued by a company in relation to a transfer of shares in, or of debentures of, the company is to be taken to be a representation by the company to any person acting on the faith of the certificate that there have been produced to the company such documents as on their face show title to the shares or debentures in the transferor named in the certificate.

(2) The certificate is not in itself a representation that the transferor has any title to the shares or debentures.

(3) If a person acts on the faith of a false certificate issued by a company made negligently, the company is liable to pay damages to the person as if the certificate had been made fraudulently.

(4) For the purposes of this section—

(a) a certificate issued by a company in relation to a transfer is treated as having been made by the company if the certificate is signed by a person authorised to certify transfers on the

company's behalf or by an officer or employee either of the company or of a body corporate so authorised; and

(b) a certificate is treated as signed by a person if—

(i) it purports to be authenticated by the person's signature or initials (whether handwritten or not); and

(ii) it is not established that the signature or initials was or were placed there by someone other than that person, or a person authorised to use that person's signature or initials, for the purpose of certifying transfers on the company's behalf.

503. Duty of company as to issue of certificates etc on transfer

(1) A company shall, within two months after the date on which a transfer of any of its shares, debentures or debenture stock is lodged with the company, complete and have ready for delivery—

(a) the certificates of the shares transferred;

(b) the debentures transferred; or

(c) the certificates of the debenture stock transferred.

(2) For the purpose of subsection (1), "transfer" does not include a transfer that the company is for any reason entitled to refuse to register and does not register.

(3) Subsection (1) does not apply if the conditions of issue of the shares, debentures or debenture stock provide otherwise.

(4) If a company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(5) If, after a company or any of its officers is convicted of an offence under subsection (4), the company continues to fail to complete and have ready for delivery the documents referred to in subsection (1), the company, and each officer of the company who is in default, commits a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

504. Company no longer authorised to issue share warrants after commencement of this section

(1) Irrespective of whether a company limited by shares purports to be authorised by its articles to 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, the company may no longer issue such share warrants after the commencement of this section.

(2) A share warrant issued in contravention of subsection (1) is void.

505. Power of Court to order company to make good failure to issue certain documents

(1) If a company is failing to comply with section 496 (1), any person claiming to be affected by the failure may serve on the company a notice requiring it to rectify the failure without delay and in any case within ten days after the service of the notice.

(2) If a company that is served with a notice served under subsection (1) fails to comply with the notice within ten days after the date of service, the person who served the notice may apply to the Court for an order under subsection (4).

(3) The company is entitled to be served with a copy of the application and to be heard at the hearing of the application by the Court.

(4) On the hearing of an application under subsection (2) and on being satisfied as to the company's failure to comply, the Court may make an order directing the company, and any of its officers, to rectify the failure within such period, or before such date, as may be specified in the order.

(5) Such an order may provide that all costs of, and incidental to, the application are to be borne by the company or by a specified officer of the company who was, in the opinion of the Court, responsible for the failure.

Division 2 — Evidencing and transfer of title to securities without written instrument

506. Provision enabling procedures for evidencing and transferring title

(1) Regulations may be made for the purpose of this Division to enable title to securities to be evidenced and transferred without a written document.

(2) In particular, those regulations may—

(a) prescribe procedures for recording and transferring title to securities; and

(b) regulate those procedures and the persons responsible for or involved in their operation.

(3) Any such regulations are invalid to the extent that they do not contain such safeguards as may be necessary—

(a) for the protection of investors; and

(b) for ensuring that competition is not restricted, distorted or prevented.

(4) Any such regulations may, for the purpose of enabling or facilitating the operation of the procedures referred to in subsection (2)(a), prescribe the rights and obligations of persons in relation to securities dealt with under the procedures.

(5) Any such regulations may also—

(a) include provisions for the purpose of giving effect to—

(i) the transmission of title to securities by operation of law;

(ii) any restriction on the transfer of title to securities arising under the provisions of any enactment or document, Court order or agreement; and

(iii) any power conferred by any such provision on a person to deal with securities on behalf of the person entitled; and

(b) make provision with respect to the persons responsible for the operation of the procedures prescribed by the regulations—

(i) as to the consequences of their insolvency or incapacity; or

(ii) as to the transfer from them to other persons of their functions in relation to those procedures.

507. Power to make regulations requiring arrangements to be adopted

(1) Regulations made for the purpose of this Division may—

(a) enable 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 or transferred or both without a written document; or

(b) require companies, or any designated class of companies, to adopt such arrangements.

(2) Any such regulations may apply—

(a) in respect of all securities issued by a company; or

(b) in respect of all securities of a specified description.

(3) The Cabinet Secretary shall ensure that any such regulations do not

provide—

(a) that persons who, but for the arrangements would be entitled to have their names entered in the company's register of members, cease to be so entitled; or

(b) that persons who, but for the arrangements would be entitled to exercise any rights in respect of the securities, continue to be able effectively to control the exercise of those rights.

(4) Any such 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) provide for matters of which any such certificate or statement is, or is not, evidence.

(5) In this section—

(a) a reference to a designated class of companies is to a class designated in the regulations or by order under section 508; and

(b) "specified" means specified in the regulations.

508. Provision enabling or requiring arrangements to be adopted: order-making powers

(1) The Cabinet Secretary may, by order—

(a) designate classes of companies for the purposes of section 507;

(b) provide that, in relation to securities of a specified description—

(i) in a designated class of companies; or

(ii) in a specified company or class of companies, specified provisions of those regulations either do not apply or apply subject to specified modifications.

(2) In subsection (1), "specified" means specified in the order.

509. Duty to consult

Regulations purporting to be made under sections 506 or 507, and an order purporting to be made under section 508, are invalid unless the Cabinet Secretary has previously carried out such consultation as in the Cabinet Secretary's opinion are appropriate.

Part XIX – PUBLIC OFFERS OF SECURITIES BY COMPANIES

510. Interpretation: Part XIX

(1) For the purposes of this Part, 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 as—

(a) not being likely 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, if it is made on terms allowing that person to renounce the person's rights, the rights may be renounced only 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, if it is made on terms allowing that person to renounce the person's rights, the rights may be renounced only in favour of—

(i) another person entitled to hold securities under the scheme; or

(ii) a person already connected with the company.

(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 of a trust of which the principal beneficiary is a person referred to in paragraphs (a) to (d).

(5) For the purposes of subsection (4)(b), a person is a member of the family of another person if the person is the other person's spouse, child or step-child or a descendant of any of any such child or step-child.

511. Prohibition of public offers by private companies

(1) A private company limited by shares or a company limited by guarantee may 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 under arrangements under which it is to be converted into a public company before the securities are allotted; or

(b) as part of the terms of the offer, it undertakes to convert itself into a public company within a specified period and that undertaking is complied with.

(4) The specified period for the purposes of subsection (3)(b) is 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.

512. Enforcement of prohibition: order restraining proposed contravention

(1) If a member or creditor of a company, or the Attorney-General, alleges that a company is proposing to act in contravention of section 511, the member, creditor or Attorney-General may apply to the Court for an order under this section.

(2) If, on the hearing of an application under subsection (1), the Court is satisfied that the company concerned is proposing to act in contravention of section 511, it shall make an order restraining the company from contravening that section.

513. Enforcement of prohibition: orders available to the Court after contravention

(1) If a member or creditor of a company, or the Attorney-General, alleges that a company is contravening, or has contravened, section 511, the member, creditor or Attorney General may apply to the Court for an order under this section.

(2) A person is eligible to make an application under subsection (1) as a member of the company only if the person—

(a) was a member of the company when the offer constituting the contravention was made or, if that offer was made over a period, at any time during that period; or

(b) became a member as a result of that offer.

(3) A person is eligible to make an application under subsection (1) as a creditor of the company only if the person was a creditor of the company at the time when the offer constituting the contravention was made or, if that offer was made over a period, at any time during that period.

(4) If, on the hearing of an application under subsection (1), the Court is satisfied that the company concerned has acted in contravention of section 511, it shall make an order requiring the company to convert itself into a public company and to apply to the Registrar for registration of the conversion, unless it appears to the Court—

(a) that the company does not meet the requirements for conversion into a public company; and

(b) that it is impractical or undesirable to require it to take steps to do so.

(5) If it does not make an order under subsection (4), the Court may make either or both of the following;

(a) a remedial order under section 514;

(b) an order for the compulsory liquidation of the company.

514. Enforcement of prohibition: power of Court to make remedial orders

(1) An order is a remedial order for the purpose of this section if it is made in order to place a person affected by a contravention of section 511 in the position in which the person would have been in had the contravention not occurred.

(2) If a private company has—

(a) allotted securities as a result of an offer to the public; or

(b) allotted or agreed to allot securities with a view to their being offered to the public,

a remedial order may require any person knowingly concerned in the contravention of section 511 to offer to purchase any of those securities at such price and on such other terms as the Court considers appropriate.

(3) A remedial order may be made—

(a) against any person knowingly concerned in the contravention, whether or not an officer of the company concerned;

(b) irrespective of anything in that company's constitution that includes, for this purpose, the terms on which any securities of the company are allotted or held; and

(c) whether or not the holder of the securities subject to the order is the person to whom that company allotted or agreed to allot them.

(4) If a remedial order is made against the company itself, the Court may make such order reducing the company's capital as appears to it to be appropriate.

(5) Subsections (2) to (5) do not limit in any way the Court's power to make a remedial order.

515. Validity of allotment etc not affected

Nothing in this Part affects the validity of an allotment or sale of securities or of an agreement to allot or sell securities.

516. Public company: requirement for minimum share capital

(1) A company that is a public company shall not conduct business or exercise a borrowing power unless the Registrar has issued it with a trading certificate under this section.

(2) On receiving an application made by a public company under section 517, the Registrar shall issue a trading certificate to the company if 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 under a share scheme of an employee can be taken into account only if it is 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.

517. Procedure for obtaining trading certificate

(1) A public company that wishes to obtain a trading certificate shall make an application in writing to the Registrar.

(2) The Registrar shall refuse such an application if it does not—

(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; and

(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.

518. The authorised minimum

For the purposes of sections 516 and 517, the authorised minimum is six million seven hundred and fifty thousand shillings.

519. Consequences of doing business etc without a trading certificate

(1) If a company does business or exercises any borrowing powers in contravention of section 516, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to fine not exceeding one million shillings.

(2) A contravention of section 516 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 that party because of the company's failure to comply with those obligations.

Part XX – REDEEMABLE SHARES

520. Power of limited company to issue redeemable shares

(1) A limited company having a share capital may issue redeemable shares that are to be redeemed, or are liable to be redeemed, at the option of the company or the shareholder.

(2) The articles of a private limited company may exclude or restrict the issue of redeemable shares.

(3) A public limited company may issue redeemable shares only if it is authorised to do so by its articles.

(4) A company may issue redeemable shares only if there are no issued shares of the company that are not redeemable.

521. Terms and manner of redemption

(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 if it amends the company’s articles.

(3) If 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.

522. Payment for redeemable shares

(1) Redeemable shares of a limited company can be redeemed only if they are fully paid.

(2) The terms of redemption of shares in a limited company may provide that the amount payable on redemption can, by agreement between the company and the holder of the shares, be paid on a date later than the redemption date.

523. Financing of redemption

(1) Redeemable shares of a limited company can be redeemed only 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 (5), any premium payable on redemption of shares in a limited company is payable out of distributable profits of the company.

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

(4) Despite subsection (3), where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this subsection unless the old shares are redeemed within one month after the issue of the new shares.

(5) If the redeemable shares were issued at a premium, any premium payable on their redemption can 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.

(6) The amount of the share premium account of the company is reduced by an amount equal to, or amounts equal to the aggregate amounts equal to, the amount of any premium payable under subsection (2).

524. Redeemed shares treated as cancelled

If shares in a limited company are redeemed—

(a) the shares are cancelled by operation of this section; and

(b) the amount of the issued share capital of the company is diminished by the nominal value of the shares redeemed.

525. Notice to Registrar of redemption

(1) Within one month after a company has redeemed any redeemable shares, the company shall lodge with the Registrar for registration a notice specifying the shares that have been redeemed.

(2) The company shall attach to, or enclose with, the notice a statement of capital that complies with subsection (3).

(3) A statement of capital complies with this subsection if it states 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) the particulars of the rights attached to the shares prescribed by the regulations for the purposes of this subsection;

(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 in the form of a premium.

(4) If a company fails to comply with a requirement of this section, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(5) If, after the company or an officer of the company is convicted of an offence under subsection (4), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit an offence on each day on which the offence continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

Part XXI – TREASURY SHARES

526. Treasury shares

(1) This section applies to a purchase or acquisition of shares by a limited company of its own shares in accordance with this Act and—

(a) the purchase or acquisition is made out of distributable profits; and

(b) the shares are qualifying shares.

(2) Shares are qualifying shares for the purpose of subsection (1) if they—

(a) are included in the official list in accordance with the provisions of the Capital Markets Act (Cap. 485A); or

(b) are traded on a regulated market.

(3) When this section applies, the company concerned may—

(a) hold the shares, or any of them; or

(b) deal with any of them, at any time, in accordance with section 529 or 530.

(4) If shares are held by the company as treasury shares, the company shall enter itself in its register of members as the member holding the shares.

(5) In this Act, references to a company holding shares as treasury shares are to the company holding shares that—

(a) were, or are treated as having been, purchased or acquired by it in circumstances in which this section applies; and

(b) have been held by the company continuously since they were so purchased or acquired, or treated as purchased or acquired.

527. Treasury shares: maximum holdings

(1) If a company has shares of only one class, the company shall ensure that the aggregate nominal value of shares held as treasury shares does not at any time exceed ten per cent of the nominal value of the issued share capital of the company at that time.

(2) If the share capital of a company is divided into shares of different classes, the company shall ensure that the aggregate nominal value of the shares of any class held as treasury shares does not at any time exceed ten per cent of the nominal value of the issued share capital of the shares of that class at that time.

(3) A company that has, as a result of having failed to comply with subsection (1) or (2), excess shares shall dispose of, or cancel, those shares in accordance with section 529 or 530 before the end of twelve months from and including the date on which the failure first occurs.

(4) For the purpose of subsection (3), excess shares are such number of the shares held by the company as treasury shares at the relevant time as resulted in the limit being exceeded.

(5) If a company purchases qualifying shares out of distributable profits as referred to in section 526 and, because of the purchase, the company would fail to comply with subsection (1) or (2), the purchase is not void because of section 424.

528. Exercise of rights in respect of treasury shares

(1) This section applies to a company that holds shares as treasury shares.

(2) The company may not exercise any right in respect of the treasury shares, including any right to attend or vote at company meetings.

(3) Any purported exercise of such a right is void.

(4) No dividend can be paid, and no other distribution (whether in cash or otherwise) of the company's assets (including any distribution of assets to members on a liquidation) can be made to the company, in respect of the treasury shares.

(5) Nothing in this section prevents—

(a) an allotment of shares as fully paid bonus shares in respect of the treasury shares; or

(b) if the treasury shares are redeemable shares—the payment of an amount payable on the redemption of the shares.

(6) In circumstances in which section 526(1) applies, shares allotted as fully paid bonus shares in respect of the treasury shares are to be treated as if purchased by the company at the time they were allotted.

529. Disposal of treasury shares

(1) A company that holds shares as treasury shares may, at any time—

(a) sell the shares, or any of them, for a cash consideration; or

(b) transfer the shares, or any of them, for the purposes of or in accordance with an employees' share scheme.

(2) In subsection (1)(a), "cash consideration" means—

(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;

(d) an undertaking to pay cash to the company on or before a date that is no more than ninety days after the date on which the company agrees to sell the shares; or

(e) payment by any other means giving rise to a present or future entitlement of the company, or a person acting on the company's behalf, to a payment, or credit equivalent to payment, in cash.

(3) For purposes of subsection (2), "cash" includes foreign currency.

(4) A company that receives a notice under section 611 that a person wishes to acquire shares held by the company as treasury shares shall not sell or transfer the shares to any other person.

(5) If a company contravenes subsection (4), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

530. Treasury shares: notice of disposal

(1) Within one month after shares held by a company as treasury shares—

(a) are sold; or

(b) are transferred for the purposes of an employees' share scheme, the company shall lodge with the Registrar for registration a return that complies with subsection (2).

(2) A return complies with this subsection if it states with respect to shares of each class disposed of—

(a) the number and nominal value of the shares; and

(b) the date on which they were disposed of.

(3) Particulars of shares disposed of on different dates can be included in a single return.

531. Cancellation of treasury shares

(1) A company that holds shares may at any time cancel all or any of the shares.

(2) As soon as shares held by a company as treasury shares cease to be qualifying shares, the company shall cancel them.

(3) For purpose of subsection (2), shares do not cease to be qualifying shares only because trading in them is suspended in accordance with the rules of the approved securities exchange on which they are traded.

(4) On the cancellation by a company of share held as treasury shares, the amount of the company's share capital is reduced by the nominal amount of the cancelled shares.

(5) The directors of the company may take such measures as are required to enable the company to cancel its shares under this section without complying with Part XVI.

532. Treasury shares: notice of cancellation

(1) Within one month after shares held by a company as treasury shares are cancelled, the company shall lodge with the Registrar for registration a return that specifies in relation to shares of each class cancelled—

(a) the number and nominal value of the shares; and

(b) the date on which they were cancelled.

(2) Subsection (1) does not apply to shares that are cancelled immediately after they are acquired by the company.

(3) Particulars of shares cancelled on different dates can be included in a single return.

(4) The company shall attach to, or enclose with, the return by a statement of capital that complies with subsection (6).

(5) A statement of capital complies with this subsection if it states with respect to the company's share capital immediately following the cancellation—

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

(b) the aggregate nominal value of those shares;

(c) for each class of shares—

(i) the particulars prescribed by the regulations 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 in the form of a premium.

533. Treatment of proceeds of sale of treasury shares

(1) This section applies when shares held by a company as treasury shares are sold.

(2) If the proceeds of the sale are equal to or less than the purchase price paid by the company for the shares, the proceeds are, for the purposes of Part XVII, taken to be a realised profit of the company.

(3) If the proceeds of the sale exceed the purchase price paid by the company—

(a) an amount equal to the purchase price paid is taken to be a realised profit of the company for the purposes of Part XVII; and

(b) the company shall transfer the excess to its share premium account.

(4) For the purposes of this section—

(a) the purchase price paid by the company is to be determined by the application of a weighted average price method; and

(b) if the shares were allotted to the company as fully paid bonus shares, purchase price paid for them is nil.

534. Treasury shares: offences

(1) If a company that holds or held shares as treasury shares fails to comply with a requirement of this Part, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(2) If, after the company or an officer of the company is convicted of an offence under subsection (2), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit an offence on each day on which the offence continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

Part XXII – INFORMATION ABOUT INTERESTS IN A PUBLIC COMPANY'S SHARES

Division 1 — Introductory provision

535. Application of Part XXII

(1) This Part applies only to public companies.

(2) This Part applies to the issued shares of a public company, or the issued shares of a class shares of a public company, that confer rights to vote in all circumstances at general meetings of the company (including shares held as treasury shares).

(3) The temporary suspension of voting rights in respect of particular shares does not affect the application of this Part in relation to interests in those or any other shares.

Division 2 — Power of public company to require persons to provide information about their interests in the company's shares

536. Notice by public company requiring information about interests in its shares

(1) A public company may give notice under this section to any person whom the company knows or reasonably believes—

(a) holds an interest in the company's shares; or

(b) to have held such an interest at any time during the three years immediately preceding the date on which the notice is issued.

(2) The notice may require the person—

(a) to confirm that fact, or to state whether or not it is the case; and

(b) if the person holds, or has during that time held, any such interest, to give such further information as may be required by subsections (3) to (7).

(3) The notice may require the person to whom it is addressed to give information about the person's own present or past interest in the company's shares held by the person at any time during the three year period referred to in subsection (1)(b).

(4) The notice may require the person to whom it is addressed if—

(a) the person's interest is a present interest and another interest in the shares subsists; or

(b) another interest in the shares subsisted during that three year period at a time when the person's interest subsisted; to give, so far as lies within the person's knowledge, such information about that other interest as may be required by the notice.

(5) The information referred to in subsections (3) and (4) includes—

(a) the identity of persons who hold interests in the relevant shares; and

(b) whether persons who hold interests in the same shares are or were parties to—

(i) an agreement to which section 566 applies; or

(ii) an agreement or arrangement relating to the exercise of any rights conferred by holding the shares.

(6) The notice may require the person to whom it is addressed, if the person's interest is a past interest, to give (so far as it is within the person's knowledge) information about the identity of the person who became the holder of that interest when the person ceased to hold it.

(7) The person to whom a notice is given under this section shall provide the required information within such reasonable period (being not less than seven days) as may be specified in the notice.

537. Public company may apply to Court for order imposing restrictions on the relevant shares if notice requiring information is not complied with

(1) If—

(a) a notice under section 536 is served by a company on a person who holds or held interests in shares of the company; and

(b) the person fails to give the company the information required by the notice within the period specified in it, the company may apply to the Court for an order directing that the relevant shares be subject to restrictions.

(2) However, if the Court is satisfied that such an order may unfairly affect the rights of third parties in respect of the shares, it may, for the purpose of protecting those rights and subject to such terms as it considers appropriate, direct that such acts by such persons or descriptions of persons, and for such purposes, as may be specified in the order do not constitute a breach of the restrictions.

(3) On the hearing of an application made under this section, the Court may make an interim order. Any such order may be made unconditionally or on such terms as the Court considers appropriate.

(4) Division 3 makes further provision about orders under this section.

538. Notice requiring information: offences

(1) A person who—

(a) fails to comply with a notice under section 536;or

(b) in purported compliance with such a notice—

(i) makes a statement that the person knows to be false in a material particular; or

(ii) recklessly makes a statement that is false in a material particular, commits an offence.

(2) In proceedings for an offence under subsection (1)(a), it is a defence for the defendant to establish that the requirement to give information was frivolous or vexatious.

(3) A person found guilty of an offence under this section is liable on conviction to a fine not exceeding five hundred thousand shillings.

539. Notice requiring information: persons exempted from obligation to comply

(1) A person is not obliged to comply with a notice given under 536 if the person is for the time being examined by the Cabinet Secretary from the operation of that section.

(2) The Cabinet Secretary may grant any such exemption only if—

(a) the person has consulted the Central Bank of Kenya;and

(b) the Cabinet Secretary is satisfied that, having regard to any undertaking given by the person with respect to any interest held, or to be held, by the person in any particular shares, there are special reasons why the person should not be subject to the. obligations imposed by that section.

Division 3— Orders imposing restrictions on shares

540. Consequences of order imposing restrictions

(1) The effect of an order under section 549 that shares are subject to restrictions is as follows—

(a) a transfer of the shares is void;

(b) no voting rights are exercisable in respect of the shares;

(c) no further shares may be issued in right of the shares or in accordance with an offer made to their holder;

(d) except in a liquidation, no payment may be made of sums due from the company on the shares, whether in respect of capital or otherwise.

(2) If shares are subject to the restriction in subsection (1)(a), an agreement to transfer the shares is void.

(3) Subsection (2) does not apply to an agreement to transfer the shares on the making of an order under section 543 made under subsection (3)(b) of that section.

(4) If shares are subject to the restriction in subsection (1)(c) or (d), an agreement to transfer any right to be issued with other shares in right of those shares, or to receive any payment on them (otherwise than in a liquidation), is void.

(5) Subsection (4) does not apply to an agreement to transfer any such right on the making of an order under section 543 made under subsection (3)(b) of that section.

(6) This section is subject—

(a) to any directions given under section 537(2) or 542(3); and

(b) in the case of an interim order made under section 537(3),to the terms of the order.

541. Offence to attempt to evade restrictions

(1) This section applies if shares are subject to restrictions imposed by an order under section 537.

(2) A person who—

(a) exercises or purports to exercise a right—

(i) to dispose of shares that to the person's knowledge, are for the time being subject to restrictions; or

(ii) to dispose of a right to be issued with any such shares;

(b) votes in respect of any such shares (whether as holder or proxy), or appoints a proxy to vote in respect of them;

(c) being the holder of any such shares, fails to notify that they are subject to those restrictions a person whom the person does not know to be aware of that fact but does know to be entitled (apart from the restrictions) to vote in respect of those shares (whether as holder or as proxy); or

(d) being the holder of any such shares, or being entitled to a right to be issued with other shares in right of them, or to receive any payment on them (otherwise than in a liquidation), enters into an agreement that is void under section 540(2) or (3).

(3) If shares of a company are issued in contravention of the restrictions, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(4) This section is subject—

(a) to any directions given under section 537(2), 542 or 543; and

(b) in the case of an interim order made under section 537(3),to the terms of the order.

542. Relaxation of restrictions

(1) If an order of the Court directs shares to be subject to restrictions, the company or any person aggrieved may make an application to the Court on the ground that the order unfairly affects the rights of third persons in relation to the shares.

(2) On the hearing of an application made under subsection (1), the Court may, if satisfied that the application is substantiated, make a further order directing that such acts by such persons or classes of persons, and for such purposes, as may be set out in the order do not constitute a breach of the restrictions.

(3) The Court may make such an order subject to such terms as it considers appropriate.

543. Removal of restrictions

(1) An application may be made to the Court for an order directing that the shares are to cease to be subject to restrictions.

(2) An application for an order under this section may be made by the company or by any person aggrieved.

(3) The Court may make an order under this section only if—

(a) it is satisfied that the relevant facts about the shares have been disclosed to the company and no unfair advantage has accrued to any person as a result of the earlier failure to make that disclosure; or

(b) the shares are to be transferred for valuable consideration and the Court approves the transfer.

(4) An order under this section made because of subsection (3)(b) may continue (wholly or partially) the restrictions referred to in section 540(1)(c) and (d) so far as they relate to a right acquired or offer made before the transfer.

(5) If any restrictions continue in force under subsection (4)—

(a) an application may be made under this section for an order directing that the shares are to cease to be subject to those restrictions; and

(b) subsection (3) does not apply in relation to the making of such an order.

544. Order of Court for sale of shares

(1) The Court may order that the shares subject to restrictions be sold, subject to the Court's approval as to the sale.

(2) An application for an order under subsection (1) may only be made by the company.

(3) If the Court has made an order under this section, it may make such further order relating to the sale or transfer of the shares as it considers appropriate.

(4) An application for an order under subsection (3) may be made—

(a) by the company;

(b) by the person appointed by or in accordance with the order to carry out the sale; or

(c) by any person who holds an interest in the shares.

(5) In making an order under subsection (1) or (3),the Court may also make an order that the applicant's costs be paid from the proceeds of sale.

545. Application of proceeds of sale under order of Court

(1) If shares are sold in accordance with an order of the Court under section 544, the seller shall pay the proceeds of the sale, less the costs of the sale, into court for the benefit of the persons who hold beneficial interests in the shares.

(2) A person who holds a beneficial interest in the shares may apply to the Court for the whole or part of those proceeds to be paid to the person.

(3) On the hearing of such an application, the Court shall, subject to subsection (4), make an order directing that the applicant be paid—

(a) the whole of the proceeds of sale together with any interest on them; or

(b) if another person had a beneficial interest in the shares at the time of their sale—the proportion of the proceeds calculated in accordance with the following formula—

		PP	=	TV x	AI —			
					TV			

where—

"PP" represents the proportion of the proceeds to be paid;

"TV" represents the total value of the shares;

"AI" represents the value of the applicant's interest in the shares.

(4) If the Court has made an order under section 544(5) directing that the costs of an applicant under that section are to be paid from the proceeds of sale, the applicant is entitled to payment of the applicant's costs from those proceeds before any person who holds an interest in the shares receives any part of those proceeds.

Division 4— Power of members to require company to exercise its powers under Division 2

546. Power of members of company to require company to act

(1) The members of a company may require it to exercise its powers under section 536.

(2) A company shall comply with such a requirement once it has received requests (to the same effect) from members of the company holding at least ten percent of such of the paid-up capital of the company as confer a right to vote at general meetings of the company (excluding the voting rights attached to shares of the company held as treasury shares).

(3) A request for the purposes of subsection (1) may be in hard copy form or in electronic form, but shall—

(a) state that the company is requested to exercise its powers under section 536;

(b) specify the manner in which the company is requested to act;

(c) specify reasonable grounds for requiring the company to exercise those powers in that manner; and

(d) be authenticated by the person or persons making it.

547. Duty of company to comply with requirement

(1) A company that is required under section 546 to exercise its powers to require a person to provide information about their interests in the company's share, shall exercise those powers in the manner specified in the requests.

(2) If the company fails to comply with subsection (1), the company, and each officer of the company who is in default, commits an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

548. Report to members on outcome of investigation

(1) On the conclusion of an investigation carried out by a company in accordance with a requirement made under section 546, the company shall prepare a report of the information obtained as a result of the investigation.

(2) The company shall ensure that the report is made available for inspection within a reasonable period (being not more than fifteen days) after the completion of the investigation.

(3) If—

(a) a company undertakes an investigation in accordance with a requirement made under section 546; and

(b) the investigation is not completed within three months after the date on which the company became subject to the requirement, the company shall prepare for that period, and for each subsequent period of three months ending before the completion of the investigation, an interim report of the information obtained during that period as a result of the investigation.

(4) The company shall make each such report available for inspection within a reasonable period (being not more than fourteen days) after the end of the period to which it relates.

(5) The company shall retain the reports for at least six years from the date on which they are first made available for inspection and during that time shall, except in so far as the regulations otherwise provided, keep them available for inspection at the company's registered office.

(6) Within three days after first making any such report available for inspection, the company shall notify the requesting members that the report is available for inspection at the company's registered office or, if the regulations otherwise provide, at a place authorised by the regulations.

(7) For the purposes of this section, an investigation carried out by a company in accordance with a requirement made under section 546 is completed when—

(a) the company has made all such inquiries as are necessary for the purposes of the requirement; and

(b) in the case of each such inquiry—

(i) a response has been received by the company; or

(ii) the time allowed for a response has elapsed.

549. Offences relating to a failure to comply with requirement of section 560

(1) If a company fails to comply with a requirement of section 548(1) to (6), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(2) If a company fails to comply with a requirement of section 548(7) or (8), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(3) If, after a company or any of its officers is convicted of an offence under subsection (1), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

(4) If, after a company or any of its officers is convicted of an offence under subsection (2), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

550. Right to inspect and request copy of reports

(1) A company that has prepared a report in accordance with section 548 shall ensure that during the company's ordinary business hours it is available for inspection by any person without charge.

(2) Any person who makes a request to the company to inspect a report prepared in accordance with section 548 shall allow the person to do so.

(3) Any person who requests the company for a copy of any such report, or of a specified part of it, is entitled, on payment of such fee (if any) as may be prescribed by the regulations, to be provided with a copy of the report or specified part.

(4) Subject to payment of the prescribed fee (if any), is the company shall comply with the request within ten days after receiving it.

(5) If the company refuses to allow an inspection required under subsection (2), or fails to comply with subsection (4), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(6) If, after a company or any of its officers is convicted of an offence under subsection (5), the company continues to refuse to allow the inspection of the relevant report, or to provide the requested copy, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

(7) In the case of any such refusal or failure, any person aggrieved by the refusal or failure may apply to the Court for an order under subsection (8).

(8) On the hearing of such an application, the Court may make an order compelling the company to allow an immediate inspection of the report, or direct the company to send to the applicant or to any person on whose behalf the application is made the required copy.

(9) On the hearing of such an application, the company concerned is entitled to appear and be heard as respondent.

(10) An application under subsection (7) may be made, heard and determined irrespective of whether the company concerned is prosecuted for an offence under this section.

Division 5 — Register of interests disclosed

551. Company to keep register of interest disclosed

(1) A company shall keep a register of information that it has obtained as a result of a requirement imposed under section 536.

(2) Within three days after receiving any such information, the company shall enter in the register—

(a) the fact that the requirement was imposed and the date on which it was imposed; and

(b) the information obtained as a result of the requirement.

(3) The company shall enter the information—

(a) against the name of the present holder of the relevant shares; or

(b) if there is no present holder or the present holder is not known, against the name of the person holding the interest.

(4) The company shall ensure that the register is made up so that the entries against the names entered in it appear in alphabetical order.

(5) If a company fails to comply with a requirement of this section, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(6) If, after a company or any of its officers is convicted of an offence under subsection (5), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

(7) The company is not because of anything done for the purposes of this section affected with notice of, or put on inquiry as to, the rights of any person in relation to any particular shares.

552. Register to be kept available for inspection

(1) Except in so far as the regulations otherwise provide, a company shall keep the register required by section 551 available for inspection at the company's registered office.

(2) If a company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(3) If, after a company or any of its officers is convicted of an offence under subsection (2), the company continues to fail to comply with subsection (1), the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

553. Rights to inspect and require copy of entries

(1) A company that is required to keep a register under 551, shall keep the register open during the company's ordinary business hours for inspection by any person without charge.

(2) Any person who requests a copy of any entry in the register is entitled, on payment of such fee (if any) as may be prescribed, to be provided with a copy of the entry.

(3) The company may decline a request received from a person who seeks to exercise either of the rights conferred by this section if the request does not comply with subsection (4).

(4) A request complies with this subsection if it specifies—

(a) in the case of a natural person—the person's name and address;

(b) in the case of an organisation — the name and address of the natural person 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 it will—

(i) if that person is a natural person—the person's name and address;

(ii) if that person is an organisation — the name and address of a natural person responsible for receiving the information on its behalf; and

(iii) the purpose for which the information is to be used by that person.

554. Court supervision of purpose for which rights may be exercised

(1) A company that receives a request under section 553 shall—

(a) comply with the request if it is satisfied that it is made for a proper purpose; and

(b) refuse the request if it is not so satisfied.

(2) If the company refuses the request, it shall inform the person making the request, stating the reason why it is not satisfied.

(3) A person whose request is refused may apply to the Court about the refusal.

(4) On making an application to the Court—

(a) the applicant shall notify the company of the application; and

(b) the company shall take all practicable steps to notify all persons whose details would be disclosed if the company were required to comply with the applicant's request.

(5) If not satisfied that the inspection or copy is sought for a proper purpose, the Court shall make an order directing the company not to comply with the request.

(6) If the Court makes such a direction and it appears to the Court that the company is or may be subject to other requests made for a similar purpose (whether made by the same person or different persons), it may make a further order directing the company not to comply with any such request. Such an order is required to include such information as appears to the Court appropriate to identify the requests to which it applies.

(7) If the Court does not make an order directing the company not to comply with the request, the company shall comply with the request as soon as practicable—

(a) after being notified of the order; or

(b) if the proceedings are discontinued, after the discontinuance of the proceedings.

555. Register of interests disclosed: refusal of inspection or default in providing copy

(1) If a company refuses to allow an inspection required under section 553, or fails to provide a copy required under that section, otherwise than in accordance with an order of the Court, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(2) If, after a company or any of its officers is convicted of an offence under subsection (1), the company continues to refuse to allow such an inspection, or to fail to provide the required copy, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

(3) In the case of any such refusal or failure, any person aggrieved by the refusal or failure may apply to the Court for an order under subsection (4).

(4) On the hearing of such an application, the Court may make an order compelling the company to allow an immediate inspection, or direct the company to send to the applicant or to any person on whose behalf the application is made the required copy.

(5) On the hearing of such an application, the company concerned is entitled to appear and be heard as respondent.

(6) An application under subsection (3) may be made, heard and determined irrespective of whether the company concerned is prosecuted for an offence under this section.

556. Register of interests disclosed: offences in connection with request for or disclosure of information

(1) A person who, in making a request under section 553, makes a statement that the person knows is, or ought to know is, false or misleading in a material respect commits an offence.

(2) A person who, having obtained possession of information by exercise of either of the rights conferred by section 553—

(a) does any act that results in the information being disclosed to another person; or

(b) omits to do anything with the result that the information is disclosed to another person, knowing, or having reason to know, that person may use the information for a purpose that is not a proper purpose commits an offence.

(3) A person found guilty of an offence under this section is on conviction liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.

557. Entries not to be removed from register

(1) A company that is required to keep a register under section 551 shall not delete an entry in it except in accordance with section 558 and 559.

(2) If an entry is deleted in contravention of subsection (1), the company shall restore it as soon as reasonably practicable afterwards.

(3) If a company contravenes subsection (1), or fails to comply with subsection (2), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(4) If, after a company or any of its officers is convicted of an offence for failing to comply with subsection (2), the company continues to fail to restore the relevant entry to its register of interests disclosed, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

558. Removal of entries from register: old entries

A company may remove an entry from the register kept under section 553 if more than six years have elapsed since the entry was made.

559. Removal of entries from register: incorrect entry relating to third party

(1) This section applies if, in accordance with an obligation imposed by a notice under section 536, a person gives to a company the name and address of another person who holds an interest in shares of the company.

(2) That other person may apply to the company for the removal of the entry from the register.

(3) If the company is satisfied that the information as a result of which the entry was made is incorrect, it shall remove the entry.

(4) If an application under subsection (3) is refused, the applicant may apply to the Court for an order directing the company to remove the relevant entry from the register.

(5) On the hearing of such an application, the Court may make such an order if it considers it appropriate to do so.

560. Adjustment of entry relating to share acquisition agreement

(1) If a person who is identified in the register kept by a company under section 553 as being a party to an agreement to which section 566 applies ceases to be a party to the agreement, the person may apply to the company for the inclusion of that information in the register.

(2) If the company is satisfied that the person has ceased to be a party to the agreement, it shall record that information (if not already recorded) in every place where the person's name appears in the register as a party to the agreement.

(3) If an application under this section is refused (otherwise than on the ground that the information has already been recorded), the applicant may apply to the Court for an order directing the company to include the information in question in the register.

(4) The Court may make such an order if it considers appropriate.

561. Duty of company ceasing to be public company

(1) A company that ceases to be a public company shall nevertheless continue to keep any register kept under section 551 until end of the period of six years after it has ceased to be such a company.

(2) If a company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

562. Interest in shares: general

(1) This section applies to determine for the purposes of this Part whether a person has an interest in shares.

(2) In this Part—

(a) a reference to an interest in shares includes an interest of any kind whatsoever in the shares; and

(b) any restraints or restrictions to which the exercise of any right attached to the interest is or may be subject are to be disregarded.

(3) If an interest in shares is comprised in property held on trust, every beneficiary of the trust is treated as having an interest in the shares.

(4) A person is taken to have an interest in shares if—

(a) the person enters into a contract to acquire them; or

(b) not being the registered holder, the person is entitled—

(i) to exercise any right conferred by holding the shares; or

(ii) to control the exercise of any such right.

(5) For the purposes of subsection (4)(b) a person is entitled to exercise or control the exercise of a right conferred by holding shares if the person—

(a) has a right (whether subject to conditions or not) the exercise of which would make the person so entitled; or

(b) is under an obligation (whether subject to conditions or not) the fulfilment of which would result in the person becoming so entitled.

(6) A person is also taken to have an interest in shares if—

(a) the person has a right to call for delivery of the shares to the person or to the person's order; or

(b) the person has a right to acquire an interest in shares or is under an obligation to take an interest in shares.

(7) Subsection (6) applies whether the right or obligation is conditional or absolute.

(8) Persons having a joint interest are each taken to have that interest.

(9) It does not matter that shares in which a person has an interest are unidentifiable.

Division 6 — Supplementary provisions

563. Interest in shares: right to subscribe for shares

(1) Section 536 applies in relation to a person who has, or previously had, or is or was entitled to acquire, a right to subscribe for shares of the company as it applies in relation to a person who holds or held an interest in shares of that company.

(2) A reference in section 536 to an interest in shares is to be read accordingly.

564. Interest in shares: family interests

(1) For the purposes of this Part, a person is taken to hold an interest in shares in which—

(a) the person's spouse; or

(b) any child or step-child of the person who has not reached the age of eighteen years, holds an interest.

(2) In subsection (1), "spouse" includes a person who is cohabiting with another person.

565. Interest in shares: corporate interests

(1) For the purposes of this Part, a person is taken to hold an interest in shares if a body corporate holds an interest in them and—

(a) the body or its directors are accustomed to act in accordance with the person's directions or instructions; or

(b) the person is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of the body.

(2) For the purposes of this section, a person is taken to be entitled to exercise or control the exercise of voting power if—

(a) another body corporate is entitled to exercise or control the exercise of that voting power; and

(b) the person is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that body corporate.

(3) For the purposes of this section, a person is treated as entitled to exercise or control the exercise of voting power if—

(a) the person has a right (whether or not subject to conditions) the exercise of which would make the person so entitled; or

(b) the person is under an obligation (whether or not subject to conditions) the fulfilment of which would make the person so entitled.

566. Interest in shares: agreement to acquire interests in a particular company

(1) For the purposes of this Part an interest in shares may arise from an agreement between two or more persons that includes provision for the acquisition by any one or more of them of interests in shares of a particular public company (the "target company" for that agreement).

(2) This section applies to such an agreement if—

(a) the agreement includes provision imposing obligations or restrictions on any one or more of the parties to it with respect to their use, retention or disposal of their interests in the shares of the target company acquired in accordance with the agreement (whether or not together with any other interests of theirs in the company's shares to which the agreement relates); and

(b) an interest in the target company's shares is in fact acquired by any of the parties in accordance with the agreement.

(3) The reference in subsection (2) to the use of interests in shares of the target company 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).

(4) When an interest in shares of the target company has been acquired in accordance with the agreement, this section continues to apply to the agreement so long as the agreement continues to include provisions of the kind referred to in subsection (2).

(5) Subsection (4) applies irrespective of—

(a) whether or not any further acquisitions of interests in the company's shares take place in accordance with the agreement;

(b) any change in the persons who are for the time being parties to it; or

(c) any variation of the agreement.

(6) A reference in subsection (5) to an agreement includes an agreement having effect (whether directly or indirectly) in substitution for the original agreement.

(7) In this section—

(a) "agreement" includes any kind of arrangement; and

(b) a reference to the provisions of an agreement Is includes—

(i) undertakings, expectations or understandings operative under an arrangement; and

(ii) any provision whether express or implied and whether absolute or not.

(8) A reference elsewhere in this Part to an agreement to which this section applies has a corresponding meaning.

(9) This section does not apply—

(a) to an agreement that is not legally binding unless it involves mutuality in the undertakings, expectations or understandings of the parties to it; or

(b) to an agreement to underwrite or sub-underwrite an offer of shares of a company if the agreement is confined to that purpose and any matters incidental to it.

567. Extent of obligation in case of share acquisition agreement

(1) For the purposes of this Part each party to an agreement to which who is for the time being a party to an agreement to which section 566 applies is taken to have an interest in all shares of the

target company in which any other party to the agreement is interested apart from the agreement (whether or not the interest of the other party was acquired, or includes any interest that was acquired, in accordance with the agreement).

(2) For the purposes of this Part, an interest of a party to such an agreement in shares of the target company is an interest apart from the agreement if the person holds an interest in those shares otherwise than because of the application of section 566 and this section in relation to the agreement.

(3) Consequently, any such interest of the person (apart from the agreement) includes for those purposes any interest that is taken to be that of the person under section 564 or 565 or by the application of section 566 and this section in relation to any other agreement with respect to shares of the target company to which the person is a party.

(4) A person who, being a person who is for the time being a party to an agreement to which section 566 applies, notifies the person's interest in shares of the target company to the company under this Part shall—

(a) state that the person is a party to such an agreement;

(b) include the names and (so far as known to the person) the addresses of the other parties to the agreement, identifying them as such; and

(c) state whether or not any of the shares to which the notice relates are shares in which the person is interested because of section 566 (and this section) and, if so, the number of those shares.

568. Information protected from wider disclosure

(1) A company may not—

(a) include information in respect of which a company is for the time being entitled to any exemption conferred by regulations made for the purpose of section 647 in a report under section 548; or

(b) make any such information available under section 553.

(2) If any such information is omitted from a report under section 548, the company shall state that fact in the report.

(3) If a company contravenes subsection (1), or fails to comply with subsection (2), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

569. Calculating periods for fulfilling obligations

If the period allowed by any provision of this Part for fulfilling an obligation is expressed as a number of days, any day that is not working day is to be disregarded in calculating that period.

Part XXIII – COMPANY DEBENTURES

570. Perpetual debentures

(1) A condition contained in debentures, or in a deed for securing debentures, is not invalid only because the debentures are made—

(a) irredeemable; or

(b) redeemable only—

(i) on the happening of a contingency, however remote; or

(ii) at the end of a period, however long.

(2) Subsection (1) applies to debentures whenever issued and to deeds whenever executed and despite any equity to the contrary.

571. Enforcement of contracts to subscribe for debentures

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

572. Company to register allotment of debentures

(1) 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.

(2) If a company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding one million shillings.

(3) If, after a company or any of its officers is convicted of an offence under subsection (2), the company continues to fail to register an allotment of debentures, the company, and each officer of the company who is in default, commit a further offence on each day on which that failure continues and on conviction are each liable to a fine not exceeding one hundred thousand shillings for each such offence.

573. Company to establish and maintain register of debenture holders

(1) A company that allots debentures shall establish and maintain a register of debenture holders.

(2) Except in so far as the regulations otherwise provide, a company shall keep its register of debenture holders (if any) open for inspection at the registered office of the company.

(3) If a company fails to comply with a requirement of this section, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding one million shillings.

(4) If, after a company or any of its officers is convicted of an offence under subsection (3), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding one hundred thousand shillings for each such offence.

(5) A reference in this section to a register of debenture holders includes a duplicate—

(a) of a register of debenture holders that is kept outside Kenya; or

(b) of any part of such a register.

574. Rights of debenture holders and others to inspect and obtain copies of register of debenture holders

(1) A company that is required to keep a register of debenture holders shall, except when it is duly closed, ensure that the register is, during ordinary office hours, kept available for inspection—

(a) by a member of the company or a holder of the company's debentures, without charge; and

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

(2) Any person may request a company that is required to keep a register of debenture holders to provide the person with a copy of the register on payment of the fee (if any) prescribed by the regulations.

(3) Within seven days after receiving a request that complies with subsection (4), the company shall provide the person making request with a copy of its register of debenture holders, or a specified part of it, on payment of such fee (if any) as may be prescribed by the regulations.

(4) A request complies with this subsection if it states—

(a) in the case of a natural person, the person's name and address;

(b) in the case of a body corporate, the name and address of a natural person responsible for making the request on behalf of the body;

(c) the purpose for which the copy of the register is to be used; and

(d) whether that copy' or any information in it will be disclosed to any other person, and if so—

(i) if that other person is a natural person, that person's name and address;

(ii) if that person is an organisation, the name and address of the natural person responsible for receiving the information on its behalf; and

(iii) the purpose for which the copy or information is to be used by that other person.

(5) For the purposes of this section, a register is duly closed if it is closed in accordance with a provision contained—

(a) in the company's 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) A company shall not keep its register of debenture holders closed for more than thirty days in a year.

(7) A reference in this section to a register of debenture holders includes a duplicate—

(a) of a register of debenture holders that is kept outside Kenya; or

(b) of any part of such a register.

575. Offence to refuse inspection of register of debenture holders or to fail to provide copy

(1) If a company—

(a) without reasonable excuse—

(i) refuses an inspection requested under section 574(2);

(ii) fails to comply with a request made under section 574(3); or

(b) contravenes section 574(6), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(2) If, after a company or any of its officers is convicted of an offence under subsection (1) in relation to refusing an inspection requested under section 574(2) or failing to comply with a request made under section 574(3), the company continues without reasonable excuse to fail to comply with the relevant request, the company, and each officer of the company who is in default, commit an offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

(3) In proceedings against a company or an officer of the company for an offence under subsection (1), the court may, in addition to, or instead of, convicting the company or officer of the offence, make an order—

(a) compelling the company to allow an immediate inspection of the company's register of debenture holders; or

(b) directing the company to immediately provide the person who made the request with a copy of the register or of the part of it that was requested.

(4) For the purposes of this section, a company has a reasonable excuse for refusing an inspection of its register of debenture holders, or for not complying with a person's request for a copy of the register or of a part of it, if it satisfies the relevant court that the person seeking to inspect the register was doing so for an improper purpose, or in the case of a failure to comply with such a request, that person has not tendered the prescribed fee.

576. Register of debenture holders: offences in connection with request for or disclosure of information

(1) A person who makes a request under section 574 (2) knowing that the request contains information that is false or misleading in a material respect commits an offence.

(2) A person who is in possession of information obtained by exercising either of the rights conferred by section 574 commits an offence if the person—

(a) acts in a way that results in the information being disclosed to another person; or

(b) fails to take reasonable action to prevent the information from being disclosed to another person, knowing, or having reason to suspect, that the other person may use the information for an improper purpose.

(3) A person found guilty of an offence under subsection (1) or (2) is liable on conviction to a fine not exceeding five hundred thousand shillings.

577. Time limit for claims arising from entry in register of debenture holders

(1) A liability incurred by a company—

(a) from the making or deletion of a record in the company's register of debenture holders; or

(b) from a failure to make or delete any such record,

is not enforceable more than ten years after the date on which the record was made or deleted or the failure first occurred.

(2) Subsection (1) does not affect any shorter period of limitation prescribed by any other written law.

578. Right of debenture holder to obtain copy of trust deed securing debentures

(1) A holder of debentures of a company is entitled, on request and on payment of the fee (if any) prescribed by the regulations, to be provided with a copy of any trust deed for securing the debentures.

(2) Within seven days after receiving from a holder of debentures of the company a request for a copy of the trust deed (if any) for securing the debentures, the company shall comply with the request.

(3) If a company fails without reasonable excuse to comply with a request under subsection (2), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(4) If, after a company or any of its officers is convicted of an offence under subsection (2), the company continues to fail to comply with the relevant request, the company, and each officer of the

company who is in default, commit an offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

(5) In the case of any such failure, the Court may, on the application of the person affected by the failure, make an order directing that the requested copy be sent to the applicant or such other person who is specified in the order.

(6) The company is entitled to be heard as respondent to such an application.

(7) An application under subsection (4) may be made, heard and determined irrespective of whether the company is charged with an offence under subsection (4) or (5).

579. Provisions protecting trustees of deed securing debentures to be void

(1) A provision contained in—

(a) a trust deed for securing an issue of debentures; or

(b) a contract with the holders of debentures secured by a trust deed, is void to the extent that it would have the effect of exempting a trustee of the deed from, or indemnifying a trustee against liability for breach of trust when the trustee fails to show the degree of care and diligence required of trustee, having regard to the provisions of the trust deed

(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) if it is agreed to by a majority of not less than seventy-five percent in value of the debenture holders present and voting in person or, if 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.

580. Power of company to re-issue redeemed debentures

(1) If 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 are to 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.

(3) The re-issue of a debenture, or the issue of another debenture in its place, under this section is to be treated as an issue of a new debenture for stamp duty purposes, but it is not to be so regarded for the purposes of any provision limiting the amount or number of debentures to be issued.

(4) If a debenture re-issued under this section appears to be duly stamped, a person who lends money on the security of the debenture may give the debenture in evidence in proceedings for enforcing the security without payment of the stamp duty or any penalty imposed in respect of it, unless the person had notice or, ought reasonably to have known, that the debenture was not duly stamped, in which case the company is liable to pay the proper stamp duty and penalty.

581. Deposit of debentures to secure advances

If a company has deposited any of its debentures to secure advances from time to time, whether on current account or otherwise, the debentures are not to be regarded as having been redeemed only because the company's account is no longer in debit, even though the debentures are still so deposited.

582. Priorities when debentures are secured by floating charge

(1) This section applies if debentures of a company are secured by a charge that, as created, was a floating charge.

(2) If—

(a) the holders of debentures secured by a charge on property of the company take possession of the property; and

(b) at the relevant time the company is not in liquidation, the company's preferential debts are payable out of assets that come into the possession of those persons in priority to claims for principal or interest payable in respect of the debentures.

Part XXIV – COMPANY TAKEOVERS

Division 1— General provisions

583. Interpretation: Part XXIV

(1) In this Part—

"**associate**" has the meaning given by section 589;

"**Authority**" means the Capital Markets Authority;

"**the company**" means the company whose shares are the subject of a takeover offer;

"**date of the offer**" means—

(a) if the offer is published, the date of publication;

(b) if the offer is not published, or if 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;

"**holder of shares**" includes—

(a) a person who holds debentures that—

(i) are issued by a company to which section 588 applies; and

(ii) confer voting rights;

(b) a person who holds securities of a company that are convertible into, or entitle the holder to subscribe for, shares of the company;

"**non-voting shares**" means shares that are not voting shares;

"**offeror**" means (subject to section 588) the person making a takeover offer;

"**offer period**", in relation to a takeover offer, means the period from and including the date of the offer and ending with the time the offer can no longer be accepted;

"**takeover offer**" has the meaning given by section 584;

"**the Takeover Rules**" means the rules made in accordance with section 592;

"**voting rights"** means rights to vote at general meetings of the company, including rights that arise only in certain circumstances;

"**voting shares**" means shares conferring voting rights.

(2) A person contracts unconditionally to acquire shares if the person's 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 satisfied, and a reference to a contract becoming unconditional is to be read accordingly.

584. What constitutes a takeover offer

(1) For the purposes of this Part, an offer to acquire shares in a company is a takeover offer if the two conditions specified in subsections (2) and (3) are satisfied in relation to the offer.

(2) The first condition is that it is an offer to acquire—

(a) all the shares in a company; or

(b) if 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 offeror.

(3) The second condition is that the terms of the offer are—

(a) the same in relation to all the shares to which the offer relates; or

(b) if the shares to which the offer relates include shares of different classes — the same in relation to all the shares of each class.

(4) In subsections (1) to (3), "shares" means shares, other than relevant treasury shares, that have been allotted on the date of the offer. (But see subsection (5)).

(5) A takeover offer may include among the shares to which it relates—

(a) all or any shares that are allotted after the date of the offer but before a specified date;

(b) all or any relevant treasury shares that cease to be held as treasury shares before a specified date; or

(c) all or any other relevant treasury shares.

(6) In this section—

“relevant treasury shares" means shares that—

(a) are held by the company as treasury shares on the date of the offer; or

(b) become shares held by the company as treasury shares after that date but before a specified date;

"specified date" means a date specified in or determined in accordance with the terms of the offer.

585. Shares already held by the offeror, etc

(1) Subject to subsection (2), the reference in section 584 to shares already held by the offeror includes a reference to shares that the offeror has contracted to acquire, whether unconditionally or subject to conditions being satisfied.

(2) The reference in section 584 to shares already held by the offeror does not include a reference to shares that are the subject of a contract—

(a) intended to ensure 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 584(2) is satisfied if—

(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 satisfied; and

(b) the condition would be satisfied if the offer did extend to those shares.

586. Cases in which offer is treated as being on same terms

(1) The condition in section 584(2) is treated as satisfied if subsection (2) or (3) applies.

(2) This subsection applies if—

(a) shares carry an entitlement to a particular dividend that other shares of the same class, because they were allotted later, do not confer;

(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 584(3) would be satisfied but for that difference.

(3) This subsection applies if—

(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

(ii) precludes it except after compliance by the offeror with conditions with which the offeror is unable to comply or which the offeror 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 584(3) would be satisfied but for the fact that an offer of consideration in the specified form to those persons is precluded.

587. Effect of impossibility etc of communicating or accepting offer

(1) For the purposes of this Part, shares are not included in a takeover offer if they are shares that the offeror acquired, or unconditionally contracted to acquire during the offer period, but were not acquired as a result of acceptances of the offer.

(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 to be treated as shares to which the offer relates, even if the offer extends to those shares.

(3) In this section "contracted" means contracted unconditionally or contracted subject to specified conditions being satisfied.

(4) This section is subject to section 611(8) and (9).

588. Certain shares excluded from offer

(1) The fact an offer to acquire shares in a company is not communicated to some of the holders of shares in the company does not prevent the offer from being a takeover offer for purposes of this Part if—

(a) those 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 may be 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) The fact that an offer is made to acquire shares in a company and a law of a country outside Kenya makes it impossible, or more difficult, for some holders of shares in the company to accept the offer, 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 that is not communicated to every holder of shares in the company cannot be a takeover offer for the purposes of this Part unless the requirements of subsection (1)(a) to (c) are satisfied; or

(b) that an offer that 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 referred to in subsection (2).

(4) If 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 acceptance of the offer, those shares are treated for the purposes of this Part as excluded from those to which the offer relates.

(5) 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.

(6) In subsection (5), "contracted" means contracted unconditionally or subject to conditions being satisfied.

(7) Subsections (4) and (5) are subject to section 611(8) and (9).

589. Persons who are associates of offerors for purposes of this Part

(1) For the purpose of this Part, a person is an associate of an offeror if the person is—

(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

(e) if the offeror is a natural person—the spouse, or any child or step-child, of the person.

(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 the offeror's directions or instructions; or

(b) the offeror 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 those shares, or their interests in those shares, acquired under the agreement; and

(c) it is not an excluded agreement.

(5) An agreement is an excluded agreement for the purpose of subsection (4) (c) —

(a) if it is only legally binding if 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—

"agreement" includes any agreement or arrangement; and

(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.

590. How debentures that confer voting rights are treated for the purposes of this Part

(1) For the purposes of this Part, debentures issued by a company to which subsection (2) applies are treated as shares in the company if they confer voting rights.

(2) This subsection applies to a company that has voting shares, or debentures carrying voting rights, that are admitted to trading on a regulated market.

(3) In this Part, in relation to debentures that are to be treated as shares because of subsection (1), references to shares being allotted are to be treated as including references to debentures being issued.

591. How convertible securities are to be treated for purposes of this Part

(1) For the purposes of this Part, securities of a company are to be treated as shares in the company if they are convertible into, or entitle the holder to subscribe for, such shares.

(2) Subsection (1) does not require 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 only because the shares into which they are convertible, or for which the holder is entitled to subscribe, are of the same class.

Division 2 — Takeover Rules

592. Power of Authority to make Takeover Rules

(1) The Authority may make rules, called Takeover Rules, for the purposes of this Part.

(2) The Takeover Rules may—

(a) regulate—

(i) takeover bids;

(ii) merger transactions; and

(iii) transactions, not falling within subparagraph (i) or (ii), that have or may have, directly or indirectly, an effect on the ownership or control of companies;

(b) provide for cases where—

(i) any such bid or transaction is, or has been, contemplated or expected; or

(ii) an announcement is made denying that any such bid or transaction is intended.

(2) The Takeover Rules may confer power on the Authority to order a person to pay such compensation as it thinks just and reasonable if the person has contravened or failed to comply with a rule the effect of which is to require the payment of money.

(3) The rules conferring such a power on the Authority may provide for the payment of interest, including compound interest.

593. Further provisions about Takeover Rules

(1) The Takeover Rules may—

(a) make different provision for different purposes;

(b) make provision subject to exceptions or exemptions;

(c) contain incidental, supplemental, consequential or transitional provision; and

(d) authorise the Authority to dispense with, or modify the application of the rules in particular cases and by reference to any specified circumstances.

(2) Rules made for the purpose of subsection (1)(d) have no effect unless the Authority has specified the reasons for dispensing with or modifying the rules in the particular cases concerned.

(3) Immediately after making Takeover Rules, the Authority shall publish them in whatever way the Authority considers appropriate.

(4) A person does not contravene a Takeover Rule if the person shows that, at the time of the alleged contravention, the Takeover Rules had not been published as required by subsection (3).

(5) The production of a printed copy of a document purporting to contain the Takeover Rules on which is endorsed a certificate signed by an officer of the Authority authorised by it for that purpose and stating—

(a) that the Rules were made by the Authority;

(b) that the copy is a true copy of the Rules; and

(c) that on a specified date the Rules were published as required by subsection (3), is evidence of the facts stated in the certificate.

(6) A certificate purporting to be signed as referred to in subsection (5) is to be treated as having been properly signed unless the contrary is shown.

(7) A person who, in any legal proceedings, wishes to rely on a document by which the Takeover Rules were made is entitled to require the Authority to endorse a copy of the document with a certificate of the kind referred to in subsection (5).

594. Power of Authority to give rulings in takeover cases

(1) The Authority may give rulings on the interpretation, application or effect of the Takeover rules.

(2) To the extent and in the circumstances specified the Takeover Rule, and subject to any review or appeal, a ruling has a binding effect.

595. Rules may empower Authority to give directions

The Takeover 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 those 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 the person is or would be a breach of those Rules; or

(c) otherwise to secure compliance with those Rules.

596. Power of Authority to require documents and Information

(1) The Authority may, by notice, require a person—

(a) to produce any documents that are specified or described in the notice; or

(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 person to whom such a notice is given commits an offence if the person fails to comply with the notice—

(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 performance 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 authorised under subsection (5) shall, if required to do so, produce evidence of the person's authority to exercise the power.

(7) The production of a document in compliance with a requirement made under this section does not affect any lien that a person has on the document.

(8) The Authority may take copies from a document produced in compliance with a requirement made under this section.

(9) A reference in this section to the production of a document includes a reference to the production of—

(a) 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 produce documents or provide information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

(11) A person who is found guilty of an offence under subsection (2) is liable on conviction to a fine not exceeding one million shillings.

597. Restrictions on disclosure of information about affairs of natural person or particular business

(1) This section applies to information (in whatever form) about—

(a) the private affairs of a natural person; or

(b) a particular business, that is provided to the Authority in connection with the performance of its functions.

(2) A person who is in possession of information to which this section applies shall not, during the lifetime of the person concerned, or the existence of the business, disclose that information without the consent of that person or the person carrying on that business, as the case requires.

(3) Subsection (2) does not prohibit a disclosure that enables the Authority to perform its functions.

(4) Subsection (2) does not apply to—

(a) the disclosure by a prescribed public authority of information disclosed to it by the Authority in reliance on subsection (3); or

(b) the disclosure of the information by anyone who has obtained it directly or indirectly from such a public 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.

(6) In subsection (4)(a)—

(a) "prescribed public authority" means—

(i) the Registrar; or

(ii) any other public authority prescribed by the regulations for the purpose of this section;

(b) "public authority" means a person who, in accordance with a written law, performs functions of a public nature.

598. Offence to disclose information in contravention of section 597

(1) A person who discloses information in contravention of section 597 commits an offence.

(2) In a prosecution for an offence under subsection (1), it is a defence to establish on a balance of probabilities that the defendant—

(a) did not know, and had no reason to suspect, that the information had been provided as specified in section 597(1); or

(b) took all reasonable steps and exercised all due diligence to avoid the making the relevant disclosure.

(3) A person who is found guilty of an offence under subsection (1) is liable on conviction to a fine not exceeding five hundred thousand shillings.

(4) If an offence under subsection (1) is committed by a company, each officer of the company who is in default also commits the offence and is liable on conviction to a fine not exceeding five hundred thousand shillings.

599. Power of Authority to impose sanctions for breaches of Takeover Rules

(1) The Authority may impose sanctions on a person who—

(a) has contravened or is contravening, or has failed to comply with or is failing to comply with, a provision of the Takeover Rules; or

(b) has failed or is failing to comply with a direction given under rules made for the purpose of section 595.

(2) The Authority may not impose sanctions under subsection (1) unless it has published a statement of its policy with respect to—

(a) the imposition of such sanctions; and

(b) if the sanction is a financial penalty — the amount of the penalty that can be imposed.

(3) As an element of the policy, the Authority shall, in making a decision to impose a sanction, take into account the following factors—

(a) the seriousness of the contravention or failure concerned;

(b) the extent to which the contravention or failure was deliberate or reckless;

(c) whether the person on whom the sanction is to be imposed is a natural person or a body corporate.

(4) The Authority may at any time revise a policy statement.

(5) Before publishing a policy statement or a revised policy statement, the Authority shall prepare a draft of the statement and consult such persons about the draft as it considers appropriate.

(6) In exercising, or deciding whether to exercise, its power to impose a sanction under subsection (2) with respect to a particular contravention or failure, the Authority shall have regard to any relevant policy statement published and in force at the time when the contravention or failure occurred.

600. Failure to comply with the Takeover Rules relating to bid documentation

(1) This section applies when a takeover bid is made for a company that has securities—

(a) that are admitted to trading on a securities exchange or other regulated market in Kenya; and

(b) that also confer voting rights.

(2) If an offer document published in respect of a takeover bid does not comply with the provisions of the Takeover Rules relating to offer documents—

(a) the person making the bid; or

(b) if the bid is made by a group of persons — the member of the group that caused the document to be published, commits an offence.

(3) A person commits an offence under subsection (2) only if it is proved that the person—

(a) knew that the offer document did not comply, or was reckless as to whether it complied, with the relevant provisions of the Takeover Rules; and

(b) failed to take all reasonable steps to ensure that it did comply.

(4) If an offence under subsection (2) is committed by a member of a group and the member is a body corporate, every officer of the body who is in default also commits the offence.

(5) If a response document published in respect of a takeover bid does not comply with the provisions of the Takeover Rules relating to responses to takeover bids, the company to which the bid relates, and each officer of that company who is in default, commit an offence.

(6) A person who is found guilty of an offence under this section is liable on conviction—

(a) in the case of a natural person, to a fine not exceeding one million shillings; or

(b) in the case of a body corporate, to a fine not exceeding two million shillings.

(7) Nothing in this section affects any power of the Authority in relation to the enforcement of the Takeover Rules.

(8) In this section, "voting rights" in relation to a company means rights to vote at general meetings of the company, including rights that arise only in specified circumstances.

601. Enforcement of Takeover Rules by the Court

(1) If the Authority is of the opinion that a person is contravening or about to contravene, or has repeatedly contravened, a provision of the Takeover Rules, it may apply to the Court for a restraining order under subsection (4).

(2) If the Authority is of the opinion that a person is failing to comply, or about to fail to comply, or has repeatedly failed to comply, with a requirement of the Takeover Rules, or with a direction given under rules made for the purposes of section 595, it may apply to the Court for a compliance order under subsection (5).

(3) A person in respect of whom an application is made under subsection (1) or (5) is the respondent at the hearing of the application and is entitled to appear and be heard at the hearing.

(4) On the hearing of an application made under subsection (1), the Court may, if satisfied that the respondent is contravening or about to contravene, or has repeatedly contravened, a provision of the Takeover Rules, the Court may make an order restraining the respondent from continuing or committing the contravention, or committing further contraventions, of the provision.

(5) On the hearing of an application made under subsection (2), the Court may, if satisfied that the respondent is failing to comply or about to fail to comply, or has failed to comply, with a requirement of the Takeover Rules or a direction given under section 595, the Court may make a compliance order directing the respondent to comply with the requirement or direction.

(6) The Authority may not seek an injunction from the Court concerning a matter in respect of which it can make an application under this section.

602. Authority not liable for damages in connection with the performance of its functions under this Part

(1) Neither the Authority nor a person to whom subsection (2) applies is liable for damages for any act done, or omitted to be done, in connection with the performance or purported performance of the functions of the Authority under this Part.

(2) Subsection (1) applies to a person who—

(a) is or is acting as a member, or an employee of the Authority; or

(b) is a person authorised under section 596(5).

(3) Subsection (1) does not apply to an act proved to have been done or omitted in bad faith.

603. No action for breach of statutory duty etc

(1) A contravention of, or a failure to comply with a requirement of, the Takeover Rules does not give rise to a right of action for breach of statutory duty.

(2) A contravention of, or a failure to comply with a requirement of, the Takeover Rules does not of itself render a transaction void or unenforceable.

604. Privilege against self-incrimination

(1) A statement made by a person in response to—

(a) a requirement under section 596(1) (power to require documents and information); or

(b) an order made by the Court under section 601 to ensure compliance with such a requirement, may not be used against the person in criminal proceedings for an offence other than one to which subsection (2) applies.

(2) This subsection applies to—

(a) an offence (if any) that is created by the regulations for the purposes of this subsection; and

(b) an offence under—

(i) section 108 of the Penal Code (perjury and subornation of perjury); or

(ii) section 114 of that Code (false swearing).

Division 3 — Impediments to takeovers

605. Interpretation: Division 3

(1) In this Division—

"**offer period**", in relation to a takeover bid, means the time allowed for acceptance of the bid by the Takeover Rules;

"**opted-in company**" means a company in relation to which—

(a) an opting-in resolution has effect; and

(b) the conditions specified in section 606(2) and (3) continue to be satisfied;

"opting-in resolution" means a special resolution of the kind referred to in section 606(1);

"opting-out resolution" means a special resolution of the kind referred to in section 606(4);

(2) For the purposes of this Division—

(a) securities of a company are treated as shares of the company if they—

(i) are convertible into; or

(ii) entitle the holder to subscribe for, shares in the company; and

(b) debentures issued by a company are treated as shares in the company if they confer voting rights on their holder.

606. Impediments to takeovers: opting in and opting out

(1) A company may, by a special resolution, opt in for the purposes of this Part if the following two conditions are satisfied in relation to the company.

(2) The first condition is that the company has voting shares admitted to trading on a regulated market.

(3) The second condition is that—

(a) no shares conferring special rights in the company are held by—

(i) a Cabinet Secretary,

(ii) a nominee of, or any other person acting on behalf of, a Cabinet Secretary, or

(iii) a company directly or indirectly controlled by a Cabinet Secretary; and

(b) no such rights are exercisable by or on behalf of a Cabinet Secretary under any enactment.

(4) A company may revoke an opting-in resolution by a further special resolution called an opting-out resolution.

607. Further provision about opting-in and opting-out resolutions

(1) For the purpose of this section, the effective date is the date specified in an opting-in resolution or an opting-out resolution is to have effect.

(2) An opting-in resolution or an opting-out resolution has no effect unless it specifies an effective date.

(3) The effective date of an opting-in resolution may not be earlier than the date on which the resolution is passed.

(4) The second condition in section 606 is required to be satisfied at the time when the opting-in resolution is passed, but the first condition does not need to be satisfied until the effective date.

(5) An opting-in resolution passed before the time when voting shares of the company are admitted to trading on a regulated market complies with the requirement in subsection (1) if, instead of specifying a particular date, it provides for the resolution to have effect from that time.

(6) An opting-in resolution passed before the commencement of this section complies with the requirement in subsection (1) if, instead of specifying a particular date, it provides for the resolution to have effect from that commencement.

(7) The effective date of an opting-out resolution may not be earlier than the first anniversary of the date on which a copy of the opting-in resolution was lodged with the Registrar for registration.

608. Consequences of opting in: effect on contractual restrictions

(1) The following provisions have effect when a takeover bid is made for an opted-in company.

(2) An agreement to which this section applies is void in so far as it places any restriction—

(a) on the transfer to the offeror, or at the offeror's direction to another person, of shares in the company during the offer period;

(b) on the transfer to any person of shares in the company at a time during the offer period when the offeror holds shares amounting to not less than seventy-five percent in value of all the voting shares in the company;

(c) on rights to vote at a general meeting of the company that decides whether to take any action that might result in the frustration of the bid;

(d) on rights to vote at a general meeting of the company that-

(i) is the first such meeting to be held after the end of the offer period; and

(ii) is held at a time when the offeror holds shares amounting to not less than seventy-five percent in value of all the voting shares in the company.

(3) This section applies to an agreement—

(a) entered into between a person holding shares in the company and another such person on or after the commencement of this section; or

(b) entered into at any time between such a person and the company,

(4) The reference in subsection (2)(c) to rights to vote at a general meeting of the company that decides whether to take any action that might result in the frustration of the bid includes rights to vote on a written resolution concerned with that question.

(5) For the purposes of subsection (2)(c), action that might result in the frustration of a bid is any action of that kind specified in the Takeover Rules.

(6) A person who sustains loss as a result of an act or omission that would, but for this section, be a breach of an agreement to which this section applies is entitled to compensation from any other person who would, but for this section, be liable to the person for committing or inducing the breach. The amount of compensation is to be such amount as the Court considers just and equitable.

(7) A reference in this section to voting shares in the company does not include—

(a) debentures; or

(b) shares that, under the company's articles of association, do not normally carry rights to vote at its general meetings (such as shares carrying rights to vote that, under those articles, arise only if specified pecuniary advantages are not provided).

609. Power of offeror to require general meeting to be convened

(1) If a takeover bid is made for an opted-in company, the offeror may, by making a request to the directors of the company, require them to convene a general meeting of the company if, at the date at which the request is made, the offeror holds shares amounting to not less than seventy-five percent in value of all the voting shares in the company.

(2) The reference in subsection (1) to voting shares in the company does not include—

(a) debentures; or

(b) shares that, under the company's articles of association, do not normally carry rights to vote at its general meetings (for example, shares carrying rights to vote that, under those articles, arise only if specified pecuniary advantages are not provided).

(3) Sections 277 to 279 apply (with necessary modifications) to the convening of a general meeting for the purpose of considering the takeover bid.

610. Requirements as to notification of opting-in or opting out resolutions

(1) A company that has passed an opting-in resolution or an opting-out resolution shall notify the resolution to the Authority within fourteen days after the resolution is passed.

(2) If a company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(3) If, after a company or an officer of the company is convicted of an offence under subsection (2), the company continues to fail to notify the resolution to the Authority, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

Division 4 — "Squeeze in" and "sell out"

611. Right of offeror to buy out minority shareholder

(1) Subsection (2) applies to a takeover offer does not relate to shares of different classes.

(2) An offeror who has, as a result 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) if the shares to which the offer relates are voting shares — not less than ninety percent of the voting rights conferred by those shares, may give notice to the holder of any shares to which the offer relates that the offeror has not acquired or unconditionally contracted to acquire that the offeror intends to acquire those shares.

(3) Subsection (4) applies even though the takeover offer relates to shares of different classes.

(4) An offeror who has, as a result 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) if the shares of that class are voting shares —not less than ninety percent of the voting rights conferred by those shares,

may give notice to the holder of any shares of that class to which the offer relates that the offeror has not acquired or unconditionally contracted to acquire that the offeror intends to acquire those shares.

(5) If a takeover offer that 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 is to 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 if—

(a) the requirements for the giving of a notice under subsection (2) or (4) are satisfied; and

(b) there are shares in the company that the offeror, or an associate of the offeror, has contracted to acquire subject to conditions being satisfied, 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) is to be determined as if—

(a) the shares to which the offer relates included shares of the kind referred to in subsection (6)(b); and

(b) in relation to those shares the words "as a result of acceptances of the offer" in subsection (2) or (4) were omitted.

(8 For the purposes of this section, shares are not excluded by section 588(4) from those to which the offer relates if—

(a) they are shares that the offeror acquired, or unconditionally contracted to acquire, during the offer period, but were not acquired or contracted to be acquired as a result of acceptances of the offer; and

(b) subsection (10) applies, and the offeror is taken to have acquired or to have contracted to acquire those shares as a result of acceptance of the offer.

(9) For the purposes of this section, shares are not excluded by section 588(5) from those to which the offer relates if—

(a) during the offer period, an associate of the offeror acquired, or unconditionally contracted to acquire, any of the shares to which the offer relates; and,

(b) subsection (10) applies.

(10) This subsection applies if—

(a) at the time the shares were acquired or contracted to be acquired the value of the consideration for which they were acquired or contracted to be acquired 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 consideration for the acquisition, at the time referred to in, paragraph (a), no longer exceeds the value of the consideration specified in those terms.

612. Further provision about notices given under section 611

(1) An offeror may not give a notice under section 611 otherwise than in the manner prescribed by the regulations.

(2) An offeror may not give a notice under section 611(2) or (4) after the end of—

(a) the period of three months from and including the day after the last day of the offer period; or

(b) the period of six months from and including the date of the offer if 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 the Takeover Rules.

(4) On first giving a notice under section 611 in relation to an offer, the offeror shall send to the company—

(a) a copy of the notice; and

(b) a statutory declaration stating that the conditions for the giving of the notice are satisfied.

(5) If the offeror is a company, subsection (4) (b) is complied with only if the statutory declaration is made by a director of the company.

(6) An offeror who—

(a) fails to send a copy of a notice or a statutory declaration as required by subsection (4);or

(b) 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 reasonable steps were taken to comply with that subsection.

(8) A person found guilty of having committed an offence under this section is liable on conviction—

(a) in the case of a body corporate, to a fine not exceeding two million shillings; or

(b) in the case of a natural person, to a fine not exceeding one million shillings.

613. Effect of notices under section 611

(1) Subject to section 618, this section applies if the offeror gives a shareholder a notice under section 611.

(2) The offeror is not only entitled but is bound to acquire the shares to which the notice relates on the terms specified in the offer.

(3) If the terms of an offer are such as to give the shareholder a choice of consideration, the offeror shall include in the notice particulars of the choice and a statement—

(a) stating that the shareholder may, within six weeks from the date of the notice, indicate that choice by a written communication sent to the offeror at an address specified in the notice; and

(b) stating which consideration specified in the offer will apply if a choice is not indicated.

(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—

(a) the consideration offered to, or chosen by, the shareholder is not cash and the offeror is no longer able to provide it; or

(b) the consideration offered to, or chosen by, the shareholder is not cash and was to have been provided by a third party who is no longer bound or able to provide it, the consideration is taken to consist of an amount of cash, payable by the offeror, which at the date of the notice is equivalent to the consideration that was offered or chosen.

(6) Immediately after the end of six weeks from the date of the notice, the offeror shall—

(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.

(7) If the consideration consists of shares or securities to be allotted by the offeror, the reference in subsection (6)(b) to the transfer of the consideration is 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 offeror shall attach to, or enclose with, the copy of the notice sent to the company under subsection (3)(a) a document of transfer executed on behalf of the holder of the shares by a person appointed by the offeror immediately after receiving the document.

(9) On receipt of the document the company shall register the offeror as the holder of those shares.

(10) The company holds any consideration received by it under subsection (5)(b) on trust for the person who, before the offeror acquired them, was entitled to the shares in respect of which the consideration was received.

614. Further provision about consideration held on trust under section 613

(1) If an offeror pays or transfers consideration to the company under section 613(6), the company shall pay into a separate bank account that complies with subsection (2)—

(a) any money it receives under section 613(6)(b); and

(b) any dividend or other amount 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 613(10) cannot be found; and

(b) subsection (4) applies, the company shall pay the consideration, together with any interest, dividend or other benefit that has accrued from the consideration, into Court.

(4) This subsection applies if—

(a) reasonable enquiries have been made at reasonable intervals to find the person; and

(b) either—

(i) twelve years has elapsed since the consideration was received; or

(ii) the company has been liquidated, whichever first occurs.

(5) If the person entitled to the consideration held on trust under section 613(10) cannot be found and subsection (4) applies, the following provisions have effect—

(a) the trust is ended;

(b) the company or, if the company has been liquidated, the liquidator shall sell any consideration other than cash and any benefit other than cash that has accrued from the consideration;

(c) the company or, if the company has been liquidated, the liquidator shall deposit in the name of the registrar of the Court in a separate bank account that complies with subsection (2) an amount 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, and shall lodge the receipt for the deposit with the Registrar.

(6) The expenses of the enquiries referred to in subsection (4) may be paid out of the money or other property held on trust for the person to whom the enquiry relates.

615. Right of minority shareholder to be bought out by offeror

(1) Subsections (3) and(4) apply if a takeover offer relates to all the shares in a company.

(2) For the 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.

(3) The holder of 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 offer period—

(a) the offeror has as a result 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 that the offeror has acquired or contracted to acquire, whether unconditionally or subject to conditions being satisfied—

(i) amount to not less than ninety percent in value of all the voting shares in the company or would do so but for subsection (1) of section 590; and

(ii) confer not less than ninety percent of the voting rights in the company or would do so but for that subsection.

(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 offer period—

(a) the offeror has, as a result 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 that the offeror has acquired or contracted to acquire (whether unconditionally or subject to conditions being satisfied) amount to not less than ninety percent in value of all the shares in the company or would do so but for section 590(1).

(5) If a takeover offer relates to shares of one or more classes and at any time before the end of the offer period—

(a) the offeror has, as a result 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 that the offeror has acquired or contracted to acquire, whether unconditionally or subject to conditions being satisfied—

(i) amount to not less than ninety percent in value of all the shares of that class; and

(ii) if the shares of that class are voting shares, confer 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 if—

(a) a shareholder exercises rights conferred by subsection (2), (3) or (4)(b);

(b) at the time when the shareholder exercises the right, there are shares in the company that the offeror has contracted to acquire subject to conditions being satisfied, and in relation to which the contract has not become unconditional; and

(c) the requirement imposed by subsection (3)(b) or (4)(b) (whichever is appropriate) would not be satisfied if those shares were not taken into account.

(7) The shareholder is treated for the purposes of section 617 as not having exercised the rights conferred by this section unless the requirement imposed by paragraph (b) of subsection (3) or (4) (as appropriate) would be satisfied if—

(a) the reference in that paragraph to other shares in the company that the offeror has contracted to acquire unconditionally or subject to conditions being satisfied were a reference to those shares that the offeror has unconditionally contracted to acquire; and

(b) the reference in that subsection to the offer period were a reference to the period referred to in section 616(2).

(8) A reference in subsection , (3)(b), (4)(b), (6) or (7) to shares that the offeror has acquired, or contracted to acquire, includes a reference to shares that an associate of the offeror has acquired or contracted to acquire.

616. Further provision about rights conferred by section 615

(1) Rights conferred on a shareholder by section 615(3), (4) or (5) are exercisable only by a written communication addressed to the offeror.

(2) Rights conferred on a shareholder by section 615(3), (4) or (5) are not exercisable after the end of the period of three months from—

(a) the end of the offer period; or

(b) if later, the date of the notice required to be given under subsection (3).

(3) Within one month after the time specified in section 615(3), (4) or (5), 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

(b) the period within which the rights are exercisable.

(4) If the notice is given before the end of the offer period, the offeror shall specify in the notice that the offer is still open for acceptance.

(5) Subsection (3) does not apply if the offeror has given the shareholder a notice in respect of the relevant shares under section 463.

(6) An offeror who fails to comply with subsection (3) commits an offence.

(7) If the offeror is a company, every officer of that company who is in default also commits an offence.

(8) If an offeror other than a company is charged with an offence for failing to comply with subsection (3), it is a defence to prove that the defendant took all reasonable steps for securing compliance with that subsection.

(9) A person found guilty of an offence under this section is liable on conviction—

(a) in the case of a body corporate, to a fine not exceeding one million shillings; or

(b) in the case of a natural person, to a fine not exceeding five hundred thousand shillings.

617. Effect of exercising the rights conferred by section 615

(1) Subject to section 618, this section applies to shares in respect of which a shareholder has exercised the rights conferred by section 615.

(2) The offeror is not only entitled but also bound to acquire shares to which this section applies on the terms of the offer or on such other terms as may be agreed to by the shareholder and the offeror.

(3) If the terms of an offer are such as to give the shareholder a choice of consideration—

(a) the shareholder may indicate that choice when requiring the offeror to acquire the shares; and

(b) the offeror—

(i) shall include in the notice given to the shareholder under section 616, particulars of the choice and of the rights conferred by this subsection; and

(ii) may include in the notice an indication stating which consideration specified in the offer will apply if the shareholder does not indicate a choice.

(4) In subsection (2), the reference 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 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 taken to consist of an amount of cash that is payable by the offeror and that, at the date when the shareholder requires the offeror to acquire the shares is equivalent to the consideration that was offered or chosen.

Division 5 — Supplementary provisions

618. Circumstances in which offeror or minority shareholder may apply to the Court

(1) If a notice is given under section 611 to a shareholder the Court may, on an application made by the shareholder, 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 are such as the Court considers to be fair and reasonable.

(2) An application under subsection (1) has no effect unless 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 613(6) does not have effect until the application has been disposed of.

(4) If a shareholder exercises the rights conferred by section 615 in respect of any shares, the Court may, on an application made by the shareholder or the offeror, make an order specifying the terms on which the offeror is entitled and bound to acquire the shares.

(5) On the hearing of an application made under subsection (1) or (3), the Court may not—

(a) impose a consideration of a higher value than that specified in the offer unless the holder of the shares satisfies that Court that the consideration so specified would be unfair; or

(b) impose a consideration of a lower value than that so specified.

(6) The Court may not make an order for costs against a shareholder making an application under subsection (1) or (3) unless it considers that—

(a) the application was unnecessary, improper or vexatious;

(b) the shareholder unreasonably delayed making the application; or

(c) the shareholder behaved unreasonably in conducting the proceedings on the application.

(7) The Court may not hear an application made by a shareholder under subsection (1) or (3) unless the shareholder has given 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 611;

(b) any person who has exercised the rights conferred by section 615.

(9) The Court may not hear an application made by an offeror under subsection (3) unless the offeror has given notice of the application to—

(a) any person to whom a notice has been given under section 611; or

(b) any person who has exercised the rights conferred by section 615.

(10) Subject to subsection (11), if a takeover offer has not been accepted to the extent necessary to enable the offeror to give notices under section 611(2) or (4), the Court may, on an application made by the offeror, make an order authorising the offeror to give notices under that subsection if it is satisfied that—

(a) the offeror has, after reasonable inquiry, 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 satisfied if that person, or all of those persons, 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.

619. When takeover offers are made by two or more persons jointly

(1) If a takeover offer is made by two or more persons jointly, the conditions for the exercise of the rights conferred by section 611 are satisfied—

(a) in the case of an acquisition of shares made as a result of acceptances of the offer—by the joint offerors acquiring, or unconditionally contracting to acquire, the shares jointly; and

(b) in any other case—by the joint offerors acquiring or unconditionally contracting to acquire the shares either jointly or separately.

(2) The conditions for the exercise of the rights conferred by section 615 are satisfied—

(a) in the case of an acquisition of shares made as a result of acceptances of the offer—by the joint offerors acquiring, or unconditionally contracting to acquire, the shares jointly; and

(b) in any other case—by the joint offerors acquiring, or contracting (whether unconditionally or subject to conditions being satisfied) to acquire, the shares either jointly or separately.

(3) Subject to subsections (5) to (9), the rights and obligations of the offeror under Division 4 are respectively joint rights and joint and several obligations of the joint offerors.

(4) A provision of sections 611 to 618 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 612(4) is ineffective unless it is made by all of the joint offerors and, if one or more of them is a company, is signed by a director of the company or companies concerned.

(6) Except as provided by subsection (7), in relation to a takeover offer made by two or more persons jointly, a reference in this Part to the offeror is a reference the joint offerors or any of them.

(7) In section 613(7) and (8), in relation to a takeover offer made by two or more persons jointly, a reference to the offeror is a reference to the joint offerors or such of them as they may determine

(8) In sections 613(5)(a) and 617(6)(a), in relation to a takeover offer made by two or more persons jointly, a reference to the offeror being no longer able to provide the relevant consideration is a reference to none of the joint offerors being able to do so.

(9) In section 618, in relation to a takeover offer made by two or more persons jointly, a reference to the offeror is a reference to the joint offerors, except that—

(a) an application to the Court under that section may be made by any of them; and

(b) the reference in subsection (10)(a) of that section to the offeror having been unable to trace one or more of the persons holding shares is as a reference to none of the offerors having been able to do so.

Part XXV – COMPANY ACCOUNTING RECORDS AND FINANCIAL STATEMENTS

Division 1 — Introductory provisions

620. Interpretation: Part XXV

(1) In this Part—

"annual financial statement" in relation to a company, means the company's individual financial statement for a financial year, and includes any group financial statement prepared by the company for that year.

(2) In the case of an unquoted company, its annual financial statement and reports for a financial year consist of—

(a) its annual financial statement;

(b) the directors' report; and

(c) the auditor's report on the financial statement and directors' report unless the company is exempt from audit.

(3) In the case of a quoted company, its annual financial statement and reports for a financial year consist of—

(a) its annual financial statement;

(b) the directors' remuneration report;

(c) the directors' report; and

(d) the auditor's report on—

(i) the financial statement;

(ii) the auditable part of the directors' remuneration report; and

(iii) the directors' report.

(4) A reference in this Part to a company's annual financial statement, or to a balance sheet or profit and loss account, includes notes to the statement, or balance sheet or profit and loss account that—

(a) give information required by a provision of this Act or the prescribed financial accounting standards; and

(b) are required or permitted by the provision to be given in a note to a company's financial statements.

621. Notes to a company's financial statements

Information required by this Part to be given in notes to a company's annual financial statement can be contained in the statement or in a separate document annexed to it.

622. Application of this Part

(1) The requirements of this Part relating to the financial statement of a company apply to each financial year of the company.

(2) In certain respects, different provisions apply to different kinds of company.

(3) The main distinctions for this purpose are—

(a) between companies subject to the small companies regime and companies that are not subject to that regime; and

(b) between quoted companies and unquoted companies.

(4) In this Part, if provisions do not apply to all kinds of company—

(a) provisions applying to companies subject to the small companies regime appear before the provisions applying to other companies;

(b) provisions applying to private companies appear before the provisions applying to public companies; and

(c) provisions applying to quoted companies appear after the provisions applying to other companies.

623. Companies subject to the small companies regime

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.

624. Companies qualifying as small: general rules

(1) A company qualifies as small in relation to its first financial year if the qualifying conditions are satisfied in that year.

(2) A company qualifies as small in relation to a subsequent financial year if the qualifying conditions—

(a) are satisfied in that year and the preceding financial year;

(b) are satisfied in that year and the company qualified as small in relation to the preceding financial year; and

(c) were satisfied in the preceding financial year and the company qualified as small in relation to that year.

(3) The qualifying conditions are satisfied by a company in a year in which it satisfies two or more of the following requirements—

(a) it has a turnover of not more than fifty million shillings;

(b) the value of its net assets as shown in its balance sheet as at the end of the year is not more than twenty million shillings; and

(c) it does not have more than fifty employees.

(4) For a period that is only part of a company's financial year, the maximum figures for turnover are to be adjusted proportionately.

(5) In this section, "the number of employees" means the average number of persons employed by the company in the year, determined as follows—

(a) ascertain 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);

(b) add together the monthly totals; and

(c) divide the result obtained under paragraph (b) by the number of months in the financial year.

(6) This section is subject to section 625.

625. Companies qualifying as small: parent companies

(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 satisfied in that year.

(3) A group qualifies as a small group in relation to a subsequent financial year of the parent company if—

(a) the qualifying conditions are satisfied in that year and the preceding financial year;

(b) the qualifying conditions are satisfied in that year and the group qualified as small in relation to the preceding financial year; and

(c) the qualifying conditions were satisfied in the preceding financial year and the group qualified as a small group in relation to that year.

(4) The qualifying conditions are satisfied by a group in a year in which it satisfies two or more of the following requirements—

(a) the group has an aggregate turnover of not more than fifty million shillings;

(b) the aggregate values of the net assets of the companies comprising the group as shown in the group's balance sheet as at the end of that year are not more than twenty million shillings; and

(c) the group has not more than fifty employees in total.

(5) The aggregate figures in subsection (4)(a) are calculated by adding together the relevant figures determined in accordance with section 624 for each member of the group.

(6) In relation to the aggregate figures in subsection (4)—

(a) "net" means the amount remaining after any setoffs and other adjustments are made to eliminate group transactions in accordance with the prescribed financial accounting standards; and

(b) "gross" means the amount existing without making 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 following figures for each subsidiary undertaking are to be those included in its individual financial statement for the relevant financial year—

(a) if its financial year ends with that of the parent company—that financial year; and

(b) if not—its last financial year ending before the end of the financial year of the parent company.

(9) If those figures cannot be obtained without disproportionate expense or undue delay, the latest available figures can be used.

626. Companies excluded from the small companies regime

(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 statement relates—

(a) a public company; or

(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 public company) whose shares are admitted to trading on a securities exchange or other regulated market in Kenya; or

(c) a person who carries on insurance market or banking activity.

(3) A company is a small company for the purposes of subsection (2) if it qualified as a small company in relation to its last financial year ending on or before the end of the financial year to which its financial statement relates.

627. When company is a quoted company or an unquoted company for the purposes of this Part

For the purposes of this Part, a company is a quoted company in relation to a financial year if it was a quoted company immediately before the end of the accounting reference period by reference to which that financial year was determined.

628. Duty of company to keep proper accounting records

(1) Every company shall keep proper accounting records.

(2) For purposes of subsection (1), accounting records are proper only if they—

(a) show and explain the transactions of the company;

(b) disclose with reasonable accuracy, up to the end of the previous three month trading period, the financial position of the company at that time; and

(c) enable the directors to ensure that every financial statement required to be prepared complies with the requirements of this Act.

(3) In particular, a company shall ensure that its accounting records—

(a) contain—

(i) entries from day to day of all amounts of money received and spent by the company and the matters in respect of which the receipt and expenditure takes place; and

(ii) a record of the assets and liabilities of the company; and

(b) comply with the prescribed financial accounting standards.

(4) If the business of the company involves dealing in goods, the company shall ensure that its accounting records 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 referred to in paragraph (a) has been or is to be prepared; and

(c) except in the case of goods sold in the ordinary course of ordinary retail trade – statements of all goods sold and purchased, showing the goods and the buyers and sellers in sufficient detail to enable them to be identified.

(5) A parent company that has a subsidiary undertaking in relation to which the above requirements do not apply shall take reasonable steps to ensure that the undertaking keeps such accounting records as will enable the directors of the parent company to ensure that every financial statement required to be prepared under this Part complies with the requirements of this Act.

629. Offence for company to fail to keep proper accounting records

(1) If a company fails to comply with a provision of section 628, the company, and each officer of the company who is in default, commit an offence.

(2) A person who is found guilty of an offence under subsection (1) is, liable on conviction—

(a) in the case of a body corporate, to a fine not exceeding two million shillings; or

(b) in the case of a natural person, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.

630. Where and for how long company is required to keep its records

(1) Except in so far as the regulations otherwise provide, a company shall—

(a) keep its accounting records at its registered office; and

(b) ensure that the records are at all times open to inspection by the officers of the company.

(2) A company shall preserve its accounting records for not less than seven years from and including the date on which they were created.

(3) If the company is in liquidation, subsection (2) is subject to any rules in force relating to companies that are in liquidation.

631. Offences relating to company's failure to preserve its records

(1) If a company fails to comply with a provision of section 630(1), the company, and each officer of the company who is in default, commit an offence.

(2) An officer of a company who—

(a) fails to take all reasonable steps to ensure that the company complies with section 630(2); or

(b) intentionally causes the company to fail to comply with that subsection, commits an offence.

(3) A person who is found guilty of an offence under subsection (1) is liable on conviction—

(a) in the case of a body corporate, to a fine not exceeding two million shillings; or

(b) in the case of a natural person, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.

632. How company's financial year is to be determined

(1) A financial year of a company is determined in accordance with this section.

(2) A company's first financial year—

(a) begins with the first day of its first accounting reference period; and

(b) 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;

(3) Subsequent financial years of a company—

(a) begin with the day immediately following the end of the previous financial year of the company; and

(b) end with the last day of its next accounting reference period or such other day, 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 when in their opinion there are good reasons to the contrary, the financial year of each of its subsidiary undertakings coincides with the financial year of the parent company.

(5) If the directors fail to comply with subsection (4), each of the directors who is in default commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(6) If, after a director has been convicted of an offence under subsection (5), the directors continue to fail to comply with subsection (4), each of the directors who is in default commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.

633. How accounting reference periods and accounting reference date of company are determined

(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 occurs.

(3) The directors of the company shall ensure that the first accounting reference period of a company is a period of at least six months after the date of its incorporation and not more than eighteen months after that 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.

(5) This section has effect subject to section 634.

634. Power of company to change its accounting reference date

(1) A company may, by notice lodged with the Registrar for registration, 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) The previous accounting reference period of a company is the one immediately preceding its current accounting reference period.

(3) The notice under subsection (1) is not effective unless it states 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 occurs or occurred 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 occurs or occurred 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) The Cabinet Secretary may, in writing, declare that subsection (4) should not apply to a notice that has been lodged or may be lodged by a specified company, in which case that subsection does not apply to the company.

(6) A company may not lodge a notice in respect of a previous accounting reference period if the period for lodging the financial statement for the financial year determined by reference to that accounting reference period has already expired.

(7) An accounting reference period may not be extended so as to exceed eighteen months. A notice under this section is void if the current or previous accounting reference period as extended in accordance with the notice would exceed that limit.

Division 4 — Directors of companies to prepare annual financial statement

635. Duty of directors to prepare individual financial statement

(1) The directors of every company shall prepare a financial statement for the company for each of financial year of the company.

(2) Such a financial statement is referred to in this Part as the company's individual financial statement.

(3) If the directors of a company fail to prepare for a financial year of the company a financial statement that complies with the relevant requirements of this Part, each of the directors who is in default commits an offence and on conviction is liable to a fine not exceeding one million shillings.

(4) If, after a director has been convicted of an offence under subsection (3), the directors continue to fail to prepare the requisite financial statement, each of the directors who is in default commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding one hundred thousand shillings for each such offence.

636. Financial statements to give true and fair view

(1) The directors of a company may approve a financial statement for the purposes of this Division only if they are satisfied that the statement gives a true and fair view of the assets, liabilities and profit or loss—

(a) in the case of an individual financial statement — of the company;

(b) in the case of a group a financial statement — of the undertakings comprising the consolidation as a whole, so far as concerns members of the company.

(2) In performing the auditing functions under this Act relating to a company's annual financial statement, the company's auditor shall have regard to the directors' duty under subsection (1).

(3) If the directors of a company in contravention of subsection (1), each of the directors who is in default commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

637. Accounting framework applicable to individual financial statements

(1) The directors of a company shall prepare the company’s individual a financial statement in accordance with section 638.

(2) Subsection (1) is subject to section 645.

(3) If the directors of a company fail to comply with subsection (1), each director of the company who is in default commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

638. Requirements for individual financial statements

(1) In preparing an individual financial statement for a financial year, the directors of a company shall ensure that the statement complies with the requirements of this section.

(2) The requirements are that—

(a) the statement comprises—

(i) a balance sheet as at the last day of the financial year;

(ii) a profit and loss account;

(iii) a statement of cash flow; and

(iv) a statement of change in equity;

(b) the statement—

(i) in the case of the balance sheet—provides a true and fair view of the financial position of the company as at the end of the financial year; and

(ii) in the case of the profit and loss account—provides a true and fair view of the profit or loss of the company for the financial year; and

(c) the statement complies with the prescribed financial accounting standards relating to—

(i) the form and content of the balance sheet and profit and loss account; and

(ii) additional information to be provided in the form of notes to the statement.

(3) If compliance with—

(a) the prescribed financial accounting standards; and

(b) any other provision made by or under this Act as to the matters to be included in a company's individual financial statement or in notes to the statement,

would not be sufficient to provide a true and fair view, the directors shall provide the necessary additional information in the statement or in a note to it.

(4) If, in special circumstances, compliance with the provisions referred to in subsection (4) is not consistent with the requirement to provide a true and fair view, the directors shall depart from the provisions to the extent necessary to provide a true and fair view.

(5) The directors shall provide in a note to the financial statement particulars of any such departure, the reasons for it and its effect in accordance with prescribed accounting standards.

639. Company that is not a small company to prepare group financial statement

(1) If, at the end of a financial year, a company that is not subject to the small companies regime is a parent company, the directors of the company shall, in addition to preparing an individual financial statement, prepare a group financial statement for the year, unless the company is exempt from that requirement.

(2) Nothing in this section prevents the directors of a company that is exempt from the requirement to prepare a group financial statement from doing so if they wish.

(3) If the directors of a company of the kind referred to in subsection (1) fail to comply with that subsection, each director of the company who is in default commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

640. Exemption for company included in group financial statement of larger group

(1) A company that is itself a subsidiary undertaking is exempt from the requirement to prepare a group financial statement in the following cases—

(a) if the company is a wholly-owned subsidiary of that parent undertaking;

(b) if that parent undertaking holds more than fifty percent of the allotted shares of the company and notice requesting the preparation of a group financial statement has not been served on the company by shareholders holding in total—

(i) more than half of the remaining allotted shares in the company; or

(ii) five percent of the total allotted shares in the company.

(2) Such a notice is not effective unless it is served not later than six months after the end of the financial year before that to which it relates.

(3) An exemption under this section is subject to compliance with the following conditions—

(a) that the company and all of its subsidiary undertakings are included in a consolidated financial statement for a larger group made up to the same date, or to an earlier date in the same financial year, by a parent undertaking;

(b) that the group financial statement are audited by one or more persons authorised to audit financial statements under the law under which the parent undertaking that prepares them is established;

(c) that the company's individual financial statement discloses that the company is exempt from the obligation to prepare and deliver a group financial statement;

(d) that the company's individual financial statement states the name of the parent undertaking that prepares the relevant group financial statement and—

(i) if the parent undertaking is incorporated outside Kenya—the country in which it is incorporated; or

(ii) if the parent undertaking is unincorporated—the address of its principal place of business;

(e) that the company lodges with the Registrar, within the period for lodging its financial statement and directors' report for the relevant financial year—copies of—

(i) the group financial statement; and

(ii) if appropriate, the consolidated annual report, together with the auditor's report on them;

(f) that any requirement of Part XXXI relating to the lodgement with the Registrar for registration of a certified translation into the English language is satisfied in relation to any document included in the documents lodged in accordance with paragraph (e).

(3) For the purposes of subsection (1)(b), shares held by a wholly-owned subsidiary of the parent undertaking, or held on behalf of the parent undertaking or a wholly-owned subsidiary, are to be attributed to the parent undertaking.

(4) Shares held by directors of a company for the purpose of complying with any share qualification requirement are not to be taken into account for the purpose of determining whether the company is a wholly-owned subsidiary.

(5) If a condition of an exemption is not complied with by or in relation to a company, the company, and each director of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

641. Exemption if no subsidiary undertakings need to be included in consolidation

A parent company is exempt from the requirement to prepare a group financial statement if under section 644 all of its subsidiary undertakings could be excluded from consolidation in a group financial statement.

642. Group financial statements: applicable accounting framework

(1) If a group financial statement is required to be prepared, the directors of the parent company shall prepare the statement in accordance with section 643.

(2) If the directors of the parent company do not comply with subsection (1), each director of the company who is in default commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

643. Requirements for group financial statements

(1) In preparing a group individual financial statement for a financial year, the directors of the parent company concerned shall ensure that the statement complies with the requirements of this section.

(2) The requirements are that—

(a) the statement comprises—

(i) a consolidated balance sheet dealing with the financial position of the parent company and its subsidiary undertakings; and

(ii) a consolidated profit and loss account dealing with the profit or loss of the parent company and its subsidiary undertakings;

(b) the statement provides a true and fair view of the financial position as at the end of the financial year, and the profit or loss for the financial year, of the undertakings comprising the consolidation as a whole, so far as concerns members of the company;

(c) the statement complies with the prescribed financial accounting standards relating to—

(i) the form and content of the consolidated balance sheet and consolidated profit and loss account; and

(ii) additional information to be provided as notes to the statement.

(3) If compliance with—

(a) the prescribed financial accounting standards; and

(b) any other provisions made by or under this Act relating to the matters to be included in a company's group financial statement or in notes to the statement, would not be sufficient to provide a true and fair view, the directors shall provide the necessary additional information in the statement or in a note to it.

(4) If, in special circumstances, compliance with any of the provisions referred to in subsection (3)(b) is inconsistent with the requirement to provide a true and fair view, the directors shall depart from those provisions to the extent necessary to provide a true and fair view.

(5) The directors shall provide particulars of any such departure, the reasons for it and its effect in a note to the statement.

(6) If the directors of the parent company fail to comply with a requirement of this section, each director of the company who is in default commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

644. Group financial statements: subsidiary undertakings to be included in consolidation

(1) In preparing a group financial statement, the directors of the parent company shall include in the consolidation all of the subsidiary undertakings of the company, subject to the exceptions specified in subsections (2) and (3).

(2) A subsidiary undertaking can be excluded from the consolidation if its inclusion is not material for the purpose of providing a true and fair view. However, two or more undertakings can be excluded only if taken together they are not material.

(3) A subsidiary undertaking can also be excluded from the consolidation if—

(a) serious long-term restrictions substantially will hinder the exercise of the rights of the parent company over the assets or management of that undertaking;

(b) the information necessary for the preparation of the group financial statement cannot be obtained without disproportionate expense or undue delay; or

(c) the interest of the parent company is held exclusively with a view to making a subsequent resale.

(4) If the directors of the parent company fail to comply with subsection (1), each director of the company who is in default commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

645. Directors of parent company to ensure consistency of financial reporting within group

(1) The directors of a parent company shall ensure that the individual financial statements of—

(a) the parent company; and

(b) each of its subsidiary undertakings, are all prepared using the same financial reporting framework, except to the extent that in their opinion there are good reasons for not doing so.

(2) Subsection (1) does not apply if the directors do not prepare a group financial statement for the parent company.

(3) Subsection (1) applies to the financial statements of subsidiary undertakings that are required to be prepared under this Division.

(4) If the directors of the parent company fail to comply with subsection (1), each director of the company who is in default commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

646. Certain information may be omitted from individual profit and loss account when group financial statement is prepared

(1) If—

(a) a company prepares a group financial statement in accordance with this Act; and

(b) the notes to the company's individual balance sheet show the company's profit or loss for the financial year determined in accordance with this Act, the profit and loss account need not contain the information specified in section 649.

(2) Although a company's individual profit and loss account is required to be approved in accordance with section 652, the account can be omitted from the company's annual financial statement for the purposes of the other provisions of this Act.

(3) The exemption conferred by this section is conditional on the company's annual financial statement disclosing that the exemption applies.

647. Information about related undertakings to be provided in notes to financial statements

(1) The regulations may require information about related undertakings to be provided in notes to a company's annual financial statement.

(2) Those regulations—

(a) may make different provision according to whether or not the company prepares a group financial statement; and

(b) may specify the descriptions of undertaking in relation to which they apply, and make different provision in relation to different descriptions of related undertaking.

(3) The regulations may also provide that information need not be disclosed with respect to an undertaking that—

(a) is established under the law of a country outside Kenya; or

(b) carries on business outside Kenya, if the relevant conditions are satisfied.

(4) The relevant conditions are—

(a) that in the opinion of the directors of the company the disclosure would detrimentally affect the business of—

(i) that undertaking;

(ii) the company;

(iii) any of the company's subsidiary undertakings; or

(iv) any other undertaking that is included in the consolidation; and

(b) that the Cabinet Secretary agrees that the information need not be disclosed.

(5) If a company takes advantage of the exemption, the directors of the company shall state that fact in a note to the company's annual financial statement.

(6) If the directors of a company fail to comply with subsection (5), each director of the company who is in default commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

648. Information about related undertakings: alternative compliance

(1) This section applies when 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 under any provision of regulations under section 647 is such that compliance with that provision would result in information of excessive length being provided in notes to the company's annual financial statement.

(2) If this section applies, the directors of the company are required to provide the information only 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 financial statement; and

(b) if the company prepares a group financial statement—undertakings excluded from the consolidation in accordance with section 644(3).

(3) If the directors of the company take advantage of subsection (2), they shall—

(a) include the notes to the company's annual financial statement a statement that the information is provided only with respect to such undertakings as are referred to in that subsection; and

(b) ensure that the full information (both that which is disclosed in the notes to the statement and that which is not) is annexed to the company's next annual return.

(4) In subsection (3), "next annual return" means that next return lodged with the Registrar after a copy of the relevant financial statement is lodged with the Registrar after the statement has been approved under section 652.

(5) If the directors of a company fail to comply with subsection (3)(b), each director of the company who is in default commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

(6) If, after a director is convicted of having committed an offence under subsection (5), the directors continue to fail to comply with the relevant requirement, each director of the company who is in default commits an offence on each day on which the failure continues and on conviction is liable to a fine not exceeding twenty thousand shillings for each such offence.

649. Information about employee numbers and costs to be included in company's annual financial statement

(1) If a company is not subject to the small companies regime, the directors of the company shall include in notes to the company's annual financial statement the following information about the company's employees:

(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) For the purpose of subsection (1)(b), the categories by reference to which the number required to be disclosed is to be determined is to be such as the directors select, having regard to the manner in which the company's activities are organised.

(3) The average number required by subsection (1)(a) or (b) is to be calculated by dividing the relevant annual number by the number of months in the company's financial year.

(4) The relevant annual number is to be calculated in the following manner—

Step 1

Ascertain 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); and

(b) for the purposes of subsection (1)(b)—the number of persons in the relevant category of persons so employed;

Step 2

Add 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), the directors shall specify the total amounts respectively of—

(a) wages and salaries paid or payable in respect of that year to those persons; and

(b) costs incurred by the company in respect of retirement and other benefits in respect of those persons.

(6) Subsection (5) does not apply in so far as the amounts, or any of them, are stated elsewhere in the company's annual financial statement.

(7) If the company prepares a group financial statement, this section applies as if the undertakings included in the consolidation were a single company.

(8) If the directors of a company fail to comply with subsection (1), each director of the company who is in default commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

650. Directors to include in notes to company's annual financial statement details of their benefits other than remuneration

(1) Except in the case of a company that is subject to the small companies regime, the directors of a company shall include in the notes to the company's individual financial statement details of the benefits that they have received during the relevant financial year of the company.

(2) The details required to be included in the notes include (but are not limited to)—

(a) gains made by directors on the exercise of share options;

(b) benefits received or receivable by directors under long-term incentive schemes;

(c) payments for loss of office;

(d) 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;

(e) consideration paid to, or receivable by, third parties for making available the services of a person as director or in any other capacity while a director.

(3) For the purposes of this section, amounts payable to, or receivable by—

(a) a person connected with a director; or

(b) a body corporate controlled by a director, are taken to be payable to, or receivable, by the director.

(4) A director or former director of a company shall give notice to the company of such matters relating to himself or herself as are prescribed by regulations made for the purposes of this section.

(5) A director or former director of a company who, without reasonable excuse, fails to comply with subsection (4) commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(6) In this section—

(a) "connected with" and "controlled by" have the same meanings as in Part IX;

(b) "former director", in relation to a company, means any person who is or has at any time in the preceding five years been a director of the company.

651. Information about directors' benefits to be included in notes to company's individual financial statement

(1) If a group financial statement is not prepared for a company, the directors of the company shall include in the notes to the company's individual financial statement 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,

(2) If a group financial statement is prepared for the companies comprising the group, the directors of the parent company concerned shall include in the notes to the group financial statement 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,

(3) The details of an advance or credit required to be included in the notes are details of—

(a) its amount;

(b) an indication of the interest rate;

(c) its main condition; and

(d) any amounts repaid.

(4) The details of a guarantee required to be included in the notes are details of—

(a) its main terms;

(b) the amount of the maximum liability that may be incurred in respect of the guarantee 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 of the guarantee).

(5) The directors shall also include in the notes to the relevant financial statement the totals of—

(a) amounts stated under subsection (3)(a);

(b) amounts stated under subsection (3)(d);

(c) amounts stated under subsection (4)(b); and

(d) amounts stated under subsection (4)(c).

(6) In this section, a reference to the directors of a company is a reference to the persons who were directors at any time in the financial year to which the relevant financial statement relates.

(7) The requirements of this section apply in relation to every advance, credit or guarantee subsisting at any time during the financial year to which the statement relates—

(a) whenever it was entered into;

(b) whether or not the person concerned was a director of the relevant company 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 the undertaking was such a subsidiary undertaking at the time it was entered into.

(8) The regulations may provide that the financial statements of companies of a specified class need only state the details required by subsections (3)(a) and (4)(b).

(9) If the directors of a company fail to comply with subsection (1), (2) or (5), each director of the company who is in default commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

652. Directors to approve and sign financial statements

(1) As soon as practicable after a company's annual financial statement has been prepared, the directors shall approve the statement and arrange for one or more of them to sign it.

(2) The directors shall sign their names on the company's balance sheet.

(3) If the financial statement required under this Part is prepared in accordance with the provisions applicable to small companies regime, the directors shall include in the company's balance sheet a statement to that effect.

(4) If an annual financial statement is approved that does not comply with the requirements of this Act, each director of the company who—

(a) knew that the statement did not comply, or was reckless as to whether it complied, with those requirements; and

(b) failed to take reasonable steps—

(i) to ensure compliance with them; or

(ii) to prevent the financial statement from being approved, commits an offence and is liable on conviction to a fine not exceeding one million shillings.

Division 5 — Directors' reports

653. Duty to prepare directors' report

(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 a group financial statement, the directors shall prepare a group director's report relating to the undertakings to which the financial statement relates.

(3) If appropriate, a group directors' report may give greater emphasis to the matters that are significant to the undertakings to which the group financial statement relates, taken as a whole.

(4) If the directors of a company fail to comply with subsection (1) or (2), each director of the company who is in default commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

654. General requirements for contents of directors' report

(1) The directors shall include in their report for a financial year—

(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 during 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 were a reference to the undertakings to which the relevant group financial statement relates.

(3) Except in the case of a company that is subject to the small companies regime, the directors shall specify in the report amount (if any) that the directors recommend should be paid as a dividend.

(4) The regulations may specify other matters that are required to be disclosed in a directors' report.

(5) If the directors of a company fail to comply with subsection (1) or (3), each director of the company who is in default commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

655. Business review to be included in certain directors' reports

(1) Unless the company is subject to the small companies regime, the directors shall include in their report a business review that complies with subsection (3), so far as relevant to the company.

(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 144.

(3) The business review complies with this subsection if—

(a) it contains—

(i) a fair review under subsection (1) of the company's business; and

(ii) a description of the principal risks and uncertainties facing the company; and

(b) is a balanced and comprehensive analysis of—

(i) the development and performance of the business of the company during the company's financial year; and

(ii) the position of the company's at the end of that year, consistent with size and complexity of the business.

(4) In the case of a quoted company, the directors shall specify in the business review (to the extent necessary for an understanding of the development, performance or position of the company)—

(a) the main trends and factors likely to affect the future development, performance and position of the business of the company;

(b) information about—

(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 to those matters and the effectiveness of those policies; and

(c) information about persons with whom the company has contractual or other arrangements that are essential to the business of the company.

(5) If the business review does not contain information of each kind mentioned in subsection (4)(b)(i), (ii) and (iii) and (c), the directors shall specify in the review which of those kinds of information it does not contain.

(6) The directors shall include in the business review (to the extent necessary for an understanding of the development, performance or position of the company's business)—

(a) an analysis using financial key performance indicators;

(b) if appropriate, an analysis using other key performance indicators (including information relating to environmental matters and employee matters); and

(c) references to, and additional explanations of, amounts included in the company's annual financial statement.

(7) The directors shall also include in the business review references to, and additional explanations of, amounts included in the company's annual financial statement.

(8) In relation to a group directors' report, this section has effect as if a reference to a company were a reference to an undertaking to which the report relates.

(9) If directors of a company fail to comply with a requirement of this section, each director of the company who is in default commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

656. When business review not required

(1) Section 655 does not require the disclosure of information about impending developments or matters in the course of negotiation if the disclosure would, in the opinion of the directors, detrimentally affect the interests of the company.

(2) Subsection 655(4)(c) does not require the disclosure of information about a person if the disclosure would, in the opinion of the directors, seriously prejudice that person and be contrary to the public interest.

657. Contents of directors' report: statement as to disclosure to auditors

(1) This section applies to a company unless—

(a) it is exempt for the relevant financial year from the requirements of Part XXVII with respect to the auditing of the company's financial statement; and

(b) the directors take advantage of that exemption.

(2) The directors shall include in their report a statement that, with respect of each of the persons who was a director at the time the report was approved—

(a) there is, so far as the person is aware, no relevant audit information of which the company's auditor is unaware; and

(b) the person has taken all the steps that the person ought to have taken as a director so as to be 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 the auditor's report.

(4) If a directors' report containing the statement required by this section is approved but the statement is false, each director of the company who—

(a) knew that the statement was false, or was reckless as to whether it was false; and

(b) failed to take reasonable steps to prevent the report from being approved, commits an offence and on conviction is liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding five years, or to both.

658. Directors to approve and sign directors' report

(1) As soon as practicable after the directors have finished preparing their annual report for the company, they shall approve the report and arrange for one of them or the secretary of the company to sign it.

(2) If the directors' report is prepared in accordance with the small companies regime, the directors shall include in the report a statement to that effect.

(3) If a directors' report is approved that does not comply with the requirements of this Act, each 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 ensure compliance with those requirements, or to prevent the report from being approved, commits an offence and on conviction is liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding five years, or to both.

Division 6 — Directors' remuneration reports

659. Duty of directors of quoted company to prepare directors' remuneration report

(1) The directors of a quoted company shall prepare a directors' remuneration report for each financial year of the company.

(2) If subsection (1) is not complied with for a financial year, each person who—

(a) was a director of the company immediately before deadline for lodging the company's financial statement and reports for the year; and

(b) failed to take all reasonable steps to ensure that that subsection was complied with, commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years, or to both.

660. Regulations may prescribe requirements for contents of directors' remuneration report

(1) The regulations may prescribe—

(a) the information that is required to be included 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) Each person who is a director of a company, and each person who is or was at any time during the preceding five years been a director of the company, who fails to give to the company such personal details as may be necessary to comply with regulations made for the purpose of this section commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

661. Directors to approve and sign directors' remuneration report

(1) As soon as practicable after the directors have finished preparing the directors' remuneration report, the directors shall approve the report and shall arrange for one of them or the secretary of the company to sign it.

(2) If a directors' remuneration report is approved that does not comply with the requirements of this Act, each 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 ensure compliance with those requirements, or to prevent the report from being approved, commits an offence and on conviction is liable to a fine not exceeding one million shillings.

662. Company's duty to circulate copies of annual financial statement and reports

(1) Every company shall send a copy of its annual financial statement and reports 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, send a copy of its financial statement and reports for each financial year.

(2) A company need not send copies of the annual financial statement and reports 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 the person; and

(b) the company has no reason to believe that documents sent to that address will not reach that person.

(4) In the case of a company not having a share capital, a copy need not be sent to anyone who is not entitled to receive notices of general meetings of the company.

Division 7 — Publication of financial statements and company reports

663. Deadline for sending out copies of annual financial statement and reports

(1) A private company shall comply with section 662 not later than—

(a) the deadline for lodging a financial statement and directors' report with the Registrar; or

(b) if earlier— the date on which the company actually lodges its financial statement with the Registrar.

(2) A public company shall comply with section 662 at least twenty-one days before the date of the general meeting at which the relevant financial statement and reports are to be laid.

(3) If, in the case of a public company, copies of the annual financial statement are sent later than is required by subsection (2), the copies are nevertheless taken to have been duly sent if all the members entitled to attend and vote at the relevant general meeting agree.

(4) Whether the deadline is that for a private company or a public company is to be 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 relevant financial statement was determined.

664. Offence to fail to send out copies of financial statements and reports

(1) If a company fails to comply with section 662 or 663, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding one million shillings.

(2) If, after a company or any of its officers is convicted of an offence under subsection (1), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit an offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding one hundred thousand shillings for each such offence.

665. Option to provide summary financial statement

(1) A company may, in such circumstances as may be prescribed by the regulations for the purposes of this section, send to its members a summary financial statement instead of the copy of the financial statement required to be sent out in accordance with section 662, subject to compliance with any conditions so prescribed.

(2) Section 662 applies to the sending out of a summary financial statement as if it were a financial statement referred to in that section.

666. Duty of company to send financial statement to persons entitled

(1) The company shall send copies of the financial statement and reports to any person entitled to receive them in accordance with section 662 and who wishes to receive them.

(2) A company that proposes to provide a summary financial statement shall ensure that the statement complies with section 667 or 668, whichever is applicable.

667. Form and contents requirements for summary financial statements of unquoted companies

(1) If a company that is not a quoted company exercises the option to provide a summary financial statement, it shall ensure that the statement—

(a) is derived from the company's annual financial statement; and

(b) is prepared in accordance with this section and regulations made for the purposes of this section.

(2) Nothing in this section prevents a company from including in a summary financial statement additional information derived from the company's annual financial statement or directors' report.

(3) The company shall in its summary financial statement—

(a) state that it is only a summary of information derived from the company's annual financial statement;

(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 receive annual financial statements can obtain a full copy of the company's annual financial statement and the directors' report;

(d) contain a statement as to whether in the opinion of the company's auditor the summary financial statement—

(i) is consistent with the company's annual financial statement and, if information derived from the directors' report is included in the statement, with that report; and

(ii) complies with the requirements of this section and with any regulations made for the purposes of this section;

(e) state whether the auditor's report on the annual financial statement 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; and

(f) state in that report—

(i) whether the auditor's statement under section 728 as qualified or unqualified; and

(ii) if it was qualified — set out the qualified statement in full together with any further material needed to understand the qualification.

(4) The regulations may require the company to send information of a prescribed kind separately but at the same time as the summary financial statement.

668. Form and contents requirements for summary financial statements of quoted companies

(1) If a quoted company exercises the option to provide a summary financial statement, it shall ensure that the statement—

(a) is derived from the company's annual financial statement and the directors' remuneration report; and

(b) complies with subsections (2) and (4) and with any regulations made for the purposes of this section.

(2) The summary financial statement referred to, in subsection (1) complies with this subsection if it is in such form, and contains such information, as are prescribed by the regulations for the purpose of this section.

(3) Nothing in this section prevents a company from including in a summary financial statement additional information derived from the company's annual financial statement, the directors' remuneration report or the directors' report.

(4) A summary financial statement complies with this subsection if it—

(a) states that it is only a summary of information derived from the company's annual financial statement and the directors' remuneration report;

(b) states 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) states 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) contains a statement as to whether, in the opinion of the company's auditor, the summary financial statement—

(i) is consistent with the company's annual financial statement and the directors' remuneration report and, if information derived from the directors' report is included in the statement, with that report; and

(ii) complies with the requirements of this section and with any regulations made for the purposes of this section;

(e) states whether the auditor's report on the annual financial statement 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; and

(f) states whether that auditor's report contained a statement under section 730(2) or 730(3), and if it did, set out the statement in full.

(5) The regulations may require a quoted company that exercises the option to provide a summary financial statement to send information of a specified kind separately but at the same time as that statement.

669. Offences relating to summary financial statements

(1) If a company fails to comply with a requirement of section 666, 667 or 668, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred and fifty thousand shillings.

(2) If, after a company or any of its officers is convicted of an offence under subsection (1), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure

continues and on conviction are each liable to a fine not exceeding twenty-five thousand shillings for each such offence.

670. Quoted company to make annual financial statement available on company's website

(1) A quoted company shall ensure that its annual financial statement and directors' report—

(a) is made available on a website that complies with section 672; and

(b) remains available on the website until the annual financial statement for the next financial year of the company is made available in accordance with this section.

(2) If a quoted company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(3) If, after a quoted company or any of its officers is convicted of an offence under subsection (2), the company continues to fail to comply with subsection (1), the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

671. Quoted company to make preliminary statement of results available on company's website

(1) If 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 that complies with section 672; and

(b) remains so available until the annual financial statement for the financial year is made available in accordance with section 662.

(2) A statement is a preliminary statement of the annual results of the company if it consists of information published before publication of the company's annual financial statement and is or purports to comprise—

(a) a balance sheet setting out the company's financial position as at the end of the relevant financial year; and

(b) the company's profit and loss account for that year,— whether on an individual or consolidated basis.

(3) If a quoted company fails to comply with subsection (1), the company, and each officer of the company who is in default commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(4) If, after a quoted company or any of its officers is convicted of an offence under subsection (3), the company continues to fail to comply with subsection (1), the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding one hundred thousand shillings for each such offence

672. Requirements as to website availability

(1) For the purposes of sections 670 and 671, a website complies with this section if it—

(a) is maintained by or on behalf of the company;

(b) identifies the company; and

(c) access to the information on the website, and the ability to obtain a hard copy of the information from the website, is not—

(i) conditional on the payment of a fee; or

(ii) otherwise restricted, except so far as necessary to comply with any written law or regulatory requirement, whether of Kenya or elsewhere.

(2) The company shall ensure that the information referred to in subsection (1)(c) is—

(a) made available as soon as reasonably practicable; and

(b) kept available throughout the relevant period.

(3) A failure to make information available on a website throughout the period referred to in subsection (2)(b) is to 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.

(4) For the purpose of subsection (2)(b), the relevant period is—

(a) in the case of a quoted company's financial statement—the period referred to in section 670(1)(b); and

(b) in the case of a quoted company's preliminary statement of its annual results—the period specified in section 671(1)(b).

673. Right of member or debenture holder of unquoted company to copies of company's financial statements and directors' reports

(1) A member, 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 statement of the company;

(b) the last directors' report; and

(c) the auditor's report on that statement and 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 662.

(3) If a company fails to comply with a demand made under subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(4) If, after a company or any of its officers is convicted of an offence under subsection (3), the company continues to fail to comply with such a demand, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

674. Right of member or debenture holder of quoted company to copies of company's financial statement and reports

(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 most recent annual financial statement;

(b) the most recent directors' remuneration report;

(c) the most recent directors' report; and

(d) the auditor's report on that financial statement (including the auditor's 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 662.

(3) If a company fails to comply with a demand made under subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(4) If, after a company or any of its officers is convicted of an offence under subsection (3), the company continues to fail to comply with such a demand, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

675. Name of signatory to be stated in published copies of annual financial statement and reports, etc

(1) A company that publishes a document to which this section applies shall ensure that the document states the name of the person who signed it on behalf of the directors.

(2) In the case of an unquoted company, this section applies to copies of—

(a) its annual financial statement; and

(b) the directors' report.

(3) In the case of a quoted company, this section applies to copies of—

(a) its annual financial statement;

(b) the directors' remuneration report; and

(c) the directors' report.

(4) If a company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

676. Requirements in connection with publication of statutory financial statement

(1) When publishing its statutory financial statement, a company shall enclose with or annex to the statement a copy of the auditor’s report on that financial statement, unless the company is exempt from audit and the directors have taken advantage of that exemption.

(2) A company that prepares a statutory group financial statement for a financial year shall also publish with it its statutory individual financial statement for that year.

(3) A company's statutory financial statement is its financial statement for a financial year as required to be lodged with the Registrar under section 686.

(4) If a company fails to comply with subsection (1) or (2), the company, and each officer of the company who is in default, commit an offence and are liable on conviction to a fine not exceeding five hundred thousand shillings.

(5) This section does not apply in relation to the provision by a company of a summary financial statement under section 665.

677. Requirements in connection with publication of non-statutory financial statement

(1) If a company publishes a non–statutory financial statement, it shall publish with it a statement indicating—

(a) that it is not the company's statutory financial statement;

(b) whether a statutory financial statement dealing with a financial year with which the non-statutory financial statement purports to deal has been lodged with the Registrar for registration; and

(c) whether an auditor's report has been made on the company's statutory financial statement for any such financial year, and if so whether the report—

(i) was qualified or unqualified, or included a reference to any matters to which the auditor emphasised without qualifying the report;

(ii) contained a statement under section 730(2); or

(iii) contained a statement under section 730(3).

(2) The company shall not publish with a non-statutory financial statement the auditor's report on the company's statutory financial statement.

(3) In this section, a reference to the publication by a company of a non-statutory financial statement is to the publication of—

(a) any balance sheet or profit and loss account relating to, or purporting to deal with, a financial year of the company; or

(b) a statement in any form purporting to be a balance sheet or profit and loss account for a group headed by the company relating to, or purporting to deal with, a financial year of the company, otherwise than as part of the company's statutory financial statement.

(4) In subsection (3)(b), "a group headed by the company" means a group consisting of the company and any other undertaking (regardless of whether it is a subsidiary undertaking of the company) other than a parent undertaking of the company.

(5) If a company contravenes a provision of this section, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(6) This section does not apply in relation to the provision by a company of a summary financial statement under section 665.

678. Meaning of "publication" in relation to company's financial statement and reports

For the purposes of sections *675, 676* and *677*, a company is taken to have published a financial statement or directors' report if it publishes, issues or circulates it or otherwise makes it available for public inspection in a manner that invites members of the public generally, or any class of members of the public, to read it.

Division 8 — Public companies: laying of financial statements and reports before general meeting

679. Public company to present annual financial statement and reports at general meeting of company

(1) The directors of a public company shall present to the members at a general meeting of the copies of its annual financial statement and directors' and other reports.

(2) The directors shall comply with subsection (1) not later than the deadline for lodging a copy of the company's financial statement with the Registrar for registration.

680. Offence for public company to fail to present annual financial statement and reports at general meeting of company

(1) If the requirements of section 679 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 the person took all reasonable steps to ensure that those requirements were or would be complied with before the end of the specified period.

(3) It is not a defence to prove that the relevant documents were not in fact prepared as required by this Part.

(4) A person who is found guilty of an offence under subsection (1) is liable on conviction to a fine not exceeding five hundred thousand shillings.

Division 9 — Directors remuneration report to be approved by members

681. Directors of quoted company required to obtain members' approval of directors' remuneration report

(1) The directors of a quoted company shall, before the general meeting at which the financial statement is to be presented, 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 notice may be given in any manner permitted for the service on the member of notice of the meeting.

(3) A resolution approving the directors' remuneration report for the financial year may be approved at the meeting even if subsection (1) has not been complied with.

(4) The existing directors of a quoted company shall ensure that the resolution is put to the vote at the meeting.

(5) A person's entitlement to remuneration as a director is not dependent on the passing of the resolution approving the directors' remuneration report only because of the provision made by this section.

(6) In this section and in section 682, "existing director" means a person who is a director of the company immediately before the general meeting at which the company's financial statement is or is to be presented.

682. Offence for directors of quoted company to fail to comply with section 694

(1) If the directors of a quoted company fail to comply with section 681(1), each of the directors who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(2) If the resolution approving the directors' remuneration report is not put to the vote at a general meeting of a quoted company at which the company's financial statement is or is to be presented, each existing director of the company commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(3) It is a defence for a director charged with an offence under subsection (2) to prove that the director took all reasonable steps to ensure that the resolution was put to the vote of the meeting.

Division 10 — Certain financial statements and reports to be lodged with Registrar

683. Company's directors to lodge certain documents with Registrar

(1) The directors of a company shall lodge with the Registrar for each financial year the financial statement and reports required by section 686, 687 or 688.

(2) Subsection (1) is subject to section 689.

684. Deadline for lodging financial statements with Registrar

(1) The deadline for lodging with the Registrar the documents referred to in section 683(1) is—

(a) for a private company — nine months after the end of the company's relevant accounting reference period; and

(b) for a public company—six months after the end of the company's relevant accounting reference period, but this subsection is subject to subsections (2) and (3).

(2) If the relevant accounting reference period is the company's first and is a period of more than twelve months, the deadline is—

(a) nine months or six months, from the first anniversary of the incorporation of the company; or

(b) three months after the end of the company's accounting reference period, whichever ends later.

(3) If the relevant accounting reference period is treated as shortened as a result of a notice given by the company under section 634, 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, whichever ends later.

(4) Whether the deadline 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 for the company.

(5) In this section in relation to a company, "the relevant accounting reference period" means the accounting reference period by reference to which the financial year for the company's financial statement was determined.

685. Calculation of deadline for lodging financial statements with Registrar

(1) This section applies for the purpose of calculating the deadline for lodging a company's financial statement that is expressed as a specified number of months from a specified date or after the end of a specified previous deadline.

(2) Subject to subsection (3), the deadline for lodging a company's financial statement ends with the date in the appropriate month corresponding to the specified date or the last day of the specified previous deadline.

(3) If the specified date, or the last day of the specified previous deadline, is the last day of a month, the deadline 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 deadline, is not the last day of a month but is the twenty-ninth or thirtieth; and

(b) the appropriate month is February, the deadline is, 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 deadline, occurs.

686. Lodgement requirements for companies subject to small companies regime

(1) The directors of a company that is subject to the small companies regime—

(a) shall lodge with the Registrar for each financial year a copy of a balance sheet drawn up as at the last day of that year;

(b) may also lodge with the Registrar—

(i) a copy of the company's profit and loss account for that year; and

(ii) a copy of the directors' report for that year.

(2) The directors shall also lodge with the Registrar a copy of the auditor's report on the company's balance sheet and the on the company's profit and loss account and directors' report (if any).

(3) Subsection (2) does not apply if the company is exempt from audit and the directors have taken advantage of that exemption.

(4) If the directors of a company subject to the small companies regime lodge with the Registrar a copy of the company's balance sheet for a financial year and, in accordance with this section, do not lodge with the Registrar a copy of the company's profit and loss account or the directors' report, they shall ensure that the copy of the balance sheet states in a prominent position it has been lodged in accordance with the provisions of this Act applicable to companies that are subject to the small companies regime.

(5) The directors of a company that is subject to the small companies regime shall also ensure—

(a) that the copy of the company's balance sheet, and of any profit and loss account or directors' report, lodged with the Registrar under this section states the name of the person who signed it on behalf of the company; and

(b) that the copy of the auditor's report lodged with the Registrar under this section—

(i) states the name of the auditor and, if the auditor is a firm, the name of the person who signed it as senior statutory auditor; or

(ii) if the conditions in section 737 are satisfied — state that a resolution has been passed and notified to the Cabinet Secretary in accordance with that section.

(6) If the directors of a company that is subject to the small companies regime fail to comply with a requirement of this section, each director of the company who is in default commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

687. Lodgement requirements for unquoted companies

(1) The directors of an unquoted company shall lodge with the Registrar for each financial year of the company a copy of—

(a) the company's annual financial statement;

(b) the directors' report; and

(c) the auditor's report on that statement and that report.

(2) Subsection (1)(c) does not apply if the company is exempt from audit and the directors have taken advantage of that exemption.

(3) The directors of an unquoted company shall also ensure that—

(a) the copy of the company's balance sheet, and of the directors' report, lodged with the Registrar under this section states the name of the person who signed it on behalf of the company; and

(b) the copy of the auditor's report lodged with the Registrar under this section—

(i) states the name of the auditor and, if the auditor is a firm, the name of the person who signed it as senior statutory auditor; or

(ii) if the conditions specified in section 737 are satisfied — state that a resolution has been passed and notified to the Cabinet Secretary in accordance with that section.

(5) This section does not apply to a company that is subject to the small companies regime.

(6) If the directors of an unquoted company fail to comply with a requirement of this section, each director of the company who is in default commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

688. Lodgement requirements for quoted companies

(1) The directors of a quoted company shall lodge with the Registrar for each financial year of the company a copy of—

(a) the company's annual financial statement;

(b) the directors' remuneration report;

(c) the directors' report; and

(d) a copy of the auditor's report on that statement and those reports.

(2) The directors of a quoted company shall ensure that—

(a) the copy of the company's balance sheet, and of the directors' report, lodged with the Registrar under this section state the name of the person who signed it on behalf of the company; and

(b) the copy of the auditor's report lodged with the Registrar under this section—

(i) states the name of the auditor and, if the auditor is a firm, the name of the person who signed it as senior statutory auditor; or

(ii) if the conditions specified in section 737 are satisfied — state that a resolution has been passed and notified to the Cabinet Secretary in accordance with that section.

(6) If the directors of a quoted company fail to comply with subsection (1) or (2), each director of the company who is in default commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

689. Exemption of unlimited companies from requirement to lodge financial statements with Registrar

(1) The directors of an unlimited company are not required to lodge a financial statement with the Registrar in respect of a financial year if at no time during the relevant accounting reference period —

(a) has the company, to the knowledge of the directors, been a subsidiary undertaking of an undertaking that was then limited;

(b) have, to their knowledge, rights been exercisable by or on behalf of two or more undertakings that were then limited that, if exercised by one of those undertakings, would have made the company a subsidiary undertaking of it; or

(c) has the company been a parent company of an undertaking that was then limited.

(2) A reference in subsection (1) to an undertaking being limited at a particular time is 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—

(a) the company is a banking or insurance company or the parent company of a banking or insurance group; or

(b) the company is of a class prescribed by the regulations as a company to which this subsection applies.

(4) If a company is exempt under this section from the obligation to lodge financial statements with the Registrar—

(a) the company's statutory financial statement is its financial statement for a financial year as prepared in accordance with this Part and approved by the company's directors; and

(b) the company shall publish with the financial statement a statement indicating that the company is exempt from the requirement to lodge statutory financial statements with the Registrar.

(5) Sections 676(3) and 677(1)(b) do not apply to a company to which subsection (4) applies.

(6) 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.

690. Special auditor's report required if abbreviated financial statement is lodged with Registrar

(1) This section applies when—

(a) the directors of a company lodge an abbreviated financial statement with the Registrar; and

(b) the company is not exempt from audit, or the directors have not taken advantage of any such exemption.

(2) When this section applies, the directors of the company shall also lodge with the Registrar a copy of a special report of the company’s auditor stating that in the auditor's opinion—

(a) the company is entitled to lodge an abbreviated financial statement in accordance with the relevant section; and

(b) the abbreviated financial statement to be lodged is properly prepared in accordance with regulations made for the purpose of that section.

(3) The auditor's report on the company's annual financial statement need not be lodged with the Registrar, but—

(a) if that report was qualified, the directors shall set out in the special report the auditor's report in full together with any further material necessary to understand the qualification; and

(b) if the auditor's report contained a statement under—

(i) section 730(2)(a) or (b); or

(ii) section 730(3), the directors shall set out in the special report that statement in full.

(4) Sections 735, 736 and 738 apply to a special report under this section as they apply to an auditor's report on the company's annual financial statement prepared under Part XXVII.

(5) If an abbreviated financial statement is lodged with the Registrar, a reference in section 676 or 677 to the auditor's report on the company's annual financial statement is to the special auditor's report required by this section.

(6) If the directors of a company fail to comply with subsection (2), each director of the company who is in default commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

691. Directors of company to approve and sign abbreviated financial statement

(1) An abbreviated financial statement of a company is not valid until it has been approved by the company’s board of directors and signed on behalf of the board by a director of the company.

(2) The director designated to sign the abbreviated financial statement shall sign the company's balance sheet.

(3) That director shall ensure that there is included in a prominent position above the director's signature a statement to the effect that the company's balance sheet is prepared in accordance with the special provisions of this Act relating to companies that are subject to the small companies regime.

(4) If the directors of a company approve an abbreviated financial statement that does not comply with the requirements of regulations (if any) made for the purpose of this Part, each of the 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 prevent it from being approved commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

692. Offence to fail to lodge annual financial statement and reports with Registrar

(1) If the requirements of section 683 are not complied with in relation to the lodgement of a company’s financial statement and reports for a financial year before the deadline for lodging them, each person who immediately before the end of that period was a director of the company commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

(2) It is a defence for a person charged with such an offence to prove that the person 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 relevant documents were not in fact prepared as required by this Part.

(4) If, after a person has been convicted of an offence under subsection (1), the requirements of section 696 are still not complied with in relation to the lodgement of a company's financial statements and reports for a financial year, every person who is a director of the company commits an offence on each day on which the requirements are not complied with and on conviction is liable to a fine not exceeding twenty thousand shilling for each such offence.

693. Power of the Court to order compliance if annual financial statement or reports not lodged with Registrar

(1) If—

(a) the requirements of section 683 have not been complied with in relation to a company's financial statement or reports for a financial year before the deadline for lodging them with the Registrar; and

(b) the directors of the company fail to comply with those requirements within fourteen days after the service of a notice on them requiring them to do so, a member or creditor of the company, or the Registrar, may make an application to the Court for an order under subsection (2).

(2) On the hearing of an application made under subsection (1), the Court may make an order directing the directors, or any of them, to rectify the failure within such period as may be specified in the order.

(3) The Court's order may provide that all costs of and incidental to the application are to be borne by the directors.

694. Company liable to default penalty for failure to lodge annual financial statement and reports with Registrar

(1) A company is liable to a default penalty if the requirements of section 683 are not complied with in relation to lodging the company's annual financial statement and reports with the Registrar by the deadline for lodging them.

(2) The liability to a default penalty is in addition to any liability of the directors under section 692.

(3) The amount of the liability is to be calculated in accordance with the regulations by reference to—

(a) the length of the period between the end of the period for lodging the financial statements and reports and the day on which the requirements are complied with; and

(b) whether the company is a private or public company.

(4) A default penalty is recoverable by the Registrar by proceedings brought in a court of competent jurisdiction.

(5) The Registrar is required to pay into the Consolidated Fund any penalty recovered in proceedings under subsection (4).

(6) It is not a defence in proceedings under this section to prove that the relevant financial statements or reports were not in fact prepared as required by this Part.

Division 11 — Revision of defective financial statements and reports

695. Voluntary revision of defective financial statements and reports

(1) This section applies to the following documents—

(a) the annual financial statement of a company;

(b) a directors' remuneration report;

(c) the directors' report of a company;

(d) a summary financial statement of a company.

(2) If it appears to the directors of a company that a document to which this section applies does not comply with the requirements of this Act, they may revise the document so that it does so comply.

(3) If copies of the original documents have been sent out to members, lodged with the Registrar or, in the case of a public company, presented at a general meeting of the company, the directors shall confine the revisions to—

(a) correcting those matters in relation to which the original documents did not comply with the requirements of this Act; and

(b) the making of any necessary consequential amendments.

(4) The regulations may prescribe how the provisions of this Act are to apply in relation to documents to which this section applies.

(5) In particular, the regulations may—

(a) make different provision according to whether the original document is replaced or is supplemented by a document indicating the corrections to be made;

(b) specify functions of the company's in relation to the revised document;

(c) require the directors of a company to take such steps as may be specified in the regulations—

(i) in relation to an original financial statement or report that has been sent out to members of the company and others in accordance with section 662 presented at a general meeting of the company or lodged with the Registrar; or

(ii) in relation to a summary financial statement or a report that has been sent to members in accordance with that section as applied by section 665.

696. Cabinet Secretary may give notice in respect of company's financial statements or reports that are believed to be defective

(1) If—

(a) copies of the financial statement or a directors' report for a financial year of a company have been sent out under section 662; or

(b) a copy of that financial statement or report has been lodged with the Registrar or, in the case of a public company, laid before the company in general meeting, and it appears to the Cabinet Secretary that that statement or report does not or may not comply with the requirements of this Act, the Cabinet Secretary may give notice to the directors of the company specifying in what respects it appears that the statement or report does not or may not so comply.

(2) A notice under subsection (1) is effective only if it specifies a period of not less than one month for the directors to give an explanation of the relevant financial statement or report or to prepare a revised financial statement or report.

(3) In this section and the other sections of this Division, "the requirements of this Act" includes the prescribed accounting standards.

697. Application to the Court to rectify defective annual financial statement or directors' report of company

(1) If at the end of the period referred to in section 696(2), or such extended period as the Cabinet Secretary may allow, it appears to that Secretary that the directors have not—

(a) given a satisfactory explanation of the relevant financial statement or directors' report; or

(b) prepared a revised financial statement or directors' report that complies with the requirements of this Act, the Cabinet Secretary, or a person authorised by the Cabinet Secretary in accordance with section 698, may apply to the Court for a declaration and order under subsection (4).

(2) On making an application under subsection (1), the Cabinet Secretary or authorised person shall lodge with the Registrar for registration a notice of the application, together with a general statement of the matters in issue in the proceedings.

(3) The directors of the company in respect of which an application is made under subsection (1) are entitled to be served with a copy of the application and to appear as respondents at the hearing of the application.

(4) If, on the hearing of an application made under subsection (1), the Court is satisfied that the relevant financial statement or report does not comply with the requirements of this Act, it may make a declaration to that effect and order the directors of the company concerned to prepare a revised financial statement or directors' report that complies with the requirements of this Act.

(5) If the Court makes an order under subsection (4) requiring directors to prepare a revised annual financial statement, it may also give directions for—

(a) the auditing of the statement;

(b) the revision of any relevant directors' remuneration report, directors' report or summary financial statement;

(c) the taking of steps by the directors to bring the making of the order to the notice of persons likely to rely on the previous financial statement; and

(d) such other matters as the Court considers appropriate.

(6) If the Court makes an order under subsection (4) requiring the preparation of a revised directors' report, it may also give directions for—

(a) the review of the report by the company's auditors;

(b) the revision of any relevant summary financial statement;

(c) the taking of steps by the directors to bring the making of the order to the notice of persons likely to rely on the previous report; and

(d) such other matters as the Court considers appropriate.

(7) If the Court finds that the company's financial statement or directors' report did not comply with a requirement of this Act, it may order all or part of—

(a) the costs of and incidental to the application; and

(b) any reasonable expenses incurred by the company in connection with, or in consequence of, the preparation of a revised financial statement or a revised directors' report, to be borne by such of the directors as were party to the approval of the defective statement or report.

(8) For the purpose of subsection (7), each person who was a director of the company at the time of the approval of the annual financial statement or directors' report is taken to have been a party to the approval unless the person proves that the person took all reasonable steps to prevent the approval from being given.

(9) In making an order under subsection (7), the Court—

(a) is required to have regard to whether the directors who were party to the approval of the defective statement or report knew or should have known that the statement or report did not comply with the requirements of this Act; and

(b) may exclude one or more directors from the order or order the payment of different amounts by different directors.

(10) At the conclusion of proceeding under this section, the applicant shall lodge with the Registrar for registration a copy of the order of the Court order or, if the application has failed or was withdrawn, a notice giving details of the failure or withdrawal.

(11) This section applies equally to a revised financial statement and a revised directors' report, in which case it has effect as if a reference to a revised financial statement or revised directors' report were a reference to a further revised financial statement or further revised directors' report.

698. Power of Cabinet Secretary to authorise other persons to make application to the Court under section 710

(1) The Cabinet Secretary may, in writing, authorise for the purposes of section 697 any person who appears to the Cabinet Secretary—

(a) to have an interest in, and to have satisfactory procedures directed to ensuring compliance by companies with the requirements of this Act relating to financial statements and directors' reports;

(b) to have satisfactory procedures for receiving and investigating complaints about companies' annual financial statements and directors' reports; and

(c) otherwise to be a fit and proper person to be authorised for those purposes.

(2) A person may be authorised generally or in respect of particular classes of case, and different persons may be authorised in respect of different classes of case.

(3) The Cabinet Secretary may refuse to authorise a person if of the opinion that such an authorisation is unnecessary having regard to the fact that there are one or more other persons who have been or are likely to be authorised.

(4) An authorisation may impose such conditions relating to the performance of the functions by the authorised person as appear to the Cabinet Secretary to be appropriate.

(5) The Cabinet Secretary may authorise a person, only if it appears to the Cabinet Secretary that the person is capable of performing the functions of an authorised person in accordance with the conditions of the proposed authorisation.

(6) The Cabinet Secretary may at any time vary the conditions of an authorisation by notice given to the authorised person.

(7) The Cabinet Secretary may, in writing, revoke an authorisation for breach of any condition imposed in respect of it and may include in the revocation such provision as the Cabinet Secretary thinks necessary with respect to pending proceedings.

699. Power of Kenya Revenue Authority to disclose information to authorised person for certain purposes

(1) The Kenya Revenue Authority may disclose information to the Cabinet Secretary or a person authorised under section 698 for the purpose of facilitating—

(a) the taking of steps by that person to discover whether there are grounds for making an application to the Court under section 697; or

(b) a decision by the Cabinet Secretary or authorised person whether to make such an application.

(2) This section applies despite any statutory or other restriction on the disclosure of information.

(3) Information disclosed to an authorised person under this section—

(a) may not be used except in or in connection with—

(i) taking steps to discover whether there are grounds for making an application to the Court under section 697; or

(ii) deciding whether or not to make such an application, or in, or in connection with, proceedings relating to such an application; and

(b) may not be further disclosed except—

(i) to the person to whom the information relates; or

(ii) in, or in connection with, proceedings on any such application to the Court.

(4) A person who contravenes subsection (3) commits an offence unless the person establishes on a balance of probabilities that the person—

(a) did not know, and had no reason to suspect, that the information had been disclosed under this section; or

(b) took all reasonable steps and exercised all due diligence to avoid the contravention.

(5) A person who is found guilty of an offence under subsection (4) is liable on conviction to a fine not exceeding one million shillings.

700. Power of Cabinet Secretary or authorised person to require documents, information and explanations

(1) This section applies if it appears to the Cabinet Secretary or a person who is authorised under section 698 that there is, or may be, a question whether a company's annual financial statement or a directors' report complies with the requirements of this Act.

(2) The Cabinet Secretary or authorised person may require any prescribed person to produce any document, or to provide any information or explanations, that the Cabinet Secretary or authorised person may reasonably require for the purpose of—

(a) discovering whether there are grounds for making an application to the Court under section 697; or

(b) deciding whether to make such an application.

(3) The following are prescribed persons for the purpose of subsection (2)—

For purposes of this section, an authorised person is—

(a) the company;

(b) any officer, employee, or auditor of the company;

(c) any person who was an officer, employee, or auditor of the company at a time when the document or information required by the authorised person was created or existed.

(4) If a person fails to comply with a requirement under subsection (2), the authorised person may apply to the Court for an order under subsection (5).

(5) If, on the hearing of an application made under subsection (4), it appears to the Court that the person concerned has failed to comply with a requirement under subsection (2), it may order that person to take such steps as it directs for the production of the relevant documents or the provision of the relevant information or explanations.

(6) A statement made by a person in response to a requirement under subsection (2), or an order under subsection (5), may not be used in evidence against the person in criminal proceedings.

(7) A person is not, because of this section, required to produce documents or provide information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

701. Restrictions on disclosure of information obtained under compulsory powers

(1) This section applies to information obtained in accordance with a requirement or order under section 700 that relates to the private affairs of a natural person or to any particular business.

(2) A person in possession of information to which this section applies shall not, during the lifetime of the person concerned or so long as that business continues to be carried on, disclose the information without the consent of that person or the person who is carrying on that business.

(3) Subsection (2) does not apply—

(a) to disclosure permitted by section 702; or

(b) to the disclosure of information that is or has been available to the public from another source.

(4) A person who discloses information in contravention of subsection (2) commits an offence and on conviction is liable to a fine not exceeding one million shillings.

(5) In proceedings for an offence under subsection (4), it is a defence to establish (on a balance of probabilities) that the defendant—

(a) did not know, and had no reason to suspect, that the information had been obtained in accordance with a requirement or order under section 700; or

(b) took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

702. Permitted disclosure of information obtained under compulsory powers

(1) The prohibition in section 701 against disclosing information obtained in accordance with a requirement or order under section 700 that relates to the private affairs of a natural person or to any particular business has effect subject to the exceptions specified in subsections (2) to (5).

(2) The prohibition does not apply to the disclosure of information for the purpose of enabling the Cabinet Secretary or authorised person to perform a function under section 697.

(3) The prohibition also does not apply to a disclosure made to—

(a) the department of Government responsible for matters relating to trade;

(b) the National Treasury;

(c) the Central Bank of Kenya;

(d) the Capital Markets Authority,

(e) the Ethics and Anti-Corruption Commission; and

(f) the Kenya Revenue Authority.

(4) The prohibition also does not apply to a disclosure made—

(a) with a view to the bringing of, or otherwise in connection with, disciplinary proceedings relating to the performance by an accountant or auditor of professional duties;

(b) for the purpose of enabling or assisting the Cabinet Secretary, the National Treasury, the Central Bank of Kenya, the Kenya Revenue Authority, the Capital Markets Authority or the Registrar-General to perform any of their statutory functions or exercise any of their statutory powers.

(5) Subject to subsection (6), the prohibition also does not apply to a disclosure made to an authority of a foreign country that appears to the Cabinet Secretary or authorised person to have functions

similar to those specified in section 697 if the disclosure is made for the purpose of enabling or assisting that authority to perform those functions.

(6) In determining whether to disclose information to an authority in accordance with subsection (5), the Cabinet Secretary or authorised person is required to have regard to the following considerations—

(a) whether the use which the authority is likely to make of the information is sufficiently important to justify making the disclosure;

(b) whether the authority has adequate arrangements in place to prevent the information from being used or further disclosed other than—

(i) for the purposes of performing the functions referred to in that subsection; or

(ii) for other purposes substantially similar to those for which information disclosed to the authorised person could be used or further disclosed.

Division 12 — Supplementary provisions

703. Liability of directors for false or misleading statements in company's financial statement and reports

(1) This section applies to the following documents—

a directors' report;

a directors' remuneration report; and

a summary 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 —

any untrue or misleading statement in a document to which this section applies; or

the omission from a document 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 or ought reasonably to have known—

the statement to be untrue or misleading or was reckless as to whether it was untrue or misleading; or

the omission to be dishonest concealment of a material fact.

(4) A director is not liable to a person other than the company as a result of the person having relied on information contained in a document to which this section applies.

(5) The reference in subsection (4) to a director not being liable includes a reference to another person being entitled as against the director to be granted any civil remedy or to rescind or repudiate an agreement.

(6) This section does not affect a person's liability for a criminal offence.

704. Regulations may make further provision about financial statements and reports of companies

The regulations may provide for all or any of the following—

(a) the financial statements that companies are required by this Act 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 a company in relation to—

(i) the approval of its financial statements and reports;

(ii) the sending of financial statements and reports to its members and others;

(iii) the laying of financial statements and reports before a general meeting of the company;

(iv) the lodgement by the company of copies of financial statements and reports with the Registrar for registration; and

(v) the publication by the company of its financial statements and reports.

Part XXVI – COMPANIES TO MAKE ANNUAL RETURNS TO REGISTRAR

705. Duty of company to lodge annual returns with Registrar

(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 lodged in accordance with this Part was made up to a different date – the anniversary of that date.

(3) A company shall ensure that its annual return—

(a) complies with the requirements of section 706 and, if applicable, section 707; and

(b) is lodged with the Registrar within twenty eight days after the date to which it is made up. If a condition of an exemption is not complied with by or in relation to a company, the company, and each director of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

706. Contents of annual return: general

(1) A company shall ensure that its annual return states the date to which it is made up and contains the following information—

(a) the address of the company's registered office and, if a Post Office box number is given, the physical address of that office;

(b) the type of company and its principal business activities;

(c) the particulars prescribed by the regulations of—

(i) the directors of the company;

(ii) in the case of a public company, or in the case of a private company that has a secretary, the secretary or joint secretaries of the company; and

(iii) any person appointed as an authorised signatory of the company;

(d) financial statements or exemption statement where applicable.

(2) The company shall give the information on the type of company by reference to the classification scheme prescribed for the purposes of this section by the regulations.

(3) The company may give the information on its principal business activities by reference to one or more categories of any prescribed system of classifying business activities.

707. Contents of annual return: information about share capital and shareholders

(1) A company having a share capital shall include in its annual return—

(a) a statement of capital; and

(b) the particulars required by subsections (3) to (6) about the members of the company.

(2) The company shall ensure that the statement of capital states, with respect to its share capital 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) the particulars prescribed by the regulations 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

the amount paid up and the amount (if any) unpaid on each share, whether on account of the nominal value of the share or in the form of a premium.

(3) The company shall ensure that the return includes the particulars prescribed by the regulations 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 or, in the case of the first return, since the incorporation of the company.

(4) The company shall also ensure that the return conforms to such requirements (if any) as may be prescribed by the regulations for the purpose of enabling the entries relating to a person to be easily located.

(5) The company shall further ensure that the return states—

(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 of the company has given the full particulars required by subsections (3) and (5), the company 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) If the company has converted any of its shares into stock, the company shall include in the return the corresponding information in relation to that stock, stating the amount of stock instead of the number or nominal value of shares.

708. Offence for company not to lodge annual return on time, etc

(1) If a company fails to lodge an annual return as required by section 705(1) or lodges an annual return that does not comply with section 705(3), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(2) If, after a company or any of its officers has been convicted an offence of failing to lodge an annual return on time as required by section 705(1), or of failing to lodge an annual return that complies with section 705(3), the company continues to fail to lodge such a return, or to lodge an annual return that complies with section 705(3), the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

Part XXVII – AUDITING OF COMPANY FINANCIAL STATEMENTS

Division 1— Requirements for audited financial statement

709. Requirements for auditing financial statements

(1) The directors of a company shall ensure that the company's annual financial statements for a financial year are audited in accordance with this Part unless the company—

(a) is exempt from audit under section 711 or 714; or

(b) is exempt from the requirements of this Part under section 716.

(2) A company is not entitled to any such exemption unless its balance sheet contains a statement by the directors to that effect.

(3) A company is not entitled to exemption under either of the provisions referred to in subsection (1)(a) unless the its balance sheet 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 relevant financial year in accordance with section 710; 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 directors shall ensure that the statement required by subsection (2) or (3) appears on the balance sheet above the signature required by section 652.

710. Right of members to require audit

(1) The members of a company that would otherwise be entitled to exemption from audit under any of the provisions referred to in section 709(1)(a) may by notice under this section require it to obtain an audit of its financial statements for a financial year.

(2) Such a notice is effective only if it is 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 is not effective if it is given before the financial year to which it relates or later than one month before the end of that year.

711. Small companies: conditions for exemption from audit

(1) A company that complies with the conditions of subsection (2) in respect of a financial year is exempt from the requirements of this Act relating to the audit of accounts for that year.

(2) The conditions are—

(a) that the company qualifies as a small company in relation to that year;

(b) that its turnover in that year is not more than fifty million shillings; and

(c) that the value of its net assets specified in its balance sheet as at the end of that year is not more than twenty million shillings.

(3) For a period that is a company's financial year but not in fact a year the maximum figure for turnover is to be adjusted proportionately.

(4) For the purposes of this section—

(a) whether a company qualifies as a small company is to be determined in accordance with section 624(1) to (6); and

(b) "balance sheet total" has the same meaning as in subsection (5) of that section.

(5) For the purpose of this section, whether a company qualifies as a small company is to be determined in accordance with section 624(1) to (6).

712. Companies excluded from small companies exemption

A company is not entitled to the exemption conferred by section 711 if it was a public company, or carried on a banking or insurance business, at any time within the relevant financial year.

713. Availability of small companies exemption in case of group company

(1) A company is not entitled to the exemption conferred by section 711 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 satisfied; or

(b) subsection (3) applies.

(2) The conditions 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 seven hundred and twenty million shillings net or eight hundred and sixty five million and five hundred thousand shillings gross; and

(c) that the aggregate values of the net assets of the companies comprising the group as specified in the group's balance sheet as at the end of that year are not more than three hundred and sixty million shillings.

(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 is to be determined in accordance with section 625;

(b) a group is ineligible if any of its members is—

(i) a public company;

(ii) a body corporate (other than a public company) whose shares are admitted to trading on a securities exchange or other regulated market in Kenya; or

(iii) a person who carries on insurance market or banking activity;

(c) a group's aggregate turnover is to be determined in accordance with section 625; and

(d) "net" and "gross" have the same meaning as in section 625(6).

(7) Subsection (6) applies for the purposes of this section as if all the bodies corporate in the group were companies.

714. Conditions for exemption from audit for dormant companies

(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) are satisfied.

(2) The conditions are that the company—

(a) with regard to its individual financial statement for the financial year—

(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 sections 709(2) and (3), 710 and 715.

715. Companies excluded from dormant companies exemption

A company is not entitled to the exemption conferred by section 714 if it was at any time within the relevant financial year a company that was—

(a) an insurance company, a banking company or an e-money issuer; or

(b) a company of any other kind prescribed by the regulations for the purposes of this section.

716. Exemption from audit for non-profit making companies

(1) The requirements of this Part as to audit of financial statements do not apply to a company for a financial year if it is non-profit making and its financial statements are subject to audit by the Auditor General.

(2) In the case of a company that is a parent company or a subsidiary undertaking, subsection (1) applies only if every group undertaking is non-profit-making.

(3) This section has effect subject to compliance with section 709(2).

(4) A company is non-profit-making for the purpose of this section if it does not provide a pecuniary gain to its members

(5) For the purpose of subsection (4), a company provides pecuniary gain to its members if—

(a) it carries on any activity for the purpose of securing pecuniary gain for its members;

(b) it has capital that is divided into shares held by the company's members;

(c) it holds property in which the company's members have a disposable interest (whether directly, or in the form of shares in the capital of the company or otherwise); or

(d) it is a company that is, or is included in a class of bodies that is, prescribed by the regulations for the purposes of this subsection.

(6) For the purposes of subsection (5)(a), a company does not provide pecuniary gain for its members only because of any of the following—

(a) the company itself makes a pecuniary gain, unless that gain or any part of it is divided among or received by the company's members or any of them;

(b) the company is established for the protection of a trade, business or industry in which the company's members are engaged or interested, but the company does not itself engage or participate in any such trade, business or industry;

(c) members of the company derive pecuniary gain through the enjoyment of facilities or services provided by the company for social, recreational, educational or other similar purposes;

(d) members of the company derive pecuniary gain from the company in the form of bona fide remuneration;

(e) members of the company derive pecuniary gain from the company of a kind that they could also derive if they were not members of the company;

(f) members of the company compete for trophies or prizes in contests directly related to the objects of the company;

(g) the company provides pecuniary gain of a class prescribed by the regulations for the purposes of this section.

Division 3 — Appointment of auditors

717. Appointment of auditors of private company: general

(1) A 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 an audited financial statement is 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 company shall ensure that the appointment is made not later than the deadline for making such an appointment.

(3) The deadline for making such an appointment is the end of the period of twenty eight days from and including—

(a) the deadline for sending out copies of the annual financial statement of the company for the previous financial year; or

(b) if earlier, the day on which copies of the annual financial statement of the company for the previous financial year are sent out under section 662.

(4) The directors may appoint an auditor or auditors of the company—

(a) at any time before the company's first deadline for the company to appoint auditors;

(b) following a period during which the company (being exempt from audit) did not have any auditor—at any time before the next deadline for the company to appoint auditors; or

(c) to fill a casual vacancy in the office of auditor.

(5) The members may appoint an auditor or auditors by ordinary resolution—

(a) not later than the deadline for appointing auditors;

(b) if the company should have appointed an auditor or auditors by a deadline for appointing auditors but did not do so; or

(c) if the directors had power to appoint an auditor or auditors under subsection (4) but did not make an appointment.

(6) An auditor or auditors of a private company may be appointed only—

(a) in accordance with this section; or

(b) in accordance with section 718.

(7) Subsection (6) does not affect the re-appointment of an auditor taken to have been made by section 719(2).

718. Appointment of auditors of private company: default power of the Cabinet Secretary

(1) If a private company has failed to appoint an auditor within the period for appointing auditors, the company shall, within seven days after the end of that period, notify the Cabinet Secretary of the failure.

(2) As soon as practicable after being notified in accordance with subsection (1), the Cabinet Secretary shall appoint one or more auditors to fill the vacancy unless satisfied that there are good reasons not to.

(3) If a company fails to give notice as required by subsection (1), the company, and each officer of the company, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(4) If, after a company or any of its officers has been convicted on an offence under subsection (3), the company continues to fail to give the required notice, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine of fifty thousand shillings for each such offence.

719. Term of office of auditors of private company

(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 reappointed.

(2) If no auditor has been appointed by the end of the next period for appointing auditors, any auditor in office immediately before that time is taken to be re-appointed at that time, unless—

(a) the auditor was appointed by the directors;

(b) the company's articles require actual reappointment;

(c) the re-appointment that is taken to be made under subsection (2) is blocked by the members under section 720;

(d) the members have resolved that the auditor should not be re-appointed; or

(e) the directors have resolved that no auditor or auditors should be appointed for the financial year concerned.

(3) Subsection (2) does not affect provisions of this Part relating to the removal and resignation of auditors.

(4) In assessing the amount of compensation or damages payable to an auditor on ceasing to hold office, no account may be taken of the loss of opportunity of the auditor being re-appointed by the operation of subsection (2).

720. Members of private company may block automatic re-appointment of auditor

(1) An auditor of a private company is not taken to be re–appointed by the operation of section 719(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" is five percent or, if a lower percentage is specified for this purpose in the company's articles, that lower percentage.

(3) A notice under this section may be in hard copy or electronic form but is not effective unless it is—

(a) authenticated by the person or persons giving it; and

(b) received by the company before the end of the accounting reference period immediately preceding the time when the re-appointment under section 719(2) is taken to have effect.

721. Appointment of auditors of public company: general

(1) A public company is required to have an auditor or auditors for each financial year of the company, unless the directors reasonably resolve otherwise on the ground that an audited financial statement is unlikely to be required for a particular financial year.

(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, a public company shall ensure that the appointment is made before the end of the general meeting at which the company's annual financial statement for the previous financial year is presented.

(3) The directors of a public company may appoint an auditor or auditors of the company—

(a) at any time before the general meeting at which the company's first financial statement is presented;

(b) following a period during which the company, being exempt from audit did not have any auditor, at any time before the next general meeting at which the company's annual financial statement is to be presented; 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 general meeting at which the company's annual financial statement is presented;

(b) if the company should have appointed an auditor or auditors at such a meeting but did not do so;

(c) if 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 be appointed only in accordance with this section or section 722.

722. Appointment of auditors of public company: default power of the Cabinet Secretary

(1) If an auditor or auditors have not been appointed for a public company within the period for appointing auditors, the company shall, within seven days after the end of that period, notify the Cabinet Secretary of the failure.

(2) As soon as practicable after being notified in accordance with subsection (1), the Cabinet Secretary shall appoint one or more auditors to fill the vacancy unless satisfied that there are good reasons not to.

(3) If a company fails to give notice as required by subsection (1), the company, and each officer of the company who is in default commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(4) If, after a company or any of its officers is convicted on an offence under subsection (3), the company continues to fail to give the required notice, the company, and each officer of the company who is in default, commits a further offence on every day on which the failure continues and on conviction are each liable to a fine of fifty thousand shillings for each such offence.

723. Term of office of auditors of public company

(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) does not affect the operation of the provisions of this Part relating to the removal and resignation of auditors.

724. Fixing of auditor’s remuneration

(1) If an auditor is appointed by the members of a company, the members shall fix the auditor’s remuneration, either by ordinary resolution or in such as the members may, by ordinary resolution, determine.

(2) If an auditor of a company is appointed by the directors, the directors shall fix the remuneration of the auditor

(3) An auditor appointed by the Cabinet Secretary is entitled to receive from the company remuneration at a reasonable rate fixed by the Cabinet Secretary.

(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 well as to payments of money.

725. Company to disclose terms of audit appointment

(1) A company shall disclose the terms on which the company's auditor is appointed, remunerated or is required to carry out his or her responsibilities.

(2) In making a disclosure under subsection (1), a company shall—

(a) include—

(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) ensure that the disclosure is made at such times, in such places and by such means as are specified in the regulations; and

(c) specify the place and means of disclosure-

(i) in a note to its annual financial statement or, if it prepares a group financial statement, in a note to that statement;

(ii) in the directors' report; or

(iii) in the auditor's report on its annual financial statement.

(3) In making regulations for the purpose of this section, the Cabinet Secretary shall ensure that the regulations provide for the disclosure of any variation of the terms on which a company's auditor is appointed, remunerated or required to carry out the responsibilities of auditor.

726. Regulations to provide for safeguarding disclosure of nature of services provided by company's auditor

The Cabinet Secretary shall ensure that the regulations provide for safeguarding the disclosure of the nature of any services provided for a company by the company's auditor, whether in the auditor's capacity as auditor or otherwise, or by the auditor's associates.

Division 3 — Functions of auditors

727. Auditor's report on annual financial statement of company

(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 the auditor's tenure of office—

(a) in the case of a private company — to be sent out to members in accordance with section 662; or

(b) in the case of a public company — to be presented at a general meeting of the company in accordance with section 679.

(2) The auditor shall include in the auditor's report—

(a) an introduction identifying the annual financial statement that is the subject of the audit and the financial reporting framework that has been applied in its 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 auditor shall clearly state in the report whether, in the auditor's opinion, the annual financial statements—

(a) gives a true and fair view of—

(i) in the case of an individual balance sheet — of the financial position of the company as at the end of the relevant financial year;

(ii) in the case of an individual profit and loss account—of the profit or loss of the company for the financial year; and

(iii) in the case of a group financial statements — of the financial position as at the end of the financial year and of the profit or loss for the financial year of the undertakings to which the statements relate, taken as a whole, so far as concerns members of the company;

(b) has been properly prepared in accordance with the relevant financial reporting framework; and

(c) has been prepared in accordance with the requirements of this Act.

(4) The auditor shall, in the case of an individual annual financial statement, clearly state in the report whether, in the auditor's opinion—

(a) the company's balance sheet gives a true and fair view of the financial position of the company as at the end of the relevant financial year; and

(b) the company's profit and loss account give a true and fair view of the company's profit or loss for that year.

(5) The auditor shall, in the case of a group financial statement, clearly state in the report whether, in the auditor's opinion—

(a) the consolidated balance sheet gives a true and fair view of the financial position of the undertakings to which the statement relates, taken as a whole, as at the end of the relevant financial year; and

(b) the consolidated profit or loss account gives a true and fair view of the profit and loss of those undertakings, taken as a whole, for that financial year.

(6) The auditor shall, in the case of an individual financial statement or a group financial statement, also clearly state in the report whether, in the auditor's opinion, the statement—

(a) has been properly prepared in accordance with the relevant financial reporting framework; and

(b) has been prepared in accordance with the requirements of this Act (including the prescribed accounting standards).

(7) The auditor shall—

(a) state in the report whether the report is unqualified or qualified; and

(b) include in the report a reference to any matters to which the auditor wishes to draw attention without qualifying the report.

728. Auditor's report on directors' report

The auditor shall state in the auditor’s report on the company’s annual financial statement whether in the auditor’s opinion the information given in the directors’ report for the financial year for which the financial statement is prepared is consistent with that statement.

729. Auditor’s report on auditable part of directors’ remuneration report

(1) In reporting on the annual financial statement of a quoted company, the auditor shall—

(a) report to the company’s members on the auditable part of the directors’ remuneration report; and

(b) state whether in the auditor's 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 regulations made for the purpose of section 660.

730. Responsibilities of auditor

(1) In reporting on the annual financial statement of a company, the company’s auditor shall carry out such investigations as will enable the auditor to form an opinion—

(a) whether adequate accounting records have been kept by the company and returns adequate for their audit have been received from the company's branches not visited by the auditor;

(b) whether the company's individual financial statement is in agreement with the company's accounting records and returns; and

(c) in the case of a quoted company—whether the auditable part of the company's directors' remuneration report is in agreement with those accounting records and returns.

(2) If, in reporting on the annual financial statement of a company, the company's auditor forms the opinion—

(a) that the company has not kept adequate accounting records, or that returns adequate for their audit have not been received from the company's branches not visited by that auditor;

(b) that the company's individual financial statement is not in agreement with the company's accounting records and returns; or

(c) in the case of a quoted company—that the auditable part of its directors' remuneration report is not in agreement with those accounting records and returns,

the auditor shall state that opinion in the report.

(3) If the auditor fails to obtain all the information and explanations that, to the best of the auditor's knowledge and belief, are necessary for the purposes of the audit, the auditor shall state that fact in the report.

(4) If—

(a) the requirements of regulations made for the purpose of section 650 are not complied with in the annual financial statement; or

(b) in the case of a quoted company—the requirements of regulations made for the purpose of section 660 as to information forming the auditable part of the directors' remuneration report are not complied with in that report, the auditor shall include in the report, so far as it is reasonably practicable to do so, a statement giving the required particulars.

(5) If the directors of the company have prepared a financial statement and directors' report in accordance with the small companies regime and in the auditor's opinion they were not entitled so to do, the auditor shall state that fact in the report.

731. Auditor's right to information

(1) An auditor of a company—

(a) has a right of access at all times to the company's accounting records and financial statements, in whatever form they are held; and

(b) may require any of the following persons to provide with such information or explanations as the auditor thinks necessary for carrying out the responsibilities of auditor—

(i) an officer or employee of the company;

(ii) a person holding or accountable for any of the company's accounting records or financial statements;

(iii) a subsidiary undertaking of the company that 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 accounting records or financial statements of any such subsidiary undertaking; and

(v) a person who was within any of subparagraphs (i) to (iv) at a time to which the information or explanations required by the auditor relates or relate.

(2) A statement in response to a requirement made under this section may not be used in evidence in criminal proceedings against the person, except proceedings for an offence under section 733.

(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.

732. Auditor's right to information from foreign subsidiaries

(1) If 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 information or explanations for the purpose of enabling the auditor to carry out the auditor’s responsibilities from any of the following—

(a) the undertaking;

(b) an officer, employee or auditor of the undertaking;

(c) a person holding or accountable for any of the undertaking's accounting records or financial statements;

(d) any person who was within paragraph (b) or (c) at the relevant time.

(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) If a company contravenes any of the provisions of this section, the company, and each officer of the company who is in default commit an offence and on conviction are each liable to a fine not exceeding one million shillings.

(4) A statement made by a person in response to a requirement under this section may not be used in evidence against the person in criminal proceedings except proceedings for an offence under section 733.

(5) 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.

733. Auditor's rights to information: offences

(1) A person who makes a statement, whether oral or written containing information or explanations that the auditor requires, or is entitled to require, under section 731—

(a) knowing that the statement is false or misleading in a material respect; or

(b) recklessly without caring whether the statement is true or false, commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years, or to both.

(2) A person who fails to comply with a requirement under section 732 commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(3) In proceedings for an offence under subsection (2), it is a defence for the person charged with the offence to establish on a balance of probabilities that it was not reasonably practicable for that person to provide the required information or explanations.

(4) If a parent company fails to comply with section 732, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(5) Nothing in this section affects a right of an auditor to apply for a compliance order to enforce any of the auditor's rights under section 731 or 732.

734. Auditor's rights in relation to resolutions and meetings

(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 communications 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 that the auditor attends on any part of the business of the meeting in the capacity of auditor.

(3) If the auditor is a firm, the right to attend or be heard at a meeting is exercisable by a natural person authorised by the firm in writing to act as its representative at the meeting.

735. Auditor to sign and date auditor's report

(1) Subject to subsection (2), an auditor shall—

(a) sign and date the auditor's report; and

(b) ensure that the auditor's name is prominently displayed in the report.

(2) If the auditor is a firm, the senior statutory auditor of the firm shall sign the report on behalf of the firm.

(3) An auditor who fails to comply with subsection (1), or a senior statutory auditor who fails to comply with (2), commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings.

736. Name of auditor to be stated in published copies of auditor's report

(1) A company shall not publish a copy of an auditor's report that relates to the company unless the copy—

(a) state the name of the auditor and, if the auditor is a firm, the name of the person who signed the report as senior statutory auditor; or

(b) if the conditions specified in section 737 are satisfied—state that a resolution has been passed and notified to the Cabinet Secretary in accordance with that section.

(2) For the purposes of this section, a company is regarded as publishing the report if it publishes, issues or circulates it or otherwise makes it available for public inspection in a manner that invites members of the public generally, or any class of members of the public, to read it.

(3) If a copy of the auditor's report is published without the statement required by this section, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

737. Circumstances in which auditors' names may be omitted from published copies of auditors' report

(1) The auditor's name and, if the auditor is a firm, the name of the person who signed the report as senior statutory auditor, may be omitted from—

(a) published copies of the report; and

(b) the copy of the report lodged with the Registrar for registration, if the conditions specified in subsection (2) are satisfied.

(2) The conditions are that the company—

(a) after concluding on reasonable grounds that statement of the name would create or be likely to create a serious risk that the auditor or senior statutory auditor, or any other person, would be subject to violence or intimidation, has resolved that the name should not be stated; and

(b) has given notice of the resolution to the Cabinet Secretary, stating—

(i) the name and registered number of the company;

(ii) the financial year of the company to which the report relates; and

(iii) the name of the auditor and, if the auditor is a firm, the name of the person who signed the report as senior statutory auditor.

738. Offences in connection with auditor's report

(1) This section applies—

(a) if the auditor is a natural person — to that person and any employee or agent of that person who is eligible for appointment as auditor of the company; and

(b) if the auditor is a firm — to any director, member, employee or agent of the firm who is eligible for appointment as auditor of the company.

(2) A person to whom this section applies commits an offence if the person includes, or is responsible for including, in an auditor's report on the financial statements of a company information or an explanation that the person knew or ought to have known was false or misleading in a material respect.

(3) A person to whom this section applies commits an offence if the person fails to include, or is responsible for failing to include, in such a report a statement required by section 730(2), (3), (4) or (5).

(4) A person found guilty of an offence under subsection (2) or (3) is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years, or to both.

Division 4 — Cessation of office of auditors

739. Resolution removing auditor from office

(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 740.

(3) This section does not affect any right that a person may have to claim compensation or damages for the termination of the person's appointment as auditor of a company or of any other appointment that is dependent on the person being appointed as such an auditor.

(4) An auditor may not be removed from office before the end of the auditor's term of office except by resolution under this section.

740. Special notice required for resolution removing auditor from office

(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 serve a copy of the notice on the auditor proposed to be removed.

(3) The auditor proposed to be removed may, with respect to the intended resolution—

(a) make written representations to the company, not exceeding two thousand words; and

(b) request the company to notify the representations to the company's members.

(4) The company shall—

(a) in any notice of the resolution given to members of the company, state that the representations have been made; and

(b) send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent.

(5) The company is not required to send copies of the representations to the members if the members would not receive their copies of the representations before the beginning of the meeting.

(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 auditor may, require the representations to be read out at the meeting.

(7) The fact that the company complies with the auditor's request under subsection (6) does not affect the auditor's right to be heard at the meeting.

(8) If the company or a person affected claims that the representations made by the auditor contain defamatory matter, the company or person may apply to the Court for an order under subsection (9). The auditor is entitled to be served with a copy of such an application and to be heard at the hearing of the application by the Court.

(9) On the hearing of such an application, the Court shall, if satisfied that the representations of the auditor contain defamatory matter, make an order that they need not be sent out to the company's members and need not be read out at the meeting, but if not so satisfied, it shall dismiss the application.

(10) If the Court has made an order under subsection (9)—

(a) copies of the auditor's representations need not be sent out to the company's members; and

(b) those representations need not be read out at the meeting.

741. Notice of resolution removing auditor from office

(1) Within fourteen days after a resolution is passed in accordance with section 739, the company shall lodge a copy of the resolution with the Registrar for registration.

(2) If a company fails to lodge with the Registrar a copy of the resolution as required by subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(3) If, after a company or any of its officers is convicted of an offence under subsection (2), the company continues to fail to lodge a copy of the resolution with the Registrar, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

742. Rights of auditor who has been removed from office

A person who has been removed from office as auditor by resolution under 739 has the same rights in relation to a general meeting of the company—

(a) at which the person's term of office would otherwise have expired; or

(b) at which it is proposed to fill the vacancy caused by the person's removal, as the person would have had but for being removed from office.

743. Failure to re-appoint auditor: special procedure required for written resolution

(1) In this section, “outgoing auditor”, in relation to a private company, means the auditor of the company whose term of office ended, or is to end, at the end of the period for appointing auditors.

(2) This section applies if a resolution is proposed as a written resolution of a private company the effect of which would be to appoint a person as auditor in place of the outgoing.

(3) This section applies only 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 should have been appointed but was not.

(4) The company shall send a copy of the proposed resolution to the person proposed to be appointed and to the outgoing auditor.

(5) Within fourteen days after receiving notice of the proposed resolution, the outgoing auditor may—

(a) make written representations with respect to the proposed resolution, not exceeding two thousand words; and

(b) request the company to circulate the representations to the company's members.

(6) The company shall circulate the representations together with the copy or copies of the resolution circulated in accordance with section 265 or 267, except that the period allowed under section 267(4) for serving copies of the proposed resolution is twenty eight days instead of twenty-one days.

(7) If a company fails to comply with subsection (4) or (6), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(8) If the company or a person affected claims that the representations made by the auditor contain defamatory matter, the company or person may apply to the Court for an order under subsection (9). The auditor is entitled to be served with a copy of such an application and to be heard at the hearing of the application by the Court.

(9) On the hearing of such an application, the Court shall, if satisfied that the representations of the auditor contain defamatory matter, make an order that the representations need not be circulated to the company's members, but if not so satisfied, it shall dismiss the application.

(10) If the Court has made an order under subsection (9), copies of the auditor's representations need not be circulated to the company's members.

(11) If a requirement of this section is not complied with, the resolution is void.

744. Failure to re-appoint auditor: special notice required for resolution at general meeting

(1) In this section, "outgoing auditor"—

(a) in relation to a private company—means the auditor of the company whose term of office ended, or is to end, at the end of the period for appointing auditors; and

(b) in relation to a public company—means the auditor whose term of office has ended, or is to end, at the next general meeting of the company at which a financial statement of the company is to be presented

(2) 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.

(3) Special notice is required of a resolution to which this section applies 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 should have been appointed but was not; or

(b) in the case of a public company—

(i) since the outgoing auditor ceased to hold office no general meeting has been held at which a financial statement of the company was presented; or

(ii) a general meeting of the company has been held at which an auditor should have been appointed but was not.

(4) As soon as practicable after receiving notice of such a proposed resolution, the company shall send a copy of it to the person proposed to be appointed and to the outgoing auditor.

(5) Within fourteen days after receiving notice of the proposed resolution, the outgoing auditor may—

(a) make written representations with respect to the proposed resolution, not exceeding two thousand words; and

(b) request the company to send a copy of the representations to the company's members.

(6) The company shall—

(a) in any notice of the resolution given to members of the company, state that the representations have been made; and

(b) send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent.

(7) The company is not required to send copies of the representations to the members if the members would not receive their copies of the representations before the beginning of the meeting.

(8) 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 require the representations to be read out at the meeting.

(9) If a company fails to comply with subsection (4) or (6), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings

(10) If the company or a person affected claims that the representations made by the auditor contain defamatory matter, the company or person may apply to the Court for an order under subsection (12).

(11) The auditor is entitled to be served with a copy of such an application and to be heard at the hearing of the application by the Court.

(12) On the hearing of such an application, the Court shall, if satisfied that the representations of the auditor contain defamatory matter, make an order to the effect that those representations need neither to be sent to the company's members nor to be read out at the meeting, but if not so satisfied, it shall dismiss the application.

(13) If the Court has made an order under subsection (12)—

(a) copies of the auditor's representations need not be sent out to the company's members; and

(b) those representations need not be read out at the meeting.

745. Resignation of auditor

(1) An auditor of a company may resign from office by lodging a notice to that effect at the registered office of the company.

(2) The notice is not effective unless it is accompanied by the statement required by section 748.

(3) An effective notice of resignation ends the auditor's term of office on the date on which the notice is lodged or on such a later date as may be specified in the notice.

746. Notice to Registrar of resignation of auditor

(1) Within fourteen days after an auditor of a company has resigned, the company shall lodge with the Registrar for registration a copy of the notice of resignation.

(2) If a company fails to lodge with the Registrar a copy of the notice of resignation as required by subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(3) If, after a company or any of its officers is convicted of an offence under subsection (2), the company continues to fail to lodge a copy of the resolution with the Registrar, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

747. Rights of resigning auditor

(1) This section applies if an auditor’s notice of resignation is accompanied by a statement of the circumstances connected with the resignation.

(2) A resigning auditor may deposit with the notice of resignation a signed requisition calling on the directors of the company to convene a general meeting of the company for the purpose of receiving and considering such explanation of the circumstances connected with the resignation as the auditor 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 the auditor's requisition; or

(b) before any general meeting at which the auditor's term of office would otherwise have expired or at which it is proposed to fill the vacancy caused by the auditor's resignation; a statement in writing, not exceeding two thousand words, setting out the circumstances that gave rise to the resignation.

(4) The company shall—

(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 company is not required to send copies of the representations to the members if the members would not receive their copies of the representations before the beginning of the meeting.

(6) If subsection (5) is not complied with, each director who failed to take all reasonable steps to ensure that such a meeting was convened commits an offence and on conviction is liable to a fine not exceeding one million shillings.

(7) Within twenty-one days after the auditor of a company has resigned, the directors shall convene a meeting for a day that is not more than twenty eight days after the date on which the notice convening the meeting is given.

(8) If a copy of the statement referred to 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 require the statement to be read out at the meeting.

(9) If the company or a person affected claims that the representations made by the auditor contain defamatory matter, the company or person may apply to the Court for an order under subsection (11).

(10) The auditor is entitled to be served with a copy of such an application and to be heard at the hearing of the application by the Court.

(11) On the hearing of such an application, the Court shall, if satisfied that the representations of the auditor contain defamatory matter, make an order that they need not be sent out to the company's members and need not be read out at the meeting, but if not so satisfied, it shall dismiss the application.

(12) If the Court has made an order under subsection (11)—

(a) copies of the auditor's representations need not be sent out to the company's members; and

(b) those representations need not be read out at the meeting.

(13) An auditor who has resigned from office has, in relation to a company general meeting referred to in subsection (3)(a) or (b), the same rights as an auditor who has been removed from office under section 742.

(14) When subsection (13) applies, the references to matters concerning a person as auditor are to be treated as references to matters concerning the person as a former auditor.

748. Statement by auditor on ceasing to hold office to be lodged with company

(1) If an auditor of an unquoted company ceases for any reason to hold office, the auditor shall lodge at the registered office of the company a statement of the circumstances connected with the auditor's ceasing to hold office, unless the auditor considers that there are no circumstances in connection with the cessation of office that need to be brought to the attention of members or creditors of the company.

(2) An auditor of an unquoted company who considers that there are no circumstances in connection with the auditor's ceasing to hold office that need to be brought to the attention of members or creditors of the company shall lodge at the company registered office a statement to that effect.

(3) An auditor of a quoted company who, for any reason ceases to hold office, shall lodge at the company's registered office a statement of the circumstances connected with the cessation of office.

(4) The auditor shall lodge the statement—

(a) in the case of resignation — together with the notice of resignation;

(b) in the case of failure to seek re-appointment — not less than fourteen days before the deadline for next appointing an auditor; and

(c) in any other case — not later than the end of the period of fourteen days from and including the date on which the auditor ceases to hold office.

(5) A person who, on ceasing to hold office as auditor, fails to comply with a requirement of this section commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(6) In proceedings for such an offence, it is a defence for the person charged with the offence to establish on a balance of probabilities that the person took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

749. Company's duties in relation to statement

(1) This section applies in respect of a statement lodged under section 748 that states the circumstances in which an auditor of a company ceased to hold office.

(2) Within fourteen days after the statement was lodged with it, the company shall either—

(a) send a copy of it to every person who, in accordance with section 662 is entitled to be sent copies of the company's financial statement; or

(b) apply to the Court for an order under subsection (4).

(3) The auditor is entitled to be served with a copy of such an application and to be heard at the hearing of the application by the Court.

(4) On the hearing of an application made under subsection (2)(b), the Court, if satisfied that the representations of the auditor contain defamatory matter-

(a) shall make an order directing that copies of the statement need not be sent out; and

(b) may further order the company's costs on the application to be paid in whole or in part by the auditor, even if not a party to the application.

(5) If the Court has made an order under subsection (4)(a), the company shall, within fourteen days after the date on which the order was made, send to the persons referred to in subsection (2)(a) a statement setting out the effect of the order.

(6) If no such order is made the company shall send copies of the statement to the persons referred to in subsection (2)(a) within fourteen days after the date of the Court's decision or, if the proceedings are discontinued, the date on which the proceedings are discontinued.

(7) If the company fails to comply with a requirement of this section, the company, and each officer of the company who is in default commit an offence and on conviction are each liable to a fine not exceeding one million shillings.

750. Auditor to lodge copy of statement with Registrar

(1) Unless within twenty-one days from and including the day on which the auditor lodged a statement in accordance with section 748 the auditor receives notice of an application to the Court under section 749, the auditor shall, within a further seven days, lodge a copy of the statement with the Registrar for registration.

(2) If an application to the Court is made under section 749 (company's duties in relation to statement) and the auditor subsequently receives notice under subsection (6) of that section, the auditor shall, within seven days after receiving the notice, lodge a copy of the statement with the Registrar for registration.

(3) An auditor who fails to comply with subsection (1) or (2) commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(4) In proceedings for an offence under subsection (3), it is a defence for the person charged with the offence to establish on a balance of probabilities that the person took all reasonable steps, and exercised all due diligence, to avoid the commission of the offence.

(5) 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.

751. Duty of auditor to notify appropriate audit authority

(1) An auditor who ceases to hold office before the end of the term for which the auditor was appointed shall notify the appropriate audit authority.

(2) The auditor shall state in the notice that the auditor has ceased to hold office, and shall enclose with, or attach to, it a copy of the statement lodged by the auditor at the company's registered office in accordance with section 748.

(3) If the statement so lodged is to the effect that the auditor considers that there are no circumstances arising from the auditor's ceasing to hold office that need to be brought to the attention of members or creditors of the company, the auditor shall enclose with, or attach to, the notice a statement of the reasons for the cessation of office.

(4) The auditor shall comply with the requirements of this section at the same time as the auditor lodges a statement at the registered office of the company in accordance with section 748.

(5) A person who, having ceased to hold office as auditor, fails to comply with a requirement of this section commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings.

(6) In proceedings for an offence under subsection (5), it is a defence for the person charged with the offence to establish on a balance of probabilities that the person took all reasonable steps and exercised all due diligence to comply with the relevant requirement.

752. Duty of company to notify appropriate audit authority if auditor ceases to hold office before end of auditor’s term

(1) If an auditor ceases to hold office before the end of the auditor’s term of office, the company shall notify the appropriate audit authority of that fact.

(2) The company shall include in the notice—

(a) a statement that the auditor has ceased to hold office; and

(b) enclose with, or attach to, the notice—

(i) a statement by the company of the reasons that gave rise to the cessation of office; or

(ii) if the copy of the statement lodged by the auditor at the registered office of the company in accordance with section 749 contains a statement of circumstances that gave rise to the cessation of office that need to be brought to the attention of members or creditors of the company—a copy of that statement.

(3) Within fourteen days after the date on which the auditor's statement was lodged at the company's registered office in accordance with section 748, the company shall give notice under this section in accordance with section 752.

(4) If the company fails to comply with a requirement of this section, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding one million shillings.

(5) If, after a company or any of its officers is convicted of an offence under subsection (4), the company continues to fail to comply with a requirement of this section, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding one hundred thousand shillings for each such offence.

753. Appropriate audit authority to notify prescribed account body of cessation of auditor's appointment

(1) As soon as practicable after receiving a notice under section 751 or 752, the appropriate audit authority—

(a) shall inform the Cabinet Secretary and the Institute of Certified Public Accountants of Kenya of that cessation of office; and

(b) may, if it considers appropriate to do so, forward to them a copy of the statement or statements that were enclosed with, or attached to the notice.

(2) If the appropriate audit authority is the Institute of Certified Public Accountants of Kenya, it is not necessary to comply with subsection (1) in relation to that body.

(3) If the Court has made an order under section 749(4) directing that copies of the statement need not be sent out by the company—

(a) section 701 (restrictions on disclosure of information obtained under compulsory powers); and

(b) section 702 (permitted disclosure of information obtained under compulsory powers), apply in relation to the copies sent under subsection (1) as they apply to information obtained under

754. Meaning of "appropriate audit authority" for purpose of this Division

In this Division, "appropriate audit authority" means such body as is designated by the regulations as the appropriate audit authority for the purposes of this Division.

755. Effect of casual vacancies

In an auditor of a company ceases to hold office for any reason, any surviving or continuing auditor or auditors may continue to act in relation to the company.

Division 5 — Quoted companies: right of members to raise audit concerns at accounts meeting

756. Members' power to request website publication of audit concerns

(1) If members of a quoted company propose to raise at the next general meeting of the company at which a financial statement of the company is to be presented a matter relating to—

(a) the audit of the financial statement (including the auditor's report and the conduct of the audit); or

(b) any circumstances connected with an auditor of the company ceasing to hold office since the previous general meeting at which a financial statement of the company was presented,

they may require the company to publish on a website a statement giving details of the matter to be raised.

(2) A company is required to publish the statement on the relevant 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 amount per member of at least one thousand shillings.

(3) In subsection (2), a "relevant right to vote" in relation to a quoted company means a right to vote at a general meeting of the company.

(4) A request under this section may be sent to the company in hard copy or electronic form, but is effective only if it—

(a) identifies the auditor's statement to which it relates;

(b) is authenticated by the person or persons making it; and

(c) is delivered to the company at least seven days before the general meeting to which it relates.

(5) The company or any other person who claims to be aggrieved may apply to the Court for an order declaring that the right conferred by this section is being abused.

(6) If, on the hearing of an application made under subsection (5), the Court is satisfied that the applicant's claim is substantiated, it may make the order sought and, if it does so, the company is not required to place on a website a statement under this section.

(7) The Court may order the members requesting website publication to pay the whole or part of the company's costs on the hearing of such an application, and may do so even if those members are not parties to the application.

757. Requirements as to website availability

(1) A quoted company to which a request under section 756 is made shall make the information to be published for the purposes of that section available on a website that—

(a) is maintained by or on behalf of the company; and

(b) identifies the company.

(2) A quoted company is not entitled to make access to the information on its website, or the ability to obtain a hard copy of the information from the website, conditional on the payment of a fee or compliance with some other requirement.

(3) The company shall ensure that the statement to be published on a website is—

(a) made available on the website within three working days after the company is required to publish it on a website; and

(b) kept available on the website 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) is to 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.

758. Website publication: company's supplementary duties

(1) A quoted company shall, in the notice that it gives of its financial statement meeting, draw attention to—

(a) the possibility of a statement being placed on a website in accordance with requests of members under section 756; and

(b) the effect of subsections (2), (3) and (4).

(2) A quoted company is not entitled to require the members requesting website publication to pay its expenses in complying with section 756 or 757.

(3) A quoted company that is required to place a statement on a website under section 756 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 that can be dealt with at the financial statements meeting includes any statement that the company has been required under section 756 to publish on a website.

759. Website publication: offences

(1) If a quoted company fails to comply with a requirement of section 757(1) or (3) or 758(1) or (3), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(2) If, after a quoted company or any of its officers is convicted of an offence under subsection (1), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

760. Meaning of "quoted company" for purposes of sections 757 to 760

A company is a quoted company for the purposes of this Division only if it is a quoted company for the purpose of section 627 in relation to the financial year for which a financial statement of the company is to be presented at a general meeting of the company.

Division 6 — Auditors' liability

761. Provisions protecting auditors from liability to be void

(1) This section applies to any provision—

(a) for exempting an auditor of a company, to any extent, from liability that would otherwise be incurred by the auditor in connection with any negligence, default, breach of duty or breach of trust in relation to the company occurring when auditing the company's financial statement; 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 incurred by the auditor in connection with any negligence, default, breach of duty or breach of trust in relation to the company whose financial statement the auditor is or has been auditing.

(2) A provision of a kind referred to in subsection (1) is void, except as permitted by—

(a) section 762 (indemnity for costs of successfully defending proceedings); or

(b) sections 764 to 766 (liability limitation agreements).

(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.

762. Indemnity for costs of successfully defending proceedings

Section 761 does not prevent a company from indemnifying an auditor against liability incurred in defending proceedings, whether civil or criminal, in which judgement is given in the auditor’s favour or the auditor is acquitted.

763. Power of Court to grant relief in certain cases

(1) This section applies to the following persons—

(a) an officer of a company;

(b) a person employed by a company as an auditor. (whether or not the person is an officer of the company).

(2) If, in proceedings for negligence, default, breach of duty or breach of trust against a person to whom this section applies, it appears to the court hearing the proceedings that—

(a) the person is or may be liable but acted honestly and reasonably; and

(b) having regard to all the circumstances of the case (including those connected with the appointment of the person) the person ought fairly to be excused, the court may relieve the person from liability (wholly or in part) on such terms as it considers appropriate.

(3) A person to whom this section applies may apply to the court for relief if the person reasonably believes that a claim will or might be made against the person in respect of negligence, default, breach of duty or breach of trust.

(4) On hearing an application made under subsection (2), the court has the same power to grant relief as it would have had if it had been a court before which proceedings for negligence, default, breach of duty or breach of trust had been brought against the person.

764. Liability limitation agreements

(1) For the purposes of this Division, an agreement is a liability limitation agreement if it purports to limit the extent 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 auditing financial statements, of which the auditor may be guilty in relation to the company.

(2) Section 761 does not affect the validity of a liability limitation agreement that—

(a) complies with section 765; and

(b) is authorised by the members of the company.

(3) A liability limitation agreement is effective only to the extent provided by section 767.

765. Terms of liability limitation agreement

(1) A liability limitation agreement is not effective if it—

(a) purports to 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) does not specify the financial year in relation to which it relates.

(2) The regulations may—

(a) require liability limitation agreements to contain specified provisions or provisions of a specified description; or

(b) prohibit such agreements from containing specified provisions or provisions of a specified description.

(3) Subject to this section, it does not matter how a liability limitation agreement is framed.

(4) The limit on the amount of the auditor's liability need not be an amount of money, or a formula, specified in the agreement.

(5) Regulations made for the purpose of this section may include provisions to prevent adverse effects on competition.

766. Authorisation of agreement by members of the company

(1) A liability limitation agreement is authorised by the members of the company only if it has been authorised under this section and that authorisation has not been withdrawn.

(2) A private company may authorise a liability limitation agreement between it and its auditor—

(a) before the company enters into the agreement – by passing a resolution waiving the need for approval;

(b) before the company enters into the agreement – by passing a resolution approving the agreement's principal terms; or

(c) after the company enters into the agreement – by passing a resolution approving the agreement.

(3) A public company may authorise a liability limitation agreement between it and its auditor—

(a) before the company enters into the agreement – by passing a resolution in general meeting approving the agreement's principal terms; or

(b) after the company enters into the agreement — by passing a resolution in general meeting approving the agreement.

(4) The resolution required under this section is an ordinary resolution unless a provision of the company's articles requires a higher majority or unanimity.

(5) For the purposes of this section, 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) The company may withdraw an authorisation by 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 despite anything in the agreement to the contrary.

767. Effect of liability limitation agreement

(1) A liability limitation agreement is not effective to limit the auditor’s liability to less than such amount as is fair and reasonable having regard 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) has effect as if it limited the liability to that amount.

(3) In determining what is fair and reasonable no account is to be taken of—

(a) matters arising after the loss or damage 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.

768. Company to disclose liability limitation agreement

(1) A company that has entered into a limited liability agreement shall disclose details of the agreement—

(a) in the case of a company that prepares an individual financial statement—in notes to the statement;

(b) in the case of a company that prepares a group financial statement—in a manner prescribed by the regulations for the purposes of this section; or

(c) in the case of either kind of company—in the directors' report.

(2) If a company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding one million shillings.

Division 7 — Supplementary provisions

769. Quoted Companies: audit committee

(1) The directors of a quoted company shall ensure that the company has an audit committee appointed by the shareholders of a size and capability appropriate for the business conducted by the company.

(2) If a quoted company is a subsidiary of another quoted company, the other quoted company may assume responsibility for performing the obligation imposed on the subsidiary by subsection (1).

(3) If the directors of a quoted company fail to comply with subsection (1), each of the directors in default commits an offence and on conviction is liable to a fine not exceeding one million shillings.

770. Quoted companies: corporate governance

(1) The audit committee of a quoted company shall—

(a) set out the corporate governance principles that are appropriate for the nature and scope of the company's business;

(b) establish policies and strategies for achieving them; and

(c) annually assess the extent to which the company has observed those policies and strategies.

(2) The audit committee of the quoted company is responsible for—

(a) organising the company to promote the effective and prudent management of the company and the 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, and other transactions or practices of a non-arm's length nature.

(3) The audit committee of a quoted company is also responsible for—

(a) overseeing the operations of the 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 any other written law;

(b) providing the directors with recommendations, for their review and approval, on the objectives, strategy, business plans and major policies that are to govern the operation of the company; and

(c) providing the directors with comprehensive, relevant and timely information that will enable the directors to review the company's business objectives, business strategy and policies, and to hold senior management accountable for the company's performance.

Part XXVIII – STATUTORY AUDITORS

771. Purpose of Part XXVIII

The purpose of this Part is to ensure—

(a) persons who are properly supervised and appropriately qualified are appointed as statutory auditors; and

(b) that audits by persons so appointed are carried out properly, with integrity and with a proper degree of independence.

772. Eligibility for appointment as a statutory auditor

A natural person or firm is eligible for appointment as an auditor only if the person, or each partners of the firm—

(a) is the holder of a practicing certificate issued under section 21 of the Accountants Act (No. 15 of 2008); and

(b) has a valid annual license issued under section 22 of the Accountants Act.

773. Ineligible person prohibited from acting as a statutory auditor

(1) A person shall not act as a statutory auditor of a company, or of a body of a kind prescribed by the regulations for the purposes of this section, unless the person is eligible for appointment as such.

(2) A statutory auditor who, at any time during the auditor's term of office, becomes ineligible for appointment as such, shall immediately—

(a) resign from office; and

(b) give notice to the audited person that the auditor has resigned as a result of having become 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 subsection (2)(b), commits an offence and is liable on conviction to a fine not exceeding one million shillings and to imprisonment for a term not exceeding two years, or to both.

(4) A person who, having been convicted of an offence under subsection (3)(a), continues to act as a statutory auditor in contravention of subsection (1) commits a further offence.

(5) A person who, having been convicted of an offence under subsection (3)(b), continues to fail to give the notice as required under subsection (2)(b) commits a further offence.

(6) A person who is found guilty of an offence under subsection (4) or (5) is liable on conviction to a fine not exceeding one million shillings.

774. Statutory auditor to be independent

(1) A person may not act as statutory auditor of an audited company if the person is—

(a) an officer or employee of the audited company;

(b) a partner or employee of the audited company, or a partnership of which such a person is a partner;

(c) an officer or employee of an associated undertaking of the audited company; or

(d) a partner or employee of the audited company or a partnership of which such a person is a partner.

(2) Subsection (1) applies if there exists between—

(a) the person or the person's associate; and

(b) the audited company or an associated undertaking of the audited company, a connection of a description prescribed by the regulations for the purposes of this section.

(3) An auditor of an audited company is not to be regarded as an officer or employee of the company for the purposes of subsection (1).

(4) In this section, "associated undertaking", in relation to an audited company, means—

(a) a parent undertaking or subsidiary undertaking of the audited company; or

(b) a subsidiary undertaking of a parent undertaking of the audited company.

(5) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one million shillings.

(6) If, after being convicted of an offence under subsection (5), a person continues to act in contravention of subsection (1), the person commits a further offence on each day on which the offence continues after the date of conviction and on conviction is liable to fine not exceeding one hundred thousand shillings for each such offence.

775. Effect of lack of independence of statutory auditor

(1) If, at any time during the statutory auditor's term of office, the auditor becomes prohibited from acting as such by section 774(1), the auditor shall immediately—

(a) resign from office; and

(b) give notice to the audited person that the auditor has resigned because of lack of independence.

(2) A person who—

(a) acts as a statutory auditor in contravention of section 774(1);

(b) fails to give the notice referred to 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 774(1); or

(d) has been convicted of an offence under paragraph (b) and 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 or to imprisonment for a term not exceeding two years, or to both.

(3) In proceedings against a person for an offence under this section, it is a defence to show that the defendant did not know and had no reason to believe that the defendant was, or had become, prohibited from acting as statutory auditor of the audited person by section 774(1).

776. Effect of appointment of a partnership as statutory auditor

(1) If a partnership is appointed as statutory auditor of an audited person, the appointment is, unless a contrary intention appears, an appointment of the partnership as such and not of the partners.

(2) If the partnership ceases, the appointment is to be treated as extending to—

(a) any appropriate partnership that 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 the partnership or other person succeeds to the whole or substantially the whole of the business of the former partnership.

(4) If 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 774(1) from acting as a statutory auditor of the audited person.

777. Appropriate qualifications for appointment as a statutory auditor.

A person holds an appropriate qualification for the purposes of this Part if the person holds a practising certificate issued under section 21 of the Accountants Act (No. 15 of 2008).

778. Power of Cabinet Secretary to recognise qualifications of foreign auditors for purposes of this Act

(1) The Cabinet Secretary may, on the recommendation of the Institute of Certified Public Accountants of Kenya, by notice published in the Gazette, declare that persons of the following classes are to be recognised as being holders of an approved foreign qualification for the purposes of this Act—

(a) persons who are qualified to audit company financial statements of accounts under the law of a specified foreign country;

(b) persons who hold a specified professional qualification in accountancy obtained in a specified foreign country.

(2) A declaration under subsection (1) may impose special requirements that persons of a class specified in paragraph (b) of that subsection have to comply with.

(3) The Cabinet Secretary may make a declaration under subsection (1) in relation to persons referred to in paragraph (a) of that subsection only if satisfied—

(a) that their qualifications to audit company financial statements under the law of the foreign country concerned are sufficient to provide an assurance of professional competence equivalent to that required for statutory auditors; and

(b) that persons who are, or are eligible to be, appointed as a statutory auditors will be, or are likely to be, recognised as persons qualified to audit company financial statements under the law of that country.

(4) The Cabinet Secretary may make a declaration under subsection (1) in relation to persons referred to in paragraph (b) of that subsection only if satisfied—

(a) that the specified professional qualification in accountancy obtained in the foreign country concerned, together with the requirements (if any) to be imposed under subsection (2), provide an assurance of professional competence equivalent to that required for statutory auditors; and

(b) that the qualifications of holders of practising certificates issued under section 21 of the Accountants Act will be, or are likely to be, recognised by the competent authority established under a corresponding law of that country corresponding to the Registration Committee established under section 13 of that Act.

(5) The Cabinet Secretary may, by notice published in the *Gazette*, direct that persons holding an approved foreign qualification are to be treated as holding an appropriate qualification only if they hold such additional educational qualifications as may be specified in the direction for the purpose of ensuring that they have an adequate knowledge of the law and practice in Kenya relevant to auditing financial statements.

(6) The Cabinet Secretary may give different directions in relation to different approved foreign qualifications.

(7) After having taken into account the requirements specified in subsections (3) and (4), the Cabinet Secretary may, by notice published in the *Gazette*, withdraw a declaration made under subsection (1) in relation to—

(a) persons becoming qualified to audit financial statements under the law of the country after such date as is specified in the notice; or

(b) persons obtaining the specified professional qualification after such date as is so specified.

(8) After taking into account the requirements specified in subsections (3) and (4), the Cabinet Secretary may, by notice published in the Gazette, vary or revoke a requirement specified under subsection (2) from such date as is specified in the notice.

(9) The Cabinet Secretary may, by notice published in the Gazette, vary or revoke a direction under subsection (5) if of the opinion that it is no longer appropriate from such date as is specified in the notice.

779. Cabinet Secretary's power to require eligible person to provide certain information

(1) The Cabinet Secretary may, by notice, require a person eligible for appointment as a statutory auditor to provide such information as that Secretary may reasonably require for the purposes of this Part.

(2) The Cabinet Secretary may require information given under this section to be provided in a specified form, or verified in a specified manner, within a specified period.

(3) A person who fails to comply with a notice under this section within the specified period, or within such extended period as the Cabinet Secretary may allow, ceases to be eligible for appointment as a statutory auditor.

(4) A person who, in purported compliance with a notice given under subsection (1), provides information that the person knows, or ought reasonably to know, is false or misleading commits an offence and on conviction is liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.

Part XXIX – PROTECTION OF MEMBERS AGAINST OPPRESSIVE CONDUCT AND UNFAIR PREJUDICE

780. Application to Court by company member for order under section 796

(1) A member of a company may apply to the Court by application for an order under section 782 on the ground—

(a) that the company's affairs are being or have been conducted in a manner that is oppressive or is unfairly prejudicial to the interests of members generally or of some part of its members (including the applicant); or

(b) that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be oppressive or so prejudicial.

(2) In this section, "member", in relation to a company, includes a person who is not a member of the company but is a person to whom shares of the company—

(a) have been transferred; or

(b) have been transmitted by operation of law.

781. Application to Court by Attorney General for order under section 783

(1) This section applies to a company in respect of which—

(a) the Attorney General has received an inspector's report under Part XXX;

(b) the Attorney General has exercised the powers under section 1000 or 1001;

(c) the Capital Markets Authority or an officer authorised by it has exercised a power conferred by section 13 or 13A of the Capital Markets Act (Cap. 485A) to obtain information or to carry out an inquiry; or

(d) the Capital Markets Authority has received a report from an officer authorised to carry out an inquiry under section 13A of that Act.

(2) The Attorney General may make an application for an order under section 782 if satisfied—

(a) that the affairs of a company to which this section applies are being, or have been, conducted in a manner that is oppressive or is unfairly prejudicial to the interests of its members generally or to a section of its members; or

(b) that an actual or proposed act or omission of such a company (including an act or omission on its behalf) is or would be oppressive or so prejudicial.

(3) The Attorney General may make such an application in addition to, or instead of, making an application for the liquidation of the company.

782. Power of Court to make orders for protection of members against oppressive conduct and unfair prejudice

(1) If, on the hearing of an application made in relation to a company under section 780 or 781, the Court finds the grounds on which the application is made to be substantiated, it may make such orders in respect of the company as it considers appropriate for giving relief in respect of the matters complained of.

(2) In making such an order, the Court may do all or any of the following:

(a) regulate the conduct of the affairs of the company in the future;

(b) require the company—

(i) to refrain from doing or continuing an act complained of; or

(ii) to do an act that the applicant has complained it has omitted to do;

(c) authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the Court directs;

(d) require the company not to make any, or any specified, alterations in its articles without the leave of the Court;

(e) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly.

(3) Subsection (2) does not limit the general effect of subsection (1).

(4) The company is entitled to be served with a copy of the application and to appear and be heard as respondent at the hearing of the application.

783. Copy of order affecting company's constitution to be lodged with Registrar

(1) If an order of the Court made under section 782—

(a) alters the company's constitution; or

(b) authorises or directs the company to make any, or any specified, alterations to its constitution, the company shall, within fourteen days after the making of the order or such extended period as the Court may allow, lodge for registration with the Registrar a copy of the order.

(2) If a company fails to comply with subsection (1), the company, and each officer of the company who is in default, commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

(3) If, after a company or any of its officers has been convicted of an offence under subsection (2), the company continues to fail to lodge the copy referred to in subsection (1), the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

784. Supplementary provisions applicable if company's constitution altered

(1) This section applies to an order made by the Court under section 782 that alters a company's constitution.

(2) If the order amends—

(a) a company's articles; or

(b) any resolution or agreement to which the provisions of Part III relating to resolutions or agreements affecting a company's constitution apply, the company shall attach to, or enclose with, the copy of the order lodged with the Registrar by the company under section 783, a copy of the company's articles, or the relevant resolution, as amended.

(3) The company shall attach to, or enclose with, every copy of a company's articles issued by the company after the order is made a copy of the order, unless the effect of the order has been incorporated into the articles by amendment.

(4) If a company fails to comply with subsection (2) or (3), the company, and each officer of the company who is in default, commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

(5) If, after a company or any of its officers has been convicted of an offence under subsection (4), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

Part XXX – COMPANY INVESTIGATIONS

Division 1 — Introductory

785. Interpretation: Part XXX

(1) In this Part—

(a) a reference to an officer or agent includes a former officer or agent;

(b) "**agent**", in relation to a company or other body corporate, includes a banker or advocate of the company or other body corporate, and any person employed by the company or other body corporate as an auditor, whether the person is or is not an officer of the company or other body corporate;

(c) "**member**" (of a company) includes any person who is not a member of the company but to whom shares in the company have been transferred or transmitted by operation of law;

(d) "**securities**", in relation to a company, means shares or debentures of the company or any other securities of a class prescribed by the regulations for the purposes of this Part.

(2) For the purposes of this Part, a company whose affairs are under investigation under this Part is related to another body corporate if—

(a) it is, or has at any relevant time been, the company's subsidiary or holding company; or

(b) it is a subsidiary of its holding company or a holding company of its subsidiary.

Division 2 — Appointment of inspectors by the Court

786. Investigation of company's affairs on application of members

(1) The Court may appoint one or more competent inspectors to investigate the affairs of a company and to report on those affairs in such manner as the Court directs—

(a) in the case of a company having a share capital — on the application either of—

(i) not fewer than two hundred members; or

(ii) members holding not less than one-tenth of the nominal value of the company's share capital; or

(b) in the case of a company not having a share capital—on the application of not less than one-fifth in number of the members of the company.

(2) The Court may decline to proceed with the application unless the applicants produce such evidence as the Court may require for the purpose of showing that the applicants have good reason for requiring the investigation.

(3) Before appointing an inspector, the Court may require the applicants to give security of an amount not exceeding five hundred thousand shillings as contribution towards meeting the costs of the investigation.

787. Investigation of company's affairs in other cases

(1) The Court shall appoint one or more competent inspectors to investigate the affairs of a company and to report on those affairs 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.

(2) The Court may also appoint one or more competent inspectors to investigate the affairs of a company and to report on its affairs in such manner as the Court directs if it appears to the Court on a report from the Attorney General that there are circumstances suggesting—

(a) that the company's business is being conducted—

(i) with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose; or

(ii) in a manner oppressive to its members or to any part of them;

(b) that the company was formed for a fraudulent or unlawful purpose;

(c) that persons responsible for the company's formation or the management of its affairs are or have been guilty of fraud, misfeasance or other misconduct towards it or towards its members;

(d) that the company's members have not been given all the information with respect to its affairs that they might reasonably expect to have been given; or

(e) that it would be in the public interest to do so.

788. Power of inspectors to carry investigation into affairs of related companies

An inspector appointed to investigate the affairs of a company may also investigate the affairs of another body corporate that is related to the company if the inspector considers that the results of the investigation are or could be relevant to the investigation of the affairs of the company.

789. General powers of Court to give directions to inspector

(1) In conducting an investigation under this Division, an inspector shall comply with any direction given by the Court under this section.

(2) The Court may give an inspector appointed under section 786 or 787 a direction—

(a) about the subject matter of the investigation (whether by reference to a specified area of a company's operation, a specified transaction, a period of time or otherwise); or

(b) that requires the inspector to take, or not to take, specified action in the investigation.

(3) The Court may give an inspector appointed under section 786 or 787 a direction requiring the inspector to ensure that a specified report under section 797—

(a) includes the inspector's views on any specified matter;

(b) does not include any reference to a specified matter;

(c) is made in a specified form or manner; or

(d) is made by a specified date.

(4) A direction under this section—

(a) may be given when an inspector is appointed;

(b) may vary or revoke a direction previously given; and

(c) may be given at the request of an inspector.

(5) In this section—

(a) a reference to an inspector's investigation includes any investigation the inspector undertakes, or could undertake, under section 788; and

(b) "specified" means specified in a direction under this section.

790. Power of Court to direct conduct of investigation under this Division to be terminated

(1) The Court may direct an inspector appointed under section 877(1) to take no further action in conducting the investigation if—

(a) matters have come to light in the course of the inspector's investigation that suggest that a criminal offence has been committed; and

(b) those matters have been or are in the process of being referred to the Director of Public Prosecutions.

(2) If the Court gives a direction under this section, a direction already given to the inspector under section 798(1) to produce an interim report, any direction given to the inspector under section 789 in relation to such a report, ceases to have effect.

(4) If the Court gives a direction under this section, the inspector shall make a final report to the Court only if the Court directs the inspector to do so.

(5) An inspector shall comply with a direction given to the inspector under this section.

(6) In this section, a reference to an inspector's investigation includes an investigation that the inspector undertakes, or could undertake, under section 788.

791. Resignation and revocation of appointment of inspector appointed by the Court

(1) An inspector appointed under section 786 or 787 may resign by notice given to the Court.

(2) The Court may revoke the appointment of an inspector by notice given to the inspector.

792. Power of Court to appoint replacement inspector

(1) If an inspector appointed by the Court to conduct an investigation resigns or dies, or the inspector’s appointment is revoked by the Court, the Court may appoint an inspector to continue the investigation.

(2) An appointment under subsection (1) is, for the purposes of this Division (this section excepted), taken to be an appointment under the section under which the former inspector was appointed.

(3) Unless the Court has directed, or proposes to direct, the termination of the investigation, the Court shall exercise its power under subsection (1) so as to ensure that at least one inspector is able to continue the investigation.

(4) In this section, a reference to an investigation includes any investigation that the former inspector conducted under section 788.

793. Production of documents and evidence to inspector appointed by the Court

(1) Every officer and agent of a company in relation to which an inspector has been appointed under section 786 or 787 and, if the investigation extends to a body corporate related to the company, every officer and agent of the body corporate, shall—

(a) produce to the inspector all documents of or relating to the company or other body corporate that are in their custody or under their control;

(b) attend before the inspectors when required to do so; and

(c) otherwise give to the inspector all assistance in connection with the investigation which they are reasonably able to give.

(2) An inspector may examine on oath an officer or agent of the company or other body corporate in relation to its affairs, and may administer an oath accordingly.

(3) The inspector shall ensure that all proceedings of an examination conducted under this section are recorded in writing.

(4) On completing the examination of a person, the inspector shall invite the person examined to sign the record of the examination.

(5) The record of the examination is admissible as evidence in all relevant legal proceedings.

(6) 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.

(7) An inspector may make copies of a document produced under this section.

794. Obstruction of inspectors appointed by Court to be contempt of Court

(1) If an officer or agent of the company or other body corporate—

(a) refuses to produce to an inspector a document that the inspector has, under section 793, required the officer or agent to produce; or

(b) refuses to answer a question that is put to the officer or agent by an inspector under that section with respect to the affairs of the company or other body corporate, the inspector may make an application to the Court in relation to the refusal.

(2) On hearing an application made under subsection (1), the Court may, after considering any evidence that may be adduced against or on behalf of the alleged offender and considering any statement that may be offered in defence, punish the offender as if the offender had been found guilty of contempt of the Court.

795. Power of inspector appointed by Court to apply to Court to conduct examination of person

(1) If an inspector appointed under section 786 or 787 believes it necessary for the purpose of the investigation that a person whom the inspector has no power to examine on oath should be so examined, the inspector may apply to the Court to conduct an examination of the person.

(2) After hearing an application made under subsection (1), the Court may order the person concerned to attend and be examined on oath before it on any matter relevant to the investigation.

(3) At any such examination—

(a) the inspector may participate either personally or by an advocate appointed by the inspector for the purpose;

(b) the Court may ask the person examined to answer such questions as it considers relevant to the investigation; and

(c) the person examined shall answer all questions as the Court may ask.

(4) A person examined under subsection (2) is entitled to be represented by an advocate.

(5) The Court may award costs to a person examined under this section and, if it does so, the costs form part of the expenses of the investigation.

796. Power of Court to obtain information from former inspectors etc.

(1) This section applies to a person who has been appointed as an inspector under section 786 or 787, but—

(a) who has since resigned; or

(b) whose appointment has since been revoked.

(2) This section also applies to an inspector to whom the Court has given a direction under section 803.

(3) The Court may direct a person to whom this section applies to produce documents obtained or generated by that person during the course of the investigation to—

(a) the Court; or

(b) an inspector appointed under section 786 or 789.

(4) The power under subsection (3) 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.

(5) The Court may take copies of a document produced in accordance with this section.

(6) The Court may direct a person to whom this section applies to inform the Court of any matters that came to the person's knowledge as a result of the person's investigation.

(7) A person shall comply with a direction given to the person by the Court under this section.

(8) In this section, a reference to the investigation of a former inspector or inspector includes an investigation the inspector conducted under section 788.

797. Inspector appointed by the Court to submit reports to the Court

(1) An inspector appointed by the Court—

(a) may (and if so directed by the Court, shall) make interim reports to the Court about the progress of the investigation; and

(b) as soon as practicable after the conclusion of the investigation, shall make a final report of the investigation to the Court.

(2) The inspector shall submit the reports to the Court in writing or, if the Court so directs, in the form of printed documents.

(3) If the investigation extends to the affairs of a body corporate that is related to the company in relation to which the inspector was appointed, the inspector shall include in the reports details of the investigation into those affairs.

(4) As soon as practicable after an interim report, or the final report, is submitted to the Court, it shall —

(a) submit a copy of the report to—

(i) the Attorney General; and

(ii) the company concerned and, if the report also deals with the affairs of a body corporate related to that company, to that body corporate;

(b) on being requested to do so and on payment of the prescribed fee (if any)—send a copy of the report to —

(i) any member of that company or body corporate;

(ii) the auditors of that company or body corporate;

(iii) any person whose conduct is referred to in the report; and

(iv) any other person whose financial interests appear to the Court to be affected by the matters dealt with in the report (whether as a creditor of the company or body corporate, or otherwise); and

(c) if the inspector was appointed as a result of an application made by persons other than the Attorney General—send a copy of the report to the applicants.

(5) If a report submitted to it under this section is not already printed, the Court may arrange for the report to be printed.

(6) The Court may also arrange for the report to be published, or notified, in such publications (including a website) as it may direct.

798. Power of Director of Public Prosecutions to bring prosecution for offences disclosed by inspectors' report

(1) If it appears to the Court that a person has, in relation to the company or to any other body corporate whose affairs have been investigated committed an offence for which the person is criminally liable, the Court shall submit a copy of the report to the Director of Public Prosecutions.

(2) If, on receiving a copy of the report from the Court, the Director of Public Prosecutions is satisfied that the report contains evidence of the commission of an offence and that alleged offender is or can be identified, the Director shall prosecute the person alleged to have committed the offence.

(3) It is the duty of all officers and agents of the company, past and present (other than the defendant in the proceedings) to assist the Director of Public Prosecutions in connection with a prosecution brought under subsection (2).

799. Expenses of investigation of company's affairs

(1) The expenses of and incidental to an investigation by inspectors appointed by the Court are in the first instance to be met by the Attorney General, but the persons referred to in subsections (2) to (6) are liable to reimburse the Attorney General to the extent specified in those subsections.

(2) The court convicting a person on a prosecution brought as a result of an investigation under this Division may in the same proceedings order the person to meet the expenses of the investigation to such extent as may be specified in the order.

(3) If a court orders a person to pay the whole or any part of the costs of proceedings brought under section 814, it may in the same proceedings order the person to meet the expenses of the investigation to such extent as may be specified in the order.

(4) A body corporate in whose name proceedings are brought under section 814 is liable to the amount or value of any money or property recovered by it as a result of those proceedings. An amount for which a body corporate is liable under this subsection is a first charge on the money or property recovered.

(5) If the inspectors were appointed otherwise than on the application of the Attorney General, any body corporate dealt with in the inspectors' report is liable unless it was the applicant for the investigation, and except to the extent that the Attorney General otherwise directs.

(6) If the inspectors were appointed under section 786, the applicants for the investigation are liable to such extent (if any) as the Attorney General may direct.

(7) An inspector appointed otherwise than on the application of the Attorney General may (and shall if the Attorney General so directs) include in the inspector's report a recommendation as to the directions (if any) that the inspector considers appropriate, in the light of the inspector's investigation, to be given under subsection (5) or (6).

(8) For purposes of this section, costs or expenses incurred by the Attorney General in or in connection with proceedings brought under section 814 (including expenses incurred under subsection (2) of that section) are to be treated as expenses of the investigation giving rise to the proceedings.

(9) A liability to reimburse the Attorney General imposed by subsections (2) to (4) is (subject to satisfaction of the Attorney General's right to reimbursement) a liability also to indemnify all persons against liability under subsections (5) and (6).

(10) A liability imposed because of subsection (2) or (3) is (subject to satisfaction of the Attorney General's right to reimbursement) a liability also to indemnify all persons against liability under subsection (4).

(11) A person liable under subsections (2) to (4) is entitled to a contribution from every other person liable under the same subsection, according to the amount of their respective liabilities under it

(12) Expenses required to be met by the Attorney General under this section are, so far as they are not recovered under it, payable from money provided by Parliament.

Division 3 — Powers of Attorney General with respect to investigation of company ownership

800. Appointment of inspector to investigate ownership of company

(1) If satisfied that there are reasonable grounds for doing so, the Attorney General shall appoint one or more competent inspectors to investigate and report on the membership of a 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) An application may be made to the Attorney General by members of a company for the appointment of one or more inspectors to conduct an investigation under this section with respect to particular securities of the company.

(3) If, on receiving an application made under subsection (2), the Attorney General is satisfied that the number of members making the application, 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 786, the Attorney General shall appoint one or more inspectors to conduct an investigation under this section with respect to particular securities of the company.

(4) The Attorney General may refuse to appoint an inspector or inspectors under subsection (3) if the applicants fail to provide sufficient security to meet the costs of the investigation.

(5) The Attorney General may refuse to appoint an inspector or inspectors under subsection (3) if satisfied that the application for their appointment is frivolous or vexatious.

(6) In making an appointment under this section, the Attorney General may define the scope of the investigation (whether with respect to the matter or the period to which it is to extend or otherwise) and may, in particular, limit the investigation to matters connected with particular securities.

(7) An inspector's appointment under this section may not exclude from the scope of the investigation a matter that the application seeks to have included in it unless the Attorney General decides on reasonable grounds that it would be unfair or unreasonable for the matter to be investigated.

(8) The Attorney General is not required to provide the company or any other person with a copy of a report by an inspector appointed under this section or with a complete copy of it if satisfied that reasonable grounds exist for not divulging the contents of the report or of parts of it.

(9) The Attorney General is required to meet the expenses of an investigation under subsection (1).

(10) The applicants are required to meet the expenses of an investigation under subsection (3) unless the Attorney General certifies that it is a case in which the Attorney General might properly have acted under subsection (1), in which case the expenses of the investigation are to be met by the Attorney General.

(11) Subject to the terms of an inspector's appointment, the inspector's powers extend to the investigation of circumstances suggesting the existence of an arrangement or understanding that, though not legally binding, is or was observed or likely to be observed in practice and that is relevant to the purposes of the investigation.

801. Power of inspector appointed by Attorney General to investigate ownership, etc. of related companies

An inspector appointed by the Attorney General may also investigate the ownership of another body corporate that is related to the company if the inspector considers that the results of the investigation are or could be relevant to the investigation relating to the company.

802. General powers of Attorney General to give directions to inspectors appointed by the Attorney General

(1) In conducting an investigation under this Division, an inspector shall comply with a direction given to the inspector by the Attorney-General under this section.

(2) The Attorney General may give an inspector appointed by the Attorney General a direction—

(a) about the subject matter of the investigation (whether by reference to a specified area of a company's operation, a specified transaction, a period of time or otherwise); or

(b) that requires the inspector to take, or not to take, specified action in the investigation.

(3) The Attorney General may give an inspector appointed by the Attorney General a direction requiring the inspector to ensure that a specified report under section 809—

(a) includes the inspector's views on a specified matter;

(b) does not include any reference to a specified matter;

(c) is made in a specified form or manner; or

(d) is made by a specified date.

(4) A direction under this section—

(a) may be given on an inspector's appointment;

(b) may vary or revoke a direction previously given; and

(c) may be given at the request of an inspector.

(5) In this section—

(a) a reference to an inspector’s investigation includes any investigation the inspector undertakes, or could undertake, under section 801; and

(b) "specified" means specified in a direction under this section.

803. Direction to terminate conduct of investigation under this Division

(1) The Attorney General may direct an inspector appointed by the Attorney General to conduct an investigation to take no further action in the investigation.

(2) The Attorney General may give a direction under this section to an inspector appointed by the Attorney General only on the grounds that it appears to the Attorney General that—

(a) matters have come to light in the course of the inspector's investigation that suggest that a criminal offence has been committed; and

(b) those matters have been referred to the appropriate prosecuting authority.

(3) If the Attorney General gives a direction under this section, any direction already given to the inspector under section 809(1) to produce an interim report, and any direction given to the inspector under section 802(3) in relation to such a report, cease to have effect.

(4) If the Attorney General gives a direction under this section, the inspector may make a final report to the Attorney General only if the direction was made on the grounds mentioned in subsection (2) and the Attorney General directs the inspector to make a final report to the Attorney General.

(5) An inspector shall comply with any direction given to the inspector under this section.

(6) In this section, a reference to an inspector's investigation includes any investigation the inspector undertakes, or could undertake, under section 801.

804. Resignation and revocation of appointment of inspectors appointed by the Attorney General

(1) An inspector appointed by the Attorney General may resign by notice given to the Attorney General.

(2) The Attorney General may revoke the appointment of an inspector by notice given to the inspector.

805. Appointment of replacement inspectors appointed by the Attorney General

(1) If an inspector appointed by the Attorney General resigns or dies or the inspector's appointment is revoked, the Attorney General may appoint one or more competent inspectors to continue the investigation.

(2) An appointment under subsection (1) is, for the purposes of this Division (apart from this section), taken to be an appointment under section 800.

(3) Unless the Attorney General has given or proposes to give a direction terminating the investigation, the Attorney General shall exercise the power under subsection (1) so as to ensure that at least one inspector is able to continue the investigation.

(4) In this section, a reference to an investigation includes an investigation that the former inspector conducted under section 801.

806. Production of documents and evidence on investigation under this Division

(1) This section applies to—

(a) each officer and agent of the company in relation to which the inspector has been appointed by the Attorney General and, if the investigation extends to a body corporate related to the company, each officer and agent of the body corporate;

(b) each person who is or has been, or whom the inspector reasonably believes to be or have been—

(i) financially interested in the success or failure or the apparent success or failure of the company or other body corporate; or

(ii) able to control or materially influence its policy; and

(c) any other person whom the inspector has reasonable cause to believe possesses information relevant to the investigation.

(2) Each person to whom this section applies shall—

(a) produce to the inspector all documents of or relating to the company or other body corporate that are in their custody or under their control;

(b) attend before the inspectors when required to do so; and

(c) otherwise give to the inspector all assistance in connection with the investigation which they are reasonably able to give.

(3) An inspector may examine on oath a person to whom this section applies in relation to the affairs of the company or other body corporate, and may administer an oath accordingly.

(4) The inspector shall ensure that all proceedings of an examination conducted under this section are recorded in writing.

(5) On completing the examination of a person, the inspector shall invite the person examined to sign the record of the examination.

(6) The record of the examination is admissible as evidence in all relevant legal proceedings.

(7) 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.

(8) An inspector may make copies of a document produced under this section.

807. Obstruction of inspectors appointed by the Attorney General to be contempt of Court

(1) If a person to whom section 802 applies—

(a) refuses to produce to an inspector a document that the inspector has, under that section, required the person to produce; or

(b) refuses to answer a question that is put to the person by an inspector under that section with respect to the affairs of the company or other body corporate concerned,

the inspector may make an application to the Court in relation to the refusal.

(2) On hearing an application made under subsection (1), the Court may, after considering any evidence that may be adduced against or on behalf of the alleged offender and considering any statement that may be offered in defence, punish the offender as if the offender had been found guilty of contempt of the Court.

808. Inspector appointed by the Attorney General may apply to Court to conduct examination of person

(1) If an inspector appointed by the Attorney General believes it necessary for the purpose of the investigation that a person whom the inspector has no power to examine on oath should be so examined, the inspector may apply to the Court to conduct an examination of the person.

(2) After hearing an application made under subsection (1), the Court may order the person concerned to attend and be examined on oath before it on any matter relevant to the investigation.

(3) At any such examination—

(a) the inspector may participate either personally or by an advocate appointed by the inspector for the purpose;

(b) the Court may ask the person examined to answer such questions as it considers relevant to the investigation; and

(c) the person examined shall answer all questions as the Court may ask.

(4) A person examined under subsection (2) is entitled to be represented by an advocate.

(5) The Court may award costs to a person examined under this section and, if it does so, the costs form part of the expenses of the investigation.

809. Inspector appointed by the Attorney General to submit reports to the Attorney General

(1) An inspector appointed by the Attorney General—

(a) may (and if so directed by the Attorney General, shall) make interim reports to the Attorney General about the progress of the investigation; and

(b) as soon as practicable after the conclusion of the investigation, shall make a final report to the Attorney General.

(2) The inspector shall submit the reports to the Attorney General in writing or, if the Attorney General so directs, in the form of printed documents.

(3) If the investigation extends to a body corporate that is related to the company in relation to which the inspector was appointed, the inspector shall include in the reports details of the investigation into those affairs.

(4) As soon as practicable after receiving an interim report, or the final report, the Attorney General shall—

(a) forward a copy of the report to the company concerned and, if the report refers to a body corporate related to that company, to that body corporate;

(b) on being requested to do so and on payment of the prescribed fee (if any) — forward a copy of the report to —

(i) any member of that company or body corporate;

(ii) the auditors of that company or body corporate;

(iii) any person whose conduct is referred to in the report; and

(iv) any other person whose financial interests appear to the Court to be affected by the matters dealt with in the report (whether as a creditor of the company or body corporate, or otherwise); and

(c) if the inspector was appointed as a result of an application made under section 800(2) — forward a copy of the report to the applicants.

(4) If a report submitted to it under this section is not already printed, the Attorney General may arrange for the report to be printed.

(5) The Attorney General may also arrange for the report to be published, or notified, in such publications (including a website) as it may direct.

810. Power of Director of Public Prosecutions to bring prosecution for offences disclosed by inspectors' report made under section 810

(1) If it appears to the Attorney General that a person has, in relation to the company or to any other body corporate whose affairs have been investigated under this Division, committed an offence for which the person is criminally liable, the Court shall forward a copy of the report to the Director of Public Prosecutions.

(2) If, on receiving a copy of the report from the Court, the Director of Public Prosecutions is satisfied that the report contains evidence of the commission of an offence and that alleged offender is or can be identified, the Director shall prosecute the person alleged to have committed the offence.

(3) It is the duty of all officers and agents of the company, past and present (other than the defendant in the proceedings) to assist the Director of Public Prosecutions in connection with a prosecution brought under subsection (2).

811. Power of Attorney General to require information about persons interested in securities of a company

(1) If satisfied that there is good reason to investigate the ownership of securities of a company and that is unnecessary to appoint an inspector for the purpose, the Attorney General may require any person whom the Attorney General reasonably believes—

(a) to be or to have been interested in those securities; or

(b) to act or to have acted in relation to those securities as the advocate or agent of someone interested in them,

to provide the Attorney General with any information that the person has, or can reasonably be expected to obtain, with respect to present and past interests in those securities, 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 securities.

(2) For the purposes of this section, a person has an interest in a security—

(a) if the person has a right to acquire or dispose of the security or any interest in it or to cast a vote at a meeting as a result of being its holder;

(b) if the person's consent is necessary for the exercise of rights of other persons interested in the security; or

(c) if other persons interested in the security can be required or are accustomed to exercise their rights in accordance with the person's instructions.

(3) A person who—

(a) fails to provide information required under this section; or

(b) in providing any such information makes a statement that the person knows to be false or misleading in a material respect, commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both.

812. Power of Attorney General to impose restrictions on securities

(1) On being satisfied, in relation to an investigation under either section 800 or 811, that there is difficulty in ascertaining the relevant facts about particular securities (whether issued or to be issued), the Attorney General may, by order, direct the securities to be subject to the restrictions imposed by Division 5.

(2) In making an order under subsection (1), the Attorney General may impose such conditions as the Attorney General considers appropriate.

(3) On being satisfied that an order made under subsection (1) could unfairly affect the rights of third parties in respect of securities, the Attorney General may, for the purpose of protecting those rights, direct that such acts by such persons or classes of persons, and for such purposes, as may be specified in the order, do not constitute a breach of the restrictions imposed by Division 5.

Division 4 — Supplementary provisions

813. Inspector's report to be evidence

(1) A copy of any report of an inspector appointed under this Part, certified by the Attorney General to be a true copy, is admissible in all legal proceedings as evidence of the opinion of the inspector in relation to any matter contained in the report.

(2) A document purporting to be a certificate signed by the Attorney General is presumed to be authentic and is admissible in all such legal proceedings unless the contrary is proved.

814. Power to bring civil proceedings on company's behalf

(1) If, from a report made under section 797 or 809, the Attorney General considers that proceedings ought, in the public interest, to be brought by a body corporate named in the report—

(a) for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion, formation or management of the body; or

(b) for the recovery of any property of the body that has been misapplied or wrongfully retained, the Attorney General may bring proceedings for that purpose in the name of the body.

(2) The Attorney General shall indemnify the body corporate against any costs or expenses incurred by it in or in connection with any proceedings brought under subsection (1).

815. Issue of warrants to enter and search premises

(1) On an application made on oath given by or on behalf of an inspector appointed by the Court or by the Attorney-General, a magistrate may issue a warrant under this section if satisfied that there are reasonable grounds for believing that on specified premises there are documents whose production has been required under this Part and that have not been produced in compliance with the requirement.

(2) A magistrate may also issue a warrant under this section if satisfied on information on oath given by or on behalf of such an inspector—

(a) that there are reasonable grounds for believing that an offence has been committed for which the penalty on conviction is imprisonment for a term of not less than two years, or a fine of not less than five hundred thousand shillings, and that there are on specified premises documents relating to whether the offence has been committed;

(b) that the inspector has power to require the production of the documents under this Part; and

(c) that there are reasonable grounds for believing that, if production was so required, the documents would not be produced but would be removed from the premises, hidden, tampered with or destroyed.

(3) A warrant under this section authorises the inspector named in it, together with any other person so named and any police officer, to do all or any of the following—

(a) to enter the premises specified in the information, using such force as is reasonably necessary for the purpose;

(b) to search the premises and take possession of any documents appearing to be documents of the kind referred to in subsection (1) or (2), or to take, in relation to any such documents, any other action that may appear to be necessary for preserving them or preventing interference with them;

(c) to take copies of any such documents;

(d) to require any person named in the warrant to provide an explanation of the documents or to state where they may be found.

(4) If, in the case of a warrant under subsection (2), the magistrate is satisfied on information on oath that there are reasonable grounds for believing that there are also on the premises other documents relevant to the investigation, the magistrate shall also authorise in the warrant the actions referred to in subsection (3) to be taken in relation to those documents.

(5) A warrant issued under this section has effect until the end of one month from and including the day on which it is issued.

(6) A document of which possession is taken under this section can be retained—

(a) for a period of three months; or

(b) if within that period proceedings to which the documents are relevant are commenced against any person for any criminal offence, until the conclusion of those proceedings.

(7) Any person who—

(a) intentionally obstructs the exercise of a power conferred by a warrant issued under this section; or

(b) fails without reasonable excuse to comply with a requirement imposed in accordance with subsection (3)(d), commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(8) For the purposes of section 818 and 834, documents obtained under this section are to be treated as if they had been obtained under the provision of this Part under which their production was or could have been required.

816. Protection in relation to certain disclosures: information provided to Attorney General

(1) A person who makes a relevant disclosure is not, only because of that disclosure, liable in proceedings relating to a breach of an obligation of confidence.

(2) A relevant disclosure is a disclosure that complies with the following conditions—

(a) it is made to the Court or the Cabinet Secretary otherwise than in compliance with a requirement made under this Part;

(b) it is of a kind that the person making the disclosure could be required to make under this Part;

(c) the person who makes the disclosure does so in good faith and in the reasonable belief that the disclosure is capable of assisting the Court or Attorney General for the purposes of the performance of their functions under this Part;

(d) the information disclosed is not more than is reasonably necessary for the purpose of assisting the Court or the Attorney General for the purposes of the performance of those functions;

(e) the disclosure is not one to which subsection (3) applies.

(3) A disclosure by a person is one to which this subsection applies—

(a) if the disclosure is prohibited by a written law, whenever enacted or made; or

(b) if—

(i) it is made by a person carrying on the business of banking or by a lawyer; and

(ii) it involves the disclosure of information in respect of which the person owes an obligation of confidence in that capacity.

817. Prohibition on disclosure of information obtained under section 812 or 817

(1) This section applies to information obtained—

(a) as a result of a requirement imposed under section 811; or

(b) by means of a relevant disclosure under section 816.

(2) Information to which this section applies may be disclosed only if it—

(a) is made to a person specified in the Fourth Schedule; or

(b) is a disclosure of a kind specified in the Fifth Schedule.

(3) A person who, without lawful excuse, discloses any information in contravention of this section commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding twelve months, or to both.

(4) Any information that can be lawfully disclosed to a person specified in the Fourth Schedule can also be disclosed to a public officer or employee over whom the person has 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.

(6) The Regulations may—

(a) amend the Fourth Schedule by adding further specified persons or substituting other specified persons for existing specified persons; and

(b) amend the Fifth Schedule by adding further kinds of disclosure, by omitting existing kinds of disclosure or by substituting other kinds of disclosure for existing kinds of disclosure.

818. Offence to destroy, mutilate or falsify company documents

(1) An officer of a company who—

(a) destroys, mutilates or falsifies, or is complicit in the destruction, mutilation or falsification of a document affecting, or relating to the company's property or affairs; or

(b) makes, or is complicit in making, a false entry in such a document, commits an offence.

(2) In proceedings for an offence under subsection (1), it is a defence for the person charged with the offence to prove on a balance of probabilities that the person had no intention to conceal the financial position of the company or to defeat the law.

(3) An officer of a company who—

(a) fraudulently parts with, alters, or makes an omission from, a document affecting or relating to the company's property or affair; or

(b) is complicit in fraudulently parting with, fraudulently altering, or fraudulently making an omission from, any such document, commits an offence.

(4) A person found guilty of an offence under this section is on conviction liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding seven years, or to both.

819. Offence to provide false information

A person who, in purported compliance with a requirement under section 811 to provide information—

(a) provides information that the person knows to be false in a material particular; or

(b) recklessly provides information that is false in a material particular commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both.

820. Disclosure of information by Attorney General or inspector

(1) This section applies to information obtained under Division 1 or 2.

(2) The Attorney General may—

(a) disclose information to which this section applies to any person to whom, or for any purpose for which, disclosure is permitted under section 817; or

(b) require or authorise an inspector appointed under this Part to disclose such information to any such person or for any such purpose.

(3) Information to which this section applies may also be disclosed by an inspector appointed under this Part—

(a) to another inspector appointed under this Part;

(b) a person authorised to exercise powers under section 811; or

(c) to a person who holds any other office prescribed by the regulations for the purposes of this section.

(4) Information that can be disclosed to a person because of subsection (3), can be disclosed to an officer or employee of that person.

(5) The Attorney General may disclose information obtained under section 811—

(a) to the company whose ownership was the subject of the investigation;

(b) to any member of the company;

(c) to any person whose conduct was investigated in the course of the investigation,;

(d) to the auditors of the company; or

(e) to any person whose financial interests appear to the Attorney General to be affected by matters covered by the investigation.

821. Certain information protected from disclosure

(1) Nothing in this Part compels a person to disclose to the Attorney General or to an inspector appointed under this Part information in respect of which in an action in the Court a claim to legal professional privilege could be maintained.

(2) Except as provided by subsection (3), nothing in section 793, 805 or 811 requires a bank to disclose information, or produce documents, in respect of which the bank owes an obligation of confidentiality as a result of carrying on business of banking unless—

(a) the person to whom the obligation of confidentiality is owed is the company or other body corporate under investigation;

(b) the person to whom the obligation of confidentiality is owed consents to the disclosure or production; or

(c) the making of the requirement is authorised by the Attorney General.

(3) Subsection (2) does not apply if the bank concerned is the company or other body corporate under investigation under this Part.

(4) Nothing in this Part—

(a) compels a person to produce a document or to disclose information in respect of which in an action in the Court a claim to legal professional privilege could be maintained; or

(b) authorises the taking of possession of any such document that is in the person's possession.

(5) The Attorney General may, under section 812, require, or authorise a person to require—

(a) a bank or an officer or employee of a bank to produce a document relating to the affairs of a customer of the bank; or

(b) the bank or any such officer or employee to disclose information relating to those affairs, only if a condition specified in subsection (6) is satisfied.

(6) The following are the conditions referred to in subsection (5)—

(a) the Attorney General considers it is necessary to impose the requirement or to give the authorisation for the purpose of investigating the affairs of the bank;

(b) the customer is a person on whom a requirement has been imposed under section 811.

(7) Despite subsections (1), (2) and (4), a person who is an advocate may be compelled to disclose the name and address of a client.

822. Answers to questions put by inspector during examination admissible in legal proceedings as evidence

(1) An answer given by a person to a question put to the person by the inspector for the purposes of an investigation conducted under this Part can be used in evidence in legal proceedings against the person.

(2) However, in criminal proceedings in which that person is charged with an offence to which this subsection applies —

(a) no evidence relating to the answer may be adduced; and

(b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(3) Subsection (2) applies to any offence other than—

(a) an offence (if any) that is created by the regulations for the purposes of this section; or

(b) an offence under—

(i) section 108 of the Penal Code (perjury and subornation of perjury); or

(ii) section 114 of that Code (false swearing).

823. Application of this Part to foreign companies

(1) This Part applies to a foreign company that is carrying on business, or has at any time carried on business, in Kenya except provided by subsection (2).

(2) Section 787 and section 800 to 811 do not apply to a foreign company referred to in subsection (1).

(3) The other provisions of this Part apply to a foreign company referred to in subsection (1) subject to such modifications (if any) as may be specified in the regulations.

824. Offences against this Part committed by bodies corporate

(1) If an offence under this Part is committed by a body corporate, each officer of the body who is in default also commits an offence and on conviction is liable to a fine not exceeding that which could be imposed on the body if it had been convicted of the offence.

(2) An officer of a body corporate may be prosecuted for an offence under subsection (1) whether or not the body is prosecuted for the related offence.

(3) For the purpose of this section, any person who purports to act as a director, manager or secretary of the body is taken to be an officer of the body.

Division 5 — Effect of orders imposing restrictions on disposal of company's securities

825. Consequence of order imposing restrictions

(1) The following restrictions apply to securities that are subject to an order made by the Attorney General under section 812 or an order of the Court made under 827—

(a) any transfer of the securities or, in the case of unissued shares, any transfer of the right to be issued with them, and any issue of them, is void;

(b) no voting rights are exercisable in respect of the securities;

(c) no further securities may be issued in respect of them or as a result of any offer made to their holder;

(d) except in a liquidation, no payment may be made of any money due from the company in respect of the securities (whether in respect of capital or otherwise).

(2) Subsection (1) is subject to any directions or conditions to the contrary specified in the order.

(3) If securities are subject to the restriction referred to in subsection (1)(a), an agreement to transfer the securities or, in the case of unissued shares, the right to be issued with them is void.

(4) Subsection (3) is subject to—

(a) the terms of any directions given or conditions imposed under section 812 or under section 827; or

(b) an agreement to transfer the securities on the making of an order for their transfer under section 827.

(5) If securities are subject to the restriction referred to in subsection (1)(c) or (d), an agreement to transfer a right to be issued with other securities in respect of those securities, or to receive any payment on them (otherwise than in a liquidation) is void.

(6) Subsection (5) is subject to—

(a) the terms of any directions given or conditions imposed under section 812 or 827;

(b) an agreement to transfer any such right on the transfer of the securities on the making of an order for their transfer under section 827.

826. Offence to attempt to evade restriction imposed by or under this Part

(1) Subject to the terms of any directions given, or any conditions imposed, under section 812 or 827, a person who—

(a) exercises, or purports to exercise, a right to dispose of securities that, to the person's knowledge, are for the time being subject to restrictions imposed by or under this Part or of a right to be issued with any such securities;

(b) votes in respect of any such securities (whether as holder or proxy); or appoints a proxy to vote in respect of them;

(c) being the holder of any such securities, fails to notify a person who would, but for restrictions, be entitled (whether as holder or as proxy) to vote in respect of the securities; or

(d) being the holder of any such securities, or being entitled to a right to be issued with other securities in respect of them, or to receive any payment on them (otherwise than in a liquidation), enters into an agreement that is void under section 825,

commits an offence.

(2) In a prosecution for an offence under subsection (1)(c), it is a defence for the defendant to show that the person entitled to vote in respect of the securities was already aware of the restrictions.

(3) Subject to the terms of any directions given, or any conditions imposed, under section 812 or 827, if securities of a company are issued in contravention of restrictions imposed by or under this Part, the company, and each officer of the company who is in default, commit an offence.

(4) A company or an officer of a company found guilty of an offence under subsection (1) or (2) is on conviction liable to a fine not exceeding one million shillings.

827. Power of Court to order relaxation or removal of restrictions

(1) If an order makes securities of a company subject to the restrictions contained in this Division, any person claiming to be aggrieved by the order may apply to the Court for an order under subsection (2).

(2) If, on the hearing of an application made under subsection (1), the Court is satisfied that the restrictions are not, or are no longer, justified, it shall make an order directing that the restrictions, or such of them as are specified in the order, are to cease to apply to the securities.

(3) In deciding whether to make an order under subsection (2), the Court may not be satisfied that the restrictions are not, or are no longer, justified unless—

(a) it is satisfied that the relevant facts about the securities have been disclosed to the company concerned and that no unfair advantage has accrued to any person as a result of the earlier failure to make that disclosure; or

(b) the securities are to be transferred for valuable consideration and the Court approves the transfer.

(4) If, on the hearing of an application made under subsection (1), the Court is satisfied that an order subjecting the securities to the restrictions contained in this Division unfairly affects the rights of third parties in respect of the securities, the Court may, for the purpose of protecting those rights and in addition to or instead of any order it may make under subsection (2), make an order directing that such acts by such persons or classes of persons, and for such purposes, as may be specified in the order, do not constitute a breach of those restrictions.

(5) In making an order under subsection (2) or (4), the Court may impose such conditions as it considers appropriate.

(6) If securities of a company are subject to restrictions contained in this Division, the Court, on an application made under subsection (7)—

(a) may make an order directing the securities to be sold, subject to the Court's approval as to the sale; and

(b) may also make an order directing that the restrictions, or such of them as are specified in the order, are to cease to apply to the securities. Nothing in this subsection affects the power of the Court to make an order under subsection (2).

(7) An application to the Court under this subsection may be made by the Attorney General or by the company.

(8) If an order has been made under subsection (6), the Court may, on application made under subsection (9), make such further order relating to the sale or transfer of the securities as it considers appropriate.

(9) An application to the Court under this subsection may be made—

(a) by the Attorney General;

(b) by the company;

(c) by the person appointed to carry out the sale; or,

(d) by any person claiming to have an interest in the securities.

(10) An order directing that restrictions contained in this Division are to cease to apply to securities may, if it is—

(a) expressed to be made with a view to permitting a transfer of the securities; or

(b) made under subsection (6), continue the restrictions referred to section 825(1)(c) and (d), either in whole or in part, so far as they relate to a right acquired or an offer made before the transfer.

(11) Subsection (3) does not apply to an order under subsection (4) or to an order under subsection (10).

(12) An order under this section directing that restrictions contained in this Division are to cease to apply to securities takes effect from the date of the order or, if a later date is specified in the order, from that date.

828. Provisions applicable to sale by Court order of restricted securities

(1) If securities are sold in accordance with an order of the Court made under section 828, the seller of the securities shall pay the proceeds of sale (less the costs of the sale) into Court for the benefit of the persons who are beneficially interested in the securities.

(2) A person claiming to be beneficially interested in the securities may apply to the Court for an order directing the whole or part of those proceeds to be paid to the person.

(3) On the hearing of an application made under subsection (2), the Court shall—

(a) (subject to paragraph (b)) order the payment to the applicant of the whole of the proceeds of sale together with any interest on the proceeds; or

(b) if any other person had a beneficial interest in the securities at the time of their sale — such proportion of those proceeds and interest as is equal to the proportion that the value of the applicant's interest in the securities bears to the total value of the securities.

(4) On granting an application for an order under section 827(6) or (8) the Court may order that the applicant's costs be paid out of the proceeds of sale.

(5) If the Court makes an order under subsection (4), the applicant is entitled to payment of the applicant's costs out of the proceeds of sale before any person interested in the relevant securities is entitled to receive any part of those proceeds.

Part XXXI – REGISTRAR OF COMPANIES AND REGISTRATION OF COMPANY DOCUMENTS

Division 1 — introductory provisions

829. Application of Part XXXI

Except as otherwise expressly provided by this Part, this Part applies in relation to the lodgement of a document with, or the provision of information to, the Registrar in electronic form as it applies in relation to the lodgement of a document or the provision of information in hard copy.

830. Part to apply to foreign companies

This Part applies to foreign companies except in so far as the context otherwise requires and a reference in this Part to a company includes a foreign company.

Division 2 — Appointment and functions of Registrar of Companies

831. Registrar and Deputy and Assistant Registrars of Companies

(1) There is established the Office of the Registrar of Companies.

(2) If the office of Registrar becomes vacant, the Cabinet Secretary shall appoint a suitably qualified person to fill the vacancy.

(3) The Cabinet Secretary may appoint such number of Deputy Registrars of Companies and Assistant Registrars of Companies as may be necessary to assist the Registrar in the performance and exercise of the Registrar's functions and powers under this Act.

(4) A person is suitably qualified for appointment as Registrar, Deputy Registrar or Assistant Registrar if the person is of good character and holds such qualifications (if any) as are prescribed by the regulations for the purposes of this section.

(5) Subject to the control of the Registrar, a Deputy Registrar or Assistant Registrar has and may perform the functions, and exercise the powers, of the Registrar under this Act.

(6) The fact that a person holding office as Deputy Registrar or Assistant Registrar performs those functions or exercises those powers is, until the contrary is proved, evidence of the person's authority to do so.

(7) The person holding office as Registrar of Companies under the repealed Act, immediately before the commencement of this section, continues to hold office, and is taken to have been appointed, as Registrar of Companies for the purposes of this Act.

832. Register of Companies and functions of Registrar

(1) The Register of Companies referred to in section 3 of the repealed Act is continued.

(2) The Registrar continues to be responsible for keeping the Register of Companies.

(3) The Register comprises—

(a) the information relating to companies that is contained in documents lodged or filed with, or delivered to, the Registrar under this or any other Act;

(b) certificates of incorporation issued by the Registrar; and

(c) certificates of registration of company charges.

(4) The Register shall record and keep information contained in documents lodged with the Registrar in such form (including electronic form) as the Registrar considers appropriate.

(5) The Registrar shall ensure that all records kept by the Registrar are in such form as will enable all the information contained in the records to be readily retrieved for inspection and copied.

(6) If the records are kept in electronic form, the Registrar shall ensure that they are capable of being reproduced in hard copy form.

(7) The Registrar shall keep the Register at such place or places (designated as Companies Registries) as the Cabinet Secretary notifies by notice published in the *Gazette*.

(8) Within six months after the end of each financial year, the Registrar shall submit to the Cabinet Secretary a report of the Registrar's operations and activities throughout the year together with audited accounts in such form and detail as the Cabinet Secretary determines, from time to time, and notifies to the Registrar.

(9) Within three months after receiving the report from the Registrar, the Cabinet Secretary shall arrange for the report to be tabled in Parliament.

(10) The Registrar shall perform—

(a) such other functions as are imposed on the Registrar by this Act or any other Act; and

(b) such functions on behalf of the Cabinet Secretary, in relation to companies or firms, as the Cabinet Secretary may from time to time in writing direct.

833. Registrar’s official seal

The Registrar is required to have an official seal for the authentication of documents in connection with the performance of the Registrar’s functions.

834. Fees payable to Registrar

(1) The regulations may 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 a purpose connected with the performance of any of the Registrar's functions.

(2) The matters for which fees are chargeable include (but are not limited to)—

(a) the performance of a function imposed on the Registrar or the Cabinet Secretary by this or any other Act;

(b) the receipt of documents lodged with the Registrar for registration under this or any other Act; and

(c) the provision of copies of documents or parts of documents forming part of the Register.

(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.

(5) In respect of the performance of functions, or the provision of services or facilities, by the Registrar —

(a) for which fees are not provided for by the 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.

(6) The Registrar is responsible for ensuring that fees received by the Registrar under this or any other Act are paid into the Consolidated Fund.

835. Registrar to give public notice of issue of certificate of incorporation

(1) The Registrar shall publish in the *Gazette* or in accordance with section 875, notice of the issue by the Registrar of every certificate of incorporation issued to a company on its incorporation or on its conversion from one kind of company to another.

(2) The Registrar shall include in the notice—

(a) the name and registered number of the company; and

(b) the date of issue of the certificate.

(3) This section applies to a certificate of incorporation issued to a company under—

(a) section 18; or

(b) Part VI, as well as to the certificate issued to a company on its formation.

836. Right to obtain certificate of incorporation

(1) The Registrar shall, if requested to do so by a person and on payment of the prescribed fee (if any), provide the person with a copy of a certificate of incorporation of any specified company.

(2) Before providing the person with the copy, the Registrar shall either sign it or authenticate it with the Registrar's official seal.

837. Registrar to allocate number to each company

(1) The Registrar shall allocate to every company a registered number, to be called the company's registered number that complies with subsection (2).

(2) A company's registered number complies with this subsection if it is in a form that consists of one or more sequences of figures or letters, or figures and letters, as determined by the Registrar.

(3) On adopting a new form of registered numbering, the Registrar may make such changes to existing registered numbers as appear to the Registrar to be necessary.

(4) A change of a company's registered number has effect from the date on which the Registrar notifies the company of the change.

838. Registrar to allocate unique number to each foreign company registered under this Act

(1) The Registrar shall allocate to every foreign company registered under this Act a unique number, to be called the company's registered number.

(2) The Registrar shall ensure that the number allocated to a foreign company is in a form that consists of one or more sequences of figures or letters, or figures and letters.

(3) On adopting a new form of registered numbering, the Registrar may make such changes to existing registered numbers of foreign companies as appear to the Registrar to be necessary.

(4) A change of a foreign company's registered number has effect from the date on which the Registrar notifies the company of the change.

839. Power of Registrar to impose requirements with respect to lodgement of documents

(1) The Registrar shall specify the form, authentication and manner of lodgement of documents required or permitted to be lodged with the Registrar for registration under this or any other Act.

(2) In relation to the form of a document, the Registrar may—

(a) require the contents of the document to be in a standard form; and

(b) impose requirements for the purpose of enabling the document to be scanned or copied.

(3) In relation to authentication of a document, the Registrar may do all or any of the following:

(a) require the document to be authenticated by a particular person or a person of a particular description;

(b) specify the means of authentication;

(c) require the document to contain or be accompanied by the name or registered number of the company to which it relates (or both).

(4) In relation to the manner of lodgement of a document, the Registrar may specify requirements as to all or any of the following:

(a) the physical form of the document (for example, hard copy or electronic form);

(b) the means to be used for lodging the document (for example, by post or electronic means);

(c) the address to which the document is to be sent;

(d) in the case of a document to be lodged by electronic means, the hardware and software to be used, and technical specifications (for example, matters relating to protocol, security, anti-virus protection or encryption).

(5) The powers conferred by this section do not authorise the Registrar to require documents to be lodged by electronic means.

(6) The Registrar shall ensure that all requirements imposed under this section are consistent with requirements imposed by any written law with respect to the form, authentication or manner of lodgement of the document concerned.

Division 3 — Specific requirements and powers relating to registration of documents

840. Regulations may require documents to be lodged by electronic means

(1) The regulations may require documents, or documents of a specified class, that are required to be lodged with the Registrar for registration to be lodged by electronic means.

(2) A requirement to lodge documents, or a specified class of documents, by electronic means has effect only if Registrar's Rules have been published with respect to the detailed requirements for that lodgement.

841. Agreement for lodgement of documents by electronic means

(1) The Registrar may enter into a written agreement with a company providing for documents relating to the company that are required or permitted to be lodged with the Registrar for registration—

(a) to be lodged 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 the Registrar in accordance with the agreement.

(2) An agreement under subsection (1) may relate to all documents or to any class of documents to be lodged with the Registrar.

(3) Unless in a specific case the Registrar otherwise approves, a company with which the Registrar has entered into an agreement in accordance with subsection (1) may lodge documents in relation to which the agreement is in effect only in accordance with the agreement.

842. Document not lodged for purposes of this Act until received by Registrar

(1) A document is not lodged with the Registrar for registration until the Registrar or a member of the Registrar's staff actually receives it.

(2) The Registrar's Rules may make specific provision as to when a document is to be regarded as having been received by the Registrar for the purposes of this Act.

843. Requirements for proper lodgement

(1) A document lodged with the Registrar for registration is not properly lodged for the purposes of this Act unless the following requirements are satisfied—

(a) requirements imposed under section 839 with respect to—

(i) the contents of the document; and

(ii) the form, authentication and manner of its lodgement;

(b) any applicable requirements under regulations made for the purpose of section 840;

(c) any applicable requirements under an agreement entered into under section 841;

(d) in so far as it consists of, or includes, names and addresses—any requirements of this Act with respect to permitted characters, letters or symbols or with respect to its being accompanied on lodgement by a certificate as to the transliteration of any element;

(e) any applicable requirements of the Registrar’s Rules;

(f) any applicable requirements of regulations made for the purpose of section 849;

(g) any applicable requirements with regard to payment of a fee in respect of its lodgement with 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 lodged with the Registrar with regard to the contents of the document;

(b) the continuing obligation to comply with the requirements referred to in subsection (1); or

(c) the exercise of the Registrar's powers under section 844 or 845.

(4) Objection may not be taken as to the legal effect of action taken by the Registrar on the ground that the requirements referred to in subsection (1) are not satisfied.

844. Powers of Registrar to correct documents in certain cases

(1) A document that is lodged with the Registrar for registration 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 exercised only—

(a) on instructions that comply with subsection(3); and

(b) if the company has given and has not withdrawn its consent to instructions being given under this section.

(3) Instructions comply with this subsection if—

(a) they are given in response to an enquiry made by the Registrar;

(b) the Registrar is 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) they satisfy 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 or to a withdrawal of that consent—

(a) may be given in hard copy or electronic form; and

(b) is effective only when notified to the Registrar.

(5) A document that is corrected under this section is taken, for the purposes of any enactment relating to its lodgement, to have been delivered when the correction is made.

845. Power of Registrar to accept replacement for document previously lodged

(1) The Registrar may accept a replacement for a document previously lodged that did not comply with the requirements for proper lodgement.

(2) The Registrar may accept a replacement document only if satisfied—

(a) that is lodged by—

(i) the person by whom the original document was lodged; or

(ii) the company to which the original document relates; and

(b) that it complies with the requirements for proper lodgement.

(3) The power of the Registrar to specify the form and manner of lodgement includes power to specify requirements for the identification of the original document and the lodgement 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 lodgement of a document are specified in section 843.

846. Power of Registrar to exclude unnecessary information

(1) For the purpose of this section, information is unnecessary if it—

(a) is not required in order to comply with an obligation imposed by or under this or any other Act; and

(b) is not specifically required or authorised to be lodged to the Registrar.

(2) For the purpose of subsection (1)(a), an obligation to lodge a document of a particular description, or that conforms to specified requirements, extends to anything that is not required for a document of that description, or for it to conform to those requirements.

(3) A document does not meet the requirements for proper lodgement if—

(a) it contains information unnecessary for registration; and

(b) the unnecessary information cannot readily be separated from the rest of the document.

(4) However, if the unnecessary information can readily be separated from the rest of the document, the Registrar may register the document with the omission of the unnecessary information.

847. Registrar's notice to remedy defective lodgement

(1) This section applies if a document lodged with the Registrar for registration—

(a) does not meet the requirements for proper lodgement; and

(b) is not corrected under section 844, or replaced under section 845.

(2) The Registrar may give notice—

(a) to the person by whom the document was lodged if the identity, and name and address of that person are known; or

(b) if notice cannot be given under paragraph (a) and the identity of that company is known — to the company to which the document relates.

(3) The Registrar shall, in a notice to be given under subsection (2)—

(a) state in what respects the document does not appear to meet the requirements for proper lodgement;

(b) state the date on which it is issued; and

(c) require a replacement document complying with the requirements for proper lodgement to be lodged with the Registrar within fourteen days after that date.

848. Annotation of the Register

(1) The Registrar shall note in the Register-

(a) the date on which a document is lodged with the Registrar for registration;

(b) if a document is corrected under section 844 — 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 lodgement 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 regulations may—

(a) authorise or require the Registrar to annotate the Register in other circumstances; and

(b) specify the contents of any such annotation.

(3) An annotation is not required for a document that, because of section 843, is not registered.

(4) The Registrar may remove a note if of the opinion that it no longer serves any useful purpose.

(5) Notes placed in the Register in accordance with subsection (1), or in accordance with regulations under subsection (2), are part of the Register for all purposes of this Act.

849. Allocation of unique identifiers for purpose of identifying directors and certain other persons

(1) The regulations may provide for the use, in connection with the Register, of reference numbers or unique identifiers 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 may also—

(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 lodged with the Registrar for registration, 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; and

(d) if a person appears to have two or more unique identifiers — enable the Registrar to take action to discontinue the use of all but one of them.

(3) The regulations may further—

(a) provide for the application of the scheme in relation to persons appointed, and documents registered, before the commencement of this section; and

(b) make different provision for different classes of persons and different classes of documents.

850. Preservation of original documents

(1) Subject to section 854(3), the Registrar shall keep the originals of documents lodged with the Registrar in hard copy form for not less than three years after they are lodged.

(2) After the end of that period, the Registrar may destroy or arrange for the destruction of those documents, but only if the information contained in the documents has been recorded in the Register.

(3) The Registrar is under no obligation to keep the originals of documents lodged in electronic form so long as the information contained in them has been recorded in the Register.

(4) This section applies to documents held by the Registrar when this section comes into effect as well as to documents subsequently received.

851. Power of Registrar to destroy records of dissolved company after lapse of two years

(1) At any time after the expiry of two years from the date on which—

(a) a company has been dissolved; or

(b) a foreign company has ceased to be registered as such in Kenya, the Registrar may arrange for the transfer to the Kenya National Archives and Documentation Service of the records recorded in the Register, or the Foreign Companies Register, in relation to the company.

(2) Records in respect of which such an arrangement is made are to be disposed of in accordance with the Public Archives and Documentation Service Act or regulations in force under that Act.

852. Right of members of public to inspect Register

(1) Every member of the public has the right to inspect the Register.

(2) The right of inspection extends to the originals of documents lodged with the Registrar in hard copy form if, and only if, the record kept by the Registrar of the contents of the document is illegible or unavailable.

(3) The right of inspection conferred by this section is subject to sections 850 and 854.

853. Right of members of public to be provided with copies of records kept by Registrar

(1) Any member of the public may apply to the Registrar for a copy of any record that forms part of the Register or the Foreign Companies Register.

(2) On receiving such an application, the Registrar shall, subject to the payment of a fee (if any) not exceeding the amount prescribed by the regulations for the purpose of this section, provide the applicant with a copy of the relevant record in hard copy form or, if the applicant so requests, in electronic form.

(3) Subsection (2) is subject to section 854.

854. Certain records not to be made available for public inspection

(1) The Registrar may not make available for public inspection—

(a) the contents of a document sent to the Registrar containing views expressed in accordance with section 51;

(b) protected information within section 202(1) or any corresponding provision of the foreign companies regulations;

(c) a document received by the Registrar in connection with the giving or withdrawal of consent under section 844;

(d) an application or other document lodged with the Registrar under section 845;

(e) an application or other document lodged with the Registrar under section 855 and any address in respect of which such an application is successful;

(f) a Court order under section 863 that the Court has directed under section 864 is not to be made available for public inspection;

(g) an application to the Registrar under section 916 that has not yet been determined or was not successful;

(h) the contents of a document creating or evidencing a charge and lodged with the Registrar for registration under Part XXXII;

(i) any e-mail address, identification code or password deriving from a document delivered for the purpose of authorising or facilitating electronic filing procedures or providing information by telephone;

(j) any other information excluded from public inspection by or under any other written law.

(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) Information 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 lodged with the Registrar.

855. Registrar can be required to make address unavailable for public inspection

(1) The Registrar is, on an application made in accordance with the regulations referred to in subsection (2), required 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 in respect of an application and of its outcome; and

(e) how an application is to be determined.

(3) In particular, provision under subsection (2)(e) may—

(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) is required to specify the address that is proposed to be removed from the Register and indicate where in the Register it is.

(5) An address is not to be made unavailable for public inspection under this section unless it is replaced by a service address, in which case the application is required to specify a service address.

856. Form of application for inspection or copy

The Registrar may specify the form and manner in which application is to be made for—

(a) an inspection under section 852; or

(b) a copy under section 853.

857. Form and manner in which copies to be provided

The Registrar may determine the form and manner in which copies are to be provided under section 854.

858. Certification of copies of records by Registrar

(1) The Registrar shall certify copies of records provided in hard copy form under section 854 as true copies unless the applicant dispenses with the need for certification.

(2) The Registrar may not certify copies of records provided in electronic form under section 853 as true copies unless the applicant expressly requests that certification.

(3) A copy provided under section 853, certified by the Registrar to be an accurate record of the contents of the original document, is admissible in all legal proceedings as evidence of the contents of the original document.

(4) The regulations may determine the manner in which such a certificate is to be provided when 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.

859. Issue of legal process for production of records kept by the Registrar

(1) Any legal process compelling the Registrar to produce a record kept by the Registrar may issue from a court only with the permission of the Court.

(2) Such a process is of no effect unless it states on its face that it is issued with that permission.

Division 4 — Correction or removal of material on the Register

860. Registrar's notice to resolve inconsistency on the Register

(1) If it appears to the Registrar that the information contained in a document lodged with the Registrar for registration is inconsistent with an existing entry in the Register, the Registrar may gave notice to the company concerned—

(a) stating in what respects the information contained in it appears to be inconsistent with the entry in the Register; and

(b) requiring the company to take action to resolve the inconsistency.

(2) The Registrar shall, in the notice—

(a) specify the date on which it is issued; and

(b) require the company to lodge with the Registrar, within fourteen days after that date, such replacement or additional documents as may be required to resolve the inconsistency.

(3) If the required documents are not lodged by the specified deadline, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(4) If, after a company or any of its officers is convicted of an offence under subsection (3), the company continues to fail to lodge the required documents with the Registrar, the company, and each officer of the company commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

861. Administrative removal of information from the Register

(1) The Registrar may remove from the Register any entry that there was power to make, but no duty.

(2) This power is exercisable, in particular, so as to remove—

(a) information derived from a document that has been replaced under section 845 or 860; or

(b) unnecessary information within the meaning of section 846.

(3) This section does not authorise the removal from the Register of any entry whose registration has had legal consequences in relation to the company with respect to—

(a) its formation;

(b) a change of name;

(c) its conversion into a different kind of company;

(d) its becoming or ceasing to be a community interest company;

(e) a reduction of capital;

(f) a change of registered office;

(g) the registration of a charge; or

(h) its dissolution; or

(i) any other matter prescribed by the regulations for the purposes of this subsection.

(4) On or before removing an entry in accordance with this section (otherwise than at the request of the company), the Registrar shall give notice—

(a) to the person by whom the relevant document was lodged (but only if the identity and name and address of that person are known to the Registrar); or

(b) to the company to which the entry relates (if notice cannot be given under paragraph (a) and the identity of that company is known to the Registrar).

(5) The Registrar shall state in the notice—

(a) what entry the Registrar proposes to remove, or has removed, and on what grounds; and

(b) the date on which the notice is issued.

862. Rectification of Register on application to Registrar

(1) On receiving an application made in accordance with this section, the Registrar shall remove from the Register an entry relating to a company that the Registrar is satisfied is of a kind 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 something that is factually inaccurate or is forged.

(2) An application may be made by the company concerned or by any other person who appears to the Registrar to have a legitimate interest in making such an application.

(3) An application is required—

(a) to specify the entry that is proposed to be removed from the Register and indicate where on the Register it is to be found; and

(b) to be accompanied by a statement that the information specified in the application complies with this section and with any regulations made for the purposes of this section.

(4) The Cabinet Secretary shall ensure that all such regulations specify—

(a) the information to be included in and documents to accompany an application;

(b) a period within which objections to an application may be made; and

(c) how the Registrar is to determine an application.

(5) If no objection is made to the application, the Registrar may accept the statement as sufficient evidence that the information specified in the application should be removed from the Register.

(6) If an entry is removed from the Register under this section the registration of which had legal consequences as referred to in section 861(3), any person appearing to the Court to have a legitimate interest in the matter may apply to the Court for such consequential orders as appear just with respect to the legal effect (if any) to be accorded to the entry because it has appeared in the Register.

863. Rectification of the Register under Court order

(1) The Registrar shall remove from the Register any entry—

(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

(b) that the Court has declared to be factually inaccurate; or to be derived from something that is factually inaccurate or is forged, and that the Court has directed to be removed from the Register.

(2) The Court shall specify in the order the entry that is to be removed from the Register and indicate where in the Register it is to be found.

(3) The Court may not make an order for the removal from the Register of any entry the registration of which had legal consequences as mentioned in section 861(3) unless it is satisfied—

(a) that the presence of the entry in the Register has caused, or may cause, damage to the company concerned; and

(b) that the company's interest in removing the entry outweighs the interest (if any) of other persons in the continued appearance of the entry in the Register.

(4) If, in such a case, the Court makes 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 entry because it has appeared in the Register.

(5) The Court shall ensure that a copy of its order is sent to the Registrar for registration.

(6) This section does not apply in respect of an entry in the Register if the Court has other specific powers under this Act to deal with the matter.

864. Powers of Court on ordering removal of entry from the Register

(1) If the Court makes an order for the removal of an entry from the Register under section 863, it may also give any of the following directions:

(a) that any note on the Register that is related to the entry that is the subject of the order is to be removed from the Register;

(b) that the order is not to be available for public inspection as part of the Register;

(c) that no note is to be made on the Register as a result of its order, or that any such note is to be restricted to such matters as are specified by the Court.

(2) The Court may not give a direction under this section unless it is satisfied—

(a) that—

(i) the presence on the Register of the note, or of an unrestricted note; or

(ii) the availability for public inspection of the Court's order, may cause damage to the company; and

(b) that the company's interest in non-disclosure outweighs any interest of other persons in disclosure.

Division 5 — Special provisions for documents not in the English language

865. Documents to be prepared and lodged in the English language

Subject to section 866, the Registrar may refuse to accept any document lodged with, or delivered, sent or submitted to the Registrar in a language other than English.

866. Documents that may be prepared and lodged in other languages

(1) Documents to which this section applies may be drawn up and lodged with the Registrar in a language other than English, but only if they are accompanied by a certified translation in English.

(2) This section applies to—

(a) agreements required to be forwarded to the Registrar under Division 2 of Part III; and

(b) documents of any other class prescribed by the regulations for the purposes of this section.

867. Voluntary lodgement of translations

(1) A company may lodge with the Registrar for registration one or more certified translations of any document relating to the company that is or has been lodged with the Registrar.

(2) The regulations may 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 lodgement includes power to impose requirements as to the identification of the original document and the lodgement of the translation in a form and manner enabling it to be associated with the original.

868. Certified translations

(1) In this Part, a “certified translation” means a translation certified as prescribed by the regulations for the purposes of this section 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) In subsection (2), "third party" means a person other than the company or the Registrar.

869. Transliteration of names and addresses: permitted characters

(1) The Registrar may decline to accept for lodgement documents that contain names and addresses unless those names and address comprise only letters, characters and symbols, including accents and other diacritical marks that are permitted.

(2) The regulations may—

(a) specify the letters, characters and symbols, including accents and other diacritical marks that are permitted for the purpose of subsection (1); and

(b) permit or require the lodgement of documents in which names and addresses have not been translated into a permitted form.

870. Transliteration of names and addresses: voluntary translation into Roman characters

(1) If a name or address is or has been lodged with the Registrar in a permitted form using other than Roman characters, the company may lodge with the Registrar for registration a translation into Roman characters.

(2) The power of the Registrar to impose requirements as to the form and manner of lodgement includes power to impose requirements as to the identification of the original document and the lodgement of the transliteration in a form and manner enabling it to be associated with the original.

871. Translation of names and addresses: certification

(1) The regulations may require the certification of transliterations and prescribe the form of certification.

(2) Different provision may be made for compulsory and voluntary translations.

Division 6 — Supplementary provisions

872. Offence to lodge false or misleading documents or to make false or misleading statements to Registrar

A person who—

(a) lodges or causes to be lodged with the Registrar for registration a document containing information; or

(b) makes to the Registrar a statement for any purpose that the person knows, or has reason to suspect, is false or misleading in a material respect commits an offence and on conviction is liable to a fine not exceeding one million shillings or imprisonment for a term not exceeding two years, or to both.

873. Enforcement of company's lodgement obligations

(1) This section applies if a company has not complied with an obligation imposed by this Act—

(a) to lodge 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.

874. Supplementary provisions relating to electronic communications

(1) The Registrar may 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 lodge material to the Registrar by electronic means.

(2) A document that is required by or under this Act to be signed by the Registrar, or to be authenticated by the Registrar's seal, is, if sent by electronic means, required to be authenticated in such manner as may be specified in the Registrar's Rules.

875. Provision for publishing notices by alternative means

(1) A notice that would otherwise require to be published by the Registrar in the *Gazette* may instead be published by such other means as the Registrar from time to time selects from the alternative means prescribed by the regulations.

(2) The regulations may prescribe alternative means.

(3) In particular, the regulations may—

(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 an alternative means selected subsection (1), the Registrar shall publish at least one notice to that effect in the *Gazette*.

(5) Nothing in this section precludes the Registrar from giving public notice in the *Gazette* and by a means selected under subsection (1).

(6) If the Registrar gives public notice in the *Gazette* and by a means selected under subsection (1), the requirement of public notice is satisfied when the notice is first given by either means.

876. Registrar's power to make Rules

(1) The Registrar may make rules (called the Registrar's Rules) about any matter in respect of which the Registrar may make provision, or impose a requirement, under a function or power imposed or conferred on the Registrar by or under this or any other Act.

(2) Subsection (1) does not prevent any such provision or requirement from being made or imposed by other means.

(3) Registrar's Rules—

(a) may make different provision for different cases; and

(b) may allow the Registrar to disapply or modify any of the rules.

(4) The Registrar shall—

(a) publicise Registrar's Rules in a manner appropriate to bring them to the notice of persons affected by them; and

(b) make copies of those Rules available to the public (in either hard copy or electronic form, or to both).

Part XXXII – COMPANY CHARGES

877. Interpretation: Part XXXII

(1) For purposes of this Part, **"charge"** includes a mortgage.

(2) For the purposes of this Part, it is immaterial where land that is subject to a charge is located.

878. Charges created by a company

(1) A company that creates a charge to which this section applies shall, before the deadline for registration, lodge with the Registrar for registration the particulars of the charge prescribed by the regulations, together with the document (if any) by which the charge is created or evidenced.

(2) A charge to which this section applies is registrable on the application of any person who claims to have an interest in it.

(3) If a charge is registered on the application of a person other than the company concerned, that person is entitled to recover from that company the amount of any fees properly paid to the Registrar in respect of the registration.

(4) This section applies to the following charges created by a company:

(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) owned by the company or in which it has a proprietorial interest;

(b) a charge created or evidenced by a document that, if executed by a natural person, would require to be registered as a bill of sale;

(c) a charge for the purposes of securing an issue of debentures by the company;

(d) a charge on the company's uncalled share capital (if any);

(e) a charge on calls made by the company but not yet paid;

(f) a charge on the company's book debts;

(g) a floating charge on the company's property or undertaking;

(h) a charge on a ship or aircraft, or a share in a ship or aircraft, owned by the company or in which it has a proprietorial interest;

(i) a charge on the company's goodwill or intellectual property.

(5) The holding of debentures entitling the holder to a charge on land is not, for the purpose of subsection (4)(a), an interest in the land.

(6) The deposit in the form of security of a negotiable instrument given to secure the payment of book debts is not, for the purpose of section subsection (4)(f), a charge on those book debts.

(7) For the purpose of subsection (4)(i), "**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.

(8) If a company fails to comply with subsection (1)—

(a) the company; and

(b) each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding one million shillings.

(9) Subsection (8) does not apply if the charge has been registered on the application of a person other than the company.

(10) If, after the company or any of its officers is convicted of an offence under subsection (8), the company continues to fail to lodge the prescribed particulars of the charge with the Registrar, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding one hundred thousand shillings for each such offence.

879. Charges existing on property acquired

(1) This section applies to a company that acquires property already subject to a charge of a kind that would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part.

(2) A company to which this section applies shall, before the deadline for registration, lodge with the Registrar for registration—

(a) the particulars of the charge prescribed by the regulations; and

(b) a certified copy of the document (if any) by which the charge is created or evidenced.

(3) A charge of the kind referred to in subsection (1) may be registered on the application of any person who claims to have an interest in it.

(4) If such a charge is registered on the application of a person other than the company, the person is entitled to recover from the company the amount of any fees properly paid by the person to the Registrar for registration.

(5) If a company fails to comply with subsection (2)—

(a) the company; and

(b) each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding one million shillings.

(6) Subsection (5) does not apply if the charge has been registered on the application of a person other than the company.

(7) If, after the company or any of its officers is convicted of an offence under subsection (5), the company continues to fail to lodge the prescribed particulars of the charge with the Registrar, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding one hundred thousand shillings for each such offence.

880. Lodgement for registration of charge in series of debentures

(1) If a series of debentures containing, or given by reference to another document, any charge to the benefit of which the debenture holders of that series are entitled equally among themselves is created by a company, section 878(1) with if—

(a) the required particulars; and

(b) the deed containing the charge or, if there is no such deed, one of the debentures of the series, are lodged with the Registrar before the deadline for registration.

(2) The required particulars referred to under subsection (1)(a) 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) The company shall lodge with the Registrar for recording in the relevant register of charges particulars of the date and amount of each issue of debentures of a series of the kind referred to in subsection (1).

(4) Failure to comply with subsection (3) does not affect the validity of the debentures issued.

(5) Section 878(2) to (10) applies to a series of debentures as if the series were a charge.

881. Additional registration requirement for commission, allowance or discount in relation to debentures

(1) If any commission, allowance or discount has been paid or made (either directly or indirectly) by a company to a person as consideration for—

(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 any such debentures, the company shall include in the particulars lodged with the Registrar under section 878(1) details of the amount or rate percent 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 an issue of debentures at a discount for the purpose of this section.

(3) Failure to comply with this section does not affect the validity of the debentures issued.

(4) If a company fails to comply with subsection (1), the company; and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

882. Certificate of registration to be endorsed on debentures

(1) As soon as practicable after receiving a certificate of registration of a charge under section 884, the company shall endorse a copy of the certificate on every debenture or certificate of debenture stock that is issued by the company, and the payment of which is secured by the charge or security right so registered.

(2) Subsection (1) 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 or security right was created.

(3) If a company fails to comply with subsection (1), the company, and each director of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(4) A person who lodges or delivers, or authorises the lodgement or delivery of, a debenture or certificate of debenture stock that under this section is required to have endorsed on it a copy of a certificate of registration, knowing that the copy is not endorsed on it, commits an offence and on conviction is liable to a fine not exceeding one million shillings or to imprisonment for a tern not exceeding two years, or to both.

883. Charges created in, or over property located outside Kenya

(1) If a charge is created outside Kenya comprising property located outside Kenya, the lodgement with the Registrar for registration of a verified copy of the document by which the charge is created or evidenced has the same effect as the lodgement of the document itself.

(2) If a charge is created in Kenya but comprises property outside Kenya, the document creating or purporting to create the charge may be lodged for registration under section 878 even if further proceedings may be necessary to make the charge valid according to the law of the country in which the property is located.

884. Registrar to keep register of charges

(1) The Registrar shall keep, with respect to each company, a register of all the charges that are required to be registered under this Part.

(2) If a charge is part of a series of debentures, the Registrar shall record in the register the required particulars specified in section 880(2).

(3) In the case of any other charge, the Registrar shall record in the register the following particulars:

(a) if it is a charge created by a company — the date of its creation;

(b) if it is a charge which was existing on property acquired by the company — the date of the acquisition;

(c) the amount secured by the charge;

(d) short particulars of the property charged;

(e) the persons entitled to the charge.

(4) On registering a charge, the Registrar shall issue a certificate of the registration of the charge, stating the amount secured by the charge.

(5) The Registrar shall either sign a certificate of registration of a charge or authenticate it with the Registrar's official seal.

(6) A certificate of registration signed by the Registrar or authenticated with the Registrar's seal is conclusive evidence that the requirements of this Part as to registration have been satisfied.

(7) The Registrar shall keep open for public inspection during the ordinary business hours of the Companies Registry each register kept under this section.

(8) A person who wishes to inspect a register of charges may do so without payment, but is entitled to be provided with a copy of the register or an entry in it only on payment of the prescribed fee (if any).

885. Deadline for registering a charge

(1) The deadline for registration of a charge created by a company is—

(a) thirty days from the day on which the charge is created; or

(b) if the charge is created outside Kenya — twenty-one days from the day on which the document by which the charge is created or evidenced, or a copy of it, could, if dispatched with due diligence, have been received in Kenya.

(2) The deadline for registration of a charge to which property acquired by a company is subject—

(a) thirty days from the day on which the acquisition is completed; or

(b) if the property is located, and the charge was created, outside Kenya — twenty-one days from the day on which the document by which the charge is created or evidenced, or a copy of it, could, if dispatched with due diligence, have been received in Kenya.

(3) The deadline for registration of particulars of a series of debentures under section 880 is—

(a) if there is a deed containing the charge referred to in section 880(1) — thirty days from the day on which that deed is executed; or

(b) if there is no such deed — thirty days from the day on which the first debenture of the series is executed.

886. Holder of floating charge to lodge with Registrar notice of appointment and cessation of appointment of administrator of company

(1) A holder of a floating charge on a company's property or undertaking who—

(a) obtains an order of the Court for the appointment of an administrator in respect of the company; or

(b) appoints such an administrator under powers contained in a document, shall, within seven days after obtaining the order or making the appointment, lodge a notice of the order or appointment with the Registrar for registration in the relevant register of charges.

(2) Within seven days after a person appointed as an administrator in respect of a company under powers contained in a floating charge ceases to act as such, the holder of the charge shall lodge a notice of the cessation with the Registrar for registration in the relevant register of charges.

(3) A person who fails to comply with subsection (1) or (2) commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

(4) If, after being convicted of an offence under subsection (3), a person continues to fail to lodge with the Registrar a notice of the relevant order or appointment, or of the cessation of appointment, the person commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding ten thousand shillings for each such offence.

(5) If, in relation to subsection (2), the floating charge has been discharged at the time when the administrator ceased to act as such, the reference in that subsection to the holder of the floating charge is a reference to the person who was holder of the charge when it was discharged.

887. Registrar to record memorandum of satisfaction or release

(1) If a statement is lodged with the Registrar verifying with respect to a registered charge that the debt for which the charge was given has been wholly or partly paid or satisfied, the Registrar shall record in the register of charges relating to the company concerned a memorandum of satisfaction in respect of the payment or partial payment of the debt.

(2) If a statement is lodged with the Registrar verifying with respect to a registered charge that a part of the property or undertaking charged has been released from the charge, the Registrar shall record in the register of charges relating to the company a memorandum of release stating that part of the property or undertaking has been released from the charge.

(3) If a statement is lodged with the Registrar verifying with respect to a registered charge that a part of the property or undertaking charged has ceased to form part of the company's property or undertaking, the Registrar shall record in the register of charges relating to the company a memorandum of release stating that that part of the property or undertaking has ceased to form part of the company's property or undertaking.

(4) As soon as practicable after being requested to do so by the company, the Registrar shall send to the company a copy of a memorandum of satisfaction or release recorded by the Registrar under this section.

888. Rectification of register of charges

(1) A company or interested person who claims that a failure to register a charge before the deadline for registration, or an omission or misstatement of a particular with respect to any such charge or in a memorandum of satisfaction or release—

(a) was accidental or due to inadvertence or to some other reasonable cause; or

(b) is not of a nature to prejudice the position of creditors or members of the company, may apply to the Court for an order under subsection (2).

(2) If, on the hearing of an application made under subsection (1), the Court is satisfied—

(a) that the failure, or the omission or misstatement—

(i) was accidental or due to inadvertence or to some other reasonable cause; or

(ii) is not of a nature to prejudice the position of creditors or members of the company; or

(b) that on other grounds it is just and equitable to grant relief, the Court may, subject to such conditions (if any) as it considers fair and reasonable, order the deadline for registration to be extended, or the omission or misstatement to be corrected.

889. Consequences of failure to register charges created by a company

(1) Subject to this Part, if a company creates charge to which section 878 applies, the charge (in so far as any security on the property or undertaking of the company is conferred by it) is void against-

(a) a liquidator of the company;

(b) an administrator of the company; and

(c) a creditor of the company, unless section is complied with.

(2) Subsection (1) does not affect the operation of a contract or obligation for repayment of the money secured by the charge.

(3) If a charge or security right becomes void under this section, the money secured by it immediately becomes payable.

890. Companies to keep copies of documents creating charges

(1) A company shall keep a copy of every document creating a charge that is required to be registered under this Part.

(2) In the case of a series of uniform debentures, subsection (1) is complied with if the company has available one of the debentures of the series.

(3) If a company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(4) If, after a company or any of its officers has been convicted of an offence under subsection (3), the company continues to fail to comply with subsection (1), the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

891. Company's register of charges

(1) A limited company shall keep a register of charges and record 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 company shall ensure that the record referred to in subsection (1) gives in each case—

(a) a short description of the property charged;

(b) the amount secured by the charge or the security right; and

(c) except in the cases of securities to bearer, the names of the persons entitled to it.

(3) If a limited company fails to comply with subsection (1) or (2), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(4) If, after a company or any of its officers has been convicted of an offence under subsection (3), the company continues to fail to comply with subsection (1) or (2) (whichever is applicable), the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

892. Right of creditors, members and others to inspect documents that create company's charges and to inspect company's register of charges

(1) This section applies to—

(a) documents required to be kept under section 890; and

(b) a limited company's register of charges kept in accordance with section 891.

(2) Except in so far as the regulations otherwise provide, a company shall keep the documents and register to which this section applies open for inspection at the company's registered office.

(3) A company shall keep documents and register to which this section applies open for inspection—

(a) by any creditor or member of the company without charge; and

(b) by any other person on payment of a fee (if any) not exceeding that prescribed by the regulations for the purpose of this section.

(4) If a company—

(a) fails to comply with a requirement of subsection (2) or (3); or

(b) refuses to allow an inspection required under subsection (3), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(5) If, after the company or any of its officers is convicted of an offence under subsection (4), a company continues—

(a) to fail to comply with the relevant requirement; or

(b) to refuse to allow an inspection required under subsection (3), the company, and each officer of the company who is in default, commit a further offence on each day on which the failure or refusal continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

(6) If a company refuses to allow an inspection required under subsection (3), the Court may, on the application of a person affected by the refusal, make an order compelling the company to allow an immediate inspection.

Part XXXIII – DISSOLUTION AND RESTORATION TO THE REGISTER

Division I — Interpretation

893. Interpretation: Part XXXIII

In this Part, **"creditor"** includes a contingent or prospective creditor.

Division 2 — Dissolution of companies

894. Power of Registrar to strike off company not carrying on business or in operation

(1) If the Registrar reasonable believes 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 within one month after sending the letter receive any answer to it, the Registrar shall, within fourteen days after the end of that month, send to the company by post a registered letter referring to the first letter, and stating—

(a) that no answer to it has been received to it; and

(b) that, if no answer is received to the second letter within one month after 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 an answer 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 an answer to it, the Registrar may publish in the *Gazette*, and send to the company by post, a notice that, at the end of the period of three months from the date of the notice, the name of the company referred to in it will, unless cause is shown to the contrary, be struck off the Register and the company will be dissolved.

(4) At the end of the period specified in the notice sent 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) As soon as practicable after striking the name of the company off the Register, the Registrar shall publish in the *Gazette* a notice to the effect that the name of the company has been struck off the register.

(6) On publication of the notice in the *Gazette*, the company is dissolved.

(7) Despite subsection (6)—

(a) the liability (if any) of every officer and member of the company continues and may be enforced as if the company had not been dissolved; and

(b) nothing in this section affects the power of the Court to liquidate a company the name of which has been struck off the Register.

895. Duty of Registrar to act in case of company that has been liquidated or no liquidator is acting

(1) If, in the case of a company that is in liquidation—

(a) the Registrar reasonably believes—

(i) that the affairs of the company are fully wound up; or

(ii) that no liquidator is acting; and

(b) the returns required to be made by the liquidator in respect of the company have not been made for 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 end of three months from the date of the notice the name of the company will, unless cause is shown to the contrary, be struck off the Register and the company will be dissolved.

(2) At the end of the period specified in the notice, the Registrar may, unless cause to the contrary is shown by the company, strike the company's name off the Register.

(3) As soon as practicable after striking the name of the company off the Register under subsection (2), the Registrar shall publish in the *Gazette* a notice to the effect that the name of the company has been struck off the Register.

(4) On publication of the notice in accordance with subsection (3), the company is dissolved.

(5) Despite subsection (4)—

(a) the liability (if any) of every officer and member of the company continues and may be enforced as if the company had not been dissolved; and

(b) nothing in this section affects the power of the Court to liquidate a company the name of which has been struck off the Register.

896. Supplementary provisions as to service of letter or notice

(1) A letter or notice to be sent to a company under section 894 or 895 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 895 may be addressed to the liquidator at the liquidator's place of business last known to the Registrar.

897. Striking off company on company's application

(1) On application by a company, the Registrar may strike the name of the company off the Register.

(2) Such an application is effective only if it—

(a) is made on behalf of the company by its directors or by a majority of them; and

(b) contains such information (if any) as is prescribed by the regulations.

(3) The Registrar may not strike the name of a company off the register under this section until after three months from the date of 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) As soon as practicable after striking the name of the company off the Register, the Registrar shall publish in the *Gazette* a notice that the company's name has been struck off the Register and the date of the striking off.

(5) On publication of the notice, the company is dissolved.

(6) Despite subsection (5)—

(a) the liability (if any) of each director, managing officer and member of the company continues and may be enforced as if the company had not been dissolved; and

(b) nothing in this section affects the power of the Court to liquidate a company the name of which has been struck off the Register.

898. Circumstances in which application not to be made: activities of company

(1) An application under section 897 may not be made (or, if made, may not be dealt with) if, at any time during the preceding three months, the company has—

(a) changed its name;

(b) carried on business;

(c) made a disposal for value of property that, immediately before ceasing to carry on business, it held for the purpose of disposal for gain in the normal course of carrying on business; or

(d) engaged in any other activity, except one that is—

(i) necessary or expedient for the purpose of making an application under section 898, or deciding whether to make an application;

(ii) necessary or expedient for the purpose of closing down the affairs of the company;

(iii) necessary or expedient for the purpose of complying with any statutory requirement; or

(iv) specified by the Cabinet Secretary by order made under subsection (2).

(2) The Cabinet Secretary may, by order published in the *Gazette*—

(a) specify an activity for the purpose subsection (1)(d)(iv); or

(b) amend subsection (1) for the purpose of altering the period in relation to which the doing of an act referred to in (a) to (d) of that subsection is relevant.

(3) For the purposes of this section, a company is not to be regarded as carrying on business only because it makes a payment in respect of a liability incurred in the course of carrying on business.

(4) A person who makes an application in contravention of subsection (1) commits an offence and on conviction is liable to a fine not exceeding fifty thousand shillings.

(5) In proceedings for such an offence it is a defence for the person charged with the offence to establish on a balance of probabilities that the person did not know, and could not reasonably have known, of the existence of the facts that led to the contravention.

899. Circumstances in which application not to be made: other proceedings not concluded

(1) An application under section 897 on behalf of a company may not be made (or, if made, may not be dealt with) at a time when—

(a) an application to the Court under Part XXXIV has been made on behalf of the company for the sanctioning of a compromise or arrangement and the matter has not been finally concluded;

(b) a voluntary arrangement in relation to the company has effect under the laws relating to insolvency, or has been proposed under that Part and the matter has not been finally concluded;

(c) the company is under administration;

(d) the company is in liquidation (whether voluntary or by the Court), or an application for the liquidation of the company liquidated by the Court has been made but has not been finally disposed of or been withdrawn; or

(e) in any other circumstances prescribed by the regulations for the purpose of this section.

(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 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.

(3) For the purposes of subsection (1)(b), the matter is finally concluded if—

(a) no meetings are to summoned under an applicable provision of the laws relating to insolvency;

(b) meetings summoned under that law fail to approve the arrangement with no, or the same, modifications;

(c) an arrangement approved by meetings summoned under that Act, or in consequence of a direction under a relevant provision of that Act, has been fully implemented; or

(d) the Court makes an order under a relevant provision of that Act revoking approval given at previous meetings and, if the Court gives any directions under such a provision, the company has done whatever it is required to do under those directions.

(4) A person who makes an application in contravention of subsection (1) commits an offence and on conviction is liable to a fine not exceeding fifty thousand shillings.

(5) In proceedings for such an offence it is a defence for the person charged with the offence to establish on a balance of probabilities that the person did not know, and could not reasonably have known, of the existence of the facts that led to the contravention.

900. Copy of application to be given to members, employees, etc

(1) A person who makes an application under section 897 on behalf of a company shall ensure that, within seven days after 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 class prescribed by the regulations for the purpose of this paragraph.

(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.

(4) A person who fails to comply with the subsection (1) (otherwise than with the intention referred to in subsection (6)) commits an offence and on conviction is liable to a fine not exceeding fifty thousand shillings.

(5) In proceedings for an offence under subsection (4), it is a defence for the person charged with the offence to establish on a balance of probabilities that the person took all reasonable steps to comply with the requirement imposed by subsection (1).

(6) A person who fails to comply with subsection (1) with the intention of concealing the making of the application from a person referred to in paragraphs (a) to (f) of that subsection commits an aggravated offence and on conviction is liable to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding two years, or to both.

901. Copy of application to be given to new members, employees, etc

(1) In this section—

"company" means a company that has made an application, or in respect of which an application has been made, under section 897;

"relevant period", in relation to a company, means the period beginning on the day after the day on which an application for striking off the company is made under section 910 and ending on the day before the application is finally dealt with or withdrawn.

(2) If, on a day during the relevant period, a person 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 class prescribed by the regulations for the purpose of this paragraph, each person (not being that person) who, at the end of that day, is director of the company shall ensure that a copy of the application for voluntary striking off the company is given to that person within seven days after that day.

(3) The requirement imposed by subsection (2) ceases to apply if the application is disposed of or withdrawn before the end of the period within which the copy is required to be given.

(4) A person who fails to comply with subsection (2) (otherwise than with the intention referred to in subsection (6)) commits an offence and on conviction is liable to a fine not exceeding fifty thousand shillings.

(5) In proceedings for an offence under subsection (4), it is a defence for the person charged with the offence to establish on a balance of probabilities—

(a) that, at the time of the failure to comply with the requirement imposed by subsection (2), the defendant was not aware of the fact that the company had made an application under section 897; or

(b) that the defendant took all reasonable steps to comply with that requirement.

(6) A person who fails to comply with subsection (2) with the intention of concealing the making of the application from a person referred to in paragraphs (a) to (f) of that subsection commits an aggravated offence and on conviction is liable to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding two years, or to both

902. Copy of application: provisions as to service of documents

(1) For the purposes of sections 900 and 901, a document is given to a person if it is—

(a) delivered to the person personally;

(b) left at the person's proper address; or

(c) sent to the person by post at that address.

(2) For the purposes of subsection (1), the proper address of a person is—

(a) in the case of a body incorporated or formed in Kenya — its registered or principal office;

(b) in the case of a body incorporated or formed outside Kenya—

(i) if it has a place of business in Kenya, its principal office in Kenya; or

(ii) if it does not have a place of business in Kenya, its registered or principal office;

(c) in the case of a natural person — the address (if any) last known to the giver of the document concerned.

(3) For the purposes of sections 900 and 903, a document is treated as being given to a person who is a creditor of the company if it is left or sent by post to the person—

(a) at the person's place of business with which the company has had dealings by virtue of which the person is a creditor of the company; or

(b) if there is more than one such place of business — at each of them.

903. Circumstances in which application taken to be withdrawn

(1) In this section—

“company" means a company that has made an application under section 897;

“relevant event”, in relation to a company, means an of the following:

(a) the making of a change to the company's name;

(b) engaging in trading or otherwise carrying on business;

(c) the disposal by the company for value of any property other than that which it was necessary or desirable for it to hold for the purpose of making, or proceeding with, an application under section 897;

(d) engaging in any activity other than one to which subsection (3) applies;

(e) the making of an application to the Court under Part XXXIV on behalf of the company for the sanctioning of a compromise or arrangement;

(f) the making of proposal for a voluntary arrangement in relation to the company under the laws relating to insolvency;

(g) the making of an application to the Court for an administration order in respect of the company under the laws relating to insolvency;

(h) the appointment of an administrator in respect of the company under the laws relating to insolvency, or the lodgement in the Court of a copy of notice of intention to appoint such an administrator in respect of the company;

(i) the coming into existence of circumstances in which, under a provision of the laws relating to insolvency, the company may be liquidated voluntarily;

(j) the presenting of an application to liquidate the company by the Court any such law;

"relevant day" means a day occurring during the period from and including the day on which the company makes an application under section 897 and ending with day before the day on which the application is finally disposed of or withdrawn.

(2) If a relevant event occurs on a relevant day, each person who is a director of the company at the end of that day shall ensure that the application of the company under section 897 is withdrawn without delay.

(3) For the purposes of subsection (1)(b), a company is not treated as trading or otherwise carrying on business only because 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)(d) are any activity—

(a) necessary or desirable—

(i) for the purpose of making, or proceeding with, an application under section 897; or

(ii) for the purpose of concluding affairs of the company that are outstanding because of what has been necessary or desirable for the purpose of making, or proceeding with such an application;

(b) necessary or desirable for the purpose of complying with any statutory requirement; and

(c) prescribed by the regulations for the purposes of this subsection.

(5) A person who fails to comply with the requirement imposed by subsection (2) commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(6) In proceedings for an offence under subsection (5), it is a defence for the person charged with the offence to establish on a balance of probabilities—

(a) that at the time of the failure the person was not aware of the fact that the company had made an application under section 897; or

(b) that the person took all reasonable steps to comply with the requirement.

904. When withdrawal of application takes effect

An application under section 897 is withdrawn when a notice of withdrawal is lodged with the Registrar.

Division 3 — Undistributed property of dissolved company to vest in the State

905. Property of dissolved company to vest in the State

(1) Property that, immediately before the dissolution of a company had not been distributed or disclaimed, vests in the State with effect from the dissolution of the company.

(2) For the purposes of this section, property of the former company includes leasehold property and all other rights vested in or held on trust for the former company, but does not include property held by the former company on trust for any other person.

(3) The Attorney General shall, on becoming aware of the vesting of the property, give public notice of the vesting, setting out the name of the former company and particulars of the property.

(4) If property is vested in the State under this section, a person who would have been entitled to receive all or part of the property, or payment from the proceeds of its realisation, if it had been in the hands of the company immediately before its dissolution, or any other person claiming through that person, may apply to the Court for an order—

(a) vesting all or part of the property in that person; or

(b) for payment to that person by the State of compensation of an amount not greater than the value of the property.

(5) On the hearing of an application made under subsection (4), the Court may—

(a) decide any question concerning the value of the property, the entitlement of any applicant to the property or to compensation, and the apportionment of the property or compensation among two or more applicants

(b) order that the hearing of two or more applications be consolidated;

(c) order that an application be treated as an application on behalf of all persons, or all members of a class of persons, with an interest in the property; or

(d) make such ancillary orders as it considers necessary.

(6) Compensation ordered to be paid under subsection (4) is payable from the Consolidated Fund without further appropriation than this section.

(7) When a company is dissolved, all property vested in or held on trust for the company immediately before its dissolution vests in the State. That property includes leasehold property, but not property held by the company on trust for another person.

(8) Subsection (1) has effect subject to the possible restoration of the company to the Register under this Part.

906. Disclaimer of property vesting in the State

(1) The Attorney General may, by notice of disclaimer, disclaim the State's ownership of property that has vested in the State under section 905.

(2) The Attorney General may, on behalf of the State, waive the right to execute a notice of disclaimer, either expressly or by taking possession or other act evidencing that intention.

(3) The Attorney General may not execute a notice of disclaimer more than three years after—

(a) the date on which the Attorney General first became aware that the property may have vested in the State under section 905; 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) A person claiming to be interested in property that has vested in the State in accordance with section 906 may, in writing, apply to the Attorney General requesting the Attorney General to decide whether or not the property is to be disclaimed.

(5) If, after considering an application under subsection (4), the Attorney General decides to disclaim the property, the Attorney General shall, not later than three after making the decision (or within such extended period as the Court may allow, execute a notice of disclaimer.

(6) A notice of disclaimer under this section is invalid if it is shown to have been executed after the end of the period specified by subsection (3) or (5).

(7) The Attorney General shall arrange for copies a notice of disclaimer executed under this section—

(a) to be published in the *Gazette*; and

(b) to be sent to all persons who claim to have an interest in the property concerned.

(8) Failure to comply with subsection (6) or (7) does not of itself invalidate a notice of disclaimer.

907. Effect of State disclaimer

(1) Property in respect of which a notice of disclaimer has been executed under section 906 is taken never to have vested in the State.

(2) Sections 908 to 911 apply in relation to the effect of the State's disclaimer

908. General effect of disclaimer

The State's disclaimer operates—

(a) so as to terminate, as from the date of the disclaimer, the rights, interests and liabilities of the company 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.

909. Disclaimer of leaseholds

(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 all persons claiming under the company as mortgagees, and either—

(a) no application under section 910 is made with respect to that property within fourteen days from and including the day on which the last notice under this subsection was served; or

(b) if such an application has been made — the Court directs the disclaimer to have effect.

(2) If the Court gives a direction under subsection (1)(b), it may, instead of or in addition to any order it makes under section 911, also make an order with respect to fixtures, tenant's improvements and other matters arising out of the lease.

910. Power of Court to make vesting order

(1) On an application made 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, the Court may 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 a liability of the kind referred to in subsection (1)(b), or a trustee for such a person.

(3) An order under subsection (2)(b) may be made only if the Court is satisfied 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 considers to be fair and reasonable.

(5) On a vesting order being made under this section, the property concerned vests, without conveyance, assignment or transfer, in the person named in the order as the owner of the interest specified in the order.

911. Protection of persons holding under a lease

(1) The Court may not make an order under section 911 vesting an interest under a lease in a person claiming under the company as a mortgagee or under lessee 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 appropriate—subject to the same liabilities and obligations as if the lease had been assigned to the person.

(2) If the order relates to only part of the property to which the lease relates, subsection (1) applies as if the lease had comprised only the part to which the vesting order relates.

(3) A person claiming under the company as mortgagee or under lessee who declines to accept a vesting order on the terms referred to in subsection (1) is excluded from all interest in the property.

(4) If no one claiming under the company is willing to accept an order on those terms, the Court may vest the interest 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 the interest in such a person freed and discharged from all encumbrances and interests created by the company.

Division 4 — Restoration of companies to the Register

912. Application for administrative restoration to the Register

(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 894 or 897.

(2) An application under this section may—

(a) be made whether or not the company has in consequence been dissolved;

(b) be made only by a former director or former member of the company; and

(c) not be made after the expiry of six years from the date on which the company was dissolved.

(3) For purposes of this section, an application is made when it is received by the Registrar.

913. Requirements for administrative restoration

(1) On an application made under section 912, the Registrar shall restore the company to the Register if (but only if) the three conditions set out in subsections (2) to (4) are satisfied.

(2) The first condition is that the company was carrying on business or in operation at the time of its striking off.

(3) The second condition is that, if any property previously vested in or held on trust for the company has vested in the State under section 905, the Attorney General has signified to the Registrar in writing consent to the company's restoration to the Register.

(4) The third condition is that the applicant has lodged with the Registrar for registration such documents relating to the company as are necessary to bring up to date the records kept by the Registrar.

(5) The applicant is responsible for obtaining the consent required under subsection (3) 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.

914. Registrar’s decision on application for administrative restoration

(1) As soon as practicable after receiving an application for the administrative restoration of a company to the Register, the Registrar shall determine the application and notify the applicant in writing of the determination.

(2) If the application is refused, the Registrar shall include in the determination the reasons for the refusal.

(3) If the Registrar determines that the company should be restored to the Register, the restoration takes effect from the date on which notice of the determination is sent to the applicant.

(4) As soon as practicable after making a determination 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) publish the notice of the restoration in the *Gazette*.

(5) The Registrar shall include in the notice of restoration—

(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.

915. Effect of administrative restoration

(1) The effect of the restoration of a company to the Register is that the company is taken to have continued in existence as if it had not been dissolved or struck off the Register.

(2) The company or an interested person may make an application to the Court for an order under subsection (3) at any time within three years after the date of restoration of the company to the Register (but no later).

(3) On the hearing of an application under subsection (2), the Court may make an order giving such directions and making such provision as it considers just for placing the company and all other persons as nearly as practicable in the same position as if the company had not been dissolved or struck off the Register.

(4) The company is not liable to a penalty under this Act for a failure to lodge with the Registrar a document required to be lodged under a provision of this Act or under a corresponding provision of the repealed Act for a financial year in relation to which the period for lodging financial statements and directors' reports ended—

(a) after the date of dissolution or striking off; and

(b) before the restoration of the company to the Register.

916. Application to Court for restoration to the Register

(1) An application may be made to the Court to restore to the Register a company—

(a) that has been dissolved after being liquidated under the law relating to insolvency;

(b) that is taken to have been dissolved following administration under that Act; or

(c) that has been struck off the Register—

(i) under section 894 or 895; or

(ii) under section 897, whether or not the company has in consequence been dissolved.

(2) Such an application may be made by—

(a) the Attorney General;

(b) a former director of the company;

(c) a person having an interest in land in which the company had a superior or derivative interest;

(d) a person who has 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) a person who, but for the dissolution of the company, would have a contractual relationship with it;

(f) a person with a potential legal claim against the company;

(g) manager or trustee of a pension fund established for the benefit of employees of the company;

(h) a former member of the company, or the executor or administrator of such a person;

(i) a person who was a creditor of the company at the time of its being struck off the Register or dissolved;

(j) a former liquidator of the company;

(k) if the company was struck off the Register under section 897— a person of a description specified by regulations referred to in section 900(1)(f) or 901(2)(f); or

(l) any other person appearing to the Court to have an interest in the matter.

917. When application to the Court may be made

(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 order may not be made on such an application if it appears to the Court that the proceedings would fail because of any written law limiting the time within which proceedings can be brought.

(3) In making that decision, the Court is required to have regard to its power under section 919 to direct that the period between the dissolution (or striking off) of the company and the making of the order is not to count for the purposes of any such enactment.

(4) In any other case an application to the Court for restoration of a company to the Register may not be made after the expiry of six years from the date of the dissolution of the company, but this subsection is subject to subsection (5).

(5) If—

(a) the company has been struck off the Register under section 894 or 895;

(b) an application to the Registrar has been made under section 912 before the deadline for making such an application; and

(c) the Registrar has refused the application, an application to the Court under this section may be made within twenty-eight days after notice of the Registrar's decision is issued. This subsection has effect even if the period of six years referred to in subsection (4) has expired.

(6) For the purposes of this section—

(a) “personal injury" includes any disease and any impairment of a person's physical or mental condition; and

(b) references to damages for personal injury include—

(i) any amount claimed under section 2 of the Law Reform Act (Cap. 26); and

(ii) damages under the Fatal Accidents Act (Cap. 32).

918. Decision on application for restoration by the Court

(1) On the hearing of an application made under section 927, the Court may order the company to be restored to the Register—

(a) if the company was struck off the Register under section 894 or 895 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 897 and a requirement of sections 898 to 903 was not complied with; or

(c) if in any other case the Court considers it just to do so.

(2) If the Court orders the company to be restored to the Register, the restoration takes effect when a copy of the Court order is lodged with the Registrar for registration.

(3) As soon as practicable after receiving a copy of the Court order, the Registrar shall record the restoration of the company to the Register and publish in the Gazette a notice of the restoration.

(4) The Registrar shall include in the notice—

(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.

919. Effect of Court order for restoration to the Register: power of Court to make consequential directions

(1) The effect of an order by the Court for the restoration of the company to the Register is that the company is taken 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 considers just in order to place the company and all other persons in as nearly as practicable in the same position as the company would have been in if it had not been dissolved or struck off the Register.

(3) The Court may also give directions with respect to—

(a) the lodgement with the Registrar of such documents relating to the company as are necessary to bring up to date the records kept by the Registrar in respect of the company;

(b) the payment of the costs of the Registrar in connection with the proceedings;

(c) if any property previously vested in or held on trust for the company has vested in the State under section 905 — 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.

(4) The company or an interested person may make an application to the Court for any such directions under this section at any time within three years after the making of the order for restoration of the company to the Register.

(5) The company is not liable to a penalty under this Act for a failure to lodge with the Registrar a document required to be lodged under a provision of this Act or under a corresponding provision of the repealed Act for a financial year in relation to which the period for lodging financial statements and directors' reports ended—

(a) after the date of dissolution or striking off; and

(b) before the restoration of the company to the Register.

920. Company's name on being restored to the Register

(1) Except as provided by subsection (2), a company is restored to the Register with the name it had before it was dissolved or struck off the Register.

(2) If, at the date of restoration, the company could not be registered under its former name without contravening section 50, it is to be restored to the Register—

(a) 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 an order of the Court order — in the Court's order; or

(b) as if its registered number was also its name.

(3) References in subsection (2) to a company's being registered in a name, and to registration in that context, are to be read as including the company's being restored to the Register.

(4) If a company is restored to the Register under a name specified in the application to the Registrar sections 65 and 66 apply as if the application to the Registrar were notice of a change of name.

(5) If a company is restored to the Register under a name specified in the Court's order, sections 65 and 66 apply as if the copy of the Court order lodged with the Registrar were a notice of a change of the company's name.

(6) 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 affecting any other method of changing the company's name);

(c) the company shall lodge with the Registrar for registration a notice of the change; and

(d) sections 65 and 66 apply in relation to the registration and effect of the change.

(7) If the company fails to comply with subsection (6)(a) or (c), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding one hundred thousand shillings.

(8) If, after the company or any of its officers is convicted of an offence under subsection (7), the company continues to fail to comply with subsection (6)(a) or (c), the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding ten thousand shillings for each such offence.

921. Effect of restoration to the Register if property has vested in the State under section 919

(1) The person in whom property is vested by section 905 may dispose of that property, even though the company has been or may be restored to the Register under this Part.

(2) The following provisions apply when a company is restored to the Register:

(a) the restoration does not affect a disposition of the kind referred to in subsection (1) but its effect in relation any other property previously vested in or held on trust for the company is not affected;

(b) the State becomes liable to pay the company an amount equal to the greater of—

(i) the amount of any consideration received for the property; and

(ii) the value of the property at the date of the disposition, or, if no consideration was received for the disposition, an amount equal to the value of the property at the date of the disposition.

(3) The Attorney General may deduct from the amount payable under subsection (2)(b) the Attorney General's reasonable costs in connection with the disposition to the extent that they have not been paid as a condition of administrative restoration or in accordance with an order of the Court directing restoration.

Part XXXIV – COMPROMISES, ARRANGEMENTS, RECONSTRUCTIONS AND AMALGAMATIONS

922. Part XXXIV: Application and interpretation

(1) This Part applies when 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) This Part has effect subject to Part XXXV if that Part applies.

(3) 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.

923. Court may order meeting of company's creditors or members to be held

(1) The Court may, on an application under subsection (2), order a meeting of—

(a) the creditors or class of creditors; or

(b) the members of the company or a class of members, to be convened in such manner as the Court directs.

(2) An application under this section may be made by—

(a) the company;

(b) any creditor or member of the company; or

(c) if the company is in liquidation or under administration — the liquidator or administrator.

924. Explanatory statement setting out effect of arrangement or compromise to be circulated or made available to company's creditors and members of company

(1) When the Court has ordered a meeting to be convened under section 923, the company concerned shall ensure that—

(a) each notice convening the meeting that is sent to a creditor or member includes or is accompanied by a statement that complies with subsection (2); and

(b) each notice convening the meeting that is given by advertisement either—

(i) includes such a statement; or

(ii) states where and how creditors or members entitled to attend the meeting may obtain copies of such a statement.

(2) A statement complies with this subsection only if—

(a) it explains the effect of the proposed compromise or arrangement; and

(b) in particular, it specifies—

(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 on similar interests of other persons.

(3) If the compromise or arrangement affects the rights of debenture holders of the company, the company shall include in the statement the same explanation in respect of the trustees of any deed for securing the issue of the debentures as is required to be given in respect of the company's directors.

(4) If 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 application in the manner indicated by the notice, to be provided by the company with a copy of the statement free of charge.

(5) If a company fails to comply with a requirement of this section, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(6) In proceedings for an offence under subsection (5), it is a defence for the person charged with the offence to establish on a balance of probabilities that the failure was due to the refusal of a director or trustee for debenture holders to supply the necessary particulars of the interests of the director or trustee.

(7) For the purpose of this section, the following persons are taken to be officers of the company:

(a) a liquidator or administrator of the company;

(b) a trustee of a deed for securing the issue of debentures of the company.

925. Duty of directors and trustees to provide information

(1) Each director of the company, and each trustee for its debenture holders, shall give notice to the company of such matters relating to the director or trustee as may be necessary for purposes of section 924.

(2) A director, or a trustee for debenture holders, who fails to comply with subsection (1) commits an offence and on conviction is liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.

926. Court order sanctioning compromise or arrangement

(1) If a majority in number representing seventy–five percent in value of—

(a) the creditors or class of creditors; or

(b) the members or class of members, present and voting either in person or by proxy at the meeting convened in accordance with section 923 agrees to a compromise or arrangement, the Court may, on an application under subsection (2), sanction the compromise or arrangement.

(2) An application for an order under subsection (1) may be made by—

(a) the company;

(b) any creditor or member of the company; or

(c) if the company is in liquidation or under administration — the liquidator or administrator.

(3) A compromise or agreement sanctioned by the Court is binding—

(a) on all creditors or the class of creditors, or on the members or class of members, concerned; and

(b) on the company or, in the case of a company that is in liquidation — the liquidator and contributories of the company.

(4) The order of the Court has no effect until a copy of it has been lodged with the Registrar for registration.

927. Powers of the Court to facilitate reconstruction or amalgamation

(1) In this section—

"property" includes property, rights and powers of every description;

"liabilities" includes duties;

"transferee company" means a company to which the whole or a part of the undertaking or property of a company is to be transferred under a compromise or arrangement referred to in subsection (2);

"transferor company" means a company the whole or a part of whose undertaking or property is to be transferred to another company under a compromise or arrangement referred to in subsection (2)

(2) This section applies when—

(a) application is made to the Court under section 939 to sanction a compromise or arrangement proposed between a company and any such persons as are referred to 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 proposed compromise or arrangement, the whole or a part of the undertaking or property of a company is to be transferred to another company.

(3) 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 a transferor company;

(b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other similar interests in that company that, 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 a transferor company;

(d) the dissolution, without liquidation, of a transferor company;

(e) the provision to be made for any persons who, within such period and in such manner as the Court directs, dissent from the compromise or arrangement;

(f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.

(4) If the Court order under subsection (3) provides for the transfer of property or liabilities—

(a) the property is because of the order transferred to, and vests in, the transferee company; and

(b) the liabilities are, because of the order, transferred to and become liabilities of that company.

(5) If the order so provides, the property vests free from all charges that, because of the compromise or arrangement, are to cease to have effect.

928. Copy of order to be lodged with the Registrar for registration

(1) Within seven days after the Court has made an order under section 927, each company affected by the order shall lodge a copy of it with the Registrar for registration.

(2) If one of the companies affected by the order has complied with subsection (1), the other companies affected by it are taken to have complied with that subsection.

(3) If a company fails to comply with subsection (1), the company, and each officer of the company who is in default commit an offence and on conviction are each liable to a fine not exceeding one hundred thousand shillings.

(4) If, after a company or officer has been convicted of an offence under subsection (2), the company continues to fail to lodge with the Registrar the copy of the Court's order, the company, and each officer of the company who is in fault, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding ten thousand shillings for each such offence.

929. Obligations of company with respect to its constitution

(1) This section applies—

(a) to any order under section 926; and

(b) to any order under section 927 that alters the company’s constitution.

(2) If an order to which this section applies amends—

(a) a company's articles; or

(b) any resolution or agreement affecting a company's constitution, the company shall attach to a copy of the company's articles, or the resolution or agreement, as amended, a copy of the order lodged with the Registrar by the company in accordance with section 926(4) or section 928.

(3) The company shall attach to every copy of its articles issued by it after the order is made a copy of the order, unless the effect of the order has been incorporated into the articles by amendment.

(4) In this section—

(a) a reference to the effect of the order includes the effect of the compromise or arrangement to which the order relates; and

(b) in the case of a company not having articles, references to its articles are to be read as references to the company's constitution.

(5) If a company fails to comply with this section, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding one hundred thousand shillings.

(6) If, after a company or officer has been convicted of an offence under subsection (5), the company continues to fail to comply with the relevant requirement of this section, the company, and each officer of the company who is in fault, commit a further offence on each day on which the failure

continues and on conviction are each liable to a fine not exceeding ten thousand shillings for each such offence.

Part XXXV – MERGERS AND DIVISIONS OF PUBLIC COMPANIES

Division 1 — Introductory provisions

930. Interpretation: Part XXXV

(1) In this Part—

“companies involved in the division", in relation to a division, means the transferor company and any existing transferee companies;

“division" means a scheme of the kind described in section 938;

“existing company", in relation to a merger or division, means a company other than one formed for the purposes of, or in connection with, the merger or division;

"**merger**" means a scheme of the kind described in section 933;

"**merger by absorption**" mean a merger of the kind described in section 933(a);

"**merger by formation of a new company**" means a merger of the kind described in section 933(b);

"**merger documents**", in relation to a merger, means the documents listed in section 940(3);

"**the merging companies**"—

(a) in relation to a merger by absorption — means the transferor and transferee companies under the merger; and

(b) in relation to a merger by formation of a new company — means the transferor companies;

“new company”, in relation to a merger or division, means a company formed for the purposes of, or in connection with, the merger or division;

"**share exchange ratio”**—

(a) in relation to a merger — means the number of shares in the transferee company that are to be allotted to members of a transferor company for a given number of their shares; and

(b) in relation to a division — means the number of shares in a transferee company that are to be allotted to members of the transferor company for a given number of their shares.

931. Application of this Part

(1) The Part applies when—

(a) a compromise or arrangement is proposed between a public company and—

(i) its creditors or a specified class of them; or

(ii) its members or a specified class of them, for the purposes of, or in connection with, a scheme for the reconstruction of a company or companies, or the amalgamation of any two or more companies;

(b) the scheme involves—

(i) a merger; or

(ii) a division; and

(c) the consideration for the transfer, or each of the transfers, that is contemplated is to be shares in the transferee company, or in one or more of the transferee companies, receivable by members of the transferor company, or the transferor companies, with or without a cash payment to members.

(2) This Part does not apply if the company in respect of which the compromise or arrangement is proposed is in liquidation.

932. Relationship of this Part to Part XXXIV

(1) The Court may sanction the compromise or arrangement under Part XXXIV only if the relevant requirements of this Part have been complied with.

(2) The requirements applicable to mergers are specified in sections 933 to 943, but certain of those requirements, and certain general requirements of Part XXXIV, are modified or excluded by sections 944 to 947.

(3) The requirements applicable to divisions are specified in sections 949 to 959, but certain of those requirements, and certain general requirements of Part XXXIV, are modified or excluded by sections 960 to 963.

Division 2 — Mergers

933. Introductory: mergers and merging companies

(1) A scheme involves a merger if under the scheme—

(a) the undertaking, property and liabilities of one or more public companies (including the company in respect of which the compromise or arrangement is proposed) are to be transferred to another existing public company; or

(b) the undertaking, property and liabilities of two or more public companies (including the company in respect of which the compromise or arrangement is proposed) are to be transferred to a new company.

(2) The new company may be a public company or a private company.

934. Draft terms of scheme for proposed merger

(1) The directors of the merging companies shall prepare and adopt a draft of the proposed terms of the scheme.

(2) Those directors shall ensure that the draft terms contain particulars of at least the following matters:

(a) in respect of each transferor company and the transferee company—

(i) its name,

(ii) the address of its registered office; and

(iii) whether it is a company limited by shares or a company limited by guarantee and having a share capital;

(b) the share exchange ratio and the amount of any cash payment;

(c) the terms relating to the allotment of shares in the transferee company;

(d) the date from which the holding of shares in the transferee company will entitle the holders to participate in profits, and any special conditions affecting that entitlement;

(e) the date from which the transactions of a transferor company are to be treated for accounting purposes as being those of the transferee company;

(f) any rights or restrictions attaching to shares or other securities in the transferee company to be allotted under the scheme to the holders of shares or other securities in a transferor company to which any special rights or restrictions attach, or the measures proposed concerning them;

(g) any amount of benefit paid or given or intended to be paid or given—

(i) to any of the experts referred to in section 938; or

(ii) to any director of a merging company, and the consideration for the payment of benefit.

(3) The requirements in subsection (2)(b), (c) and (d) are subject to section 944.

935. Draft terms of proposed merger to be published

(1) The directors of each of the merging companies shall lodge with the Registrar for registration a copy of the draft terms.

(2) As soon as practicable after the copy of the draft terms is lodged with the Registrar (and in any case not later than one month before the date of the meeting (if any) of the company convened for the purpose of approving the scheme), the Registrar shall publish in the *Gazette* a notice of the lodgement by that company of the copy.

(3) If the directors of a merging company fail to comply with subsection (1), each of the directors who is in default commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

(4) If, after a director of the company has been convicted of an offence, the directors continue fail to lodge the required copy with the Registrar, each of the directors who is in default commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding twenty thousand shillings for each such offence.

936. Scheme not effective unless approved by members of merging companies

(1) A scheme has no effect unless it is approved by a majority in number, representing seventy-five percent in value, of each class of members of each of the merging companies, present and voting either in person or by proxy at a meeting.

(2) Subsection (1) is subject to sections 945, 946 and 947.

937. Directors of merging companies to prepare explanatory report relating to proposed merger

(1) The directors of each of the merging companies shall prepare and adopt a report that complies with subsection (2).

(2) A report complies with this subsection if it includes—

(a) the statement required by section 924; and

(b) insofar as that statement does not deal with the following matters, a further statement—

(i) setting out the legal and economic grounds for the draft terms, and in particular for the share exchange ratio; and

(ii) specifying any special valuation difficulties.

(3) This section is subject to section 944.

938. Merging companies to arrange for preparation of experts' reports

(1) The directors of the merging companies may jointly appoint an expert on behalf of those companies to prepare a written report on the draft terms for presentation to the members of each of those companies.

(2) If the merging companies cannot agree on the appointment of an expert to prepare such a report, the Court, on the joint application of those companies, may appoint an expert on their behalf to prepare a single written report on the draft terms for presentation to the members of each of those companies.

(3) If an appointment under subsection (1) or (2) is not made within a reasonable period, each of the merging companies shall appoint a separate expert to prepare a written report on the draft terms for presentation to the company's members.

(4) A person is eligible for appointment as expert for the purposes of this section only if the person—

(a) is eligible for appointment as a statutory auditor as provided by section 774; and

(b) satisfies the independence requirement in section 965.

(5) In preparing the report, the expert shall—

(a) indicate the method or methods used to arrive at the share exchange ratio;

(b) give an opinion as to whether the method or methods used are reasonable in all the circumstances of the case;

(c) indicate the values arrived at using each of such method and, if there are two or more methods, give an opinion on the relative importance attributed to those methods in arriving at the value decided on;

(d) indicate any special valuation difficulties that have arisen;

(e) state whether in the expert's opinion the share exchange ratio is reasonable; and

(f) in the case of a valuation made by another person (see section 965) – state that it appeared to the expert reasonable to arrange for it to be so made or to accept a valuation so made.

(6) The expert or, if there is more than one, each of them, is entitled—

(a) to have access to all such documents of each of the merging companies; and

(b) to obtain from each of the companies' officers all such information, as the expert considers necessary for the preparation of the report.

(7) This section is subject to section 944.

939. Supplementary financial statement for merger in certain cases

(1) If the last annual financial statements of any of the merging companies relate to a financial year ending more than seven months before the first meeting of the company convened for the purposes of approving the scheme, the directors of the company concerned shall prepare a supplementary financial statement that complies with subsection (2).

(2) A supplementary financial statement complies with this subsection if it consists of—

(a) a balance sheet setting out the financial position of the company as at a date not more than three months before the draft terms were adopted by the directors; and

(b) if the company would be required under section 639 to prepare a group financial statement if that date were the last day of a financial year, a consolidated balance sheet setting out the

financial position of the company and the undertakings that would be included in such a consolidation.

(3) The requirements of this Act as to the balance sheet forming part of a company's annual financial statement, and the matters to be included in notes to it, apply to the balance sheet required for a financial statement under this section, with such modifications as are necessary because of its being prepared otherwise than as at the last day of a financial year.

(4) Section 652 applies to the balance sheet required for a financial statement under this section.

940. Members of merging companies entitled to inspect merger documents

(1) The members of each of the merging companies are, during the relevant period entitled—

(a) to inspect at the registered office of that company copies of the merger documents relating to that company and every other merging company; and

(b) to obtain copies of those documents or any part of them on request free of charge.

(2) For the purpose of this section, the relevant period is the period—

(a) beginning one month before the date of the first meeting of the members, or a specified class of members, of the company for the purposes of approving the scheme; and

(b) ending on that date.

(3) The merger documents are the following:

(a) the draft terms;

(b) the directors' explanatory report;

(c) the expert's report;

(d) the company's annual financial statements and reports for the last three financial years ending on or before the first meeting of the members, or a specified class of members, of the company convened for the purposes of approving the scheme;

(e) any supplementary financial statement required by section 939.

(4) Subsections (3)(b) and (c) are subject to section 944.

941. Articles of transferee company involved in merger to be approved

A merger by formation of a new company does not take effect unless the articles of the transferee company, or a draft of them, are approved—

(a) by an ordinary resolution of the transferor company; or

(b) if there is more than one transferor company — by each of the transferor companies.

942. Protection of holders of securities to which special rights attached (merger)

(1) This section applies to securities of the transferor company (other than shares) to which special rights are attached.

(2) If a person holds securities to which this section applies otherwise than as a member or creditor of the company, the scheme is invalid unless it provides that the person is entitled to receive rights in a transferee company of equivalent value.

(3) Subsection (2) does not apply if—

(a) the holder of the securities has agreed otherwise;

(b) that holder is, or under the scheme is to be, entitled to have the securities purchased by a transferee company on terms that the Court considers fair and reasonable; or

(c) the Court has, on the application of the holder of the securities or the transferor company or the transferee company, made an order validating the scheme.

943. Allotment of shares to transferor company (or its nominee) prohibited

A scheme is invalid to the extent that it provides for shares in the transferee company to be allotted to a transferor company (or its nominee) in respect of shares in the transferor company held by it (or its nominee).

944. Circumstances in which certain particulars and reports not required in relation to merger

(1) This section applies to a merger by absorption if all of the relevant securities of the transferor company, or if there is more than one transferor company, of each of them, are held by or on behalf of the transferee company.

(2) The draft terms of the scheme need not give the particulars referred to in section 934(2)(b), (c) or (d).

(3) Section 924 does not apply.

(4) The requirements of the following sections do not apply—

(a) sections 937 and 938; and

(b) section 940 so far as it relates to any document required to be drawn up under section 937 or 938.

(6) In this section, "**relevant securities**", in relation to a company, means shares or other securities conferring the right to vote at general meetings of the company.

945. Circumstances in which meeting of members of transferee company not required for merger

(1) This section applies to a merger by absorption if ninety percent or more (but not all) of the relevant securities of the transferor company, or, if there is more than one transferor company, of each of them, are held by or on behalf of the transferee company.

(2) The scheme need not be approved at a meeting of the members, or a specified class of members, of the transferee company if the Court is satisfied that the three conditions specified in subsections (3) to (5) have been complied with.

(3) The first condition is that publication of notice of receipt of the draft terms by the Registrar took place in respect of the transferee company at least one month before the date of the first meeting of members, or a specified class of members, of the transferor company convened for the purpose of agreeing to the scheme.

(4) The second condition is that the members of the transferee company were able during the relevant period—

(a) to inspect at the registered office of the transferee company copies of the merger documents listed in section 940(3)(a), (d) and (e) relating to that company and the transferor company, or if there is more than one transferor company, each of them; and

(b) on request, to obtain copies of those documents or any part of them free of charge.

(5) The third condition is that—

(a) one or more members of the transferee company, who together held not less than five percent of the paid-up capital of the company that conferred the right to vote at general meetings of the company (excluding any shares in the company held as treasury shares) would have been able, during the relevant period, to require a meeting of each class of members to be called for the purpose of deciding whether or not to agree to the scheme; and

(b) no such requirement was made.

(6) In this section—

(a) "**relevant period**" has the meaning given by section 940(2);

(b) "**relevant securities**", in relation to a company, means shares or other securities conferring the right to vote at general meetings of the company.

946. Circumstances in which meeting of members of transferee company not required in relation to merger

(1) This section applies to a merger by absorption if all of the relevant securities of—

(a) the transferor company; or

(b) if there is more than one transferor company—of each of them,

are held by or on behalf of the transferee company.

(2) The scheme need not be approved at a meeting of the members, or of a specified class of members, of any of the merging companies if the Court is satisfied that the three conditions specified in subsections (3) to (5) have been complied with.

(3) The first condition is that publication of notice of receipt of the draft terms by the Registrar took place in respect of all the merging companies at least one month before the date of the Court's order.

(4) The second condition is that the members of the transferee company were able during the relevant period—

(a) to inspect at the registered office of that company copies of the merger documents relating to that company and—

(i) the transferor company; or

(ii) if there is more than one transferor company — each of them; and

(b) to obtain copies of those documents or any part of them on request, free of charge.

(5) The third condition is that—

(a) one or more members of the transferee company, who together held not less than five percent of the paid-up capital of the company that conferred the right to vote at general meetings of the company (excluding any shares in the company held as treasury shares) would have been able, during the relevant period, to require a meeting of each class of members to be called for the purpose of deciding whether or not to agree to the scheme; and

(b) no such requirement was made.

(6) In this section—

(a) "**relevant period**" means the period beginning one month before the date of the Court's order and ending on that date;

(b) "**relevant securities**", in relation to a company, means shares or other securities conferring the right to vote at general meetings of the company.

947. Other circumstances in which meeting of members of transferee company not required in relation to merger

(1) In the case of a merger by absorption, the scheme need not be approved by the members of the transferee company if the Court, on the application of the transferee company or of any of its members, makes an order declaring that it is satisfied that the three conditions specified in subsection (2) to (4) have been complied with.

(2) The first condition is that publication of the notice of receipt of the draft terms by the Registrar took place in respect of that company at least one month before the date of the first meeting of members, or a specified class of members, of—

(a) the transferor company;

(b) if there is more than one transferor company, any of them, convened for the purposes of agreeing to the scheme.

(3) The second condition is that the members of that company were, during the relevant period, at all reasonable times able—

(a) to inspect at the registered office of that company copies of the merger documents relating to that company and the transferor company or, if there is more than one transferor company, each of them; and

(b) on request, to obtain copies of those documents or any part of them free of charge.

(4) The third condition is that—

(a) one or more members of that company, who together held not less than five percent of the paid-up capital of the company that conferred the right to vote at general meetings of the company (excluding any shares in the company held as treasury shares) would have been able, during the relevant period, to require a meeting of each class of members to be convened for the purpose of deciding whether or not to agree to the scheme; and

(b) no such requirement was made.

(5) In this section, "**relevant period**" means the period specified in section 940(2).

Division 3 — Division of companies

948. Introductory: companies and involvement of companies in division

A scheme involves a division if, under the scheme, the undertaking, property and liabilities of the company in respect of which a compromise or arrangement is proposed are to be divided among, and transferred to, two or more companies each of which is either—

(a) an existing public company; or

(b) a new company (whether or not a public company).

949. Draft terms of scheme to be prepared and adopted in relation to division

(1) The directors of each company involved in a division shall prepare and adopt a draft of the proposed terms of the scheme.

(2) The directors shall include in the draft terms particulars of at least the following matters:

(a) in respect of the transferor company and each transferee company—

(i) its name;

(ii) the address of its registered office; and

(iii) whether it is a company limited by shares or a company limited by guarantee and having a share capital;

(b) the share exchange ratio and the amount of any cash payment;

(c) the terms relating to the allotment of shares in a transferee company;

(d) the date from which the holding of shares in a transferee company will entitle the holders to participate in profits, and any special conditions affecting that entitlement;

(e) the date from which the transactions of the transferor company are to be treated for accounting purposes as being those of a transferee company;

(f) any rights or restrictions attaching to shares or other securities in a transferee company to be allotted under the scheme to the holders of shares or other securities in the transferor company to which any special rights or restrictions attach, or the measures proposed concerning them;

(g) the amount of benefit (if any) paid or given or intended to be paid or given—

(i) to any of the experts referred to in section 953; or

(ii) to any director of a company involved in the division, and the consideration for the payment of the benefit.

(3) The directors shall also include in the draft terms—

(a) particulars of the property and liabilities to be transferred (to the extent that these are known to the transferor company) and their allocation among the transferee companies;

(b) provision for the allocation among and transfer to the transferee companies of any other property and liabilities that the transferor company has acquired or may subsequently acquire; and

(c) particulars concerning the allocation to members of the transferor company of shares in the transferee companies and the criteria on which that allocation is based.

950. Draft terms relating to division to be published

(1) The directors of each company involved in the division shall lodge a copy of the draft terms with the Registrar for registration.

(2) As soon as practicable after receiving from the company a copy of the draft terms (and in any case not later than one month before the date of the meeting of the company convened for the purpose of approving the scheme), the Registrar shall publish the copy in the *Gazette*.

(3) This section is subject to section 963.

951. Approval of members of companies involved in division

(1) The compromise or arrangement is not effective unless it is approved by a majority in number, representing seventy-five percent in value, of each class of members of each of the companies involved in the division, present and voting either in person or by proxy at a meeting.

(2) This section is subject to sections 960 and 961.

952. Directors to prepare explanatory report in relation to division

(1) The directors of the transferor company and each existing transferee company shall prepare and adopt a report that complies with subsection (2).

(2) A report complies with this subsection if it includes—

(a) the statement required by section 924;

(b) insofar as that statement does not deal with the following matters, a further statement—

(i) specifying the legal and economic grounds for the draft terms and, in particular, for the share exchange ratio and for the criteria on which the allocation to the members of the transferor company of shares in the transferee companies was based; and

(ii) specifying any special valuation difficulties; and

(c) a statement as to—

(i) whether a report has been made to any transferee company under section 368; and

(ii) if so, whether that report has been lodged with the Registrar for registration.

(3) This section is subject to section 962.

953. Expert's report to be prepared for each company involved in division

(1) The companies involved in a division may jointly appoint an expert to prepare on behalf of those companies a single written report on the draft terms for presentation to the members of each of those companies.

(2) If the companies involved in the division cannot agree on the appointment of an expert to prepare such a report, the Court, on the joint application of those companies, may appoint on their behalf an expert to prepare a single written report on the draft terms for presentation to the members of each of those companies.

(3) If an appointment under subsection (1) or (2) is not made within a reasonable period, each company involved in the division shall appoint a separate expert to prepare a written report on the draft terms for presentation to its members.

(4) A person is eligible to be appointed as an expert under this section only if the person—

(a) is eligible for appointment as a statutory auditor as provided by section 772; and

(b) satisfies the independence requirement in section 965.

(5) In preparing a report for presentation to the members of a company involved in a division, the expert shall—

(a) indicate the method or methods used to arrive at the share exchange ratio;

(b) give an opinion as to whether the method or methods used are reasonable in the circumstances;

(c) indicate the values arrived at, using each such method and (if there are two or more methods) give an opinion on the relative importance attributed to those methods in arriving at the value decided on;

(d) identify any special valuation difficulties that have arisen;

(e) state whether in the expert's opinion the share exchange ratio is reasonable; and

(f) in the case of a valuation made by a person other than the expert (in accordance with section 965), state that it appeared to the expert reasonable to arrange for it to be so made or to accept a valuation so made.

(6) The expert or, if there is more than one, each of them is entitled—

(a) to have access to all such documents of the companies involved in the division; and

(b) to require from the companies' officers all such information, as the expert or experts consider necessary for the purposes of making the report.

(7) This section is subject to section 962.

954. Supplementary financial statement to be prepared in relation to division in certain cases

(1) If the last annual financial statement of a company involved in the division relate to a financial year ending more than seven months before the first meeting of the company convened for the purposes of approving the scheme, the directors of the company shall prepare a supplementary financial statement.

(2) The directors shall include in the supplementary financial statement—

(a) a balance sheet dealing with the financial position of the company as at a date not more than three months before the draft terms were adopted by the directors; and

(b) if the company would be required under section 639 to prepare a group financial statement if that date were the last day of a financial year — a consolidated balance sheet dealing with the financial position of the company and the undertakings that would be included in such a consolidation.

(3) The requirements of this Act as to the balance sheet forming part of a company's annual financial statement, and the matters to be included in notes to it, apply to the balance sheet required for a financial statement under this section, with such modifications as are required because of its being prepared otherwise than as at the last day of a financial year.

(4) Section 652 (directors to approve and sign financial statements) applies to the balance sheet required for a financial statement under this section.

(5) The requirement in this section is subject to section 962.

955. Members of companies involved in division entitled to inspect certain documents

(1) The members of each company involved in the division are, during the relevant period, entitled—

(a) to inspect at the registered office of that company copies of the relevant documents relating to that company and every other company involved in the division; and

(b) on request, to obtain copies of those documents, or any part of them, free of charge.

(2) For the purpose of subsection (1), the relevant period is the period—

(a) beginning one month before the first meeting of the members, or a specified class of members, of the company convened for the purposes of approving the scheme; and

(b) ending on that date.

(3) For the purpose of subsection (2), the relevant documents are as follows:

(a) the draft terms;

(b) the directors' explanatory report;

(c) the expert's report;

(d) the company's annual financial statements and reports for the last three financial years ending on or before the first meeting of the members, or a specified class of members, of the company convened for the purposes of approving the scheme;

(e) any supplementary financial statement required by section 954.

(4) The requirements relating to the documents referred to in subsection (3)(b), (c) and (e) are subject to sections 962 and 963.

956. Report on material changes of assets of transferor company involved in division

(1) The directors of the transferor company shall report—

(a) to every meeting of the members, or a specified class of members, of that company convened for the purpose of agreeing to the scheme; and

(b) to the directors of each existing transferee company, any material changes in the property and liabilities of the transferor company occurring between the date when the draft terms were adopted and the date of the meeting.

(2) The directors of each existing transferee company shall in turn—

(a) report those matters to every meeting of the members, or a specified class of members, of that company convened for the purpose of agreeing to the scheme; or

(b) send a report of those matters to every member entitled to receive notice of such a meeting.

(3) The requirements of this section are subject to section 962.

957. Articles of transferee company involved in division to be approved by transferor company

The articles of a new transferee company do not have effect unless they, or a draft of them, have been approved by an ordinary resolution of the transferor company.

958. Protection of holders of securities to which special rights attached (division)

(1) This section applies to securities of the transferor company (other than shares) to which special rights are attached.

(2) If a person holds securities to which this section applies otherwise than as a member or creditor of the company, the scheme is invalid to the extent that it does not provide that the person is entitled to receive rights in a transferee company of equivalent value.

(3) Subsection (2) does not apply if—

(a) the holder of the securities has agreed otherwise;

(b) that holder is, or under the scheme is to be, entitled to have the securities purchased by a transferee company on such terms as the Court considers reasonable; or

(c) the Court has, on the application of the holder of the securities or the transferor company or the transferee company, made an order validating the scheme.

959. Allotment of shares to transferor company (or its nominee) prohibited

A scheme is void to the extent that it provides for shares in a transferee company to be allotted to the transferor company (or its nominee) in respect of shares in the transferor company held by it (or its nominee).

960. Circumstances in which meeting of members of transferor company involved in division is not required

(1) This section applies to a division in respect of which all of the shares or other securities of the transferor company conferring the right to vote at general meetings of the company are held by or on behalf of one or more existing transferee companies.

(2) The transferor company or a transferee company, or of a member of the transferor company or a transferee company, may make an application for an order under subsection (3).

(3) A scheme to which this section applies does not need to be approved by a meeting of the members, or a specified class of members, of the transferor company if, on the hearing of an application made under subsection (2), the Court makes an order declaring that it is satisfied that the four conditions set out in subsections (4) to (7) have been complied with.

(4) The first condition is that publication of notice of receipt of the draft terms by the Registrar took place in respect of all the companies involved in the division at least one month before the date of the Court's order.

(5) The second condition is that the members of every company involved in the division could, at all reasonable times during the relevant period—

(a) inspect at the registered office of their company copies of the relevant documents relating to each company involved in the division; and

(b) on request, obtain copies of those documents, or any part of them, free of charge.

(6) The third condition is that—

(a) one or more members of the transferor company, who together held not less than five percent of the paid-up capital of the company (excluding any shares in the company held by or on behalf of the State or an agency of the State) could, during the relevant period, have required a meeting of each class of members to be convened for the purpose of deciding whether or not to agree to the scheme; and

(b) no such requirement was made.

(7) The fourth condition is that the directors of the transferor company have sent—

(a) to every member who would have been entitled to receive notice of a meeting to agree to the scheme (had such a meeting been called); and

(b) to the directors of every existing transferee company, a report of any material change in the property and liabilities of the transferor company, between the date when the terms were adopted by the directors and the date one month before the date of the Court's order.

(7) In this section—

(a) "**relevant documents**" means the documents listed in section 955(3);

(b) "**relevant period**" means the period specified in section 955(2).

961. Other exceptions: circumstances in which meeting of members of transferee company not required in relation to division

(1) In the case of a division, the scheme does not need to be approved by the members of a transferee company if the Court, on the application of the company or any of its members, makes an order declaring that it is satisfied that the three conditions specified in subsection (2) to (4) have been complied with in relation to the company.

(2) The first condition is that publication of notice of receipt of the draft terms by the Registrar took place in respect of that company at least one month before the date of the first meeting of members of the transferor company convened for the purposes of agreeing to the scheme.

(3) The second condition is that the members of that company could, at all reasonable times during the relevant period—

(a) inspect at the registered office of that company copies of the relevant documents relating to that company and every other company involved in the division; and

(b) on request, obtain copies of those documents, or any part of them, free of charge.

(4) The third condition is that—

(a) one or more members of that company, who together held not less than five percent of the paid-up capital of the company that conferred the right to vote at general meetings of the company (excluding any shares in the company held by or on behalf of the State or an agency of the State) could, during the relevant period, have required a meeting of each class of members to be convened for the purpose of deciding whether or not to agree to the scheme; and

(b) no such requirement was made.

(5) The first and second conditions are subject to section 963.

(6) In this section—

(a) "**relevant documents**" means the documents specified in section 955(3);

(b) "**relevant period**" means the period specified in section 955(2).

962. Members of companies involved in division can agree to dispense with reports, etc

(1) If all members holding shares in, and all persons holding other securities of, the companies involved in the division (being shares or securities that confer a right to vote in general meetings of the company concerned) so agree, the requirements specified in subsection (2) do not apply.

(2) The requirements that may be dispensed with under this section are—

(a) the requirements of sections 952, 953, 954 and 956; and

(b) the requirements of section 955 so far as they relate to any document referred to in paragraph (a)(i), (ii) or (iii).

(3) For the purposes of this section—

(a) the members, or holders of other securities, of a company; and

(b) whether shares or other securities carry a right to vote in general meetings of the company, are determined as at the date of the application to the Court under section 926.

963. Power of the Court to exclude certain requirements in the case of division

(1) In the case of a division, the Court may, by order, direct that—

(a) in relation to any company involved in the division, the requirements of sections 950 and 955 do not apply; and

(b) in relation to an existing transferee company section 961 has effect with the omission of the first and second conditions specified in that section, if the Court is satisfied that the three conditions specified in subsections (2) to (4) will be fulfilled in relation to that company.

(2) The first condition is that the members of that company will have received, or will have been able to obtain free of charge, copies of the relevant documents—

(a) in time to examine them before the date of the first meeting of the members, or a specified class of members, of that company convened for the purposes of agreeing to the scheme; or

(b) in the case of an existing transferee company if, in the circumstances described in section 961, no meeting is held, in time to require a meeting as referred to in subsection (4) of that section.

(3) The second condition is that the creditors of that company will have received, or could have obtained, free of charge copies of the draft terms in time to examine them—

(a) before the date of the first meeting of the members, or a specified class of members, of the company convened for the purposes of agreeing to the scheme; or

(b) in the circumstances referred to in subsection (2)(b), at the same time as the members of the company.

(4) The third condition is that the members or creditors of the transferor company, or any transferee company, would be prejudiced by making the order concerned.

(5) In this section, "**relevant documents**" means the documents specified in section 955(3).

Division 4 — Supplementary provisions

964. Experts's report: valuation by another person

(1) If it appears to an expert that—

(a) a valuation is reasonably necessary to enable the expert's report to be prepared; and

(b) that it is reasonable for such a valuation, or part of it, to be made by (or for the expert to accept a valuation made by) another person who—

(i) appears to the expert to have the requisite knowledge and experience to make the valuation or that part of it; and

(ii) satisfies the independence requirement in section 965, the expert may arrange for, or accept, such a valuation, together with a report that will enable the expert's report to be prepared under section 938 or 953.

(2) If a valuation is made by a person other than the expert, the expert shall state that fact in the expert's report and shall also—

(a) state the other person's name and what knowledge and experience that person has to make the valuation; and

(b) describe so much of the undertaking, property and liabilities as was valued by the other person, and the method used to value them, and specify the date of the valuation.

965. Experts and valuers: independence requirement

(1) A person satisfies the independence requirement for the purposes of section 938, 953 or 964 only if —

(a) the person is not—

(i) an officer or employee of any of the companies involved in the scheme; or

(ii) a partner or employee of such a person; or a partnership of which such a person is a partner;

(b) the person is not—

(i) an officer or employee of an associated undertaking of any of the companies concerned in the scheme; or

(ii) a partner or employee of such a person, or a partnership of which such a person is a partner; and

(c) there does not exist between—

(i) the person or an associate of the person; and

(ii) any of the companies involved in the scheme or an associated undertaking of such a company, a connection of any such description as may be specified by regulations (if any) made for the purposes of this section.

(2) An auditor of a company is not an officer or employee of the company for the purpose of subsection (1).

(3) For the purposes of this section—

(a) the "**companies involved in the scheme**" means each transferor and existing transferee company;

(b) "**associated undertaking**", in relation to a company, means—

(i) a parent undertaking or subsidiary undertaking of the company; or

(ii) a subsidiary undertaking of a parent undertaking of the company; and

(c) "**associate**" has the meanings given by subsections (4) to (7).

(4) In relation to a natural person, "**associate**" means—

(a) that person's spouse or minor child or step-child;

(b) any body corporate of which that person is a director; and

(c) any employee or partner of that person.

(5) In relation to a body corporate, "**associate**" means—

(a) any body corporate of which that body is a director;

(b) any body corporate within the same group as that body; and

(c) any employee or partner of that body or of any body corporate in the same group.

(6) In relation to a partnership that is a legal person under the law by which it is governed, "**associate**" means—

(a) any body corporate of which that partnership is a director;

(b) any employee of or partner in that partnership; and

(c) any person who is an associate of a partner in that partnership.

(7) In relation to a partnership that is not a legal person under the law by which it is governed, "**associate**" means any person who is an associate of any of the partners.

(8) In applying this section to a limited liability partnership, "**member**" is to be substituted for "**director**".

966. Power of the Court to convene meeting of members or creditors of existing transferee company

(1) The Court may order a meeting of—

(a) the members of an existing transferee company, or a specified class of them; or

(b) the creditors of an existing transferee company, or a specified class of them,

to be convened in such manner as the Court directs.

(2) An application for such an order may be made by—

(a) the company concerned;

(b) a member or creditor of that company; or

(c) if that company is under administration — the administrator.

967. Court to fix date for transfer of undertaking etc of transferor company

(1) If the Court sanctions the compromise or arrangement, it shall—

(a) in the order sanctioning the compromise or arrangement; or

(b) in a subsequent order made under section 927, fix a date on which the transfer or transfers to the transferee company or transferee companies of the undertaking, property and liabilities of the transferor company is, or are, to take place.

(2) If the order provides for the dissolution of the transferor company, the Court shall fix the same date for the dissolution.

(3) If the transferor company needs to take steps to ensure that the undertaking, property and liabilities are fully transferred, the Court shall fix a date, not later than six months after the date fixed under subsection (1), by which those steps are to be taken.

(4) In that case, the Court may postpone the dissolution of the transferor company until that date.

(5) The Court may postpone, or may further postpone, the date fixed under subsection (3) if it is satisfied that the steps referred to cannot be completed by the date, the latest date, fixed under that subsection.

968. Liability of transferee companies for each other’s defaults

(1) In the case of a division, each transferee company is jointly and severally liable for any liability transferred to any other transferee company under the scheme to the extent that the other company has failed to satisfy that liability. This subsection is subject to subsections (2) and (3).

(2) If a majority in number representing seventy-five percent in value of the creditors, or a specified class of creditors, of the transferor company, present and voting either in person or by proxy at a meeting convened for the purposes of agreeing to the scheme, so agree, subsection (1) does not apply in relation to the liabilities owed to the creditors or that class of creditors.

(3) A transferee company is not liable under this section for an amount greater than the net value transferred to it under the scheme.

(4) For the purpose subsection (3), the "net value transferred" is the value at the time of the transfer of the property transferred to it under the scheme less the amount at that date of the liabilities so transferred.

Part XXXVI – COMPANIES NOT FORMED UNDER THIS ACT

969. Companies not formed under companies legislation can be registered under this Act

This section applies to companies formed (whether before or after the commencement of this Part) —

(a) under an Act of Parliament other than this Act or a former law relating to companies; or

(b) that is otherwise duly constituted according to law.

(2) A company to which this section applies may be registered under this Act on making an application to do so.

(3) Subject to subsections (4) and (5), such a company may be registered as-

(a) an unlimited company;

(b) a company limited by shares; or

(c) a company limited by guarantee.

(4) A company having the liability of its members limited by an Act of Parliament-

(a) may not be registered under this section unless it is a joint stock company; and

(b) may not be registered under this section as an unlimited company or a company limited by guarantee.

(5) A company that is not a joint stock company may not be registered under this section as a company limited by shares.

(6) The registration of a company under this section is not invalidated only because the registration is for the purpose of liquidating the company.

(7) For the purposes of this section, "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 persons.

(8) When registered with limited liability under this Act, a joint stock company is a company limited by shares.

970. Regulations providing for registration of companies to which section 983 applies.

The regulations may provide for-

(a) the registration of the companies to which section 969 applies; and

(b) the application of this Act to those companies.

971. Provisions of this Act may be applied to unregistered companies.

This section applies to bodies corporate incorporated, and having a principal place of business, in Kenya, other than-

(a) bodies incorporated by, or registered under, a public general Act of Parliament;

(b) bodies not formed for the purpose of carrying on a business that has as its object the acquisition of gain by the body or its individual members;

(c) bodies for the time bei ng exempted from this section by order made by the Cabinet Secretary; and

(d) open-ended investment companies.

(2) The regulations may provide —

(a) for specified provisions of this Act to apply to all, or any specified description of, the bodies to which this section applies; and

(b) that those provisions apply subject to any specified limitations and with such modifications (if any) as may be specified.

(3) This section does not repeal or revoke in whole or in part an enactment or other document that constitutes or regulates a body in relation to which provisions of this Act are applied by regulations made for the purposes of this section, but, in relation to such a body, the operation of the enactment or document is suspended in so far as it is inconsistent with any of those provisions as applied to that

body.

(4) In this section, "specified" means specified in the regulations.

972. Application of this Part to certain existing companies

This Part applies to companies registered but not formed under any of the former laws relating to companies in the same manner as it applies to companies registered under section 969.

Part XXXVII – FOREIGN COMPANIES

Division 1 — Introductory provisions

973. Interpretation: Part XXXVII

In this Part—

"officer", in relation to a registered foreign company, includes a local representative of the company;

"prescribed" means prescribed by the foreign companies regulations;

"registered foreign company" means a foreign company registered in accordance with this Part.

974. When foreign company may carry on business in Kenya.

(1) A foreign company shall not carry on business in Kenya unless—

(a) it is registered under this Part; or

(b) it has applied to be so registered and the application has not been dealt with within the period prescribed for the purposes of this section.

(2) For the purposes of subsection (1), carrying on business in Kenya includes (but is not limited to)—

(a) offering debentures in Kenya; or

(b) being a guarantor for debentures offered in Kenya.

(3) If a foreign company carries on business in Kenya in contravention of subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five million shillings.

(4) If, after a foreign company or an officer of the company is convicted of an offence under subsection (3), the company continues to carry on business in Kenya in contravention of subsection (1), the

company, and each officer of the company who is in default, commit a further offence on each day on which the contravention continues and on conviction are each liable to a fine not exceeding five hundred thousand shillings for each such offence.

(5) If a foreign company has applied to be registered under section 975 and the application has not been dealt with within the period prescribed for the purposes of subsection (1)(b), the company is taken to be registered under this Part as a foreign company and accordingly is entitled to be issued with a certificate of registration as such a company.

Division 2 — Procedure for registration of foreign companies

975. Application for registration of foreign companies

(1) Subject to this Part, a foreign company that wishes to be registered as a foreign company shall lodge with the Registrar an application that is in accordance with this Division.

(2) The Registrar shall approve the application for registration and register the company by entering its name and other particulars in the Foreign Companies Register, if the application—

(a) contains the information prescribed by the regulations for the purposes of this section;

(b) *deleted by Act No. 38 of 2016, s. 85*;

(c) is accompanied by the prescribed fee, if any, and the required documents; and

(d) complies with the requirements of this Part with respect to the company's name and the appointment of a local representative.

(3) The documents required to accompany the application are—

(a) a certified copy of a current certificate of the foreign company's incorporation or registration in its place of origin, or a document of similar effect;

(b) a certified copy of its constitution;

(c) a list containing the names of its directors and shareholders and their personal details;

(d) if that list includes directors who—

(i) reside in Kenya; and

(ii) are members of a local board of directors a memorandum that is duly executed by or on behalf of the foreign company and states the powers of those directors; and

(e) in relation to each existing charge on property of the foreign company that would be a registrable charge if the foreign company were a company formed and registered under this Act, the documents that would be required to be lodged for registration with the Registrar under Part XXXI; and

(f) notice of the address of—

(i) if it has in its place of origin a registered office for the purposes of a law there in force —that office; or

(ii) otherwise — its principal place of business in its place of origin; and

(g) notice of the address of its registered office under section 983.

(4) On registering a foreign company under subsection (2), the Registrar shall—

(a) allocate a unique identifying number to the company.

(b) issue to the company a certificate of registration that complies with subsection (5).

(5) A certificate of registration complies with this subsection if it states—

(a) the name of the company and its unique identifying number and the fact that the company is registered under this Act as a foreign company;

(b) the date of its registration as a foreign company and the date of its incorporation in its place of origin; and

(c) such other particulars (if any) as are prescribed by the regulations for the purposes of this section.

(6) The Registrar shall sign the certificate and authenticate it with the Registrar's official seal.

(7) The certificate is conclusive evidence that the requirements of this Act relating to the registration of foreign companies have been complied with and that the company is duly registered as a foreign company under this Act. [Act No. 38 of 2016, s. 85.]

976. Requirements with respect to names of foreign companies

(1) In its application under section 975, a foreign company shall include particulars of the name under which it seeks to carry on business in Kenya.

(2) The name of such a company can be—

(a) the name of the company name under the law of the country or territory in which it is incorporated; or

(b) an alternative name specified in accordance with section 977.

(3) In any other case, sections 49, 50, 51, 56, 57, 58, 60 and 61 and regulations having effect for the purpose of section 59 apply in relation to the registration of the name of a foreign company:

(4) Regulations having effect for the purpose of section 52 apply in respect of all foreign companies.

(5) A reference in the provisions referred to in subsection (3) or (4) to a change of name include a reference to registration of a different name under section 978.

977. Foreign company can be registered under alternative name under which it will carry on business in Kenya

(1) A foreign company that wishes to be registered under this Part may, at any time, lodge with 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, lodge with 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) If a foreign company is registered with an alternative name as provided by this section, that name is for all purposes of the law applying in Kenya the corporate name of the company.

(4) Subsection (3) does not—

(a) affect the references in this section or section 976 to the company's corporate name;

(b) affect any rights or obligation of the company; or

(c) render defective any legal proceedings brought 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.

978. Registrar to issue certificate of registration on change of name of registered foreign company

(1) On registering a change in a registered foreign company's name, the Registrar shall issue to the company a certificate, under the Registrar's common seal and in the prescribed form, certifying the company's registration with that name.

(2) A certificate under subsection (1) is conclusive evidence of the matters stated in it.

Division 3 — Local representatives of foreign companies

979. Foreign company required to have local representative

(1) The Registrar may not register a foreign company under this Part unless the company has at least one local representative in relation to whom the foreign company has complied with the prescribed requirements of the foreign companies regulations relating to local representatives of foreign companies.

(2) If—

(a) as a result of a person having ceased on a particular day to be a local representative of the foreign company, a registered foreign company has no local representative; and

(b) the company carries on business, or has a place of business, in Kenya,

the company shall, within twenty-one days after that day, appoint another person as a local representative.

(3) If a registered foreign company fails to comply with subsection (2), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(4) If, after a registered foreign company or an officer of the company is convicted of an offence under subsection (3), the company continues to carry on business in Kenya without having a local representative, the company, and each officer of the company who is in default, commit a further offence on each day on which the contravention continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

(5) On becoming aware that a registered foreign company has carried on business in Kenya for more than twenty-one days, and is continuing to carry on that business, without having a local representative, the Registrar shall take steps to strike the company's name from the Foreign Companies Register in accordance with section 992.

980. Appointment and termination of appointment of local representation

(1) Within one month after a registered foreign company has appointed a person as a local representative of the company in Kenya, the company shall lodge with the Registrar for registration a notice of the appointment, specifying the person's name and residential address and such other particulars (if any) as are prescribed for the purposes of this section.

(2) Subsection (1) does not apply to the appointment of a person as a local representative of a registered foreign company if particulars of that appointment are contained in the company's application for registration under this Part.

(3) Within one month after a person who is a local representative of a registered foreign company has died, resigned or otherwise ceased to hold office as such, the company shall lodge with the Registrar for registration a notice to the effect that the person has ceased to be a local representative of the company in Kenya.

(4) Within one month after a local representative of a registered foreign company has changed his or her residential address in Kenya, the company shall lodge with the Registrar for registration a notice giving details of the change.

(5) If a registered foreign company fails to comply with subsection (1), (3) or (4), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(6) If, after a foreign company or an officer of the company is convicted of an offence under subsection (5), the company fails to lodge the required notice with the Registrar, the company, and each officer of the company who is in default, commit a further offence on each day on which the contravention continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

981. Liability of local representative

(1) A local representative of a registered foreign company—

(a) is answerable for the doing of all acts, matters and things that the company is required by or under this Act to do; and

(b) is personally liable to a penalty imposed on the company for a contravention of, or failure to comply with, this Act if the Court hearing the matter is satisfied that the local representative should be so liable.

(2) If a registered foreign company has two or more local representatives, those representatives are jointly and severally—

(a) answerable for the doing of all acts and things that the company is required by or under this Act to do; and

(b) personally liable to a penalty imposed on the company for a contravention of, or failure to comply with, this Act if the Court hearing the matter is satisfied that they should be so liable.

(3) If, in relation to a registered foreign company that has two or more local representatives, the responsibility for doing an act or thing that the company is required by or under this Act to do is discharged by one those representatives, it is taken to have been also discharged by the other or others of those representatives.

Division 4 — Regulation of registered foreign companies carrying on business in Kenya

982. Particulars of places of businesses of registered foreign companies to be notified to Registrar

(1) A registered foreign company shall not carry on business at a place in Kenya unless the company has lodged with the Registrar for registration a notice containing the prescribed particulars of that place.

(2) A registered foreign company does not contravene subsection (1) in respect of a place of business if particulars of the place of business were included in the company's application for registration.

(3) Within twenty-one days after closing a place of business in Kenya, a registered foreign company shall lodge with the Registrar for registration a notice containing the prescribed particulars of the closure.

(4) A registered foreign company that does not carry on business at a place of business of the company for a continuous period of six months is taken to have closed it.

(5) If a registered foreign company fails to comply with subsection (1) or (3), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(6) If, after a registered foreign company or an officer of the company is convicted of an offence under subsection (5), the company continues to fail to lodge the requisite notice with the Registrar for registration, the company, and each officer of the company who is in default, commit a further offence on each day on which the contravention continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

983. Registered foreign company to have registered office

(1) A registered foreign company shall establish and maintain a registered office in Kenya to which all communications and notices may be addressed.

(2) The company shall ensure—

(a) that its registered office is kept open on each business day from at least 10 a.m. to 12 noon and from at least 2 p.m. to 4 p.m.; and

(b) that a local representative of the company is present at all times when the office is open.

(3) The company shall lodge with the Registrar for registration a notice of the hours between 9 a.m. and 5 p.m. on each business day during which the body's registered office in Kenya is kept open.

(4) The company shall, within seven days after making a change in the location of its registered office in Kenya, lodge with the Registrar for registration a notice of the change and of the new address of that office.

(5) The company shall, within seven days after making a change to the hours during which its registered office in Kenya is kept open, lodge with the Registrar for registration a notice of the change.

(6) If a registered foreign company fails to comply with a requirement of this section, the company and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(7) If, after a registered foreign company or any of its officers is convicted of an offence under subsection (6), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

984. Registered foreign company to display its name at office and places of business

(1) A registered foreign company shall paint or affix and keep painted or affixed, in a conspicuous position and in letters easily legible, on the outside of every office and place (including its registered office) that is in Kenya, at which its business is carried on and that is open and accessible to the public—

(a) its name and the name of its place of origin;

(b) if the liability of its members is limited and the last word of its name is neither the word "Limited" nor the abbreviation "Ltd." — notice of the fact that the liability of its members is limited; and

(c) in the case of its registered office — the expression "Registered Office".

(2) If a registered foreign company fails to comply with subsection (1), the company and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding one hundred thousand shillings.

(3) If, after a foreign company or any of its officers is convicted of an offence under subsection (2), the company continues to fail to comply with a requirement of subsection (1), the company, and each officer of the company who is in default, commit a further offence on each day on which the failure

continues and on conviction are each liable to a fine not exceeding ten thousand shillings for each such offence.

985. Registered foreign company to state its name and other information in documents and communications relating to its business in Kenya

(1) A registered foreign company shall—

(a) state its name and other specified information in prescribed classes of documents and communications relating to its business in Kenya; and

(b) provide prescribed information on request to those with whom it deals in the course of carrying on its business in Kenya.

(2) If a registered foreign company fails to comply with subsection (1), the company and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

986. Registered foreign company to give notice of certain changes relating to its constitution, directors and business in Kenya

(1) A registered foreign company shall, within one month after a change occurs in—

(a) its constitution or any other document lodged in relation to the company;

(b) its directors;

(c) the powers of any directors who reside in Kenya and members of a Kenyan board of directors of the company; or

(d) a local representative or local representatives;

(e) the name or address of a local representative; or

(f) the location of—

(i) if it has in its place of origin a registered office for the purposes of a law (other than this Act) that is in force there — that office; or

(ii) otherwise- its principal place of business in its place of origin; lodge with the Registrar for registration a notice of particulars of the change, together with such documents (if any) as are prescribed by the regulations for the purposes of this section.

(2) The Registrar may, in special circumstances, extend the period within which a notice or document under subsection (1) is required to be lodged.

(3) If a registered foreign company fails to lodge with the Registrar a notice of a change of the kind referred to in subsection (1), the company and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(4) If, after a registered foreign company or any of its officers is convicted of an offence under subsection (3), the company continues to fail to lodge with the Registrar a notice of a change of the kind referred to in subsection (1)), the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

987. Copies of registered foreign company's financial statements and other documents to be lodged with Registrar

(1) Subject to this section, a registered foreign company shall, at least once in every calendar year and at intervals of not more than fifteen months, lodge a copy of its financial statement made up to the end of its last financial year, in such form and containing such particulars, and including copies of such documents, as the company is required to prepare by the law for the time being applicable to that company in its place of origin, together with a statement in writing, supported by a statutory declaration, verifying that the copies are true copies of the documents so required.

(2) The Registrar may extend the period within which subsection (1) requires a financial statement or other document to be lodged.

(3) The Registrar may, if of the opinion that the financial statement and the other documents referred to in subsection (1) do not adequately and accurately disclose the company's financial position, require the company to lodge with the Registrar within such period, and in such form, as may be prescribed for the purpose of this subsection such documents as will fully disclose that position.

(4) Subsection (3) does not authorise the Registrar to require a document to contain any information that the company would not be required to provide if it were a public company incorporated under this Act.

(5) A registered foreign company shall comply with the requirements of such a notice.

(6) If a registered foreign company is not required by the law of the place of its incorporation or formation to prepare a financial statement, the company shall prepare and lodge a financial statement, within such period, in such form and containing such particulars and including such documents as the company would have been required to prepare if the company were a public company incorporated under this Act.

(7) The Cabinet Secretary may, by notice published in the *Gazette*, declare that this section does not apply to specified registered foreign companies.

(8) Subsections (1) to (6) do not apply to a registered foreign company in respect of which a notice under subsection (7) has effect.

(9) The Cabinet Secretary may, by notice published in the *Gazette*, revoke a notice made under subsection (7), and if the Cabinet Secretary does so, the registered foreign company concerned becomes subject to subsections (1) to (6) from the date of the notice of revocation or from such later date as may be specified in that notice.

(10) If a registered foreign company fails to comply with a subsection (5) or (6), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding one million shillings.

(11) If, after a registered foreign company or an officer of the company is convicted of an offence under subsection (10), the company continues to fail to comply with the requirement specified in subsection (5) or (6), the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding one hundred thousand shillings for each such offence.

988. Provision for registration of charges over Kenyan property of foreign company

(1) The foreign companies regulations may provide for the registration of specified charges over property in Kenya of a registered foreign company.

(2) Those regulations 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 failing 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) The foreign companies regulations may for this purpose apply, with or without modifications, any of the provisions of Part XXXII.

(4) The foreign companies regulations may modify any reference in an enactment to Part XXXII, or to a particular provision of that Part, so as to include a reference to those regulations or to a specified provision of those regulations.

989. Registered foreign company to lodge certain returns with Registrar

(1) A registered foreign company shall, as and when required to do so by the Registrar, provide the Registrar with such returns, containing such information, relating to the company as the Registrar may reasonably require.

(2) If a registered foreign company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(3) If, after a registered foreign company or an officer of the company is convicted of an offence under subsection (2), the company continues to fail to provide the Registrar with a particular return to which subsection (1) applies, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

990. Natural person's residential address to be protected from disclosure

If a provision of this Part, or of the foreign companies regulations, requires a registered foreign company to register particulars of a natural person's usual residential address, the provision is required to include provisions that safeguard that address from disclosure.

Division 5 — Circumstances in which name of registered foreign company can be struck off or restored to Register of Foreign Companies

991. Local representative of registered foreign company to notify Registrar of certain events affecting the company

(1) Within one month after a registered foreign company has ceased to carry on business in Kenya, each person who, on the day when the company's business in Kenya ceased, was a local representative of the company in Kenya shall lodge with the Registrar for registration a notice of that fact.

(2) Within one month after a registered foreign company has been dissolved or deregistered in its place of origin, each person who was, on the day when the company was dissolved or deregistered in its place of origin, a local representative of the company in Kenya shall lodge with the Registrar for registration a notice of that fact.

(3) As soon as practicable after receiving a notice under subsection (1) or (2), the Registrar shall strike the foreign company's name off the Foreign Companies Register.

(4) If a foreign company's name is struck off the register under subsection (3), the company ceases to be registered under this Part.

(5) If a registered foreign company is placed in liquidation in its place of origin—

(a) each person who, on the day when the liquidation proceedings began, was a local representative of the company in Kenya shall, within one month after that day (or within that period as extended by the Registrar in special circumstances), lodge with the Registrar for registration—

(i) notice of that fact; and

(ii) when a liquidator is appointed, notice of the appointment; and

(b) the Court shall, on application by the person who is the liquidator for the company in its place of origin, or by the Registrar, appoint a liquidator of the company in respect of its property in Kenya.

(6) A liquidator appointed by the Court under subsection (5)(b)—

(a) shall, before distributing the company's property in Kenya, by advertisement in a daily newspaper circulating generally in each country or territory where the foreign company carried on business at any time during the six years before the liquidation, invite all creditors to make their claims against the company within a reasonable time before the distribution is made;

(b) may not, without obtaining an order of the Court, pay out a creditor of the company to the exclusion of another creditor of the foreign company; and

(c) shall, unless the Court otherwise orders, recover and realise the property of the company in Kenya and pay the net amount so recovered and realised to the liquidator appointed in respect of the company in its place of origin.

(7) If a registered foreign company has been liquidated so far as its property in Kenya is concerned and no liquidator has been appointed in respect of the company in its place of origin, the liquidator may apply to the Court for directions about the disposal of the net amount recovered in accordance with subsection (6)(c).

(8) A person who fails to comply with subsection (1), (2) or (5)(a) commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

(9) If, after being convicted of an offence under subsection (8), a person continues to fail to lodge the notice referred to in subsection (1), (2) or (5)(a), the person commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding twenty thousand shillings for each such offence.

(10) A liquidator who—

(a) fails to comply with subsection (6)(a) or (c); or

(b) contravenes subsection (6)(b), commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(11) If, after being convicted of an offence under subsection (10), a liquidator continues to fail to comply with the relevant requirement of subsection (8)(a) or (c), the liquidator commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.

992. Power of Registrar to strike registered foreign company's name from Register of Foreign Companies in certain circumstances

(1) On forming a reasonable belief that a registered foreign company—

(a) is not carrying on business in Kenya (otherwise than as a result of a notice lodged under section 991); or

(b) is carrying on such a business without having a local representative,

the Registrar may send to the company a letter to that effect and stating that, if no answer showing cause to the contrary is received within six weeks from the date of the letter, a notice will be published in the *Gazette* with a view to striking the foreign company's name off the Foreign Companies Register.

(2) Unless the Registrar receives, within six weeks after the date of the letter, an answer to the effect that the foreign company is still carrying on business in Kenya, or has appointed a local representative, the Registrar may publish in the *Gazette*, and send to the company, a notice that, at the end of three months after the date of the notice, the foreign company's name will, unless cause to the contrary is shown, be struck off the Foreign Companies Register.

(3) At the end of the period specified in a notice sent under subsection (2), the Registrar may, unless cause to the contrary has been shown, strike the foreign company's name off the register and, if the Registrar does so, the Registrar shall publish in the *Gazette* notice of the striking off.

(4) Nothing in subsection (3) or section 991 affects the power of the Court to liquidate a registered foreign company whose name has been struck off the Foreign Companies Register.

(5) On being struck off the Foreign Companies Register in accordance with subsection (3), the foreign company ceases to be registered under this Part.

(6) If a foreign company's name is struck off the Foreign Companies Register in accordance with this Division, an obligation to lodge a document that this Act imposed on the company as a result of having done an act or thing, or the occurrence of an event, at or before the time of the cancellation (being an obligation not fulfilled at or before that time) continues to apply in relation to the company even if the period prescribed for lodging the document has not ended at or before that time.

993. Restoration of foreign company to Foreign Companies Register in certain circumstances

(1) If the Registrar is satisfied that a foreign company’s name was struck off the Foreign Companies Register as a result of an error on the Registrar’s part, the Registrar may restore the foreign company’s name to that Register, and if the Registrar does so, the foreign company’s name is taken never to have been struck off and the company is taken never to have ceased to be registered under this Part.

(2) A person who is dissatisfied with a decision striking a foreign company's name off the Foreign Company's Register may, within twelve years after the striking off, apply to the Court for the company's name to be restored to that Register.

(3) If, on the hearing of an application made under subsection (2), the Court is satisfied that—

(a) at the time of the striking off, the foreign company was carrying on business in Kenya; or

(b) it is otherwise just for the foreign company's name to be restored to the register;

the Court may—

(c) make an order directing that company's name to be restored to the Foreign Companies Register; and

(d) if it does so, give such directions, and make such provision, as it thinks just for placing that company and all other persons as nearly as practicable in the same position as if its name had never been struck off.

(4) On the lodgement with the Registrar of an office copy of an order under subsection (3), the foreign company's name is taken never to have been struck off the Foreign Companies Register.

(5) If a foreign company's name is restored to the Foreign Companies Register under subsection (1) or (3), the Registrar shall publish in the *Gazette* a notice of the restoration.

Division 6 — Supplementary provisions

994. Registrar to keep Foreign Companies Register

(1) The Registrar shall establish and maintain a register, called the Foreign Companies Register.

(2) The Registrar shall enter in the Foreign Companies Register the names and prescribed particulars of all registered foreign companies, and may enter in the Register such other particulars in respect of them as it considers necessary for the effective enforcement and administration of this Act.

(3) The Registrar may establish the Register in paper or electronic form, or both. However, if the Foreign Companies Register is kept in electronic form, the Registrar shall ensure that it is capable of being reproduced in a visually readable form.

(4) The Registrar shall keep the Register at such place or places as are prescribed its head office and ensure that it is kept open for inspection by interested persons during normal business hours of the Registrar.

(5) As soon as practicable after the commencement of this Part, the Registrar shall transfer to the Foreign Companies Register the records relating to foreign companies that were registered under the repealed Act immediately before that commencement.

995. Power of Cabinet Secretary to make foreign companies regulations

(1) The Cabinet Secretary may make regulations (called foreign companies regulations) prescribing matters—

(a) required or permitted by this Part to be prescribed by regulations; or

(b) necessary or convenient to be prescribed by such regulations for carrying out or giving effect to this Part.

(2) The foreign companies regulations may, in relation to registered foreign companies or foreign companies required to be registered under this Part, provide for any matters for which companies general regulations under section 1025 may provide in relation to companies formed and registered under this Act.

(3) Except as otherwise expressly provided in this Part, the foreign companies regulations may be of general or specially limited application or may differ according to differences in time, locality, place or circumstance.

Part XXXVIII – OFFENCES AND LEGAL PROCEEDINGS

996. Liability of officers who are in default

(1) If a provision of this Act provides that an officer of a company who is in default commits an offence, the officer commits the offence only if the officer—

(a) authorises or permits;

(b) participates in; or

(c) fails to take all reasonable steps to prevent, the contravention of the act or conduct, or the failure to comply with the requirement, that constitutes the offence.

(2) If a company is an officer of another company, the first-mentioned company commits an offence as an officer in default only if at least one of its officers is in default.

(3) If a company that is an officer of another company commits an offence because of subsection (2), the officer in default also commits the offence and is liable to be proceeded against and punished accordingly.

997. Application of section 1010 to bodies other than companies

(1) Section 996 (liability of officers in default)applies to a body other than a company.

(2) In its application to a body corporate other than a company, section 996 is to be read as if—

(a) the reference to a director of the company were—

(i) if the body's affairs are managed by its members, a reference to a member of the body;

(ii) in any other case, to any corresponding officer of the body; and

(b) the reference to a manager or secretary of the company were a reference to a manager, secretary or similar officer of the body.

(3) In its application to a partnership, section 995 is to be read as if—

(a) the reference to a director of the company were a reference to a member of the partnership; and

(b) the reference to a manager or secretary of the company were a reference to a manager, secretary or similar officer of the partnership.

(4) In its application to an unincorporated body other than a partnership, section 996 is to be read as if —

(a) the reference to a director of the company were—

(i) if the body's affairs are managed by its members, to a member of the body; or

(ii) in any other case, to a member of the governing body; and

(b) the reference to a manager or secretary of the company were a reference to a manager, secretary or similar officer of the body.

998. Proceedings against unincorporated bodies

(1) Proceedings for an offence under this Act alleged to have been committed by an unincorporated body may be brought only in the name of the body (and not in that of any of its members).

(2) For the purposes of any such proceedings, rules of Court relating to the service of documents have effect as if the body were a body corporate.

(3) A fine imposed on an unincorporated body on its conviction of an offence under this Act is payable out of the funds of the body.

999. Legal professional privilege

A person who is prosecuted for an offence under this Act is not obliged to disclose any information that the person is entitled to refuse to disclose because the information is protected by legal professional privilege.

1000. Production and inspection of documents if offence suspected

(1) An application for an order under subsection (2) may be made to the Court by the Attorney General, the Director of Public Prosecutions or the Inspector General of Police.

(2) If, on the hearing of an application under subsection (1), the Court is of the opinion—

(a) that a person has, while an officer of a company, committed an offence in connection with the management of the company's affairs; and

(b) that evidence of the commission of the offence is to be found in any documents in the possession, or under the control, of the company, it may make an order in accordance with subsection (3).

(3) Such an order may—

(a) authorise any person named in it to inspect the documents concerned, or any of them, for the purpose of investigating and obtaining evidence of the alleged offence; or

(b) require the secretary, or some other specified officer of the company, to produce the documents (or any of them) to a person named in the order at a specified place and within a specified period.

(4) This section applies also in relation to documents in the possession or under the control of a person carrying on banking business, 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) can be made because of this subsection.

(5) A decision of the Court under this section is not appealable.

(6) A company in relation to which an application is made under subsection (1) is entitled to be heard at the hearing of the application.

1001. Power to enter and search of premises under warrant

(1) A Court or magistrate may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Attorney General, or by a person appointed or authorised to exercise powers under this Part, that there are reasonable grounds for believing that there are on any premises documents whose production has been required under this Part and that have not been produced in compliance with the requirement.

(2) A Court or magistrate may also issue a warrant under this section if satisfied on information on oath given by or on behalf of the Attorney General, or by a person appointed or authorised to exercise powers under this Part—

(a) that there are reasonable grounds for believing that an offence has been committed for which the maximum penalty on conviction is a fine of five hundred thousand shillings and that there are on any premises documents relating to whether the offence has been committed;

(b) that the Attorney General, or the person so appointed or authorised, has power to require the production of the documents under this Part; and

(c) that there are reasonable grounds for believing that if production was so required the documents would not be produced but would be removed from the premises, hidden, tampered with or destroyed.

(3) A warrant under this section authorises a police officer, together with any other person named in it and any other police officers—

(a) to enter the premises specified in the information, using such force as is reasonably necessary for the purpose;

(b) to search the premises and take possession of any documents appearing to be such documents as are referred to in subsection (1) or (2), or to take, in relation to any such documents, any other steps that may appear to be necessary for preserving them or preventing interference with them;

(c) to make copies of any such documents and to take them away; and

(d) to require any person named in the warrant to provide an explanation of them or to state where they may be found.

(4) If, in the case of a warrant under subsection (2), the Court or magistrate is satisfied on oath that there are reasonable grounds for believing that there are also on the premises other documents relevant to the investigation, the Court or magistrate shall also authorise the actions referred to in subsection (3) to be taken in relation to those documents.

(5) A warrant issued under this section has effect for one month from and including the day on which it is issued.

(6) Any documents of which possession is taken under this section may be retained—

(a) for up to three months; or

(b) if, within that period, proceedings to which the documents are relevant are begun against a person for an offence, until the conclusion of those proceedings.

(7) A person who—

(a) intentionally obstructs the exercise of a right conferred by a warrant issued under this section; or

(b) fails without reasonable excuse to comply with a requirement imposed in accordance with subsection (3)(d),

commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

1002. Offence of fraudulent trading

(1) If a business of a company is carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, each person who knowingly participates in carrying on the business in that manner commits an offence.

(2) Subsection (1) applies whether or not the company has been liquidated or is in liquidation.

(3) A person found guilty of an offence under this section is liable on conviction to imprisonment for a term not exceeding ten years or a fine not exceeding ten million shillings, or to both.

1003. Power of the Court to prohibit payment or transfer of money, financial products or other property

(1) In this section—

"aggrieved person" means a person who claims that a relevant person is liable, or may be or may become liable, to pay money to the first-mentioned person (whether in respect of a debt, as damages or compensation or otherwise, or to account for financial products or other property);

"relevant person" means a person referred to in subsection (2)(a), (b) or (c).

(2) The following persons are relevant persons for the purposes of this section:

(a) a person in respect of whom an investigation is being carried out under this Act in relation to an act or omission that constitutes or may constitute an offence under this Act;

(b) a person against whom a prosecution has begun for an offence under this Act;

(c) a person against whom a civil proceeding has begun under this Act.

(3) If, on the application of the Attorney General or an aggrieved person, the Court considers it necessary or desirable to do so for the purpose of protecting the interests of the aggrieved person, it may make one or more of the following orders:

(a) an order prohibiting a person who is indebted to the relevant person or to an associate of the relevant person from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed;

(b) an order prohibiting a person holding money or other property, on behalf of the relevant person, or on behalf of an associate of the relevant person, from paying all or any of the money, or transferring, or otherwise parting with possession of, the other property, to, or to another person at the direction or request of, the person on whose behalf the money or other property, is or are held;

(c) an order prohibiting the taking or sending out of Kenya by a person of money of the relevant person or of an associate of the relevant person;

(d) an order prohibiting the taking, sending or transfer by a person of other property of the relevant person, or of an associate of the relevant person from a place in Kenya to a place outside Kenya;

(e) an order appointing—

(i) if the relevant person is a natural person — a trustee, having such powers as the Court orders, to manage the affairs and property of that person; or

(ii) if the relevant person is a company — an administrator, having such powers as the Court specifies, to manage the affairs and property of the company;

(f) if the relevant person is a natural person — an order requiring that person to surrender to the Court the person's passport and such other documents as the Court considers necessary in the circumstances;

(g) if the relevant person is a natural person — an order prohibiting that person from leaving Kenya without the consent of the Court.

(4) A reference in paragraph (3)(d) or (e) to property of a person includes a reference to property that the person holds otherwise than as sole beneficial owner, for example—

(a) as trustee for, as nominee for, or otherwise on behalf of or on account of, another person; or

(b) in a fiduciary capacity.

(5) An order under this section prohibiting conduct may prohibit the conduct either absolutely or subject to conditions.

(6) Before hearing an application for an order under this section, the Court may, if in its opinion it is desirable to do so, grant an interim order expressed to have effect pending the determination of the application.

(7) The Court may not, as a condition of granting an interim order under subsection (6), require the applicant or any other person to give an undertaking as to damages.

(8) If the Court has made an order under this section, it may, on application by the applicant for the order or by any other person affected by the order, make a further order discharging or varying the earlier order.

(9) An order made under this section may be expressed to operate for a specified period or until the order is discharged by a further order under this section.

(10) This section does not affect the powers that the Court has apart from this section.

(11) This section has effect subject to the laws relating to insolvency.

1004. Power of the Court to grant injunctions in certain cases

(1) The Attorney General or a person who claims to have been, to be or to be about to be adversely affected—

(a) by the past or continuing conduct of, or by a threat to engage in conduct made by, a person referred to in subsection (2); or

(b) by the past or continuing refusal or failure, or by a threatened refusal or failure, of a person do an act or thing that the person is required by this Act to do,

may apply to the Court to grant an injunction under subsection (2) or (3).

(2) If, on the hearing of an application under subsection (1), the Court is satisfied that a person has engaged, is engaging or has threatened to engage in conduct that constituted, constitutes or would constitute—

(a) a contravention of, or a failure to comply with, this Act;

(b) attempting to contravene, or fail to comply with, this Act;

(c) aiding, abetting, counselling or procuring a person to contravene, or fail to comply with, this Act;

(d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene or fail to comply with this Act;

(e) being in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of, or a failure to comply with, this Act by a person; or

(f) conspiring with others to contravene or fail to comply with this Act,

the Court may grant an injunction, on such terms as it considers just, restraining the person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring the person to do any specified act or thing.

(3) If a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that the person is required by this Act to do, the Court may, on hearing of an application under subsection (1), grant an injunction, on such terms as the Court considers appropriate, requiring the person to do that act or thing.

(4) If, in the opinion of the Court it is desirable to do so, it may grant an interim injunction pending determination of an application made under subsection (1).

(5) The Court may discharge or vary an injunction granted under subsection (2), (3) or (4).

(6) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised—

(a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind;

(b) whether or not the person has previously engaged in conduct of that kind; and

(c) whether or not there is an imminent danger of substantial damage to any person if the first mentioned person engages in conduct of that kind.

(7) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised—

(a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing;

(b) whether or not the person has previously refused or failed to do that act or thing; and

(c) whether or not there is an imminent danger of substantial loss or damage to any other person if the person refuses or fails to do that act or thing.

(8) The Court may not require an applicant under this section or any other person to give an undertaking as to damages as a condition of granting an interim injunction.

(9) In proceedings under this section against a person, the Court may make an order under section 1003 in respect of the person.

(10) In dealing with an application under this section for the grant of an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or instead of, granting an injunction, order that person to pay damages to the applicant or to any other person.

(11) Subsection (10) applies to an application made by the Attorney General only if, and to the extent that, the Attorney General has made the application for the benefit of another person who has sustained loss or damage in consequence of the conduct, or the refusal or failure, of the person to do the particular act or thing concerned.

1005. Power of a court to grant relief in certain cases

(1) If, in proceedings for negligence, default, breach of duty or breach of trust against a person who—

(a) is an officer of a company; or

(b) is employed by a company as auditor (whether or not the person is an officer of the company),

it appears to the court hearing the proceedings that, although the person is or may be liable, the person acted honestly and reasonably, and that the person ought fairly to be excused, the court may make an order relieving the person from the whole or a part of the liability on such terms as it considers appropriate.

(2) A person who, being an officer of a company or employed by a company as auditor (whether or not the person is an officer of the company), reasonably believes that a claim will or might be made against the person for negligence, default, breach of duty or breach of trust may apply to the court for relief under subsection (3).

(3) On the hearing of an application made under subsection (2), the court has the same power to make an order relieving the person from liability as it would have had if it had been a court before which proceedings against the person for negligence, default, breach of duty or breach of trust had been brought.

Part XXXIX – COMPANY RECORDS

1006. Form of company records

(1) A company can—

(a) keep its records in hard copy or electronic form; and

(b) arrange them in such manner as the directors of the company consider to be appropriate for the efficient operation of the company,

so long as it ensures that the information contained in the records is accessible for future reference.

(2) A company that keeps its records in electronic form shall ensure that they are capable of being reproduced in hard copy form.

(3) If a company fails to comply with a requirement of this section, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

(4) If, after a company or any of its officers has been convicted of an offence under subsection (3), the company, and each officer of the company who is in default, commit a further offence and on conviction are each liable to a fine not exceeding twenty thousand shillings for each such offence.

1007. Power to make regulations about where certain company records can be kept

(1) The regulations may specify places other than a company's registered office at which records of the company that are required to be kept available for inspection under a provision of this Act may be so kept in compliance with that provision.

(2) For the purposes of subsection (1), the company records to which this section applies are the following:

(a) the company's register of members;

(b) the company's register of directors;

(c) the company's records relating to its directors' service contracts;

(d) the company's records relating to directors' indemnities;

(e) the company's register of secretaries;

(f) the records of resolutions passed by the company;

(g) in the case of a private company — the company's contracts relating to purchase of its own shares out of capital and documents relating to redemption or purchase of own shares out of capital;

(h) the company's register of debenture holders;

(i) in the case of a public company—

(i) reports made by the company to members regarding the outcome of investigations by the company into interests in its shares; and

(ii) the company's register of interests disclosed;

(j) documents creating charges over the company's property and its register of charges.

(3) The regulations referred to in subsection (1) may specify a place by reference to—

(a) the company's principal place of business;

(b) the place at which the company keeps any other records available for inspection; or

(c) any other criterion.

(4) Those regulations may provide that a company does not comply with a provision relating to the keeping of records to which this section applies by keeping those records at a place specified in the regulations unless the conditions (if any) specified in the regulations are satisfied.

(5) Those regulations—

(a) need not specify a place in relation to each kind of company records; and

(b) may specify more than one place in relation to a kind of company records.

(6) A requirement under a provision of the regulations requiring a company to keep company records available for inspection is not complied with by keeping them available for inspection at a place

specified in the regulations unless all the company's records subject to the requirement are kept there.

1008. Power to make regulations about the inspection of records and the provision of copies

(1) The regulations may prescribe the obligations of a company that is required by a provision of this Act—

(a) to keep available for inspection any specified company records; or

(b) to provide copies of any such records.

(2) A company that fails to comply with a regulation made for the purpose of this section is taken to have refused inspection or having failed to provide a copy.

(3) In particular, the regulations may—

(a) impose requirements about the time, duration and manner of inspection, and specify the circumstances in which, and the extent to which, the copying of information is permitted in the course of inspection; and

(b) specify what may be required of the company as regards the nature, extent and manner of extracting or presenting any information to facilitate inspection or the provision of copies.

(4) If there is power to charge a fee, the regulations may make provision as to the amount of the fee and the basis of its calculation.

(5) Nothing in this Act or the regulations precludes a company—

(a) from providing more extensive facilities than are required by the regulations; or

(b) if a fee can be charged, from charging a lesser fee than that prescribed or none at all.

1009. Duty of company to take precautions against falsification of its records

(1) A company that keeps its records shall ensure that adequate precautions are taken—

(a) to guard against falsification of those records; and

(b) to facilitate the discovery of any falsification of those records that might occur.

(2) If a company fails to comply with subsection (1), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding one million shillings.

(3) If, after a company or any of its officers has been convicted of an offence under subsection (2), the company continues to fail to comply with a requirement of subsection (1), the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding one hundred thousand shillings for each such offence.

(4) This section does not apply to the documents required to be kept under section 200.

Part XL – SERVICE OF DOCUMENTS ON AND BY COMPANIES

1010. Service of documents on companies

(1) A document may be served on a company registered under this Act by leaving it at, or sending it by post to, the company's registered office.

(2) A document may be served on a registered foreign company—

(a) by leaving it with, or sending it by post to, the local representative of the company in Kenya (or the designated local representative if there is more than one local representative); or

(b) if the company has no local representative, or if a local representative of the company refuses service or service cannot for any other reason be effected — by leaving it at, or sending it by post to, any place of business of the company in Kenya.

1011. Service of documents on directors, secretaries and others

(1) A document may be served on a person to whom this section applies by leaving it at, sending it by post to, the person's registered address.

(2) This section applies to the following persons:

(a) a director or secretary of a company;

(b) in the case of a registered foreign company — the local representative of the company in Kenya (or the designated local representative if there is more than one local representative);

(c) a person appointed in relation to a company in any other capacity prescribed by the regulations for the purpose of this subsection.

(3) This section applies whatever the purpose of the relevant document, and is not restricted to service for purposes arising out of or in connection with the appointment or position referred to in subsection (2) or in connection with the company concerned.

(4) For the purposes of this section, a person's registered address is the address (if any) for the time being shown as the person's current address in the company's register of directors, secretaries or members.

(5) Service may not be effected under this section at an address of a person to whom subsection (2)(a) or (c) applies if notice has been registered of the termination of the person's appointment in relation to the company and the address is not a registered address of the person in relation to any other appointment.

(6) Service may not be effected under this section at an address of a person to whom subsection (2)(b) applies if the foreign company is no longer registered as such in Kenya.

(7) Nothing in this section affects the operation of any enactment or rule of law under which permission is required for service of process outside Kenya.

1012. Requirement for service addresses

(1) In this Act, a person's service address is an address at which documents required or permitted to be served on the person under this Act may be effectively served on the person under this Act may be effectively served on that person.

(2) The regulations may prescribe conditions with which a service address is required to comply.

(3) A requirement under this Act to provide a person's address is, unless otherwise expressly provided, a requirement to provide a service address for that person.

1013. Companies Communications Regulations

(1) The Cabinet Secretary shall make regulations (to be called the Companies Communication Regulations) that are to have effect for the purposes of all provision of this Act and of any cognate Act that require or permit documents or information to be sent or supplied by or to a company.

(2) The Companies Communications Regulations are to have effect subject to any requirements imposed, or contrary provision made, by or under any other enactment.

(3) For the purpose of subsection (2), a provision is not contrary to the Company Communications Regulations only because it expressly permits a document or information to be sent or supplied in a hard copy form or in an electronic form or by being published on a website.

(4) Documents or information required or permitted to be sent or supplied to a company are to be sent or supplied in accordance with the Companies Communications Regulations.

(5) Documents or information required or permitted to be sent or supplied by a company are to be sent or supplied in accordance with the Companies Communications Regulations.

1014. Right to require company to provide hard copy version of company document or information

(1) A member of a company, or a holder of a company's debentures, who has received a document information from the company otherwise than in hard copy form is entitled to require the company to send to the member or debenture holder a version of 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 after being requested to do so by the member or debenture holder.

(3) The company may not impose or attempt to impose a charge for providing the document or information in that form.

(4) If a company fails to comply with subsection (2), or contravenes subsection (3), the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding one hundred thousand shillings.

(5) If, after a company or officer is convicted of an offence under subsection (4) in relation to a failure to send a document or information in hard form, the company continues to fail to send the document or information, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding ten thousand shillings for each such offence.

1015. Requirements for authentication of documents and information

(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) when 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 the statement.

(3) If a document or information is sent or supplied by a person on behalf of another, nothing in this section affects a provision of the company's articles under which the company may require reasonable evidence of the authority of the person to act on behalf of the other.

1016. When documents and information are taken to have been sent or supplied by company

(1) This section applies in relation to documents and information sent or supplied by a company.

(2) If—

(a) a document or information is sent by post (whether in hard copy or electronic form) to an address in Kenya; and

(b) the company is able to establish that it was properly addressed, prepaid and posted, the document or information is taken to have been received by the intended recipient forty-eight hours after it was posted.

(3) If—

(a) the document or information is sent or supplied by electronic means; and

(b) the company is able to show that it was properly addressed,

it is taken to have been received by the intended recipient forty-eight hours after it was sent or supplied.

(4) If the document or information is sent or supplied by publishing it on a website, it is taken to have been received by the intended recipient—

(a) when the material was first made available on the website; or

(b) if later, when the recipient received (or is taken to have received) notice that the material was available on the website.

(5) In calculating a period of hours for the purposes of this section, any part of a day that is not a working day is to be disregarded.

(6) This section has effect subject—

(a) in its application to documents or information sent or supplied by a company to its members — to any contrary provision of the company's articles;

(b) in its application to documents or information sent or supplied by a company to its debentures holders — to any contrary provision in the document constituting the debentures; and

(c) in its application to documents or information sent or supplied by a company to a person otherwise than in the person's capacity as a member or debenture holder — to any contrary provision in an agreement between the company and that person.

Part XLI – GENERAL PROVISIONS RELATING TO INDEPENDENT VALUATION AND REPORT

1017. Part XLI: Application and interpretation of valuation requirements

(1) Sections 1018 to 1101 apply to the valuation and report required by sections 73, 368 and 374.

(2) A person is a qualified valuer for the purposes of this Part and the sections referred in subsection (1) only if the person—

(a) is eligible for appointment as a statutory auditor; and

(b) satisfies the independence requirement specified in section 1019.

1018. Valuation to be carried out only by qualified valuer

(1) Except as provided by subsection (2), a valuation and report made for the purpose of sections 73, 368 or 374 can be made only by a qualified valuer.

(2) If it appears to the valuer to be reasonable for a valuation of the consideration, or part of it, to be made by (or for the valuer to accept a valuation made by) another person who—

(a) appears to the valuer to have the requisite knowledge and experience to value the consideration or that part of it; and

(b) is not an officer or employee of—

(i) the company; or

(ii) any other body corporate that is that company's subsidiary or holding company or a subsidiary of that company's holding company,

or a partner of or employed by any such officer or employee, the valuer may arrange for or accept such a valuation, together with a report that will enable the valuer to make the valuer's own report under this section.

(3) A reference in subsection (2)(b) to an officer or employee does not include an auditor.

(4) If the consideration or part of it is valued by a person other than the valuer personally, the person shall state that fact in the report and shall specify in the report—

(a) the person's name and what knowledge and experience the person has to carry out the valuation; and

(b) the extent to which the consideration was valued by the person and the method used to value it, and the date of the valuation.

1019. Valuer to satisfy independence requirement

(1) A person satisfies the independence requirement for the purposes of section 1017 only if—

(a) the person is not—

(i) an officer or employee of the company; or

(ii) a partner or employee of such a person, or a partnership of which such a person is a partner;

(b) the person is not—

(i) an officer or employee of an associated undertaking of the company; or

(ii) a partner or employee of such a person, or a partnership of which such a person is a partner; and

(c) there does not exist between—

(i) the person or an associate of the person; and

(ii) the company or an associated undertaking of the company,

a connection of any such description as may be specified by regulations made for the purposes of this section.

(2) An auditor of the company is not regarded as an officer or employee of the company for this purpose.

(3) In this section—

"associated undertaking" means—

(a) a parent undertaking or subsidiary undertaking of the company; or

(b) a subsidiary undertaking of a parent undertaking of the company; and

"associate" has the meaning given by section 1020.

1020. Meaning of "associate" for purposes of section 1034

(1) This section defines "associate" for the purposes of section 1019.

(2) In relation to a natural person, "**associate**" means—

(a) that person's spouse or minor child or step-child;

(b) any body corporate of which that person is a director; and

(c) any employee or partner of that person.

(3) In relation to a body corporate, "**associate**" means—

(a) any body corporate of which that body is a director;

(b) any body corporate in the same group as that body; and

(c) any employee or partner of that body or of any body corporate in the same group.

(4) In relation to a partnership that is a legal person under the law by which it is governed, "**associate**" means—

(a) any body corporate of which that partnership is a director;

(b) any employee of or partner in that partnership; and

(c) any person who is an associate of a partner in that partnership.

(5) In relation to a partnership that is not a legal person under the law by which it is governed, "**associate**" means any person who is an associate of any of the partners.

(6) In this section, in relation to a limited liability partnership, "**member**" is to be substituted for "director".

1021. Valuer entitled to full disclosure

(1) A person who is carrying out a valuation or making a report with respect to consideration proposed to be accepted or given by a company is entitled to require from the officers of the company such information and explanation as the person believes necessary to enable—

(a) the valuation to be carried out or the report to be made; and

(b) provide any note required by section 371 or 375.

(2) A person who knowingly or recklessly makes a statement to which this subsection applies that is misleading, false or deceptive in a material particular commits an offence and on conviction is liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.

(3) Subsection (2) applies to a statement—

(a) made (whether orally or in writing) to a person carrying out a valuation or making a report; and

(b) conveying or purporting to convey any information or explanation which that person requires, or is entitled to require, under subsection (1).

Part XLII – MISCELLANEOUS PROVISIONS

1022. Power of Cabinet Secretary to make regulations for purposes of this Act

(1) The Cabinet Secretary may make general companies regulations prescribing matters—

(a) required or permitted by this Act to be prescribed by regulations; or

(b) necessary or convenient to be prescribed by regulations for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), the general companies regulations may do all or any of the following:

(a) prescribe a body or bodies that are recognised for the purposes of issuing standards of accounting practice for the preparation of financial documents and reports required under or for the purposes of this Act;

(b) provide for matters relating to—

(i) maintaining the Register and other records by the Registrar;

(ii) lodging documents with the Registrar;

(iii) the registration of documents by the Registrar;

(c) prescribe requirements with which documents lodged or to be lodged with the Registrar are to comply;

(d) provide for the allocation of unique identifying numbers to existing companies;

(e) prescribe the requirements for allocating unique identifying numbers of companies (including registered foreign companies);

(f) authorise the Registrar to adopt new forms of unique identifying numbers for companies (including registered foreign companies) and to make such changes to existing registered identifying numbers as appear to the Registrar to be necessary;

(g) prescribe the circumstances in which, and the conditions subject to which, a company's unique identifying number are to be or can be changed;

(h) prescribe forms for the purposes of this Act and the method of verifying any information required by or in those forms;

(i) prescribe the manner in which, the persons by whom, and the directions or requirements in accordance with which, the forms prescribed for the purposes of this Act, or any of them, are required or permitted to be signed, prepared, or completed, and generally regulate the signing, preparation and completion of those forms, or any of them;

(j) prescribe requirements for—

(i) sending notices of meetings of members to those entitled to attend those meetings,

(ii) lodging copies of notices of, and resolutions passed at, such meetings, and

(iii) generally regulating the conduct of, procedure at, meetings of members;

(k) prescribe the persons by whom, and the circumstances and manner in which, proxies may be appointed and generally regulate the appointment of proxies;

(l) impose requirements for or in relation to giving to the Registrar information in addition to, or in variation of, the information contained in a prescribed form that is required to be lodged with the form;

(m) prescribe requirements for or in relation to the times within which documents required to be lodged with, or information required to be given to, the Registrar under this Act are to be so lodged or is to be so given;

(n) prescribe offences for failing to comply with a requirement of a specified regulation, or for contravening a prohibition imposed by a specified regulation, and prescribe fines that can be imposed on persons convicted of those offences not exceeding five hundred thousand shillings.

(3) The general companies regulations may—

(a) if documents required by or under this Act to be lodged in accordance with this Act are required to be verified or certified and no manner of verification or certification is prescribed by or under this Act — require the documents or any of them to be verified or certified by a statement in writing made by such persons as are prescribed by the regulations; and

(b) if no express provision is made in this Act for verification or certification of documents – require the documents to be verified or certified by statement in writing by such persons as are prescribed.

(4) A general regulation may make provision in relation to a specified matter by applying, adopting or incorporating, with or without modification, the provisions of contained in any document as in force or existing at the time when the regulation takes effect, but it may not make provision in relation to that matter by applying, adopting or incorporating any provision contained in a document as in force or existing from time to time.

(5) Except as otherwise expressly provided in this Act, the general regulations may be of general or specially limited application or may differ according to differences in time, locality, place or circumstance.

(5) The general companies regulations apply to foreign companies only insofar as they expressly so provide.

1023. Repeals and revocation

(1) The provisions of the Companies Act are repealed on such date or such different dates as the Cabinet Secretary may appoint by notice published in the *Gazette*.

(2) When bringing provisions of this Act into operation by a notice made under section 1(3) of this Act, the Cabinet Secretary shall ensure that all provisions of the Companies Act (Cap 486, Subleg) that correspond to those provisions are repealed contemporaneously by a notice published under subsection (1) of this section.

(3) However, if the provisions of this Act that are to be brought into operation correspond to provisions of the Companies Act that are to be repealed by notice under subsection (1), the Cabinet Secretary may instead combine the repeal of those provisions of the Companies Act in the notice under section 1(3) of this Act bringing the relevant provisions of this Act into operation.

(4) On the repeal of section 342 of the Companies Act, the following rules are revoked:

(a) the Companies (winding up Rules);

(b) the Companies (Winding-up Fees) Rules;

(c) the Companies (High Court) Rules.

(5) On the repeal of section 402(4) of the Companies Act, the Companies Regulations are revoked.

1024. Continuity of the law

(1) If a provision of the repealed Act is re-enacted by this Act (with or without modification), the effect of the provision continues subject to this Act.

(2) If—

(a) any act, matter or process required or permitted to be done under, or for the purpose of, a provision of the repealed Act before this section came into operation;

(b) a provision of this Act corresponds to the provision of the repealed Act; and

(c) the act, matter or process was not completed, or had not ceased to have effect, before, this section came into operation,

the act, matter or process shall or (as the case requires) may be completed, or continues to have effect, under the corresponding provision of this Act as if done under or for the purpose of that provision.

(3) Subsection (2) does not apply to subsidiary legislation made under the repealed Act.

(4) Any reference (express or implied) in this Act, or in any other enactment or document, to a provision of this Act is to be interpreted (so far as the context allows) as including, with respect to a time, circumstance or purpose in relation to which the corresponding provision of the repealed Act had effect, a reference to that corresponding provision.

(5) Any reference (express or implied) in an enactment or document to a provision of the repealed Act is to be interpreted (so far as the context allows), with respect to a time, circumstance or purpose in relation to which the corresponding provision of this Act, as being or as including a reference to the corresponding provision of this Act.

(6) If—

(a) any act, matter or process required or permitted to be done under, or for the purpose of, a provision of the repealed Act had been started before the commencement of this section but had not been completed before that commencement; and

(b) no provision of this Act corresponds to that provision of the repealed Act,

the act, matter or process shall or (as the case requires) may be completed under that provision as if the provision had not been repealed.

(7) This section has effect subject to any specific savings or transitional provision contained in the Sixth Schedule or in savings and transitional regulations made under section 1025.

(8) References in this section to this Act and to the repealed Act include subsidiary legislation made under those Acts.

(9) In this section, "subsidiary legislation" has the same meaning as in section 3 of the Interpretation and General Provisions Act—

(a) to affect, in a manner prejudicial to any person (other than the State or an agency of the State), the rights of that person existing before the date of its publication; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

(4) Without limiting subsection (1), the savings and transitional regulations may provide for a matter to be dealt with, wholly or partly, in any of the following ways:

(a) by applying (with or without modification) to the matter provisions of a written law of Kenya;

(b) by otherwise specifying rules for dealing with the matter;

(c) by specifying a particular consequence of the matter, or of an outcome of the matter.

(5) In this section, matters of a savings or transitional nature include, but are not limited to, matters related to any of the following—

(a) how a matter that arose or existed under the repealed Act is to be dealt with under this Act;

(b) the significance for the purposes of this Act of a matter that arose or existed under the repealed Act;

(c) how a process started but not completed under the repeated Act is to be dealt with;

(d) the preservation of concessions or exemptions (however described) that existed under the repealed Act;

(e) any other matters that are prescribed by regulations made for the purposes of this subsection.

1025. Sixth Schedule: savings and transitional provisions

The savings and transitional provisions in the Sixth Schedule have effect.

1026. Power to make savings and transitional regulations

(1) The Cabinet Secretary may make regulations, not inconsistent with the provisions in the Sixth Schedule, containing provisions of a savings or transitional nature relating to the transition from the application of the repealed Act to and in relation to companies (including foreign companies) to the application of this Act.

(2) Any such provision may, if those regulations so provide, have effect from the date of the passing of this Act or a later date.

(3) To the extent to which any such provision has effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as-

SCHEDULES

FIRST SCHEDULE

[Sections 124 & 125.]

CONNECTED PERSONS: REFERENCES TO AN INTEREST IN SHARES OR DEBENTURES

1. Introduction

This schedule has an effect for the interpretation of references in sections 124 and 125 to directors connected with or controlling a body corporate to an interest in shares or debentures.

2. General provisions

(1) A reference to an interest in relevant securities includes every kind of interest in the securities.

(2) Any restraints or restrictions to which the exercise of any right attached to the interest is or may be subject are to be disregarded.

(3) It is immaterial that the securities in which a person has an interest are not identifiable.

(4) Persons having a joint interest in relevant securities are each taken to have that interest.

3. When person has interest in securities of company

(1) A person has an interest in relevant securities on entering into a contract to acquire them.

(2) A person is taken to have an interest in relevant securities if the person—

(a) has a right to call for delivery of the securities; or

(b) has a right to acquire an interest in the securities or is under an obligation to take an interest in them whether the right or obligation is conditional or absolute.

(3) Rights or obligations to subscribe for relevant securities for the purposes of subparagraph (2) are rights to acquire or obligations to take an interest in the securities.

(4) A person ceases to have an interest in relevant securities because of this paragraph—

(a) on the securities being delivered to another person in accordance with the person's order—

(i) in fulfilment of a contract for their acquisition by the person; or

(ii) in satisfaction of a right of the person to call for their delivery;

(b) on a failure to deliver the securities in accordance with the terms of such a contract or on which such a right falls to be satisfied; or

(c) on the lapse of the person's right to call for the delivery of securities.

4. When person taken to have interest in relevant securities if not registered holder

(1) A person is taken to have an interest in relevant securities if, not being the registered holder, the person 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 taken to be entitled to exercise or control the exercise of a right conferred by the holding of shares if the person—

(a) has a right (whether subject to conditions or not) the exercise of which would make the persons so entitled; or

(b) is under an obligation whether or not so subject, the fulfilment of which would make the person so entitled.

(3) A person does not have an interest in relevant securities because of this paragraph only because the person—

(a) has been appointed a proxy to exercise any of the rights attached to the securities; or

(b) 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.

5. Bodies corporate

(1) A person is taken to have an interest in relevant securities if a body corporate has an interest in them and—

(a) the body corporate or its directors are accustomed to act in accordance with the person's directions or instructions; or

(b) the person 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 subparagraph (1), if—

(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,

if the voting power mentioned in paragraph (b) is taken to be exercisable by that person.

6. Trusts

(1) If an interest in relevant securities is comprised in property held on trust, each beneficiary of the trust is taken to have an interest in the securities.

(2) If a person is entitled to receive, during the person's lifetime or the lifetime of another person, income from trust property comprising relevant securities, an interest in the securities in reversion or remainder or in fee is to be disregarded.

(3) A person who holds relevant securities as a bare trust trustee or custodian trustee in accordance with the law applying in Kenya does not have an interest in the securities for the purposes of this Schedule or section 124 or 125.

SECOND SCHEDULE

[Section 219.] MATTERS FOR DETERMINING UNFITNESS OF DIRECTORS AND SECRETARIES

Part 1 — Matters applicable in all cases

1. Misfeasance or breach of any fiduciary or other duty

Any misfeasance or breach of any fiduciary or other duty by the director or secretary in relation to the company.

2. Misapplication or improper retention of money

Any misapplication or retention by the director or secretary of, or any conduct by the director or secretary giving rise to an obligation to account for, money or other property of the company.

3. Responsibility for company entering into debt avoidance transaction

The extent of the director's responsibility for the company entering into any transaction liable to be set aside under a provision of the law of insolvency relating debt avoidance.

4.

The extent of the responsibility of the director or secretary for any failure by the company to comply with any of the following provisions of this Act:

(a) section 93;

(b) section 94;

(c) section 134;

(d) section 248;

(e) section 628;

(f) section 630;

(g) section 705;

5. Responsibility for company failing to comply with provisions of this Act relating to financial statements and directors' reports

The extent of the responsibility of the director or secretary for any failure by the directors of the company to comply with the provisions of Part XXV imposing duties to prepare annual financial statements and directors' reports and to approve and sign those statements and reports.

Part 2 — Matters to be considered when company has become insolvent

6. Responsibility for the causes of company's insolvency

The extent of the responsibility of the director or secretary for the causes of the company becoming insolvent.

7. Responsibility to supply goods or services already paid for

The extent of the responsibility of the director or secretary for any failure by the company to supply any goods or services which have been paid for (in whole or in part).

8. Responsibility with respect to preferential transactions

The extent of the responsibility of the director or secretary for the company entering into any transaction or giving any preference, being a transaction or preference that is liable to be set aside under the laws relating to Insolvency.

9. Responsibility with respect to failure to call creditors' meeting

The extent of the responsibility of the director or secretary for any failure by the directors of the company to comply with a duty under the laws relating to Insolvency to call a creditors' meeting in a creditors voluntary liquidation.

10. Responsibility with respect to company's failure to comply with prescribed provision of insolvency law

Any failure by the director or secretary to comply with any obligation by or under a provision of the law relating insolvency prescribed by the regulations for the purposes of this paragraph.

THIRD SCHEDULE

[Section 489.]REQUIREMENTS TO BE COMPLIED WITH TO AVOID CONTRAVENING PART XVII (HOW COMPANY'S ASSETS ARE TO BE DISTRIBUTED)

1. Requirements if last annual financial statement used

(1) In this paragraph, the "company's last annual financial statement" means—

(a) the individual financial statement that was last circulated to members in accordance with section 662; or

(b) if, in accordance with section 665, the company provided a summary financial statement instead — the individual financial statement that formed the basis of that statement.

(2) If the company uses its last annual financial statement, it shall ensure that—

(a) the statement has been properly prepared in accordance with this Act, or has been so prepared subject only to matters that are not material for determining, by reference to the items referred to in section 488(1), whether the distribution would contravene Part XVII;

(b) unless the company is exempt from audit and the directors have taken advantage of that exemption — the auditor has made the auditor's report on the financial statements, and, if that report was qualified—

(i) the auditor has stated in writing (either at the time of the auditor's report or subsequently) whether in the auditor's opinion the matters in respect of which the auditor's report is qualified are material for determining whether a distribution would contravene Part XVII; and

(ii) in the case of a private company — a copy of that statement has been circulated to members in accordance with section 662; or

(iii) in the case of a public company — a copy of that statement has been laid before the company in general meeting.

(3) an auditor's statement is sufficient for the purposes of a distribution if it relates to distributions of a description that includes the distribution in question, even if at the time of the statement it had not been proposed.

2. Requirements if initial financial statements used

(1) If the company uses initial financial statements, it shall ensure that they will enable a reasonable judgment to be made as to the amounts of the items referred to in section 488(1).

(2) If an initial financial statement is prepared for a proposed distribution by a public company, the company shall ensure that—

(a) the statement has been properly prepared, or has been so prepared subject to matters that are not material for determining, by reference to the items referred to in section 488(1), whether the distribution would contravene Part XVII;

(b) the company's auditor has made a report stating whether, in the auditor's opinion, the financial statement has been properly prepared, and if that report was qualified—

(i) the auditor has stated in writing (either at the time of the auditor's report or subsequently) whether in the auditor's opinion the matters in respect of which the auditor's report is qualified are material for determining whether a distribution would contravene Part XVII; and

(ii) in the case of a private company — a copy of that statement has been circulated to members in accordance with section 662; or

(iii) in the case of a public company – a copy of that statement has been laid before the company in general meeting;

(d) a copy of the financial statement, and copies of the auditor's report and any auditor's statement on the financial statement, have been lodged with the Registrar for registration; and

(e) any requirement of Part XXXI as to the delivery of a certified translation into English of any of those documents has been complied with.

4.

In this paragraph, "**properly prepared**" means prepared in accordance with sections 637 and 638, applying those requirements with such modifications as are necessary because the financial statements are prepared otherwise than in respect of an accounting reference period.

FOURTH SCHEDULE

[Section 817.] SPECIFIED PERSONS

1. The Cabinet Secretary.

2. The Court.

3. The Attorney General.

4. The Director of Public Prosecutions.

5. The Registrar.

6. The Capital Markets Authority.

7. An inspector appointed under Part XXX.

8. A member of the National Police Service.

FIFTH SCHEDULE

[Section 817.] AUTHORISED DISCLOSURES

1.

A disclosure for the purpose of enabling the Court to perform its functions under this Act or the laws relating to Insolvency.

2.

A disclosure for the purpose of enabling or assisting the Attorney General or the Director of Public Prosecutions to perform their respective functions under this Act.

3.

A disclosure for the purpose of enabling the Registrar and officers of the Companies Registry to perform their functions under this Act.

4.

A disclosure for the purpose of enabling a statutory auditor to perform the auditor's functions under this Act.

5.

A disclosure for the purpose of enabling or assisting an inspector appointed under Part XXX to perform the inspector's functions under that Part.

6.

A relevant disclosure made for the purpose of section 816.

7.

A disclosure for the purpose of enabling or assisting the Attorney General or the Director of Public Prosecutions to perform their respective functions under this Act.

8.

A disclosure for the purpose of enabling the Takeovers Panel to perform its functions under this Act.

9.

A disclosure for the purpose of enabling or assisting the Capital Markets Authority, or an officer or servant appointed under the Capital Markets Act, to perform their respective functions under that Act.

10.

A disclosure for the purpose of enabling or assisting the Official Receiver, an authorised insolvency practitioner or a bankruptcy trustee to perform their respective functions under the Insolvency Act, 2015.

11.

A disclosure made to the Court for the purpose any legal proceedings contemplated by this Act.

SIXTH SCHEDULE

[Section 1025] TRANSITIONAL AND SAVING PROVISIONS

PART 1 — PRELIMINARY

1. Interpretation

In this Schedule—

"the repealed Act" means Cap. 486;

"repeal" means a repeal under section 1025, and repealed is to be construed accordingly.

PART 2 — TRANSITIONAL AND SAVING ARRANGEMENTS FOR PART II (INCORPORATION OF COMPANIES AND RELATED MATTERS)

2. Companies formed but not registered before repeal of sections 4 to 19 of the repealed Act

In the case of a company formed but not registered before the repeal of sections 4 to 19 of the repealed Act, those provisions continue to apply to and in relation to the registration of that company.

3. Continued application of Tables A, B, C, D and E to existing companies

(1) This Act does not affect the continued application of Table A in the First Schedule to the repealed Act in so far as it applied to an existing company immediately before the repeal of section 11 of that Act.

(2) This Act does not affect the continued application of Table B, C, D or E in the First Schedule to the repealed Act in so far as it applied to an existing company immediately before the repeal of section 14 of that Act.

4. Alteration of company's objects before repeal of section 13 of the repealed Act

Section 13 of the repealed Act, as in force immediately before its repeal, continues to apply in relation to a special resolution passed before that repeal.

5. Re-registration of unlimited company as limited

Despite the repeal of section 18 of the repealed Act, that section continues to apply to an existing unlimited company that had sought to be re-registered under that section as a limited company, but the re-registration had not been completed before the repeal of that section.

6. Name reserved under section 19 of the repealed Act

A name reserved under section 19 of the PCA before the repeal of that section continues to have effect in accordance with that section as if that repeal had not taken effect.

7. Change of name of existing company made before the repeal of section 20 of the repealed Act

(1) If an existing company has changed its name before the repeal of section 20 of the repealed Act, that section continues to apply to the company with respect to the change as if that repeal had not taken effect.

(2) Despite the repeal of section 20 of the repealed Act, that section continues to apply in relation to a direction given by the Registrar to an existing company before, but not complied with, before that repeal.

8. Power to dispense with "limited" in name of charitable and other companies

(1) If a company holds a licence under section 21 of the repealed Act immediately before the repeal of that section, the licence continues in force under and in accordance with that section as if that repeal had not taken effect.

(2) For the purposes of subparagraph (1), section 21 of the repealed Act has effect in relation to the licence as if "**Cabinet Secretary**" were substituted for "**Minister**".

(3) Section 21 of the repealed Act, as in force immediately before its repeal, continues to have effect in relation to an application for a licence made under that section made, but not processed, before that repeal.

9. Document entered into or made by existing company before repeal of relevant provision date to continue to have effect despite repeal

Any bill of exchange, promissory note, deed or other document that was entered into or made by an existing company before the repeal of the provision of the repealed Act under which the bill, note, deed or other document was required or permitted to be entered into or made and that had not ceased to have effect before that date continues to have effect under this Act if and to the extent that the company could enter into or make such a bill, note, deed or document under this Act after that commencement.

10. Notice or other document given to or lodged with Registrar before relevant commencement date

Any notice or other document that was given to or lodged with the Registrar before the repeal of the provision of the repealed Act under which it was given or lodged and that had not taken effect or been disposed of before that repeal continues to have effect as if that provision had been not been repeal if and to the extent that notice or other document could be given or lodged under this Act after that repeal.

11. Official seal of existing company

If an existing company had an official seal immediately before the repeal of section 37 of the DDC, the seal continues to have effect as if it had been created by the company under section 42 of this Act.

PART 3 — TRANSITIONAL AND SAVING ARRANGEMENTS FOR PART III (SHARE CAPITAL AND DEBENTURES)

12. Issue of prospectus etc before repeal of Part III of the repealed Act

Part III of the repealed Act continues to apply to a prospectus, or statement in lieu of prospectus, issued by or on behalf of a company or an intended company, and to an allotment of shares under that Part, before the repeal of that Part as if that Part had not been repealed.

13. Resolutions of existing company, etc

(1) Resolutions of an existing company (including special resolutions) passed before the repeal of a provision of the repealed Act passed before the repeal of the provision and not yet implemented may be implemented to the extent that they could be implemented under corresponding provisions of this Act.

(2) Motions for the passing of such resolutions moved before the repeal of such a provision may nevertheless be passed as if the repeal had not had effect if the motions could be passed under corresponding provisions of this Act.

14. Shares, debentures and debenture stock issued by existing company

Shares, debentures and debenture stock issued by an existing company before the repeal of the provision of the repealed Act under which they were issued continue to have effect subject to this Act.

15. Section 54 of the repealed Act to continue to apply to existing company that has allotted shares before repeal of section

If an existing company limited by shares, or a company limited by guarantee and having a share capital, has made an allotment of its shares but has not complied with section 54 of the repealed Act before its repeal, that section continues to apply to the company as if that repeal had not taken effect.

16. Existing company's share premium account and capital redemption reserve

(1) If an existing company has a share premium account immediately before the repeal of section 58 of the repealed Act, that account is taken to be the company's share premium account for the purpose of section 388 of this Act.

(2) If an existing company has a capital redemption reserve immediately before the repeal of section 60 of the repealed Act, that account is taken to be the company's capital redemption reserve for the purpose of section 492 of this Act.

17. Redeemable shares issued before repeal of section 60 of the repealed Act

Any redeemable preference shares issued by an existing company but not redeemed before the repeal of section 60 of the repealed Act may be redeemed in accordance with this Act.

18. Conversion of shares into stock before repeal of section 64 of the repealed Act

If an existing company having a share capital has, before the repeal of section 64 of the repealed Act—

(a) consolidated and divided its share capital into shares of larger amount than its existing shares; or

(b) converted any shares into stock; or

(c) reconverted stock into shares; or

(d) subdivided its share or any of them; or

(e) redeemed any redeemable preference shares; or

(f) cancelled any shares, otherwise than in connection with a reduction of share capital under section 68 of that Act,

but has not complied with that section before that repeal, that section continues to apply to the company as if that repeal had not taken effect.

19. Resolutions for reduction of share capital of existing company passed but not implemented before repeal of section 68 of the repealed Act

If an existing company has, before the repeal of section 68 of the repealed Act, passed a special resolution in accordance with that section to reduce its share capital but the reduction has not been fully implemented before that repeal has taken effect, that section and sections 69 to 73 of that Act continue to apply to that reduction of share capital as if their repeal had not taken effect.

20. Issue of shares, etc. allotted before repeal of section 82 of the repealed Act

Section 82 of the repealed Act, as in force immediately before its repeal, continues to apply—

(a) to the issue of shares, debentures and debenture stock allotted but not issued, before that repeal has taken effect; and

(b) to the transfer of shares, debentures and debenture stock allotted that has not been fully effected,

before that repeal took effect.

21. Share warrants issued by existing companies

Share warrants issued by an existing company under section 85 of the repealed Act and having effect before the repeal of that section continue to have effect after that repeal even though the company could not issue share warrants after that repeal and section 87 of that Act continues to have effect in respect of those share warrants as if that repeal had not taken effect.

22. Provisions as to register of debenture holders kept by existing company before repeal of section 88 of the repealed Act

If an existing company was, immediately before the repeal of section 88, keeping a register of debenture holders in accordance with section, that register is taken to be the register of debentures holders required to be maintained by the company under [section 537] of this Act.

23. Reregister of debenture holders kept by existing company before repeal of section 88 of the repealed Act

(1) Sections 89 of the repealed Act, as in force immediately before it repeal, continues to apply in relation to a request received by an the company under that section as that repeal.

(2) Section 89(6) of the repealed Act, as in force immediately before its repeal, continues to apply in relation to a closure of a register of debenture holders if the register was closed in accordance with that subsection before that repeal took effect.

24. Liability in respect of debentures, etc. issued before repeal of section 90 of the repealed Act

Section 90 of the repealed Act, as in force immediately before its repeal, continues to apply to a trust deed for securing an issue of debentures issued, or in any contract with the holders of debentures secured by a trust deed entered into, before that repeal took effect.

25. Shares redeemed before repeal of section 92 of the repealed Act

If an existing company has, before the repeal of section 92 of the repealed Act, redeemed any debentures previously issued by the company and taken steps to reissue those debentures, that section continues to apply to those debentures as if that repeal had not taken effect.

26. Savings for certain debentures reissued before 1 January 1934

If an existing company that reissued debentures redeemed before 1 January 1934 reissued those debentures before the repeal of section 94 of the repealed Act, that section continues to apply to those debentures as if that repeal had not taken effect.

PART 4 — TRANSITIONAL AND SAVING ARRANGEMENTS FOR PART IV (REGISTRATION OF CHARGES)

27. Charges created by existing company before repeal of sections 96 and 97 of the repealed Act

Despite the repeal of sections 96 and 97 of the repealed Act, those sections continue to apply to an existing company that has created a charge but has not delivered it to the Registrar for registration before the repeal of those sections took effect.

28. Property acquired by a company that is subject to a charge

Despite the repeal of section 98 of the repealed Act, if an existing company has acquired property subject to a charge but has not complied with that section before its repeal, that section continues to apply to the company as if that repeal had not taken effect.

29. Registration of satisfaction and release of property from charge

Despite the repeal of section 101 of the repealed Act, that section continues to apply to a charge in respect of which the Registrar has received evidence of satisfaction of the charge, but has not registered a memorandum of satisfaction in respect of the charge, before the repeal of that section.

30. Registration of memorandum of satisfaction in respect of release of charge before repeal of section 101 of the repealed Act

If the whole or part of the property or undertaking of an existing company has been released from a charge, or has ceased to form part of the company's property or undertaking, but a memorandum of satisfaction has not been registered in respect of that release before the repeal of section 101 of the repealed Act, that section continues to apply to the release as if that repeal had not taken effect.

31. Extension of time to register charges

Despite the repeal of section 102 of the repealed Act, that section continues to apply to an application for an extension of time made under that section before, but not finally disposed of, before that repeal took effect.

32. Existing company’s register of charges etc

An existing company’s register of charges, and the instruments comprising it, as in existence immediately before the repeal of sections 104 and 105 of the repealed Act continue to have effect under the corresponding provisions of this Act.

33. Rights to inspect copies of instruments creating charges and register of charges kept by existing company

Section 106 of the repealed Act, as in force immediately before its repeal, continues to apply in relation to a request received by an existing company under that section before that repeal took effect.

PART 5 — TRANSITIONAL AND SAVING ARRANGEMENTS FOR PART V (MANAGEMENT AND ADMINISTRATION)

34. Existing company's registered office

The registered office of an existing company continues to be its registered office after the repeal of section 107 of the repealed Act, but subject to the relevant provisions of this Act.

35. Compliance with section 109 of the repealed Act with respect to publication of company's name etc

(1) An existing company that was complying to comply with section 109 of the repealed Act immediately before its repeal is taken to comply with [section 67] of this Act.

(2) Despite the repeal of section 109 of the repealed Act, that section continues to apply to an existing company that was not complying with that section immediately before that repeal.

36. Existing company's register of members

An existing company's register of members, as in existence immediately before the repeal of section 112 of the repealed Act, continues to have effect under [section 93] of this Act.

37. Existing company's index of members

An existing company's index of members, as in existence immediately before the repeal of section 112 of the repealed Act, continues to have effect under section 95 of this Act.

38. Power of Court to rectify register

If an application under section 118 of the repealed Act was pending before the Court immediately before the repeal of that section, the Court may continue to determine the application as if that repeal had not taken effect.

39. Branch registers kept by existing companies

(1) If an existing company was keeping a branch register in accordance with section 121 of the repealed Act and regulations in force under section 122 of that Act immediately before their repeal, the company may continue to keep the register in which case those sections and sections 123 and 124 of that Act, and those regulations, continue to apply to and in respect of the company and those registers as if they had not been repealed or revoked.

(2) Any direction in force under section 124 of the repealed Act continues to have effect for the purpose of the continued application of that section by paragraph (1) and for that purpose a reference to the Cabinet Minister is substituted for the reference to the Minister.

40. Annual returns of existing companies

(1) If an existing company that was required to comply with section 125 (and section 129 if applicable) of the repealed Act has not, before the repeal of those sections, complied with those sections within the period prescribed by section 127 of that Act, those sections (so far as applicable) continue to apply the company as if they had not been repealed.

(2) If an existing company that was required to comply with section 126 of the repealed Act has not, before the repeal of that section, complied with it within the period prescribed by section 127 of that Act, that section continues to apply the company as if that repeal had not taken effect.

41. General meetings of existing companies

(1) If an existing company that was required by section 130, 131 or 132 of the repealed Act to convene and hold a general meeting has not convened and held that meeting before the repeal of the relevant section, that section continues to have effect in respect of the company and the meeting as if that repeal had not taken effect.

(2) Sections 134 to 146 of the repealed Act continue to have effect in respect of a company and a general meeting to which paragraph (1) applies as if the repeal of those sections had not taken effect.

(3) If an existing company that was required by section 130, 131 or 132 of the repealed Act to convene and hold a general meeting has convened and held that meeting before the repeal of the relevant section but has not complied with section 143 of that Act, that section continues to have effect in respect of the company as if that repeal had not taken effect.

42. Accounts and audit of existing company

If the financial year of an existing company began before, but has ended after, the repeal of sections 147 to 163 of the repealed Act (or of such of those sections as are applicable), those sections continue to apply to the company with respect to its accounts for that year, and to the audit of those accounts, as if that repeal had not taken effect.

43. Appointment of auditor in respect of existing company

Without limiting paragraph 42, sections 159 to 163 of the repealed Act, as in force immediately before their repeal, continue to apply to and in respect of an auditor appointed under section 159 of that Act to audit the accounts of an existing company whose financial year began before but has ended after that repeal took effect.

44. Investigations by the Registrar pending under section 164 of the repealed Act

The Registrar may complete an investigation begun but not completed under section 164 of the repealed Act before its repeal, in which case that section continues to have effect despite its repeal.

45. Investigation of affairs of existing company pending under section 165 or 166 of the repealed Act

(1) If the Court has appointed one or more competent inspectors to investigate the affairs of an existing company under section 165 or 166 of the repealed Act but the investigation has not been completed before the repeal of that section, the investigation is to be continued under that section as if that repeal had not taken effect.

(2) Despite the repeal of sections 167 to 172 of the repealed Act, those sections continue to apply to an investigation continued under paragraph (1) as if their repel had not taken effect.

(3) If, before the repeal of section 170 of the repealed Act, as in force immediately before its repeal, a report had been made under that section, the following provisions apply:

(a) the Attorney General may, despite the repeal, exercise any power under that section to institute a prosecution, present a winding up petition or bring proceedings that he or she could have instituted, presented or brought if that repeal had not taken effect;

(b) if any such prosecution, petition or proceedings has or have been instituted, presented or brought before that repeal took effect, the prosecution, petition or proceedings may be heard and determined as if that repeal had not taken effect.

46. Appointment of inspectors to investigate and report on membership of existing company

(1) If the Registrar has appointed one or more competent inspectors to investigate on the membership of an existing company under section 173 of the repealed Act and the investigation has not been completed before its repeal, the investigation is to continue under that section as if that repeal had not taken effect.

(2) Despite the repeal of section 175 of the repealed Act, that section continues to apply to an investigation under paragraph (1) as if that repeal had not taken effect.

47. Requirement imposed by Registrar in relation to ownership of shares or debentures of existing company

(1) If the Registrar has imposed a requirement on persons under section 174 of the repealed Act but the requirement has not been complied with before that repeal, that section continues to apply in respect of that requirement as if that repeal had not taken effect.

(2) Despite the repeal of section 175 of the repealed Act, that section continues to apply to the persons referred to in paragraph (1) as if that repeal had not taken effect.

48. Directors and secretary of existing company

(1) If a person appointed as a director of an existing company is holding office immediately before the repeal of the provision of the repealed Act under which the person was appointed, the person continues to hold that office under that provision as if that repeal had not taken effect, but any reappointment of the person as a director after the appointment has come to an end is to be subject to the relevant provisions of this Act.

(2) If a person appointed as a secretary of an existing company is holding office immediately before the repeal of the provision of the repealed Act under which the person was appointed, the person continues to hold that office under that provision as if that repeal had not taken effect.

49. Requirement to have at least one director who is natural person

If, on the commencement of section 129 of this Act—

(a) a company has at least one director; but

(b) that director is not a natural person and none of the company's other directors (if any) are natural persons,

the requirement imposed by that section does not take effect until six months after that commencement.

50. Minutes of meetings of existing company and of directors of existing companies

(1) Section 145 of the repealed Act, as in force immediately before its repeal, continues to apply to meetings of an existing company or of the directors of such a company held before that repeal took effect.

(2) Despite subparagraph (1), a company is not required to keep the minutes that have been entered in a book in accordance with section 145(l) of the repealed Act if they have been kept for at least ten years from the date of the meeting.

51. Secretary of existing company to continue in office after repeal of section 178 of the repealed Act

A person holding office as secretary of an existing company before the repeal of section 178 of the repealed Act continues to hold that office subject to the provisions of Part XI of this Act.

52. Validity of acts of director of existing company

Section 181 of the repealed Act, as in force immediately before its repeal, continues to apply in relation to acts done before that repeal took effect.

53. Removal of director of existing company before repeal of section 185 of the repealed Act

Section 185 of the repealed Act, as in force immediately before its repeal, continues to apply if the representations were received by the company before that repeal took effect.

54. Power to restrain fraudulent persons from managing companies

(1) An order of a court made under section 195 of the repealed Act in respect of a person and in force immediately before the repeal of that section continues in force under that section as it had not been repealed.

(2) Despite the repeal of section 195 of the repealed Act, a court may hear and determine an application made under that section, but not determined, before its repeal.

55. Register of directors' shareholdings kept by existing company

Despite the repeal of section 196 of the repealed Act, if an existing company was, immediately before that repeal, keeping a register of directors' shareholdings, that section continues to apply to the company and its directors as if that repeal had not taken effect.

56. Particulars in accounts of directors' salaries, pensions, etc

Section 197 of the repealed Act continues to apply to the accounts of an existing company in respect of a financial year of the company that began, but had not ended, before the repeal of that section.

57. Register of directors and secretaries of existing company

(1) An existing company's register of directors and secretaries, as in existence immediately before the repeal of section 201 of the repealed Act, continues—

(a) to have effect under section 134 of this Act in so far the register relates to the company's directors; and

(b) to have effect under section 249 of this Act in so far as the register relates to the company's secretaries.

(2) An existing company need not comply with a provision of this Act requiring the company's register of directors to contain particulars additional to those required by the repealed Act until—

(a) the date to which the company makes up its first annual return made up to a date on or after the repeal of section 201 of the repealed Act; or

(b) if the company fails to do so, the last date to which the company should have made up that return.

(3) An existing company need not comply with a provision of this Act requiring the company's register of secretaries to contain particulars additional to those required by the repealed Act until —

(a) the date to which the company makes up its first annual return made up to a date on or after the repeal of section 201 of the repealed Act; or

(b) if the company fails to do so, the last date to which the company should have made up that return.

58. Limited company may have directors with unlimited liability

If an existing company had directors or managers or a managing director with unlimited liability immediately before the repeal of section 203 of the repealed Act, those directors or managers continue, or that managing director continues, to hold office as such with that liability as if that repeal had not taken effect, in which case that section continues to apply accordingly.

59. Scheme of arrangement involving existing company

If a compromise or arrangement has, before the repeal of section 207 of the repealed Act, been proposed between an existing company and its creditors or any class of them, or between the company and its members or any class of them, but has not been sanctioned by the Court or otherwise determined, before that repeal, that section and sections 208 and 209 of that Act continue to apply to compromise or arrangement as if those sections had not been repealed.

60. Power to acquire shares of shareholders dissenting from scheme or contract approved by majority

(1) If a scheme or contract involving the transfer of shares or any class of shares in an existing company to another company has, before the repeal of subsection (1) of section 210(1) of the repealed Act, been approved by the holders of not less than nine-tenths in value of the shares to which the transfer relates, that other company may, if has not already done so, give notice in accordance with that section to any dissenting shareholder that it desires to acquire that shareholder's shares. In which case that subsection continues to apply to and in respect of the scheme or contract as if that repeal had not taken effect.

(2) If, in accordance with any such scheme or contract, shares in an existing company are transferred to another company or its nominee, and those shares together with any other shares in the existing company held by, or by a nominee for, the other company or its subsidiary at the date of the transfer comprise or include nine-tenths in value of the shares in the existing company or of any class of those shares, and the other company has not, before the repeal of subsection (2) of section 210 of the repealed Act, given notice as required by paragraph (a) of that subsection to the holder or holders of the remaining shares in the existing company, or of the remaining shares of that class, who have not assented to the scheme or contract, that subsection continues to apply to the other company and to that holder or those holders as it had not been repealed.

61. Complaints made by member of existing company before repeal of section 211 of the repealed Act

If any member of an existing company has, before the repeal of section 211 of the repealed Act, complained that the affairs of the company are being conducted in a manner oppressive to some part of the members (including the member) or, in a case falling within section 170(2) of that Act, but the complaint has not been disposed of before that repeal, the first-mentioned section continues to apply to and in respect of the complaint as if that repeal had not had effect.

PART 6 — TRANSITIONAL AND SAVING ARRANGEMENTS FOR PART VI (DISSOLUTION OF COMPANIES)

62. Pending application before the Court under section 338 of the repealed Act to declare dissolution of company void

If, immediately before the repeal of section 338 of the repealed Act the repealed Act, an application to the Court was pending under that section to declare the dissolution of a company void, the Court may continue to hear and determine the application as if that repeal had not taken effect.

63. Pending proceedings for striking existing company off the Register

(1) If, immediately before the repeal of section 339 of the repealed Act, the Registrar had sent a letter to an existing company in accordance with subsection (1) of that section but had not, before that repeal took effect, struck the company off the Register in accordance with subsection (5) of that section, that section continues to have effect in relation to the company and its members and creditors, and If a liquidator has been appointed in respect of it, that liquidator, as if that repeal had not taken effect.

(2) If, immediately before the repeal of section 339 of the repealed Act, an application to the Court under subsection (6) had been made but had not been heard and determined, that subsection continues to apply to and in respect of the application as that repeal had not taken effect.

64. Disclaimer of property of company by Attorney General

If, immediately before the repeal of section 341 of the repealed Act, property has vested in the Government under that section but the property had not been disclaimed as provided by that section, that section continues to have effect in respect of the property as if that repeal had not taken effect.

PART 7 — TRANSITIONAL AND SAVING ARRANGEMENTS FOR PART X (COMPANIES INCORPORATED OUTSIDE KENYA)

65. Saving for foreign companies

A company that, immediately before the repeal of section 367 of the repealed Act, was the holder of a certificate of registration as a foreign company continues to be registered as a foreign company under Part XXXVII of this Act.

66. Alterations made in respect of existing registered foreign company before repeal of section 368 of the repealed Act

If, before the repeal of section 368 of the repealed Act, an alteration has been made—

(a) in the charter, statutes or memorandum and articles of a foreign company registered under section 367 of the repealed Act or in any of those documents;

(b) in the directors or secretary of such a foreign company or the particulars contained in the list of the directors and secretary;

(c) in the names or postal addresses of the persons authorized to accept service on behalf of such a foreign company; or

(d) in the address of the registered or principal office of such a foreign company,

and the company has not complied with a requirement of that section before its repeal, that section continues to apply to the company as if that repeal had not taken effect.

67. Charges registered in respect of existing registered foreign company

If, immediately before the repeal of section 369 of the repealed Act, an existing foreign company has created a charge on property in Kenya, or has acquired property in Kenya that is subject to a charge, that

was created, and to charges on property in Kenya that was acquired, before the repeal of that section, that section continues to apply to the charge or property as if that repeal had not taken effect.

68. Accounts of existing registered foreign company

If the financial year of an existing registered foreign company began but had not ended before the repeal of section 370 of the repealed Act, that section continues to apply to and in respect of the accounts of the company for that year as if that repeal had not taken effect.

69. Cessation of business of existing registered foreign company

If an existing registered foreign company has ceased to have a place of business in Kenya, but has not complied with, before the repeal of section 371 of the repealed Act, that section continues to apply to the company as if that repeal had not taken effect.

PART 8— TRANSITIONAL AND SAVING ARRANGEMENTS FOR PART XIII (GENERAL)

70. Deputy Registrar etc. holding office under repealed Act

A person holding office as Deputy Registrar of Companies or Assistant Registrar of Companies, immediately before the repeal of section 382 of the repealed Act, continues to hold or act in that office as if the person were appointed under section 831(3) of this Act.

71. Application for enforcement of duty of company to make returns to Registrar made before repeal of section 385 of the repealed Act

(1) If an application made under section 395 of the repealed Act has not been heard or determined before the repeal of that section, the Court may nevertheless hear and determine the application as if that repeal had not taken effect.

(2) If an order made under section 395 of the repealed Act has not been implemented before the repeal of that section, it continues to have effect until it has been fully implemented.

72. Section 386 of the repealed Act to continue to apply to certain companies after repeal

If, before the repeal of section 386 of the repealed Act, a company to which that section applied was, immediately before that repeal, under an obligation to comply with a requirement of that section, that section continues to apply to that company with respect to its compliance with that requirement as if that repeal had not taken effect.

73. Application for production and inspection of books, etc. made before repeal of section 396 of the repealed Act

(1) If an application made under section 396 of the repealed Act has not been heard or determined before the repeal of that section, the Court may nevertheless heard and determine the application as if that repeal had not taken effect.

(2) If an order made under section 396 of the repealed Act has not been implemented before the repeal of that section, it continues to have effect until it has been fully implemented.

74. Legal proceeding brought by company before repeal section 401 of the repealed Act

Despite the repeal of section 401 of the repealed Act, that section continues to apply to a legal proceeding brought by a limited company, but not determined, before that repeal.

75. Power of Court to grant relief to continue in relation to acts or omissions occurring before repeal of section 402 of the repealed Act

Despite the repeal of section 402 of the repealed Act, that section continues to apply to and in respect of any negligence, default, breach of duty or breach of trust committed or alleged to have been committed by an office of an existing company or by a person employed as an auditor of such a company or by a person employed as an auditor of such a company before that repeal unless a court has already exercised its power under that section in respect of that negligence, default, breach of duty or breach of trust.