

**THE COMPANIES ACT, 2017**

ARRANGEMENT OF SECTIONS

**PART I**

PRELIMINARY PROVISIONS

*Section*

1. Short title and commencement
2. Application of Act
3. Interpretation
4. Definition in other laws
5. Superiority of Act

**PART II**

INCORPORATION AND REGISTRATION OF COMPANIES

6. Types of companies to be incorporated
7. Public companies
8. Private companies
9. Private companies limited by shares
10. Companies limited by guarantee
11. Private unlimited companies
12. Application for incorporation
13. Declaration of compliance
14. Certificate of incorporation and share capital
15. Certificate to be evidence of incorporation
16. Legal status of registered company
17. Contractual effect of incorporation
18. Display of certificate of incorporation
19. Rejection of application for incorporation
20. Pre-incorporation contracts
21. Register of Companies and Register of Beneficial Owners

**PART III**

CORPORATE CAPACITY AND ADMINISTRATION

22. Capacity, powers and rights of company
23. Validity of acts
24. Presumption of knowledge
25. Articles of association
26. Effect of articles of association
27. Amendment of articles of association

28. Registered office and change of registered office
29. Publication of name of company
30. Records kept at company's registered office
31. Register of directors and secretaries
32. Seal of company and execution of documents
33. Common seal for use abroad
34. Service of documents on company
35. Service of documents by company

#### PART IV

##### COMPANY NAME AND CHANGE OF NAME

36. Company name to end with PLC or Ltd
37. Application to omit or dispense with " Limited " in name of company limited by guarantee
38. Revocation of approval to dispense with "Limited"
39. Clearance and approval of proposed name
40. Rejection of application for approval of name
41. Reservation of company name
42. Change of name
43. Registrar may direct change of name
44. Document with incorrect name not void
45. Liability where company name incorrectly stated
46. Publication of change of company name prior to public notices
47. Legal effect of change of name

#### PART V

##### CONVERSION OF COMPANIES

48. Conversion of private company limited by shares into company limited by guarantee
49. Conversion of private company limited by shares into unlimited company
50. Conversion of company limited by guarantee into company limited by shares or unlimited company
51. Conversion of unlimited company into private limited company
52. Conversion of public company into private company limited by shares
53. Conversion of private company limited by shares into public company
54. Process of conversion
55. Imposition of penalty by Registrar for non-compliance

**PART VI****MEETINGS AND RESOLUTIONS**

56. Types of meetings
57. Annual general meeting
58. Business to be transacted at annual general meeting
59. Extraordinary general meeting
60. Class meetings
61. Requisition of general meeting
62. Entitlement to receive notice of meetings
63. Length of notice for convening meeting
64. Meeting by order of Court
65. Place of meetings
66. Attendance at meetings
67. Conduct of meetings and voting
68. Chairperson's declaration as to result of vote
69. Right to demand poll
70. Voting on poll
71. Proxies
72. Representation of body corporates and unincorporated associations at meetings
73. Circulation of members' resolutions and supporting documents
74. Circulation of members' statements
75. Refusal to circulate members' statements
76. Reference to ordinary, extraordinary, and special resolutions in other documents
77. Written resolutions for private companies
78. Lodgement of resolutions
79. Date of certain resolutions
80. Minutes of proceedings of meetings
81. Inspection of minute books

**PART VII****CORPORATE GOVERNANCE**

82. Company secretary
83. Responsibilities of company secretary
84. Appointment of body corporate as company secretary
85. Appointment of directors
86. Powers and duties of directors
87. Limitations on powers of directors
88. Delegating powers of board
89. Board committees

90. Number of directors falling below prescribed minimum
91. Residential requirements of directors
92. Qualifications of director
93. Disqualification by court from holding office of director
94. Consent before appointment as director
95. First and subsequent directors
96. Appointment of directors by Court
97. Alternate directors
98. Removal of director from office
99. Vacancy in office of director and filling up of casual vacancy
100. Notice of change of directorship and particulars
101. Executive director
102. Acts done in dual capacity as director and secretary
103. Loans to directors by company
104. Directors to comply with Act and articles
105. General responsibilities of directors
106. Fiduciary duties of directors
107. Duty to avoid conflict of interest
108. Meaning of 'interest'
109. Duty not to accept third party benefits
110. Disclosure of interest of director
111. Avoidance of transaction in which director has interest
112. Effect of avoiding transaction on *bona fide* purchase
113. Use of information
114. Disclosure of interest in shares issued, acquired or disposed of by director
115. Restrictions on director regarding disposal of shares
116. Director's liability on share dealing
117. Exception for companies dealing in securities
118. Remuneration for directors
119. Approval of other distributions by special resolution
120. Liability of director for breach of duty
121. Validity of decisions by executive officer
122. Liability and indemnity with regard to decisions made *bona fide*

## PART VIII

## SHAREHOLDERS' RIGHTS AND OBLIGATIONS

123. Declaration in respect of beneficial interest in share
124. Beneficial ownership of shares

125. Liability of shareholders
126. Liability of former shareholders
127. Liability of person ceasing to be shareholder before shareholders' liability becomes unlimited
128. Shareholders not required to acquire shares by alteration to articles
129. Liability of personal representative
130. Liability of assignee
131. Exercise of powers reserved for shareholders
132. Power to acquire shares of minority on takeover
133. Rights of minority on takeover
134. Remedy against oppression of minority on takeover
135. Classes and interest groups
136. Alteration of shareholder rights
137. Shareholder requiring company to purchase shares
138. Right of shareholder to commence action

#### PART IX

##### SHARES AND SHARE CAPITAL

139. Share capital
140. Alteration of share capital
141. Rights and powers attaching to shares
142. Types of shares and rights conferred
143. Variation of class rights
144. Pre-emptive rights
145. Share premium account
146. Issue of shares on incorporation and amalgamation
147. Issue of other shares
148. Forfeiture and surrender of shares
149. Return on allotment of shares
150. Reduction of share capital
151. Confirmation of reduction by Court
152. Consideration for shares
153. Consideration to be determined by board
154. Exceptions to consideration for shares
155. Consideration to issue of options and convertible securities
156. Subsequent issue of shares
157. When share is issued
158. Board to authorise distribution of dividends

159. Dividends to be paid out of profits
160. Shares in lieu of dividends
161. Recovery of distributions of dividends
162. Reduction of shareholder's liability and distribution
163. Company may acquire fully paid-up shares
164. Acquisition of company's own shares
165. Board may make offer to acquire shares
166. Special offers to acquire shares
167. Disclosure document
168. Securities exchange acquisitions subject to prior notice to shareholders
169. Disclosure document for securities exchange acquisitions
170. Securities exchange acquisitions not subject to prior notice to shareholders
171. Cancellation of shares repurchased
172. Enforceability of contract to repurchase shares
173. Company may hold its own shares
174. Suspension of rights and obligations attaching to shares held by company in itself
175. Reissue of shares held by company in itself
176. Redeemable shares
177. Redemption at option of company
178. Special redemption of shares
179. Disclosure document
180. Cancellation of redeemed shares
181. Redemption at option of shareholder
182. Redemption on fixed date
183. Restriction on financial assistance in acquisition of shares
184. Relaxation of restrictions for private companies
185. Holding companies and subsidiary companies
186. Subsidiary may not hold shares in holding company
187. Statement of shareholder's rights
188. Transfer of shares
189. Restrictions on transferability
190. Transmission of shares by operation of law
191. Evidence of transmission of shares by operation of law
192. Company's lien on shares
193. Rights and options to subscribe for share issue to directors, officers and employees

- 
194. Power to return accumulated profits in reduction of paid-up share capital
  195. Company to maintain share and beneficial ownership register
  196. Place of share and beneficial ownership register
  197. Evidence of legal title to shares
  198. Directors' duty to supervise share and beneficial ownership register
  199. Power of court to rectify share register
  200. Trusts to be entered on beneficial ownership register
  201. Personal representative to be registered
  202. Assignee of bankrupt to be registered
  203. Issue of share certificate
  204. Perpetual debenture
  205. Power to reissue redeemed debenture
  206. Specific performance of contracts for debenture subscription
  207. Shareholding in regulated companies

**PART X****PUBLIC ISSUE OF SHARES**

208. Offer of sale by company
209. First publication of prospectus
210. Invitations to public to acquire shares and debentures
211. Prospectus required for invitation to public to purchase shares or debentures
212. Contents of prospectus
213. Expert's consent
214. Registration of prospectus
215. Over-subscription in debenture issue
216. Reference to stock exchange listing in prospectus-allotment of shares
217. Civil liability for misstatements or omissions in prospectus
218. Offence of misstatement or omission in prospectus
219. Stop trading order
220. Enforceability of agreement before end of waiting period
221. Withdrawal of application after waiting period
222. Allotment and minimum subscription
223. Statement in lieu of prospectus
224. Prohibition of waiver and notice clause

## PART XI

## DEBENTURES AND CHARGES

225. Issue of debentures
226. Documents of title to debentures
227. Liability of assignee
228. Appointment as assignee for debenture holders
229. Right to copies of trust deed
230. Unsecured debentures to be so described
231. Register of debenture holders
232. Holders of debentures secured by trust deed
233. Meetings of other debenture holders
234. Reissue of redeemed debentures
235. Charge to secure fluctuating amount
236. Company's register of charges
237. Registrar's register of charges
238. Registration of charges by companies
239. Certificate to be issued by Registrar
240. Priorities
241. Entries of satisfaction and release of property from charge
242. Variation of registered charge
243. Registration of enforcement of security by mortgagee
244. Endorsement of registration on debentures
245. Extension of time for lodgement

## PART XII

## ACCOUNTING RECORDS, AUDIT AND ANNUAL RETURNS

246. Accounting records
247. Company to keep accounting records
248. Inspection of accounting records
249. Annual financial statements to include amounts paid to directors
250. Annual financial statements to include particulars of loans to officers
251. Director to make disclosure of loans and receipts
252. Statement of financial position to be signed by directors
253. Appointment of auditors
254. Auditing firm
255. Signing of auditor's report
256. Qualifications of auditors
257. Reappointment of auditor



- 258. Auditor to avoid conflict of interest
- 259. Auditor's report
- 260. Access to information
- 261. Auditor's attendance at annual general meeting
- 262. Furnishing auditor's report
- 263. Small private company need not appoint auditor
- 264. Appointment of auditor for small private company
- 265. Preparation of audited financial statement
- 266. Standards for financial statement preparation
- 267. Obligation to provide consolidated financial statement
- 268. Comprehensive income statement when company becomes subsidiary
- 269. Date for financial statement of subsidiary
- 270. Annual return to Registrar
- 271. Filing of annual returns in receivership or liquidation
- 272. " No change " return
- 273. Documents lodged with annual return of public company
- 274. Notice of adopted date given to Registrar
- 275. Obligation to prepare annual report
- 276. Submitting annual report to shareholders
- 277. Content of annual report
- 278. Inspection of company's records
- 279. Records to be made available for inspection by members
- 280. Manner of inspection
- 281. Commencement of inspection

### PART XIII

#### AMALGAMATION

- 282. Amalgamation
- 283. Amalgamation proposal
- 284. Amalgamation resolution
- 285. Documents for submission to shareholders
- 286. Procedures before amalgamation
- 287. Approving amalgamation proposal
- 288. Notice of amalgamation to creditors
- 289. Lodgement of documents for amalgamation
- 290. Certificate of amalgamation or of incorporation
- 291. Removing amalgamating companies from register
- 292. Property, rights, powers and privileges of amalgamated company

- 293. Liabilities and obligations of amalgamated company
- 294. Enforcement of Court ruling by or against amalgamated company
- 295. Objection to amalgamation
- 296. Conversion of shares and rights in amalgamation proposal

#### PART XIV

##### FOREIGN COMPANIES

- 297. Application of Act to existing foreign company
- 298. Register of foreign Companies
- 299. Registration of foreign company
- 300. Established place of business
- 301. Financial year of foreign company
- 302. Returns required on alteration of registered particulars
- 303. Foreign company to appoint local director
- 304. Responsibilities of local directors
- 305. Service on foreign company
- 306. Annual accounts of foreign company
- 307. Maintenance of accounting records
- 308. Name of foreign company
- 309. Publication of name of foreign company
- 310. Registration of charges by foreign company
- 311. Notification of winding up of foreign company
- 312. Winding up of foreign company in Zambia
- 313. Cessation of business of foreign company
- 314. Invitation to the public relating to foreign companies
- 315. Invitation to public relating to other foreign corporates
- 316. Penalties and disabilities

#### PART XV

##### DEREGISTRATION OF COMPANIES

- 317. Power of Registrar to deregister company
- 318. Deregistration on application by company
- 319. Registrar to act as representative of deregistered company in certain events

#### PART XVI

##### ADMINISTRATION OF ACT

- 320. Administration of Act
- 321. Establishment of Companies Office

- 
322. Powers of Registrar
  323. Appointment of officers
  324. Seal of Agency
  325. Keeping of registers and lodged documents
  326. Inspection of registers
  327. Inspection of records
  328. Waiver of fees
  329. Collection of information

#### PART XVII

##### ENFORCEMENT AND GENERAL PROVISIONS

330. Injunction
331. Derivative actions
332. Costs of derivative action to be met by company
333. Powers of Court where leave is granted
334. Compromise, settlement, or withdrawal of derivative action
335. Actions by member against director
336. Actions by members against company
337. Actions by member to require company to act
338. Representative actions
339. Ratification of certain actions of directors
340. Exercise of discretionary power
341. Appeal against a decision of Registrar
342. Registrar to sit with assessors in determining matter
343. Registrar to act as soon as practicable
344. Registrar to act in accordance with decision of Court
345. Reference to Court by Registrar
346. Registrar to appear in legal proceedings
347. Immunity of officers as regards official acts
348. Requests for information
349. Registration of documents
350. Extension of time
351. Documents to be in official language
352. Oaths and affirmations
353. Evidence of entries and documents
354. Loss or destruction of certificate
355. Electronic Transactions
356. Retention of records
357. Failure to keep books
358. Failure to provide documents

- 359. Furnishing false document
- 360. Fraudulent use or destruction of property
- 361. Falsification of records
- 362. Penalties for carrying on business fraudulently
- 363. Persons prohibited from managing companies
- 364. Failure to comply with registration requirements and improper use of “ PLC ” or “ Limited ”
- 365. Imprisonment for failure to pay fine
- 366. Exemption from liability for actions or omissions
- 367. Deceiving or influencing Registrar or officer
- 368. Aiding and abetting offences
- 369. False representation about Companies Office
- 370. Administrative penalties
- 371. Offences by body corporate or unincorporated body
- 372. General offences
- 373. General penalty
- 374. Prescribed fee
- 375. Regulations
- 376. Repeal
- 377. Transitional provisions

**SCHEDULES**

GOVERNMENT OF ZAMBIA

**ACT**

**No. 10 of 2017**

Date of Assent: 17th November, 2017

**An Act to promote the development of the economy by encouraging entrepreneurship, enterprise efficiency, flexibility and simplicity in the formation and maintenance of companies; provide for the incorporation, categorisation, management and administration of different types of companies; provide the procedure for the approval of company names, change of name and conversion of companies; provide for shareholders' rights and obligations, the conduct of meetings and the passing of resolutions by shareholders; to encourage transparency and high standards of corporate governance by providing for the functions and obligations of company secretaries and directors; provide for issue of shares, share capital requirements, procedures for alteration and reduction of share capital and disclosure requirements of companies; provide for the public issue of shares, the issue and registration of charges and debentures; incorporate financial reporting provisions, maintenance of accounting records, and access to financial information of companies; provide for amalgamations; provide for the registration of foreign companies doing business in Zambia; provide for the deregistration of companies; repeal and replace the Companies Act, 1994; and provide for matters connected with or incidental to the foregoing.**

[20th November, 2017

ENACTED by the Parliament of Zambia

Enactment

PART I

PRELIMINARY PROVISIONS

**1.** This Act may be cited as the Companies Act, 2017 and shall come into operation on a date that the Minister may appoint by Statutory Instrument.

Short title and commencement

Application of Act	<p><b>2.</b> Subject to this Act, this Act shall also apply to—</p> <p>(a) a body corporate; and</p> <p>(b) an existing company incorporated in accordance with the repealed Act as if it was incorporated in accordance with this Act.</p>
Interpretation	<p><b>3.</b> In this Act, unless the context otherwise requires—</p> <p>“ Agency ” means the Patents and Companies Registration Agency established in accordance with the Patents and Companies Registration Act, 2010;</p> <p>“ accounts ” means the financial statements of a company together with accompanying notes, but does not include an auditors’ report or annual report of the company;</p> <p>“ accountant ” means a person qualified in the theory and practice of accountancy, audit, tax consultancy and tax advisory registered in accordance with the Accountants Act, 2008;</p> <p>“ accounting records ” include—</p> <p>(a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry; and</p> <p>(b) such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up;</p> <p>“ accounting period ” means the period in respect of which the financial statements of a company or other body corporate are made up, whether that period is a year or not;</p> <p>“ address ” means a place where an individual or company is located and in the case of the address of—</p> <p>(a) an individual, includes the full address of the place where that person usually lives; and</p> <p>(b) a company, includes its registered office or its principal place of business;</p> <p>“ alternate director ” means a director specified in section 97;</p> <p>“ amalgamated company ” means a company that comes into existence as a result of an amalgamation as specified in section 282;</p> <p>“ amalgamation ” means the combination of two or more companies to form a new body corporate as provided for in section 282 and the word amalgamating shall be construed accordingly;</p>
Act No. 15 of 2010	
Act No. 13 of 2008	

“annual accounts” means the annual financial statements of a company that give an accurate and correct view of the financial performance, financial position and cash flows of the company, and includes consolidated financial statements for a group which give a true and fair view of the group’s financial performance, financial position and cash flows;

“annual general meeting” means a yearly meeting of a company convened as provided for in section 57;

“annual report” means a report of the affairs of a company that is prepared annually as provided in this Act;

“annual return” means a return that is prepared and lodged in accordance with section 270;

“arrangement” means the re-organisation of the share capital of a company by the consolidation of shares of different classes, division of shares into shares of different classes or other methods intended to alter the shares;

“articles” means the articles of association incorporating the internal governing rules of a company as provided for in section 25;

“auditor” has the same meaning assigned to the word in the Accountants Act, 2008 and other written laws relating to the regulation of auditors and appointed to perform auditing functions for a company;

Act No. 13  
of 2008

“auditor’s report” means a report provided for in section 259;

“Bank” means the Bank of Zambia established in accordance with the Bank of Zambia Act;

Cap. 360

“beneficial owner” means a natural person who—

(a) directly or indirectly, through any contract, arrangement, understanding, relationship or any other means ultimately owns, controls, exercises substantial interest in, or receives substantial economic benefit from a body corporate; or

(b) exercises ultimate and effective control over a legal person or legal arrangement;

and the terms “beneficially own” and “beneficial ownership” shall be construed accordingly;

“board of directors” means persons appointed or nominated as directors of the company whose number is not less than the required quorum acting together as a board or, if the company has one director, that director acting alone;

- “ body corporate ” means an entity incorporated in accordance with any other written law, other than a corporate sole;
- “ book ” includes a book of accounts, deed, register, document, accounting record, and record of information, whether compiled or recorded, stored in written or printed form, or produced through electronic, photographic or other process;
- “ certificate of incorporation ” means a certificate issued to a company by the Registrar in accordance with section 14 or a replacement of the certificate issued in accordance with this Act;
- “ certificate of share capital ” means a certificate issued to a company by the Registrar in accordance with section 14 or a replacement of such a certificate issued in accordance with this Act;
- “ certified true copy ” means—
- (a) a copy or extract of a document, certified as a true copy of the original document in a manner approved by the Registrar;
  - (b) in relation to a translation of a document in a language other than English, a document certified as a true copy of the original document in a manner approved by the Registrar;
- “ charge ” includes—
- (a) a security interest or security agreement;
  - (b) a mortgage or an agreement to give or execute the mortgage whether on demand or otherwise;
  - (c) a debenture; or
  - (d) an agreement for sale and purchase of land under which the seller remains in occupation, until such time as the whole of the purchase price is paid;
- “ chief executive officer ” means the person who is responsible, under the immediate authority of the board, for the day to day management of the affairs of the company;
- “ citizen ” means a citizen of Zambia;
- “ class ” means a class of shares which have the same rights, privileges, limitations or conditions attached to the share;



- 
- “ class meeting ” means the meeting of members of a particular class as provided for in section 60;
- “ company ” means an entity incorporated in accordance with this Act and section 6 of the repealed Act; Cap. 388
- “ company’s book ” means a book belonging to a company;
- “ compromise ” means an agreement for the settlement of a real or supposed claim in which each party surrenders something in concession to the other;
- “ control ” means the control of a company by a person who—
- (a) beneficially owns more than twenty-five percent of the issued share capital of the company;
  - (b) is entitled to vote a majority of the votes that may be cast at a general meeting of the company, or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that person;
  - (c) is able to appoint or to veto the appointment of a majority of the directors of the company;
  - (d) is a holding company and the company is a subsidiary of that company as provided for in this Act;
  - (e) in the case of a company that is a trust, has the ability to control the majority of the votes of the trustees, to appoint the majority of the trustees or to appoint or change the majority of the beneficiaries of the trust; or
  - (f) has the ability to materially influence the management policy or affairs of the company in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in paragraphs (a) to (e);
- “ corporate ” means an entity, including a company or body corporate, that is separate and distinct from its owners and which is recognised as such by law and acts as a single entity;
- “ Court ” means the High Court for Zambia;
- “ creditor ” means a person entitled to claim a debt owing to that person by a company;
- “ current liability ” means a liability that would, in the ordinary course of events, be payable within twelve months after the end of the financial year to which the accounts or group accounts relate;

“ debenture ” means a document issued by a corporate that evidences or acknowledges a debt of the corporate, whether or not it constitutes a charge on property of the corporate in respect of money that is or may be deposited with or lent to the corporate, and includes a unit of a debenture, debenture stock and bonds and any other security issued by the corporate, whether constituting a charge on the assets of the corporate or not, other than a—

(a) document acknowledging a debt incurred by the corporate in respect of money that is or may be deposited with or lent to the corporate by a person in the ordinary course of business—

(i) carried on by the person; and

(ii) of the corporate as is not part of a business of borrowing money and providing finance;

(b) document issued by a bank in the ordinary course of its banking business that evidences or acknowledges indebtedness of the bank;

(c) cheque, order for the payment of money or bill of exchange; or

(d) document of a kind and in the circumstances prescribed in regulations issued by the Minister;

“ debenture holder ” includes a debenture stockholder;

“ declaration of guarantee ” means a statement made by a member of a private company limited by guarantee as specified in section 10;

“ deregistration ” means the removal, from the Register of Companies, of a dormant or wound up company;

“ designating number ” means the registration number assigned to a company or foreign company by the Registrar on incorporation or where the Registrar directs that the name of an existing company be changed in accordance with this Act;

“ director ” means a person appointed as a member of the board of directors and includes an *alternate director*, by whatever name designated;

“ dividends ” means the amount of money to be divided among shareholders out of the profits arising or accumulated from the business of the company as specified in section 159;

- 
- “ document ” means written, printed or electronic material that provides information, evidence or material content, and includes—
- (a) any writing, mark, figure, symbol or perforation on any material;
  - (b) a book, graph or drawing;
  - (c) information recorded or stored by electronic means or on a technological device and capable of being reproduced;
- “ dormant company ” means a company which is not carrying on business or is not in operation from the date of incorporation or for a prescribed period;
- “ entitled person ” means a member or other person recognised under the articles as enjoying a shareholder’s rights and having a shareholder’s obligations;
- “ equity share ” means a share classified as part of the equity share capital of a corporate;
- “ established place of business ” means a place of business of a foreign company in accordance with section 300;
- “ executive director ” means a director who is involved in the day-to-day management of a company;
- “ executive officer ” means the chief executive officer, chief financial officer or a person holding a managerial position;
- “ existing foreign company ” means a body corporate incorporated outside Zambia which immediately before the commencement of this Act was registered as a foreign company in accordance with the repealed Act;
- “ expert ” includes a person belonging to a profession or calling and whose statement on a subject matter is authoritative;
- “ extraordinary general meeting ” means a special meeting of a company as specified in section 59;
- “ extraordinary resolution ” means a resolution passed by a majority of not less than seventy-five percent of the votes of the members entitled to vote in person or by proxy at a meeting duly convened and held;
- “ fair value of shares and debentures ” means the prevailing market value of shares and debentures on an open market;

“ financial assistance ” means assistance given by way of—

- (a) gift;
- (b) guarantee, security or indemnity, other than an indemnity in respect of the indemnifier’s own neglect or default, or by way of release or waiver;
- (c) a loan;
- (d) any agreement under which any of the obligations of any other party to the agreement remains unfulfilled;
- (e) innovation of, or the assignment of, any rights arising under any such loan or agreement; or
- (f) any other means, given by a company which does not have net assets, or which reduces the net assets of the company to a material extent;

Act No. 7 of  
2017

“ financial institution ” has the meaning assigned to the words in the Banking and Financial Services Act, 2017;

“ financial statement ” means a statement of financial position or income statement that summarises a company’s financial position as at that balance sheet date by reporting on the assets and liabilities of the company, together with any notes or documents relating to the statement of financial position or income statement, including a statement of accounting policies;

“ financial year ” means, in relation to—

- (a) a company, the period, that begins on the first or subsequent accounting date, whether or not it constitutes a period of twelve months;
- (b) a foreign company, the financial year of the foreign company as specified in section 301; and
- (c) any other body corporate, the period specified in the law establishing or incorporating the body corporate;

“ first accounting date ” means the date the company or foreign company was incorporated or registered, as the case may be;

“ foreign company ” means—

- (a) a body corporate formed outside Zambia that has been registered under this Act; or
- (b) an existing foreign company, subject to section 297;

“group financial statements” means a consolidated statement of financial position for a group of companies as at that statement date, together with any notes or documents relating to the statement of financial position or income statement, including a statement of accounting policies;

“group of companies” means a holding company and its subsidiaries;

“holding company” means a company that controls another company;

“interest group”, means a group of shareholders—

(a) whose affected rights are identical;

(b) whose rights are affected by the action or proposal in the same way; and

(c) subject to section 135 (1) (b), who comprise the holders of one or more classes of shares in the company;

“interests register” means a register kept and maintained by a company in accordance with this Act, into which a declaration of interest of a director or shareholder is recorded regarding any business of a company is recorded;

“invitation to the public” means an offer of, or an invitation to make an offer for, or the issue of any kind of application form for, shares or debentures of a company, on the condition that a person who accepts the invitation may not renounce or assign the benefit of any shares or debentures to be obtained thereunder in favour of any other person, but does not include an invitation made—

(a) to not more than fifteen persons; or

(b) exclusively to existing shareholders, debenture holders or employee of the company;

“legal practitioner” has the meaning assigned to the words in the Legal Practitioners Act;

Cap. 30

“liabilities” includes any amount retained as reasonably necessary for the purpose of providing for any liability or loss which is either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which it will arise;

“liquidator” has the meaning assigned to it in the Corporate Insolvency Act, 2017;

Act No. 9 of 2017

- “local director” means a director of a foreign company who is resident in Zambia and empowered and authorised to conduct and manage the affairs, property, business and other operations of the company in Zambia;
- “meeting” means an annual general meeting, extraordinary general meeting or class meeting as the case may be;
- “member” means a shareholder or stockholder of a company or a subscriber to a company limited by guarantee;
- “net assets” means the amount by which the aggregate amount of the company’s assets exceeds the aggregate amount of its liabilities taking the amount of both assets and liabilities to be stated in the company’s accounting records;
- “nominee” means a person entitled to exercise a right in accordance with instructions given by another person;
- “non-executive director” means a director who is not involved in the day-to-day management of a company;
- “officer” includes—
- (a) a director, company secretary or executive officer of a company; or
  - (b) a local director;
- “ordinary resolution” means a resolution passed by more than half of the votes cast by the members entitled to vote in person or by proxy at a meeting duly convened and held;
- “person concerned” means—
- (a) a person who is or has been employed by a company as a director, banker, accountant, legal practitioner or the Registrar; or
  - (b) a person who, or in relation to whom, there are reasonable grounds for suspecting that the person—
    - (i) has, in the person’s possession, any property of a company;
    - (ii) is indebted to a company; or
    - (iii) is able to give information concerning the promotion, formation, management, dealings, affairs or property of a company;
- “pre-emptive rights” means a shareholder’s privilege to purchase newly issued shares before the shares are offered to the public in amounts proportionate to the shareholder’s current holdings;

- 
- “private company” means an entity incorporated as a private company in accordance with section 6 or the repealed Act and which fulfils the requirements stipulated in section 8;
- “private company limited by guarantee” means an entity incorporated in accordance with section 6 or the repealed Act and which fulfils the requirements stipulated in section 10;
- “private company limited by shares” means an entity incorporated in accordance with section 6 and satisfying the requirements of section 9;
- “private unlimited company” means a company incorporated in accordance with section 6 and which fulfils the requirements of section 11;
- “property” means property of every kind, whether tangible or intangible, real or personal, corporeal or incorporeal, and includes all rights to property, whatever their nature;
- “prospectus” means a notice, circular, brochure, advertisement, publication or request issued in a document inviting applications or offers from the public to subscribe for, or purchase of, a share in, or debenture of, a company or proposed company, and includes a statement attached to or intended to be read with the prospectus;
- “public company” means an entity incorporated as a public company in accordance with section 6 and which fulfils the requirements stipulated in section 7;
- “receiver” has the meaning assigned to it in the Corporate Insolvency Act, 2017; Act No. 9  
of 2017
- “religious activity” means an activity which primarily promotes or manifests a particular belief in, and reverence for, God or a deity, or which proclaims a particular belief;
- “registered accountant” means an accountant registered in accordance with the Accountants Act, 2008; Act No. 13  
of 2008
- “registered” means entered in a register;
- “Register of Beneficial Owners” means the Register of Beneficial Owners kept and maintained at the Agency in accordance with this Act;
- “Register of Companies” means the Register of Companies kept and maintained at the Agency in accordance with this Act;
- “register of members” means a register of members and kept and maintained by a company in accordance with this Act;

- “registered office ” means, in relation to a—
- (a) company, the registered office of the company as provided in section 28; and
  - (b) foreign company, the established place of business of the company as provided in section 300;
- Act No. 15 of 2010 “ Registrar ” means the person appointed as Registrar in accordance with the Patents and Companies Registration Agency Act, 2010;
- “ related company ” means any one of two companies—
- (a) which is a subsidiary of the other;
  - (b) which is a holding company of the other; or
  - (c) both of which are subsidiaries of another company;
- Cap. 388 Act No. 26 of 1994 “ repealed Act ” means the Companies Act, 1994;
- “ seal ” means the common seal of a company or other corporate;
- “ secretary ” means in relation to a—
- (a) company, a person appointed as the secretary in accordance with section 82; or
  - (b) corporate, other than a company, a person occupying the position of secretary, by whatever name called;
- Act No. 9 of 2017 “ secured creditor ” has the meaning assigned to the words in the Corporate Insolvency Act;
- Act No. 3 of 2016 “ security agreement ” has the meaning assigned to the word in the Movable Property (Security Interest) Act, 2016;
- Act No. 3 of 2016 “ security interest ” has the meaning assigned to the words in the Movable Property (Security Interest) Act, 2016;
- “ shareholder ” means a person whose name—
- (a) is entered in the share register as the holder of one or more shares in a company;
  - (b) appears in the application for incorporation as a promoter of a private company; or
  - (c) appears in an amalgamation proposal and is entitled to have the name entered in the share register of the amalgamated company;
- “ share ” includes stock;
- “ share and beneficial ownership register ” means the register of shares and beneficial ownership of a company as provided in section 195;



- 
- “ small private company ” means any business enterprise whose total investment, excluding land and buildings, annual turnover and the number of persons employed by the enterprise, does not exceed the prescribed numerical value;
- “ solvency test ” means a test to determine that—
- (a) a company is able to pay its debts as they become due in the normal course of business; and
  - (b) the value of the company’s assets is greater than the value of its liabilities, including contingent liabilities;
- “ special resolution ” means a resolution passed by not less than seventy-five per cent of the votes of members of a company, entitled to vote in person or by proxy at a meeting duly convened and held at which the resolution is moved as a special resolution, or such higher majority percentage as the articles of association may require;
- “ Standard Articles ” means the recommended articles set out in the First and Second Schedules;
- “ subsidiary ” means a corporate that is a subsidiary of another corporate as provided by section 185 and includes a—
- (a) company in which the holding company holds more than half in value of the equity share capital, whether the company is incorporated in a jurisdiction that has or does not have nominal value for share capital;
  - (b) company of which the holding company is a member, and whose composition of board of directors is controlled by the holding company; and
  - (c) subsidiary of a company which is itself a subsidiary of a holding company in accordance with paragraph (a) or (b);
- “ subsequent accounting date ” means the—
- (a) dates specified, in that application for incorporation of the company as the financial year of the company and the anniversaries of the dates of the financial year specified in the application; or
  - (b) anniversaries of the first accounting date, specified in the application for incorporation;
- “ substantial risk of serious loss ” means a risk of such a nature or degree that if disregarded will constitute a gross deviation from the standard of care that a reasonable person would exercise;

“ waiting period ” means the period of seven days after the first publication of a prospectus which has been registered, or such longer period after that date as may be stated in the prospectus as the period before which the expiration of applications, offers, or acceptances in response to the prospectus shall not be accepted or treated as binding; and

“ wholly owned subsidiary ” means a company with no members other than—

(a) the holding company and its nominees; or

(b) companies which are themselves wholly owned subsidiaries of the holding company or their nominees.

Definition in other laws  
Act No. 9 of 2017  
Act No. 3 of 2016  
Act No. 41 of 2016  
Act No. 7 of 2017

**4.** In this Act, unless the context otherwise provides, words and expressions used in this Act and which are not defined, but are defined in the Corporate Insolvency Act, 2017, the Movable Property (Security Interest) Act, the Securities Act, the Banking and Financial Services Act or any other relevant Act, shall have the meaning assigned to them in those Acts.

Superiority of Act  
Cap. 1  
Act No. 7 of 2017  
Act No. 41 of 2016

**5.** Subject to the Constitution, and the Banking and Financial Services Act, 2017, and the Securities Act, 2016, where there is any inconsistency between the provisions of this Act and the provisions of any other written law, the provisions of this Act shall prevail to the extent of the inconsistency.

## PART II

### INCORPORATION AND REGISTRATION OF COMPANIES

Types of companies to be incorporated

**6.** A company incorporated under this Act shall be—

(a) public company; or

(b) private company, being—

(i) a private company limited by shares;

(ii) a private company limited by guarantee; or

(iii) an unlimited private company.

Public companies

**7.** (1) A public company shall have share capital.

(2) The articles of a public company shall state the—

(a) rights, privileges, restrictions and conditions attaching to each class of shares; and

(b) authority given to the directors to determine the number of shares in, the designation of, and the rights, privileges, restrictions and conditions attaching to, each series in a class of shares.

(3) All shares in a public company rank equally except for differences relating to the classes or series of shares.

(4) Where a public company is wound up in accordance with the Corporate Insolvency Act, 2017, a member is liable to contribute, an amount not exceeding the amount, if any, unpaid on the shares held by that member.

Act No.9 of  
2017

(5) The articles of a public company shall not impose any restriction on the right to transfer shares of the company other than a—

(a) restriction on the right to transfer a share which has not been fully paid for; or

(b) provision for the compulsory acquisition, or rights of first refusal, of shares referred to in paragraph (a), in favour of other members of the company or assignees.

**8.** (1) Subject to this section, the articles of a private company shall limit the number of its members to not more than fifty members.

Private  
companies

(2) The articles of an unlimited company may, subject to any specified conditions, have more than fifty members.

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

(a) joint holders of a share shall be counted as one shareholder; and

(b) a member shall not be counted as a member, if the member is—

(i) in the employ of the company or of a related corporate; or

(ii) became a member while previously in the employ of the company or a related corporate and has been a member since.

**9.** (1) The articles of a private company limited by shares shall state the—

Private  
companies  
limited by  
shares

(a) rights, privileges, restrictions and conditions attaching to each class of shares; and

(b) authority given to the directors to determine the number of shares in, the designation of, and the rights, privileges, restrictions and conditions attaching to each series, in a class of shares.

(2) All shares in a private company limited by shares rank equally except for differences relating to the classes or series.

- Act No. 9 of 2017
- (3) Where a private company limited by shares is wound up in accordance with the Corporate Insolvency Act, a member shall be liable to contribute an amount not exceeding the amount, if any, unpaid on the shares held by that member.
- Companies limited by guarantee
- 10.** (1) A subscriber to an application for incorporation for a company limited by guarantee shall make a declaration of guarantee specifying the amount that the subscriber undertakes to contribute to the assets of the company in the event of the company being wound up.
- (2) A subscriber to an application for incorporation for a company limited by guarantee shall, on incorporation of the company, be a member of the company.
- (3) A declaration of a guarantee made under subsection (1) shall state that a member undertakes to contribute an amount not exceeding the amount specified in the declaration of guarantee made by the member, if the company is wound-up in accordance with the Corporate Insolvency Act, 2017, or within one year after the member ceases to be a member.
- Act No. 9 of 2017
- (4) Subject to subsection (2), and any additional requirements imposed by the articles and this Act, a person may—
- (a) become a member of a company, on approval of the members by special resolution, and by signing a declaration of guarantee delivered to the company; or
- (b) cease to be a member, by delivering to the company a signed notice to that effect in the prescribed form.
- (5) A company limited by guarantee shall, within seven days after a person becomes or ceases to be a member of the company, lodge with the Registrar the declaration of guarantee and a notice in the prescribed form.
- (6) A company limited by guarantee shall not carry on business for the purpose of making profit for its members or anyone concerned in its promotion or management.
- (7) If a company fails to comply with this section, the directors and each officer in default commit an offence and are liable, on conviction, to a fine not exceeding three hundred penalty units for each day that the failure continues.
- Private unlimited companies
- 11.** (1) A private unlimited company shall have share capital and its articles shall state the—
- (a) rights, privileges, restrictions and conditions attaching to each class of shares; and

(b) authority given to the directors to determine the number of shares in, the designation of, and the rights, privileges, restrictions and conditions attaching to each series, in a class of shares.

(2) All shares in a private unlimited company shall rank equally, except for differences relating to classes or series.

(3) A member shall, where a private unlimited company is wound up in accordance with the Corporate Insolvency Act, be liable to contribute without limitation of liability.

Act No. 9 of  
2017

**12.** (1) Subject to the other requirements of this Act, two or more persons may apply to incorporate a company specified in section 6 for a lawful purpose, by subscribing their names to an application for incorporation in accordance with this section.

Application  
for  
incorporation

(2) An application for incorporation of a company, specified in subsection (1), shall be made in the prescribed manner and form and shall be lodged with the Registrar.

(3) The following shall accompany an application for incorporation of a company:

- (a) a copy of the proposed articles of the company, or a statement that it has adopted the Standard Articles;
- (b) declaration of compliance made in accordance with section 13;
- (c) signed consent from each person named in the application as a director or secretary of the company;
- (d) declaration of guarantee by each subscriber, if the company is limited by guarantee;
- (e) a statement of beneficial ownership which shall state, in respect of each beneficial owner—
  - (i) the full names;
  - (ii) the date of birth;
  - (iii) the nationality or nationalities;
  - (iv) the country of residence;
  - (v) the residential address; and
  - (vi) any other particulars as maybe prescribed; and
- (f) a declaration by the applicants that the particulars stated in accordance with paragraph (e) have been submitted to the Registrar with the knowledge of the individuals to whom the particulars relate.

(4) An application for incorporation specified in subsection (1), shall state—

- (i) the name and address of the individual lodging the application;
- (ii) the proposed name of the company;
- (iii) the physical address of the office to be the registered office of the company;
- (iv) the registered postal address, electronic mail address and phone number of the company where available;
- (v) the type of company to be formed;
- (vi) the particulars of persons who shall be the first directors of the company;
- (vii) the particulars of persons who shall be the first secretary or joint secretaries of the company; and
- (viii) the nature of the company's proposed business or proposed activity.

(5) Where a company being incorporated is required to have share capital, the applicant shall state on the application for incorporation the—

- (a) amount of share capital of the company;
- (b) the division of the share capital into shares of a fixed amount; and
- (c) number of shares each subscriber has agreed to take.

(6) An applicant shall specify, on the application for incorporation, the date on which the first financial year of the company shall end, which shall not be more than twelve months from the date of incorporation.

(7) An application for incorporation shall be signed by each subscriber in the presence of at least one witness who attests to the signature.

(8) Subject to section 14(2), an individual shall not subscribe to an application for incorporation if that individual is—

- (a) under eighteen years of age;
- (b) an undischarged bankrupt; or
- (c) of unsound mind and has been declared to be so by a court of competent jurisdiction.

(9) A person shall not apply to incorporate an entity as a company, for purposes of carrying out religious or faith based activities.

- 13.** (1) An application for incorporation, specified in section 12, shall be accompanied by a declaration made in the prescribed form stating that the requirements of the Act relating to incorporation, have been complied with. Declaration of compliance
- (2) The declaration, referred to in subsection (1), shall be made in the prescribed manner and form by a—
- (a) legal practitioner holding a valid practicing certificate who was engaged in the formation of the company; or
- (b) person named, as a first director or secretary of the company, in the application for incorporation.
- (3) The Registrar may accept the declaration as *prima facie* evidence of compliance with the requirements of this Act.
- (4) A person who makes a declaration in accordance with this section, without having reasonable grounds for believing that the requirements of this Act have been complied with, commits an offence and shall be liable, on conviction, to a fine not exceeding fifty thousand penalty units or to imprisonment for a period not exceeding six months, or to both.
- 14.** (1) Where an applicant meets the requirements of this Act, the Registrar shall within five days— Certificate of incorporation and share capital
- (a) register the proposed company;
- (b) issue a certificate of incorporation in the prescribed form;
- (c) issue a certificate of share capital in the prescribed form, where a company has share capital; and
- (d) assign a designating number to the company as its registration number.
- (2) The incorporation of a company shall not be invalid by reason only that an individual or individuals subscribed to the application for incorporation in contravention of section 12(8).
- 15.** (1) A certificate of incorporation issued in accordance with section 14 shall be conclusive evidence that— Certificate to be evidence of incorporation
- (a) the requirements of this Act regarding the incorporation of the company have been complied with; and
- (b) from the date of registration stated in the certificate, the company is incorporated in accordance with this Act.
- 16.** A company registered in accordance with this Act, acquires a separate legal status, with the name by which it is registered, and shall continue to exist as a corporate until it is removed from the Register of Companies. Legal status of registered company

- Contractual effect of incorporation
- 17.** Subject to this Act, the incorporation of a company has the same effect as a contract under seal between the company and its members and between the members themselves, in which they agree to form a company whose business shall be conducted in accordance with the articles and this Act.
- Display of certificate of Incorporation
- 18.** A company registered in accordance with this Act shall display its certificate of incorporation in a prominent place at its business premises.
- Rejection of application for incorporation
- 19.** (1) The Registrar shall reject an application for a incorporation of an entity where an applicant—
- (a) does not meet the requirements of this Act; or
  - (b) submits false information in the application for incorporation.
- (2) Where the Registrar rejects an application for incorporation, the Registrar shall inform the applicant of its decision, in writing, within fourteen days of making the decision and shall give reasons for the rejection.
- Pre-incorporation contracts
- 20.** (1) Where a person purports to enter into a contract not evidenced in writing in the name or on behalf of an entity before it is incorporated, that person is bound by the contract and shall incur any liability and be entitled to the benefits arising therefrom.
- (2) Subject to this section, where a person purports to enter into a contract evidenced in writing in the name or on behalf of an entity before it is incorporated, the person shall be bound by the contract and entitled to the benefits thereof, except as provided in this section.
- (3) A company may, not later than fifteen months after its incorporation, adopt the contract specified in subsection (1) and (2) by an ordinary resolution, and on the adoption, subject to subsection (4) the—
- (a) company shall be bound by the contract and entitled to the benefits thereof, as if the company had been incorporated at the date of the contract and had been a party thereto; and
  - (b) person who purported to act in the name or on behalf of the company shall cease to be bound by the contract or entitled to the benefits thereof.



(4) Subject to subsection (5), whether or not a contract specified in subsection (3) is adopted by the company, a party to the contract, may apply to the Court for an order fixing obligations under the contract as a joint party or joint and several parties, or apportioning liability between or among the company and, the person who purported to act in the name or on behalf of the company, and on such application, the Court may make any order it considers appropriate in the circumstances.

(5) Subsection (4) shall not apply if the relevant contract expressly provides that the person who purported to act in the name or on behalf of the company before it was incorporated shall not be bound by the contract nor entitled to the benefits thereof.

**21.** (1) The Registrar shall establish and maintain a Register of Companies in manual or electronic form in which shall be entered, in respect of each company a—

Register of  
Companies  
and Register  
of Beneficial  
Owners

- (a) chronological record of the prescribed particulars, and of any other particulars as prescribed in relation to the company; and
- (b) record of the documents lodged in compliance with this Act in respect of the company, other than documents whose only effect is to amend particulars recorded in accordance with paragraph (a).

(2) The Registrar shall establish and maintain a Register of beneficial owners in manual or electronic form in which shall be entered—

- (a) the information provided in accordance with section 12(3)(e);
- (b) the following information relating to a legal person—
  - (i) the body corporate name;
  - (ii) head office address;
  - (iii) identities of directors, shareholders and beneficial owners;
  - (iv) proof of incorporation or evidence of legal status and legal form;
  - (v) provisions governing the authority to bind the legal person; and
  - (vi) such information as is necessary to understand the ownership and control of the legal person;

- (c) with respect to other legal entities or arrangements the name of trustees, settler and beneficiary of a trust, and any other parties with authority to manage, vary or otherwise control the entity or arrangement; and
- (d) any other information as maybe prescribed.

(3) A company shall, where a change occurs with respect to the particulars of shareholding or beneficial ownership stated in a register maintained in accordance with this Act, notify the Registrar in the prescribed form, within fourteen days of such change.

### PART III

#### CORPORATE CAPACITY AND ADMINISTRATION

Capacity,  
powers and  
rights of  
company

**22.** A company shall have—

- (a) perpetual succession and a common seal, capable of suing and being sued in its corporate name and shall, subject to this Act, have power to do all such acts and things as a corporate may by law, do or perform;
- (b) subject to this Act and to such limitations as are inherent in its corporate nature, the capacity, rights, powers and privileges of an individual; and
- (c) the capacity to carry on business and exercise its powers in any jurisdiction outside Zambia, to the extent that the laws of Zambia and of that jurisdiction permit.

Validity of  
acts

**23.** (1) A person dealing with the company or any person who has acquired rights from the company, in good faith, shall not be prejudiced by the company or a guarantor of an obligation of the company by reason only that—

- (a) the articles have not been complied with;
- (b) a person named as director of the company in the most recent notice received by the Registrar is not—
- (i) a director or an employee of the company;
  - (ii) duly appointed; or
  - (iii) authorised to exercise powers performed by a director or executive officer; or
- (c) a director, nominee or chief executive officer of the company acted fraudulently or forged a document, that was signed on behalf of a company.

(2) Subject to subsection (3), a document executed on behalf of a company by a director, nominee or chief executive officer of the company with actual authority to execute the document, shall be valid.

(3) A document specified in subsection (2), shall be void if, at the time the document was executed, a person dealing with the company or acquired rights from the company, knew or ought to have known, by virtue of that person's relationship with the company, of the facts specified in subsection (1).

**24.** A person shall not be affected by, or presumed to have notice of the contents of the articles or any other document of a company, by reason only that the articles or document is—

Presumption  
of  
knowledge

(a) registered or has been lodged with the Registrar; or

(b) available for inspection at the office of the company.

**25.** (1) A company shall have articles of association that regulate the conduct of the company.

Articles of  
association

(2) The articles may contain restrictions on the type of business that a company may carry on or the powers exercisable by the company.

(3) A company shall not carry on any business or exercise a power which the company is restricted by its articles from carrying on or exercising, or exercise any of its powers in a manner that is contrary to its articles.

(4) A provision in the articles which is inconsistent with this Act or any other law is invalid to the extent of the inconsistency.

(5) The articles shall be divided into paragraphs numbered consecutively.

(6) The articles shall be signed by persons who are the first members of the company.

(7) A company may adopt the Standard Articles set out in the Schedules or any specified regulation therein.

(8) Where a company adopts the Standard Articles set out in the Schedules, the company shall not be required to file the Standard Articles with the Registrar.

**26.** (1) The articles shall have the effect of a contract between—

Effect of  
articles of  
association

(a) the company and each member; and

(b) amongst the members.

(2) The articles shall bind the company and its members.

**27.** (1) Subject to this Act, and its articles, a company may amend its articles by passing a special resolution.

Amendment  
of articles of  
association

(2) A company shall, where it amends its articles, in accordance with subsection(1), within twenty-one days after the date of passing the resolution, lodge a copy of the resolution with the Registrar, together with a copy of each paragraph of the articles affected by the amendment, in its amended form.

(3) The articles shall take effect, in their amended form, on and from the day of their lodgement with the Registrar, or such later date as may be specified in the resolution.

(4) If a company fails to comply with subsection (2), the company, and each officer in default, commits an offence and is liable, on conviction, to a fine not exceeding three hundred thousand penalty units for each day that the contravention continues.

Registered  
office and  
change of  
registered  
office

**28.** (1) A company shall have a registered office in Zambia to which all communications and notices may be addressed.

(2) The registered office shall be the address for service of legal proceedings on the company.

(3) A company may change its registered office.

(4) The company shall, where a change occurs with respect to its registered office, notify the Registrar in the prescribed manner and form, within fourteen days of that change.

(5) A change of the registered office shall take effect on the date the notice referred to in subsection (4), is lodged with the Registrar.

(6) Where a company fails to comply with subsection (4), every officer of the company commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units.

Publication  
of name of  
company

**29.** (1) A company shall—

(a) paint or affix, and keep painted or affixed, the name of the company, in easily legible Roman letters or a combination of Roman letters with Arabic numerals, above or adjacent to the principal entrance to the company's registered office, its registered records office and to every other office or place in which the company's business is carried on; and

(b) have its name accurately stated in Roman letters or a combination of Roman letters with Arabic numerals on all business letters, invoices, receipts, notices and other publications of the company, and in all negotiable instruments or orders for money, goods or services issued or signed by or on behalf of the company.

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

**30.** (1) A company shall, at its registered office, keep the following records:

Records kept at company's registered office

(a) the articles of association;

(b) a register of—

(i) members indicating separately for each class of equity and preference shares held by each member residing in or outside Zambia;

(ii) beneficial owners, specifying the particulars in section 12(3)(e);

(iii) debenture holders; and

(iv) any other security holders;

(c) the full names and addresses of the current directors;

(d) minutes of all meetings and resolutions of shareholders for the preceding ten years;

(e) an interests register;

(f) minutes of all meetings and resolutions of directors and directors' committees within the last ten years;

(g) copies of all financial statements for the preceding ten years;

(h) the accounting records for the preceding ten years;

(i) copies of instruments creating or evidencing charges required to be registered in accordance with this Act or any other written law; and

(j) any other document or record as may be prescribed by the Minister.

(2) A register of members maintained in accordance with subsection (1) (b) shall have an index of the names contained in it.

(3) The documents required to be maintained in accordance with this section may be kept in electronic form.

(4) A company may, if authorised by its articles, keep in a country outside Zambia, in such a manner as may be prescribed, a part of the register, referred to in subsection (1) (b), except that such part of the register shall be publicly available in Zambia in accordance with this Act.

(5) If a company fails to maintain a document in accordance with this section, the company and every officer of the company in default commit an offence and are liable, on conviction, to fine not exceeding one hundred thousand penalty units.

Register of  
directors and  
secretaries

**31.** (1) A company shall keep a register of its directors and secretaries.

(2) The register shall contain the following particulars of each director and secretary:

- (a) forenames and surname;
- (b) residential and postal address;
- (c) business or occupation, if any;
- (d) nationality and national identity card number or passport number;
- (e) any directorship held in another corporate, whether or not formed in Zambia, during the preceding five years; and
- (f) any local directorship held in a foreign company during the preceding five years.

(3) Where the secretary is a body corporate, the register, specified in subsection (1), shall contain the—

- (a) name of the body corporate;
- (b) registered office and registered postal address and, if different, the address of its principal office; and
- (c) name of a body corporate in which the body corporate holds the position of secretary.

(4) A director or secretary shall, at the time of being appointed or employed, furnish to the company all the documents, information and particulars, as may be necessary for purposes of this section.

(5) If a company or individual fails to comply with this section, the company, individual and each executive officer in default commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units.

Seal of  
company  
and  
execution of  
documents

**32.** (1) A company shall have a common seal bearing its name and the words “ common seal ” in legible letters.

(2) The chairperson, vice-chairperson and the secretary or any other person authorised by a resolution of the Board, shall authenticate the affixing of the seal.

(3) A common seal referred to in subsection (1), shall not be used for any purpose, except in accordance with the articles and this Act.

(4) A document or deed shall be validly executed by or on behalf of a company—

(a) by the affixing of the common seal; or

(b) if the document or deed bears the signatures or signature of—

(i) two authorised signatories; or

(ii) a director whose signature is attested by a witness.

(5) A document signed, in accordance with subsection (4)(b), shall have the same effect as if executed under the common seal of the company.

(6) A seal may be kept in electronic form in accordance with the Electronic Communications and Transactions Act, 2009.

Act No. 21  
of 2009

**33.** (1) A company may, subject to its articles, have for use outside Zambia, a common seal stating, on its face, the name of the country where the seal is to be used.

Common  
seal for use  
abroad

(2) A company may, in writing, under its common seal specified in subsection (1), authorise an agent or appoint an attorney to affix the common seal to a document or execute a deed to which the company is a party to outside Zambia.

(3) A person dealing with a person authorised or appointed as specified in subsection (2), shall be entitled to assume that the authority of the person is valid, unless that person has actual notice of the revocation of the appointment or determination of the authority.

(4) A person affixing the common seal specified in subsection (1), shall certify on the document or deed to which the seal is affixed the date and the place at which the seal is affixed.

**34.** (1) Despite this Act or any other law, a document may be served on a company by—

Service of  
documents  
on company

(a) delivery of the document to the registered office of the company; or

(b) personally serving a director or secretary of the company.

(2) Where service in the manner specified in subsection (1) is not possible, a document may be served on a company by registered mail or electronic mail.

**35.** (1) For the purposes of this Act, a document may be served by a company on any member, debenture holder, director or secretary of the company—

Service of  
documents  
by company

- (a) personally;
- (b) by sending it by registered post in a prepaid letter addressed to that member, debenture holder, director or secretary of that company at the registered postal address or at any other address supplied by that member, debenture holder, director or secretary to that company for the giving of notices to that member, debenture holder, director or secretary to that company; or
- (c) by leaving it for that member, debenture holder, director or secretary of that company at the registered address of that member, debenture holder, director or secretary of that company with a person apparently over the age of eighteen years.

(2) A document may be served by a company on the joint holders of a share or debenture of the company by serving it on the joint holder named first in the register of members or debenture holders in respect of that share or debenture.

(3) A document may be served by a company on the person upon whom the ownership of a share or debenture has devolved by reason of the person being a legal personal representative, receiver, or trustee in bankruptcy of a member or debenture holder—

- (a) personally;
- (b) by sending it by registered post in a prepaid letter addressed to the person at a postal address notified by the person to the company;
- (c) by leaving it in any manner in which it might have been served if the death, receivership or bankruptcy had not occurred, if the company has not received notice of a postal address for the person;
- (d) by leaving it for the person at a place the address of which has been notified by the person to the company, with a person apparently over the age of eighteen years; or
- (e) by electronic means.

(4) Where a document is sent by registered post, service shall be deemed to be effected by properly addressing, prepaying and posting the letter accompanying the document and to have been effected at the expiration of seven days or, if it is sent to an address outside Zambia, twenty-one days, after the letter containing the same is posted.



(5) Where a document is sent by electronic means, service shall be deemed to be effected when the complete data message enters an information system designated or used for that purpose in accordance with the Electronic Communications and Transactions Act, 2009.

Act No. 21  
of 2009

(6) For purposes of subsections (4) and (5), where a document is sent to an address outside Zambia, the letter accompanying the document shall be dispatched by registered or electronic mail, as applicable.

#### PART IV

##### COMPANY NAME AND CHANGE OF NAME

**36.** (1) The name of a public limited company shall end with the words “Public Limited Company” or the abbreviation “PLC”.

Company  
name to end  
with PLC or  
Ltd

(2) Subject to this Part, the name of a private limited company shall end with the words “Limited” or the abbreviation “Ltd”.

**37.** (1) The Registrar may, on application in the prescribed manner by a—

- (a) person applying to form a company limited by guarantee; or
- (b) company, that is, or has become a company limited by guarantee;

Application  
to omit or  
dispense  
with  
“Limited” in  
name of  
company  
limited by  
guarantee

grant the applicant written approval to omit or dispense with the use of the word “limited” from the name of the company, on such terms and conditions as the Registrar considers necessary.

(2) The Registrar shall, on granting the approval specified in subsection (1), enter the company name on the register without the word “ Limited ” and issue a certificate of incorporation or replacement certificate of incorporation worded to meet the circumstances of the case.

(3) A replacement certificate referred to in subsection (2) shall be conclusive evidence of the alteration to which it relates.

**38.** Where the Registrar considers that the reasons given by an applicant for omitting or dispensing with the word “ Limited ” from the name of a company limited by guarantee have ceased to be valid, the Registrar may revoke the approval granted in accordance with section 37 and the revocation shall take effect on a date that the Registrar determines.

Revocation  
of approval  
to dispense  
with  
“Limited”

- Clearance and approval of proposed name
- 39.** (1) A person intending to incorporate a company may apply to the Registrar, for clearance and approval of a proposed name, in the prescribed manner and form.
- (2) If the Registrar considers that a proposed name of a company does not contravene section 40, the Registrar may approve the name and shall notify the applicant in writing of the approval.
- Rejection of application for approval of name
- 40.** (1) The Registrar may reject an application for approval of a proposed name made in accordance with section 39, where—
- (a) the name, if registered, is likely to cause confusion with a name or trademark of a registered company or a well-known name or trademark;
  - (b) registration of the name is sought to prevent another person who is legitimately entitled to use that name from using it;
  - (c) registration of the name is otherwise undesirable or inimical to the public interest;
  - (d) the name denotes the patronage of the State or of the President, Government or administration of any foreign state, or of any department or institution of any foreign state;
  - (e) the name is calculated to deceive or mislead the public, cause annoyance or offence to any person or is suggestive of blasphemy or indecency; or
  - (f) registration would suggest or imply a connection with a political party or a leader of a political party.
- (2) Where the Registrar rejects an application made in accordance with section 39, the Registrar shall within seven days of the decision notify the applicant of the refusal and give reasons for the refusal.
- (3) In this section, “ well-known name or trademark ” means a name or trademark associated generally by the Zambian public with a registered company, products whether within or outside the Republic, and in respect of which confusion is likely to arise if the proposed name or trademark is registered by a company other than the company generally associated with that name.
- (4) The Registrar shall, in determining whether a name is well-known in Zambia take into account the degree of association of the name with a registered company by the Zambian public.
- Reservation of company name
- 41.** (1) Subject to this section, a person or persons who propose to incorporate a company may reserve a proposed name for the company, by making an application in the prescribed manner and form to the Registrar.

(2) The Registrar may approve a reservation of a name if satisfied that the—

(a) name proposed for reservation is—

(i) a registered business name of the person or persons registered in accordance with any other law; or

(ii) the name of an unincorporated association consisting of, or represented by the person or persons; or

(b) applicant is a body corporate, other than a company, and the name is of the body corporate or that name with minor modifications.

(3) The Registrar shall, on approving a reservation of a name in accordance with subsection (2), notify the applicant, in writing, and shall register the name as reserved for a period of ninety days from the date of the notice.

(4) Subject to this Act, where a name is registered as specified in subsection (3)—

(a) the applicant shall be entitled to incorporate a company under the reserved name; and

(b) the Registrar shall treat the proposed name as the name of a company incorporated by the person for the purposes of determining the acceptability of any other name.

**42.** (1) A company may pass a special resolution to change its name.

Change of  
name

(2) Within twenty-one days after the date of the resolution, the company shall notify the Registrar in the prescribed form that the company intends to change its name to the name specified in the resolution (in this section called the “ new name ”).

(3) The Registrar, after considering the new name, shall notify the company that—

(a) the new name is acceptable; or

(b) in the opinion of the Registrar, the new name of the company would be likely to cause confusion with the name of another company or is otherwise undesirable, and that the Registrar will not register the new name.

(4) If the new name is acceptable, the company shall, within twenty-one days after receiving the notice of the fact, lodge with the Registrar—

(a) the company’s certificate of incorporation; and

(b) a copy of the resolution.

(5) On receiving the documents referred to in subsection (4), the Registrar shall enter the new name on the Register in place of the former name, and shall issue a replacement certificate of incorporation worded to meet the circumstances of the case.

(6) A certificate under this section shall be conclusive evidence of the alteration to which it relates.

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

Registrar  
may direct  
change of  
name

**43.** (1) Where the Registrar considers that the name of a registered company subsequently contravenes section 40, the Registrar may direct that the company changes its name in accordance with this Part.

(2) Where, after receiving a directive in accordance with subsection (1), a company fails to change its name, within fifty days or such longer period as the Registrar may allow, the Registrar may register the designation number of the company, together with the word “ Limited ” or “ PLC ” if required by section 38, as the name of the company, and shall issue a new certificate of incorporation for the company worded to reflect the change in name of the company.

(3) Where the Registrar directs a company to change its name, the Agency shall not compensate any person in respect of such matter.

Document  
with  
incorrect  
name not  
void

**44.** A contract or legal obligation of a company evidenced on a document on which the name of the company is incorrectly stated shall not be void, at the instance of the company, by reason only of the company’s name being incorrectly stated.

Liability  
where  
company  
name  
incorrectly  
stated

**45.** Where the name of a company is incorrectly stated in a document which evidences a legal obligation of the company, and the document is issued or signed by or on behalf of the company, every person who issues or signs the document is liable to the same extent as the company unless the—

(a) person who issues or signs the document proves that the person in whose favour the obligation was incurred was aware at the time the document was issued or signed, that the name was incorrectly stated and the obligation was incurred by the company; or

(b) Court before which the document is produced, is satisfied that it would not be just and equitable for the person who issued or signed the document to be held liable.

**46.** (1) A company shall, where the name of the company changes, within a period of twelve months prior to the company's release of any public notice, cause to be published in the *Gazette* a notice stating the—

Publication of change of company name prior to public notices

- (a) new name of the company;
- (b) specific date on which the name of the company changed; and
- (c) former name or names of the company.

(2) If a company fails to comply with subsection (1), the company and each officer in default commits an offence and is liable, on conviction, to a fine not exceeding three thousand penalty units for each day that the failure continues.

**47.** The change of name of a company in accordance with this Part shall—

Legal effect of change of name

- (a) not affect the rights or obligations of the company nor render defective legal proceedings by or against it;
- (b) not affect any legal proceedings that could have been continued or commenced against the company by or under its former name; and
- (c) take effect from the date specified in the replacement certificate of incorporation.

## PART V

### CONVERSION OF COMPANIES

**48.** A private company limited by shares may be converted into a company limited by guarantee if—

Conversion of private company limited by shares into company limited by guarantee

- (a) all its members agree in writing to such a conversion;
- (b) there is no unpaid liability on any of its shares;
- (c) the members surrender their shares for cancellation, despite section 150 (1) (c);
- (d) the members pass a special resolution to amend the articles to convert the company to a company limited by guarantee complying with section 10; and
- (e) each member makes a declaration of guarantee.

- Conversion of private company limited by shares into unlimited company
- 49.** A private company limited by shares may be converted into an unlimited company if—
- (a) all its members agree in writing to such a conversion;
  - (b) there is no unpaid liability on any of the company's shares;
  - (c) the members pass a special resolution to amend the articles to convert the company to an unlimited company complying with section 11; and
  - (d) each member agrees, in writing, to take up a specified number of shares.
- Conversion of company limited by guarantee into company limited by shares or unlimited company
- 50.** A company limited by guarantee may be converted into a company limited by shares or an unlimited company if—
- (a) all its members agree in writing to—
    - (i) convert it into a company limited by shares or an unlimited company; and
    - (ii) a share capital for the company; and
  - (b) each member agrees, in writing, to take up a specified number of shares; and
  - (c) the members pass a special resolution to amend the articles to convert the company to a company limited by shares or an unlimited company complying with section 9 or 11.
- Conversion of unlimited company into private limited company
- 51.** (1) An unlimited company may be converted into a company limited by shares or a company limited by guarantee if—
- (a) all its members agree in writing to its conversion;
  - (b) in the case of conversion to a company limited by guarantee, each member makes a declaration of guarantee as provided in section 10; and
  - (c) the members pass a special resolution to amend the articles to convert the company to a private limited company complying with section 8.
- (2) The company may, by special resolution, in the case of a conversion to a company limited by shares—
- (a) increase the nominal amount of the company's share capital by increasing the nominal amount of each of its shares, subject to the condition that no part of the increased capital shall be capable of being called up except in the event of the company being wound up; or
  - (b) provide that a specified portion of the company's uncalled share capital shall not be capable of being called up except in the event, and for the purpose of, the company being wound up.

(3) Where an unlimited company is converted into a private limited company and is wound up within three years after the conversion, a member of the company who was a member immediately before the conversion, shall not be entitled to a limitation of liability.

**52.** A public company may be converted into a private company limited by shares by—

Conversion of public company into private company limited by shares

- (a) its members passing a special resolution to convert the company into a company limited by shares;
- (b) amending the articles to satisfy sections 8 and 9;
- (c) its members agreeing in writing to a share capital for the company; and
- (d) each member agreeing, in writing, to take up a specified number of share.

**53.** A private company limited by shares may be converted into a public company by—

Conversion of private company limited by shares into public company

- (a) passing a special resolution to convert the company into a public company;
- (b) amending the articles to satisfy section 7; and
- (d) its members agreeing in writing to a share capital for the company.

**54.** (1) A company shall, within twenty-one days of satisfying the requirements of sections 47, 48, 49, 50, 51 or 52, as the case may be, lodge with the Registrar a notice, in the prescribed form, together with the documents specified in subsection (2).

Process of conversion

(2) The following documents shall accompany the notice lodged with the Registrar in accordance with subsection (1):

- (a) the company's certificate of incorporation;
- (b) a copy of each amended paragraph in the articles;
- (c) a copy of the special resolution or written agreement by the members as specified in the relevant conversion section;
- (d) a statutory declaration by a director and the secretary of the company stating that—
  - (i) the conditions for converting the company as specified in the relevant section have been complied with; and
  - (ii) in their opinion, the company is solvent as evidenced in a report by the auditors of the company, made not more than ninety days before the date of the notice referred to in subsection (1);

(e) if the company is being converted from a public company to a private company and has been incorporated as a public company for not less than fifteen months, certified copies, signed by not less than two directors of the company or, where the company has one director, by that director, of every financial statement, statement of comprehensive income, group accounts, directors' report and auditor's report sent to the members of the company in the preceding twelve months.

(3) The Registrar shall, on receipt of the notice referred to in subsection(1), together with the documents specified in subsection (2)—

(a) issue a replacement certificate of incorporation in the prescribed form, worded to meet the converted status of the company and stating the date of conversion of the company; and

(b) make such entries in such registers as the Registrar considers appropriate.

(4) From the date of conversion stated in the certificate of incorporation the—

(a) company shall stand converted into a company of the status specified on the replacement certificate of incorporation;

(b) articles shall stand amended in accordance with the documents lodged with the notice of conversion; and

(c) name shall be as stated in the replacement certificate of incorporation.

(5) The conversion of a company as provided in this section shall not—

(a) alter the identity of the company;

(b) affect any rights or obligations of the company, except as specified in this section; or

(c) render defective any legal proceedings by or against the company.

(6) If a company fails to comply with subsection (1), the company and each officer in default commit an offence and are liable, on conviction, to a fine not exceeding three thousand penalty units for each day that the failure continues.

(7) If a director or secretary of a company makes a declaration, for purposes of subsection (2)(d) that in the director's or secretary's opinion, the company is solvent, without having reasonable grounds



for the opinion, the director or secretary commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand penalty units.

- 55.** (1) The Registrar shall, where a private company—
- (a) has more members than permitted by its articles; or
  - (b) invites the public to acquire shares or debentures in the company in contravention of section 210;

Imposition  
of penalty  
by Registrar  
for non-  
compliance

give notice in the prescribed form to the company, of the Registrar's intention to impose a penalty for failure to comply with the Act.

- (2) The Registrar shall, in the notice referred to in subsection (1)—

- (a) give reason for the intended penalty;
- (b) require the company to show cause within a period of thirty days, why the penalty should not be imposed.

(3) Where a company takes remedial measures to the satisfaction of the Registrar, within the period specified in subsection (2), the Registrar shall not impose the intended penalty.

(4) Where a company fails to take remedial measures within thirty days, the Registrar shall impose a penalty not exceeding three hundred penalty units for each day that the failure to comply continues.

## PART VI

### MEETINGS AND RESOLUTIONS

**56.** (1) In this Part, unless the context otherwise requires, “meeting” means any of the following meetings of a company:

Types of  
meetings

- (a) an annual general meeting;
- (b) an extraordinary general meeting; or
- (c) a class meeting.

(2) A meeting called in accordance with this Part, at which voting will be conducted or documents tabled, may be held by teleconferencing or other electronic means.

**57.** (1) Subject to this section, a company shall hold, within ninety days after the end of each financial year of the company, an annual general meeting.

Annual  
general  
meeting

(2) The Registrar may, where an annual general meeting is not held in accordance with subsection (1), on the application of a member, direct the convening of an annual general meeting and give such directions as the Registrar considers expedient, including directions to modify or supplement the—

(a) convening, holding and conducting of the meeting; or

(b) operation of the company's articles.

(3) A private company may dispense with the holding of an annual general meeting required in accordance with this Part, other than the first financial year, if all the members entitled to attend and vote at the annual general meeting agree in writing, before the end of the financial year, and notify the Registrar in the prescribed form.

(4) If a company fails to comply with this section, the company and each officer in default commit an offence and shall be liable, on conviction, to a fine not exceeding three thousand penalty units for each day that the failure continues.

Business to  
be transacted  
at annual  
general  
meeting

**58.** The business to be transacted at an annual general meeting shall include the following:

(a) consideration and approval of the financial statements and annual report;

(b) the declaration of a dividend;

(c) the consideration of the directors' and auditors' reports;

(d) the election of directors in place of those retiring;

(e) the fixing of the remuneration of the directors; and

(f) the appointment of the auditors and the fixing of their remuneration.

Extraordinary  
general  
meeting

**59.** An extraordinary general meeting may be convened in accordance with this Act or by—

(a) the board of directors whenever it considers necessary;  
or

(b) any other person in accordance with the articles.

Class  
meetings

**60.** Unless the articles provide otherwise, a meeting of members of a particular class may be convened by—

(a) the board of directors whenever it considers necessary;  
or

(b) two or more members of that class, holding, at the time the notice of the meeting is sent out, not less than five percent of the total voting rights of all the members having a right to vote at meetings of that class.

Requisition  
of general  
meeting

**61.** (1) Subject to subsection (2), any member of a company may make a requisition for a general meeting to be held.

(2) A requisition made in accordance with subsection (1), may be made by any member who at the time when the requisition is made, holds not less than five percent of the total voting rights of all the members having a right to vote at a general meeting of the company.

(3) The requisition, made in accordance with subsection (1), shall—

(a) state the nature of the business to be transacted at the meeting;

(b) be signed by the member making the requisition; and

(c) be deposited at the registered office of the company or posted to the company's registered postal address;

and may consist of several documents in like form, each signed by the member making the requisition.

(4) The board shall, where a requisition is made in accordance with subsection (1), proceed to convene a general meeting of the company.

(5) If the board does not proceed to convene a meeting to be held within the period requested for the convening of the meeting, the members requesting the meeting may, convene the meeting, which shall be held not more than ninety days after receipt of the requisition by the company.

(6) Despite anything in the articles, the notice period for a meeting convened in accordance with this section shall be—

(a) twenty-eight days, if the meeting is an annual general meeting or a meeting at which a special resolution shall be passed; or (b) twenty-one days, in any other case;

beginning on the date of receipt by the company, of the requisition to convene a general meeting.

(7) The company shall refund, any reasonable expenses incurred by a member requesting a meeting specified in this section.

(8) The company shall, for purposes of making a refund in accordance with subsection (6), draw the necessary funds from the sums payable as remuneration or fees to the board.

**62.** (1) The following are entitled to receive notice of a meeting of the company:

(a) a member having the right to vote at such meeting;

(b) a person on whom the ownership of a share devolves by reason of that person being a legal personal representative, receiver or assignee in bankruptcy of a member, and of whom the company has received notice;

Entitlement  
to receive  
notice of  
meetings

- (c) a director;
- (d) an auditor of the company; or
- (e) a person entitled under the articles to receive such notice.

(2) The proceedings of a meeting shall not be invalid by reason only of the—

- (a) accidental omission to give notice of the meeting to a person entitled to receive notice; or
- (b) non-receipt of a notice of the meeting duly sent to a person entitled to receive notice.

(3) Subject to subsection (1), a notice of a meeting of a company shall be in writing and served on each person entitled to receive the notice.

Length of  
notice for  
convening  
meeting

**63.** (1) A notice of a company meeting shall be given not less than—

- (a) twenty-one days, in the case of an annual general meeting;
- (b) twenty-one days, in the case of a meeting at which a special resolution will be proposed; or
- (c) fourteen days, in any other case;

and not more than fifty days before the meeting is to be held.

(2) The articles may substitute for the minimum periods of notice provided in subsection (1) longer periods, being periods of not more than thirty days.

(3) Where a meeting of the company is convened with a shorter period of notice than that required under this section, full notice shall be deemed to have been given if it is so agreed—

- (a) by all the members entitled to attend and vote at the meeting, in the case of a meeting convened as the annual general meeting;
- (b) by a majority in number of the members having a right to attend the meeting and vote on the resolution concerned, being a majority holding not less than ninety-five percent of the total of such voting rights, in the case of a meeting convened as a meeting at which a special resolution will be moved, and in relation to that resolution; and
- (c) by a majority in number of the members having a right to attend and vote at the meeting, being a majority holding not less than ninety-five percent of the total of such voting rights, in the case of any other meeting.

- 
- 64.** (1) The Court may, where it is impracticable to convene a meeting of a company in accordance with this Act and the articles, on the application of a director or a member entitled to vote at the meeting—
- Meeting by  
order of  
Court
- (a) order a meeting of the company to be convened, held and conducted in such a manner as the Court considers appropriate; and
- (b) give such ancillary or consequential directions which the Court considers expedient, including a direction that one member shall make resolutions relating to the matters for that meeting which resolutions shall be deemed to be resolutions of the company.
- (2) A meeting convened, held and conducted in accordance with subsection (1), shall for all purposes be considered to be a meeting of the company duly convened, held and conducted.
- 65.** A meeting shall be held in Zambia unless—
- Place of  
meetings
- (a) the articles provide otherwise; or
- (b) all the members entitled to vote at that meeting agree in writing, to hold the meeting at a place outside Zambia.
- 66.** The following persons are entitled to attend and to speak at a meeting of a company—
- Attendance  
at meetings
- (a) a member with the right to vote at the meeting;
- (b) a person on whom the ownership of a share devolves, by reason of that person being a personal representative, successor in title, receiver or assignee in bankruptcy of a member;
- (c) director of the company;
- (d) the secretary of the company;
- (e) auditor of the company;
- (f) a person entitled under the articles to do so; and
- (g) any other person permitted to do so by the chairperson.
- 67.** (1) Unless the articles provide otherwise, a member—
- Conduct of  
meetings and  
voting
- (a) shall have one vote for each share and whole unit of stock that the member is registered as holding; and
- (b) of a private company limited by guarantee, shall have one vote.
- (2) The articles may provide that a member shall have rights in respect of shares not registered to that member.
- (3) A person who is not a member shall not be entitled to vote at a meeting of the company.

(4) The quorum for a meeting of a company shall be two members of the company, holding not less than one third of the total voting rights in relation to the meeting, unless the articles or an order of Court provide otherwise.

(5) A meeting of the company may, unless the articles or this Act provide otherwise, elect a chairperson and determine the conduct of business in that meeting.

(6) The articles may provide that a member shall not be entitled to attend a meeting of the company, unless all outstanding sums payable by the member, in respect of shares in the company, have been paid.

(7) For the purposes of this section, a “ unit of stock ” of a company is the amount of stock with a nominal value arrived at by adding together the nominal value of all the shares of the company other than stock, and dividing the sum by the number of those shares.

Chairperson’s  
declaration  
as to result  
of vote

**68.** A statement by the chairperson and secretary at a meeting of the company that a motion or resolution at a meeting was passed by a specified majority, shall be conclusive evidence that it was so passed, unless a poll was demanded on the motion or resolution and unless the articles provide otherwise.

Right to  
demand poll

**69.** A poll may be demanded, at a meeting of a company on any question other than the election of the chairperson of the meeting or the adjournment of the meeting, by not less than—

(a) three members with the right to vote on the question, representing not less than five percent of the total voting rights of all members having the right to vote on the question, where there are more than eight members present; or

(b) one-third of the members present with the right to vote on the question, where the members present are eight or less.

Voting on  
poll

**70.** The articles shall not require a member entitled to more than one vote on a poll taken at a meeting of the company, if the member votes to use or cast all the member’s votes in the same way.

Proxies

**71.** (1) A member entitled to attend and vote at a meeting of the company is entitled to appoint another person as a proxy.

(2) A member shall appoint a proxy in writing, in the prescribed form, in the case of—

(a) an individual member, under the hand of the appointing member or the appointing member’s authorised agent; or

---

(b) a member that is a body corporate, under seal or under the hand of an officer or authorised agent.

(3) A proxy, appointed in accordance with this section, shall have, in relation to the meeting and subject to any instructions in the instrument of appointment, all the rights and powers of the appointing member.

(4) Where voting rights attach to shares held in a company with share capital, a shareholder may, appoint separate proxies to represent the member on each of the shares held, in a manner specified in the instrument of appointment.

(5) A director appointed as a proxy on behalf of a member shall not vote on the following business transacted at an annual general meeting:

- (a) declaration of a dividend;
- (b) consideration of the accounts and the directors' and auditors' reports;
- (c) election and fixing of remuneration of directors; and
- (d) appointment and fixing of remuneration of auditors.

(6) In a notice convening a meeting of a company, there shall appear, with reasonable prominence, a statement to the effect that a member entitled to attend and vote is entitled to appoint one or more proxies and, unless the articles provide otherwise, such a proxy need not be a member.

(7) Subject to subsection (5), a company shall not provide a member with a form for the appointment of a proxy unless the form permits the member to direct the proxy as to how to use that member's vote on different matters.

(8) The articles shall not provide that an appointment of a proxy shall only be valid if received by the company or any other person more than forty-eight hours before a meeting is to be held.

(9) If a company fails to comply with subsection (6) or (7), the company and each officer in default commit an offence and are liable, on conviction, to a fine not exceeding two thousand five hundred penalty units.

(10) Where a company fails to issue a form for the appointment of a proxy to every member entitled to receive a notice and vote at a meeting, the company and every officer in default commit an offence and are liable on conviction to a fine not exceeding two thousand five hundred penalty units in respect of each member not issued with a notice.

Representation  
of body  
corporates  
and  
unincorporated  
associations  
at meetings

**72.** (1) A body corporate or an unincorporated association that is a member may, by resolution of its board of directors or other governing body, authorise any person it considers appropriate to act as its representative at a meeting of the company.

(2) A person authorised, in accordance with subsection (1), may exercise the same powers on behalf of the body corporate or unincorporated association in the same manner that an individual member of the company would exercise those powers.

Circulation  
of members'  
resolutions  
and  
supporting  
documents

**73.** (1) A member entitled to attend and vote at a meeting of the company may, in accordance with this section, request the company to circulate, at the company's expense, a notice of any resolution, which is intended to be moved at the meeting accompanied by a statement with respect to the matter referred to in the proposed resolution.

(2) A request made, in accordance with subsection (1), shall be in writing and posted to the company's registered postal address or deposited at the company's registered office.

(3) The company shall, if a meeting is proposed and the company receives a request—

(a) not less than seven days before the end of the period during which notice of the meeting is required to be given; or

(b) at a time when it is practicable to include the notice and statement required with the notice of the meeting;

send the notice and statement to each person entitled to receive notice of the meeting before the end of the period within which notice of the meeting is required to be given.

(4) Where a company receives a request and subsection (3) does not apply, the company shall include the notice and statement required in a notice for the next meeting.

(5) Where a request is made in accordance with this section and the resolution is not passed, a request for the same resolution to be moved shall not be made at a meeting held within ninety days after the meeting at which the resolution was first moved unless the—

(a) board agrees otherwise; or

(b) request is supported, in writing, by members representing not less than five percent of the total voting rights of all the members having at the date of the request a right to vote on the resolution to which the request relates.



**74.** (1) A company shall, at the written request of a member entitled to attend and vote at a meeting, circulate to members, a statement of not more than one thousand words with respect to any business to be dealt with at that meeting.

Circulation  
of members'  
statements

(2) The circulation of the statement, referred to in subsection (1), shall be at the expense of that member, unless the company otherwise resolves.

(3) The statement referred to in subsection (1), shall be circulated to the members in any manner permitted for service of a notice of the meeting at the same time as the notice of the meeting.

(4) A company shall not be required to circulate a statement in accordance with this section, unless the request is—

(a) received by the company not less than ten days before the meeting; and

(b) accompanied by a sum reasonably sufficient to meet the company's expenses in circulating the statement.

**75.** (1) A company need not circulate a resolution or statement, made in accordance with section 73 or section 74, if the company is satisfied that the rights conferred by those sections are being abused so as to secure publicity of defamatory matter.

Refusal to  
circulate  
member's  
statements

(2) A person aggrieved by the company's decision to refuse to circulate a resolution or a statement, in accordance with subsection (1), may appeal to the Court against the decision.

(3) A company shall not incur liability by reason only that it has circulated a resolution or statement in compliance with section 73 or section 74.

(4) If a company fails to comply with this section, the company and each officer in default commit an offence and are liable, on conviction, to a fine not exceeding two thousand five hundred penalty units.

**76.** A reference in the articles, any debenture or debenture trust deed to—

(a) an ordinary resolution;

(b) extraordinary resolution; or

(c) special resolution;

Reference to  
ordinary,  
extraordinary,  
and special  
resolutions  
in other  
documents

of a meeting of creditors or debenture holders or of any class of creditors or debenture holders shall have the same meaning as defined in this Act, with necessary modifications.

Written  
resolutions  
for private  
companies

**77.** (1) The members of a private company may, in accordance with this section, pass a resolution in writing, without holding a meeting, and such a resolution shall be valid and have the same effect as if it had been passed at a meeting of the appropriate kind, duly convened, held and conducted.

(2) The resolution, referred to in subsection (1), shall be—

(a) signed by each member who is entitled to vote on the resolution, if it was moved at a meeting of the company or by the member's authorised representative; and

(b) passed when signed by the last member, or member's representative, referred to in paragraph (a), whether or not the member was a member when the other members signed.

(3) If the resolution proposed is described as a special resolution, it shall be treated as a special resolution for the purposes of this Act.

(4) If the resolution states a date as being the date of the signature by a member, the statement shall be *prima facie* evidence that it was signed by the member on that date.

(5) This section shall not apply to a resolution proposed for the removal of an auditor or a director.

Lodgement  
of  
resolutions

**78.** (1) A company shall, within twenty-one days after the passing of a special resolution, lodge with the Registrar a certified copy of the resolution.

(2) Subject to this section, every copy of the articles shall have embodied in, or attached to it, a copy of every special resolution passed by the company.

(3) For the purposes of subsection (2), where the sole effect of a special resolution is to amend the articles, a copy of the articles that embodies the amendment, embodies the resolution.

(4) If a company fails to comply with this section, the company and each officer in default commit an offence and are liable, on conviction, to a fine not exceeding one thousand penalty units in respect of each copy that is not in compliance with this section.

Date of  
certain  
resolutions

**79.** (1) Where a resolution is passed on a poll, it shall for all purposes be considered to have been passed on the day on which the result of the poll is declared.

(2) Subject to subsection (1), where a resolution is passed at an adjourned meeting of a company or the board, it shall be considered to have been passed on the date of the adjourned meeting.

- 80.** (1) A company shall cause minutes to be entered in books kept for that purpose, the proceedings of meeting of—
- Minutes of proceedings of meetings
- (a) the company;
  - (b) the board of directors and any committee of the directors; and
  - (c) meetings of its debenture holders or other creditors.
- (2) A minute, referred to in subsection (1), if purporting to be signed by the chairman of the meeting at which the proceedings took place or of a subsequent meeting, shall be *prima facie* evidence of the facts stated in the minute in relation to the proceedings.
- (3) Where minutes have been made, in accordance with this section, a meeting shall be presumed to have been duly convened, held and conducted and all appointments of directors, officers, auditors and liquidators shall be presumed to be valid.
- (4) If the company fails to comply with subsection (1), the company and each officer in default commit an offence and shall be liable, on conviction, to a fine not exceeding two thousand five hundred penalty units.
- 81.** The books, referred to in section 80 (1), shall be kept at the registered records office of the company and shall be open for inspection by any member, officer, auditor, receiver or liquidator of the company and the Registrar or a delegate of the Registrar.
- Inspection of minute books

**PART VII**  
CORPORATE GOVERNANCE

- 82.** (1) Subject to subsection (5), a company shall appoint a company Secretary.
- Company secretary
- (2) A person who is named as the first company secretary or joint company secretary in the application for incorporation shall, on the incorporation of the company, be deemed to have been appointed as such for a term of one year.
- (3) A company secretary, other than the first company secretary, shall be appointed by the board of directors for such a term as the board considers appropriate, unless the articles provide otherwise.
- (4) A company secretary shall be appointed on such remuneration and other conditions as the board of directors considers appropriate and may be removed by the board, subject to the company secretary's right to claim damages from the company if removed in breach of contract.

(5) A person shall not be eligible for appointment, as company secretary if the person, in the case of—

(a) an individual, is not—

(i) a legal practitioner, a chartered accountant or a member of the chartered institute of secretaries; and

(ii) resident in Zambia; or

(b) a body corporate—

(i) is not incorporated in Zambia; and

(ii) does not have an officer who qualifies to be appointed as company secretary.

(6) The qualifications for a company secretary set out in subsection (5) shall not apply to a small private company.

(7) The Court may, on application by a company, a creditor of the company or the Registrar, disqualify a person from being appointed as secretary of a company, for a period not exceeding five years on conviction for an offence or breach of any of the duties of a secretary as specified in this Act.

(8) The board of directors shall, within sixty days after a vacancy arises in the office of company secretary, fill the vacancy by appointing a person qualified to be so appointed in accordance with this Act.

(9) If a company carries on business for more than sixty days without a company secretary or in contravention of subsection (8), each officer of the company commits an offence and is liable, on conviction, to a fine not exceeding three thousand penalty units.

Responsibilities of company secretary

**83.** A company secretary is responsible for—

(a) providing the directors, collectively and individually, with guidance as to their duties, responsibilities and powers;

(b) informing the board of directors on—

(i) legislation relevant to or affecting the meetings of members and the board;

(ii) the reports relating to the operations of the company; and

(iii) submission of documents to relevant authorities, as required by statute, as well as the implications of failure to comply with such requirement;

- (c) ensuring that minutes of the members' meetings and of the meetings of the board of directors are properly recorded and registers are properly maintained;
- (d) ensuring that the company maintains and updates information on the beneficial ownership of all the shares of the company and their associated voting rights;
- (e) ensuring that the company is in compliance with this Act in relation to lodging of documents with the Registrar; and
- (f) bringing to the attention of the board of directors any failure on the part of the company or a director to comply with the articles or this Act.

**84.** A body corporate may be appointed to hold the office of company secretary.

Appointment of body corporate as company secretary

**85.** (1) A company shall, unless the articles provide otherwise, appoint a person as a director by ordinary resolution passed at a general meeting of the company.

Appointment of directors

- (2) The board of directors shall comprise, in the case of a—
  - (a) private company, not less than two directors; or
  - (b) public company, not less than three directors.

(3) The board of directors may, where there are less directors than the minimum number prescribed in this section, subject to ratification at the next general meeting of the company, appoint a person to be a director.

(4) The articles may specify a higher number than the minimum number of directors specified in subsection (2).

(5) A person who, not being a duly appointed director, holds oneself out, or knowingly allows another to hold that person out, as a director—

- (a) shall be considered to be a director for the purposes of all duties and liabilities, including liabilities for criminal penalties imposed on directors by this Act; and
- (b) commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units.

(6) A company shall not, knowing that a person is not a duly appointed director—

- (a) hold that person out; or
- (b) allow that person to hold out as a director.

(7) A limitation on the authority of a director, whether imposed by the articles or otherwise, shall not be effective against a person who has no knowledge of the limitation, unless, taking into account that person's relationship with the company the person ought to have had knowledge of the limitation.

(8) Subject to this Act, the directors shall act collectively as a board.

Powers and  
duties of  
directors

**86.** (1) Subject to this Act, the business of a company shall be managed by, or under the direction or supervision of, a board of directors who may—

(a) pay all expenses incurred in promoting and forming the company; and

(b) exercise all such powers of the company as are not, by this Act or the articles, required to be exercised by the members.

(2) Without limiting the generality of subsection (1), and subject to the articles, the board of directors may exercise the powers of the company to—

(a) borrow money;

(b) charge any property or business of the company, including any of its uncalled capital; and

(c) issue debentures or give any other security for a debt, liability or obligation of the company or of any other person.

(3) The board of directors may, by power of attorney, appoint a person to be the attorney of the company for such purposes, with the powers, authorities and discretions that are vested in or exercisable by the board of directors, for such periods and subject to such conditions as the board of directors considers appropriate.

(4) A power of attorney, made in accordance with subsection (3), may contain provisions for the protection and convenience of persons dealing with the attorney, as the board considers necessary, including an authorisation to the attorney to delegate all or any of the powers, authorities and discretions vested in that attorney.

(5) All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, including receipts for money paid to the company, shall be signed, drawn, accepted, endorsed or otherwise executed by two directors or as the board may determine.

- 
- 87.** (1) The board of directors shall not, without the approval of the members, by ordinary resolution—
- Limitations  
on powers  
of directors
- (a) sell, lease or otherwise dispose of the whole, or substantially the whole, of the undertaking or assets of the company;
  - (b) issue any new or unissued shares in the company;
  - (c) create or grant any rights or options entitling the holders to acquire shares of any class in the company; or
  - (d) enter into a transaction that has or is likely to have the effect of the company acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is the value of the company's assets before the transaction.
- (2) The approval of a transaction, referred to in subsection (1)(a), shall be an approval of the specific transaction proposed by the board to the members.
- (3) Nothing in this section prohibits the issue—
- (a) of shares under a good faith underwriting agreement; or
  - (b) to a director of such shares, if any, as the articles require the director to hold by way of share qualification.
- (4) The validity of any transfer or disposition of property to a person dealing with the company, in good faith, shall not be affected by a failure to comply with this section.
- (5) This section shall not limit the powers exercisable by an insolvency practitioner appointed in accordance with the Corporate Insolvency Act, 2017.
- Act No. 9 of  
2017
- 88.** (1) Subject to the articles, the board of directors may delegate to a director or committee of directors any one or more of the powers of the board.
- Delegating  
powers of  
board
- (2) A board of directors that delegates any power, in accordance with subsection (1), shall be responsible for the exercise of that power, as if the power had been exercised by the board itself.
- 89.** (1) The board of directors may constitute committees of the board and appoint any number of directors as members of the committee, unless the articles otherwise provide.
- Board  
committees
- (2) A committee constituted, in accordance with subsection (1), may to the extent provided by the articles or a resolution constituting the committee—

(a) include a person who is not a director but such person shall not—

(i) be eligible or qualified to be appointed as director; and

(ii) vote on any matter to be decided by the committee;

(b) consult with or receive advice from any person; and

(c) have the full authority of the board of directors in respect of a matter referred to it.

Number of directors falling below prescribed minimum

**90.** If a company carries on business for a period of more than ninety days with less than the minimum number of directors specified in section 85(2)(a) or (b), the company and each officer of the company commit an offence and are liable, on conviction, to a fine not exceeding two hundred thousand penalty units.

Residential requirements of directors

**91.** (1) The number of directors, including an executive director, resident in Zambia, shall not be less than half the number of directors appointed.

Cap. 213

(2) The Minister may, by statutory instrument, permit a company which after 1st February, 2000, entered into a Development Agreement in accordance with the Mines and Minerals Act, 1995, to have not less than thirty percent of its director's resident in Zambia.

Act No. 9 of 2017

(3) A contravention of subsection (1) which continues for more than sixty days shall constitute grounds for winding up of the company, in accordance with the Corporate Insolvency Act, 2017 by the Court on the application of the Registrar.

Qualifications of director

**92.** (1) A company shall appoint a natural person as director.

(2) A director may not be a member or hold shares in the company, unless the articles provide otherwise.

(3) A person shall not be appointed as a director if that person—

(a) is under eighteen years of age;

(b) is an undischarged bankrupt;

(c) is disqualified by section 93 from being a director;

(d) has been declared by a court of competent jurisdiction to be of unsound mind; or

(e) fails to satisfy any additional qualifications for directors provided in the articles.

(4) The articles may provide further restrictions or qualifications on the appointment or continuation in office of a director.



- 93.** (1) The Court may, on the application of a company, a creditor of the company or the Registrar, prevent a person from being appointed as director in any company, for a period not exceeding five years, for committing an offence or breaching any of the duties of a director specified in this Act.
- (2) A person who is disqualified from appointment as a director but continues to act as a director, is liable for any purported actions as a director, for the purposes of the duties and liabilities of a director as specified in this Act.
- (3) A person who is disqualified from appointment as a director shall during the period of disqualification remain disqualified to act as director in any other company.
- 94.** A person shall not be appointed as a director or secretary unless that person has—
- (a) given consent to be appointed as such, in the prescribed form; and
- (b) made a declaration that the person is not disqualified by this Act from holding office as a director.
- 95.** (1) A person named in an application for incorporation or in an amalgamation proposal as a director shall, on the date of incorporation or of the amalgamation, as the case may be, be a director from that date until that person ceases to hold office as a director in accordance with this Act.
- (2) All subsequent directors shall be appointed at a general meeting of the company in accordance with section 85.
- 96.** A shareholder or creditor of a company may apply to the Court to appoint a director and the Court may, on such terms and conditions as the Court considers just in the circumstances, make the appointment where—
- (a) there are no directors of a company, or the number of directors is less than the—
- (i) statutory minimum number; or
- (ii) quorum required for a meeting of the board of directors; and
- (b) it is not possible or practicable to appoint directors in accordance with the articles.
- 97.** (1) A director may, subject to any restriction provided in the articles, with the approval of the board of directors, appoint a person who is not a director as an alternate director.

Disqualification by court from holding office of director

Consent before appointment as director or secretary

First and subsequent directors

Appointment of directors by Court

Alternate directors

(2) An appointment as alternate director shall be in writing, signed by the director making the appointment and the person being appointed and be lodged with the company.

(3) A person shall not be appointed as an alternate director by more than one director.

(4) Subject to this Act, the provisions on registration of directors' particulars and interests shall apply to an alternate director as if the alternate director were a director.

(5) An appointment of a person as an alternate director shall confer on that alternate director the right to—

(a) attend any meeting of the board of directors or any committee of directors at which the director who appointed the alternate director is not present; and

(b) vote at a meeting of the board of directors or committee of directors.

(6) An alternate director may not hold shares in a company.

(7) An alternate director has no power to appoint an alternate director.

(8) Subject to subsection (9), a company may not pay any remuneration to an alternate director or be liable to pay additional remuneration by reason of the appointment of an alternate director, except that an alternate director may be remunerated by the director who appointed the alternate director.

(9) The articles may provide that—

(a) an alternate director shall be entitled to receive from the company, during the period of the alternate director's appointment, the remuneration to which the director who appointed the alternate director is entitled; and

(b) the director who appointed the alternate director shall not be entitled to that remuneration.

(10) The appointment of an alternate director shall cease—

(a) at the expiry of the period for which the alternate director was appointed;

(b) if the director who appointed the alternate director—

(i) gives written notice to that effect to the board of directors; or

(ii) ceases for any reason to be a director; or

(c) if the alternate director resigns by notice in writing to the board of directors.

- 98.** (1) A company may remove a director from office by an ordinary resolution passed at a general meeting of the company. Removal of director from office
- (2) A member shall, not less than twenty eight days before the meeting referred to in subsection (1), give the company secretary notice of intention to move a resolution to remove a director, in the prescribed manner and form.
- (3) The company secretary shall, on receipt of a notice of intention referred to in subsection (2), send a copy of the notice to the director concerned and that director shall be entitled to—
- (a) be heard at the meeting;
  - (b) submit a written statement to the company regarding the notice specified in subsection (2); and
  - (c) require that the director's written statement, made in accordance with paragraph (b), be read at the meeting.
- (4) A notice of the general meeting, at which a notice referred to in subsection (2) is to be considered, shall be sent to every person entitled to receive the notice, which shall be accompanied by a copy of the written statement referred to in subsection (3) (b).
- (5) The company shall not be obliged to send or circulate the director's statement if it is received by the company less than seven days before the meeting.
- (6) A vacancy created by the removal of a director in accordance with this section, if not filled at the meeting at which the director is removed, may be filled as a casual vacancy.
- 99.** (1) The office of director shall be vacant if the director— Vacancy in office of director and filling up of casual vacancy
- (a) resigns;
  - (b) is removed from or vacates office in accordance with the articles or this Act;
  - (c) becomes disqualified to hold the office of director as specified in this Act; or
  - (d) dies.
- (2) A director may resign from office by written notice in the prescribed form and delivering the notice to the company secretary.
- (3) The notice, specified in subsection (2), shall be effective when received by the company secretary or at a later time as specified in the notice.

(4) A director who vacates office in accordance with this section shall within the five years following that vacation of office continue to be liable, for acts, omissions and decisions made during the period that person was a director.

(5) Where the office of a director becomes vacant before the expiry of the term of office, the company may in accordance with section 85, appoint another director in place of the director who vacates office but such director shall hold office only for the unexpired part of the term.

Notice of  
change of  
directorship  
and  
particulars

**100.** (1) A company shall lodge with the Registrar, in the prescribed form, notice of a change in the—

(a) directorship of the company, whether as a result of a director ceasing to hold office or appointment of a new director, or both; or

(b) particulars of a director, such as the name, residential address or other particulars as may be prescribed.

(2) A notice required to be lodged in accordance with subsection (1) shall, in addition to the requirements specified in subsection(1), include the—

(a) date of the change;

(b) full name, residential address and other particulars, as may be prescribed, of every person who is a director from the date of the notice; and

(c) consent to be appointed director as specified in section 94.

(3) A notice required to be lodged in accordance with subsection (1) shall be lodged with the Registrar within twenty-one days of the—

(a) change occurring, in the case of an appointment or resignation of a director; or

(b) company first becoming aware of the change, in the case of the death of a director or a change in the name or residential address or other particulars of a director.

(4) If a company fails to comply with this section, each officer of the company commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units.

Executive  
director

**101.** (1) A company may appoint an executive director for such period and on such terms as the company considers appropriate, unless the articles provide otherwise.

(2) An executive director shall receive remuneration as determined by the members, subject to the terms of an agreement entered into with the executive director.

(3) The company may, subject to the articles and the terms of any agreement entered into with an executive director, revoke an appointment made in accordance with subsection (1).

(4) An executive director shall not, while holding that office, be subject to retirement by rotation or be taken into account in determining the retirement of directors by rotation.

(5) Subject to the articles, an executive director's appointment shall terminate automatically if the executive director ceases for any reason to be a director.

**102.** A provision that requires or authorises an act to be done by a director and the company secretary shall not be satisfied if it is done by the same person in that person's capacity both as a director and company secretary.

Acts done in dual capacity as director and secretary

**103.** (1) This section shall apply to a—

- (a) public company;
- (b) a related company to a public company; and
- (c) company in a prescribed class of companies.

Loans to directors by company

(2) A company to which this section applies shall not—

- (a) make a loan to a director or related company;
- (b) give a guarantee or provide security in connection with a loan made by any person to a director or related company; or
- (c) subject to this section—
  - (i) make a loan; or
  - (ii) give a guarantee or provide security in connection with a loan made by any person;

to a company in which a director or nominee of a director holds twenty percent or more of the company's issued shares.

(3) This section shall not prohibit a company—

- (a) from making a loan to a related company, or entering into a guarantee or providing security in connection with a loan made by any person to the related company;

(b) whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons from making a loan to, or giving a guarantee or providing security in connection with, a director or a company referred to in subsection 2 (c) if prior written approval of the company has—

- (i) been obtained at a general meeting; or
- (ii) not been obtained within 12 months of a general meeting being held, on condition that the loan shall be repaid or the liability under the guarantee or security shall be discharged within 18 months.

(4) A company may advance to a director or related company, funds to meet expenditure incurred or to be incurred by the director for the purposes of the company or for the purposes of enabling that director to properly perform that director's duties, except that the total amount advanced to that director does not exceed one per centum of the assets of the company, less the liabilities of the company as shown in the last audited statement of financial position of the company.

(5) If a company fails to comply with this section the—

- (a) company and each officer in default commit an offence are liable, on conviction, to a fine not exceeding one hundred thousand penalty units; and
- (b) directors, who authorised the making of the loan or the giving of the guarantee or provision of the security, shall be jointly and severally liable to indemnify the company against any loss arising therefrom.

(6) This section shall not apply to a loan, guarantee or security made or provided before the commencement of this Act.

Directors to  
comply with  
Act and  
articles

**104.** (1) A director shall not act, or agree to the company acting, in a manner that contravenes this Act or the articles.

(2) A director who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units or imprisonment for a period not exceeding twelve months, or to disqualification from being eligible for appointment as a director, as specified in section 85.

General  
responsibilities  
of directors

**105.** Subject to this Act, a director shall—

- (a) take necessary measures to prevent, reduce and manage any attendant risks to the business of the company;

- (b) not cause, allow or agree for the business of the company to be conducted in a manner that is likely to create a substantial risk of serious loss to a member or creditor of the company; and
- (c) when exercising powers or performing duties of a director—
  - (i) act in good faith and in the best interests of the company; and
  - (ii) exercise the degree of care, diligence and skill that may reasonably be expected of a person carrying out the functions of a director.

**106.** A director shall—

- (a) exercise that director's power—
  - (i) in accordance with this Act and act within the articles; and
  - (ii) for the purpose for which the power is conferred;
- (b) promote the success of the company;
- (c) exercise independent judgment; and
- (d) disclose information about that director's remuneration in the financial statements of the company.

Fiduciary  
duties of  
directors

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

Duty to  
avoid  
conflict of  
interest

(2) Subsection (1) shall apply, in particular, to the exploitation of any property, information or opportunity, whether or not the company takes advantage of the property, information or opportunity.

(3) The duty to avoid a conflict of interest shall not be considered to be infringed if the—

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

**108.** (1) Subject to subsection (2), a director has interest in a transaction in which the company is a party if the director—

- (a) is a party to, or is likely to derive a material financial benefit from, the transaction;
- (b) has a material financial interest in, or with another party to, the transaction;
- (c) is the parent, child or spouse of another party to, or person who is likely to derive a material financial benefit from, the transaction; or

Meaning of  
'interest'

(d) is otherwise directly or indirectly materially interested in the transaction.

(2) A director, shall not be considered to be interested in a transaction to which the company is a party, if the transaction relates to the company—

(a) giving security to a third party on the request of that third party who or which is not connected to the director; and

(b) with respect to a debt or obligation of the company for which the director or another person has personally assumed responsibility in full or in part under a guarantee, indemnity or deposit of a security.

Duty not to accept third party benefits

**109.** (1) A director shall not accept a benefit from a third party, conferred by reason of—

(a) being a director of the company; or

(b) doing or not doing anything as a director of the company.

(2) Benefits received by a director from a person by whom that director's services as a director or otherwise are provided to the company shall not be regarded as conferred by a third party.

(3) The duty not to accept third party benefits, in accordance with this section, shall not be considered to have been infringed if the acceptance of the benefit does not give rise to a conflict of interest.

(4) In this section "third party" means a person other than a body corporate or a person acting on behalf of the body corporate.

Disclosure of interest of director

**110.** (1) A director shall, if interested in a transaction or proposed transaction with the company—

(a) cause to be entered in the interests register and disclose to the board—

(i) the nature and monetary value of the director's interest where the monetary value of that interest is quantifiable; or

(ii) where the monetary value of the director's interest cannot be quantified, the nature and extent of that interest; and

(b) not vote on a matter relating to the transaction.

(2) A failure by a director to comply with subsection (1) (a), may not affect the validity of a transaction entered into by the company or the director, if the other party was not aware of the director's interest.



(3) Where a director with an interest in a matter votes on it the vote shall be null and void.

(4) A director who fails to comply with subsection (1) (a) commits an offence.

**111.** (1) A transaction entered into by a company, in which a director has an interest known to the other party, may be avoided by the company within six months after the transaction is disclosed to all the shareholders.

Avoidance of transaction in which director has interest

(2) A transaction shall not be avoided where the company receives fair value for it.

(3) The question, as to whether a company receives fair value under a transaction, shall be determined on the basis of the information known to the company and to the interested director at the time the transaction is entered into.

**112.** The avoidance of a transaction shall not affect a person's title to, or interest in, property which that person has acquired—

Effect of avoiding transaction on *bona fide* purchase

(a) from a person other than the company;

(b) for an appropriate price or fair value; or

(c) without actual knowledge of the circumstances of the transaction under which the person, referred to in paragraph (a), acquired the property from the company.

**113.** (1) A director shall not, except as required by subsection (2) or in circumstances authorised by the articles, disclose to any person or use or act on information which is in the director's possession, by virtue of the director's position as a director or employee of the company and to which the director would not otherwise have had access.

Use of information

(2) A director may, on written approval of the board, use or act on, or disclose information referred to in, subsection (1) to a person authorised to be informed in accordance with guidelines, instructions, powers and responsibilities of the company.

(3) The board of directors may authorise a director to disclose, use information or act on the information, if the board is satisfied that the interests of the company shall not be prejudiced.

(4) A director shall inform the company of any benefit that the director obtains from using or acting on information acquired as a director or employee of the company.

Disclosure  
of interest in  
shares  
issued,  
acquired or  
disposed of  
by director

**114.** (1) A director who has an interest in any shares issued by the company, shall—

(a) disclose the interest to the board of directors as specified in subsection (2); and

(b) ensure that the particulars disclosed to the board are entered in the interests register.

(2) A director who acquires or disposes of an interest in shares issued by the company, shall within seven days after the acquisition or disposal, disclose to the board of directors the—

(a) number and class of shares in which the interest has been acquired or disposed of, as the case may be;

(b) nature of the interest;

(c) consideration paid or received; and

(d) date of the acquisition or disposal.

(3) For purposes of this section, a director has an interest in a share issued by a company, if the director—

(a) is a beneficiary of the share or has power to—

(i) exercise a right to vote attached to the share;

(ii) control the exercise of the right to vote attached to the share;

(iii) acquire or dispose of the share; and

(iv) control the acquisition or disposition of the share by another person; or

(b) has any of the powers referred to in subsection (3) (a) (i) and (ii) following an agreement or consensus between that director and the board of directors.

Restrictions  
on director  
regarding  
disposal of  
shares

**115.** (1) Where a director has information which is material to an assessment of the value of shares or debentures issued by the company or subsidiary that would not be available to that director, the director may acquire or dispose of those shares or debentures in the case of—

(a) an acquisition, where the consideration given for the acquisition is not less than the fair value of the shares or debentures; or

(b) a disposition, where the consideration received for the disposition is not more than the fair value of the shares or securities.

(2) The fair value of shares or debentures shall be determined on the basis of all information known to the director or publicly available at the time of the acquisition or the disposition, as the case may be.

(3) Subsection (1), shall not apply to a share or security that is acquired or disposed of by a director only as a nominee for the company or a related company.

**116.** Where a director acquires or disposes of shares or debentures, in contravention of section 115, the director shall be liable to the person who, or from whom, the shares or debentures were acquired or disposed to, for the amount by which the consideration received by the director exceeds the fair value of the shares or debentures.

Director's liability on share dealing

**117.** The restrictions specified in sections 115 and 116 with regard to disposal of shares by directors shall not apply in relation to a company dealing in shares on the capital market.

Exception for companies dealing in securities

**118.** The remuneration of directors shall be proposed by the board of directors and approved by the members by ordinary resolution.

Remuneration for directors

**119.** (1) Despite Section 118, the members may, by special resolution, approve any payment, provision, benefit, assistance or other distribution proposed by and payable to the directors.

Approval of other distributions by special resolution

(2) An approval, referred to in subsection (1), shall only be made where there are reasonable grounds to believe that, after the distribution, the company will be able to satisfy the solvency test.

**120.** (1) Where a director of a company wilfully commits a breach of any duty or responsibility specified in this Act, the director—

Liability of director for breach of duty

(a) is liable to compensate the company for any loss the company suffers as a result of the breach;

(b) may be removed from the board of directors in accordance with this Act; and

(c) is liable to account to the company for any profit made as a result of the breach.

(2) A contract or other transaction entered into between a director and the company in breach of any duty of the director as specified in this Act, may be rescinded by the company.

- Validity of decisions by executive officer
- 121.** A decision made by an officer of a company shall, subject to the requirements as to disclosure, be considered valid if the—
- (a) decision is made in good faith for a proper purpose;
  - (b) officer does not have a personal interest in the decision;
  - (c) company is appropriately informed of the subject matter of the decision; and
  - (d) officer reasonably believes that the decision is in the best interests of the company.
- Liability and indemnity with regard to decisions made *bona fide*
- 122.** Where a company establishes that a decision made by an officer is—
- (a) not valid, the officer shall be held personally liable for any obligation or liability that arises as a result of that decision; or
  - (b) valid, the officer shall be indemnified for that decision.

## PART VIII

## SHAREHOLDERS' RIGHTS AND OBLIGATIONS

- Declaration in respect of beneficial interest in share
- 123.** (1) Where the name of a person who is not the beneficial owner, is entered in the register of members as the holder of a share, the person shall make a declaration to the company within such time and in such form as may be prescribed, specifying the name and other particulars of the beneficial owner of the share.
- (2) A beneficial owner or a person acting or holding a share on behalf of a beneficial owner, shall make a declaration to the company, specifying—
- (a) the nature of the interest and voting rights held;
  - (b) particulars of the person in whose name the share is registered in the books of the company; and
  - (c) such other particulars as may be prescribed.
- (3) Where a change occurs in beneficial ownership, the person referred to in subsection (1) and the beneficial owner shall, within fourteen days from the date of the change, make a declaration to the company, in the prescribed form, giving such particulars as may be prescribed.
- (4) The Minister may make rules on beneficial ownership, beneficial owners and the identification, verification and disclosure of beneficial ownership.

(5) A person referred to in subsection (1) who fails to make a declaration in accordance with this section or regulations issued in accordance with this section commits an offence.

(6) A company shall, where a declaration referred to in subsection (3) is made—

(a) record the declaration in the Register of beneficial ownership established in accordance with section 21(2); and

(b) within thirty days from the date of receipt of the declaration, and on payment of such fees or additional fees as may be prescribed, file with the Registrar a return in the prescribed form in respect of the declaration.

(7) If a company fails to comply with subsection (6) the company and every officer of the company in default commit an offence.

(8) Where a beneficial owner or a person acting or holding a share on behalf of a beneficial owner fails to make a declaration in accordance with this section, a right in relation to that share shall not be enforceable.

(9) Nothing in this section shall prejudice the obligation of a company to pay dividends to its members in accordance with this Act and the obligation shall, on such payment, stand discharged.

**124.** (1) The Registrar shall ensure that the beneficial ownership of shares is known, ascertained and verified before the shares can be registered and transacted in.

Beneficial  
ownership  
of shares

(2) Where the Registrar, considers it necessary to ascertain and verify the beneficial ownership of a share or class of shares of a company, the Registrar may serve on the company a notice to furnish the Registrar, within a period specified in the notice, specified information with regard to the beneficial ownership of the share.

(3) The provisions of section 329 shall, as far as possible, apply as if the enquiry provided for in subsection (1), were an investigation conducted in accordance with that section.

(4) A person who fails to comply with a notice provided for in subsection (2) commits an offence.

**125.** (1) Subject to the articles—

(a) a shareholder is not liable for an obligation of the company by reason only of being a shareholder; and

Liability of  
shareholders

(b) the liability of a shareholder, to the company, is limited to any—

(i) amount unpaid on a share held by the shareholder;

(ii) liability expressly provided for in the articles;

(iii) liability that arises by reason of the shareholder exercising powers, or carrying out the duties of a director, as provided in this Act; or

(iv) other incidental liability.

(2) Nothing in this section shall affect the liability of a shareholder to a company under a contract, including a contract for the issue of shares, or for any tort or other actionable wrong committed by the shareholder.

Liability of former shareholders

**126.** (1) A former shareholder of a company who, while a member, was liable to the company in respect of any amount unpaid on the shares held by that former shareholder or any liability provided for in the articles, continues to be liable until the amount or liability has been fully paid or discharged.

(2) A former shareholder is not liable, as specified in subsection (1), for any debt or liability of the company contracted after ceasing to be a shareholder.

Liability of person ceasing to be shareholder before shareholders' liability becomes unlimited

**127.** Where a person ceases to be a shareholder of a company before the liability of the shareholders of the company becomes unlimited and that person has not since become a shareholder of the company, that person shall be liable to the company, to the same extent as if the liability of the shareholders had remained limited.

Shareholders not required to acquire shares by alteration to articles

**128.** Despite anything in the articles, a shareholder is not bound by an amendment of the articles that—

(a) requires the shareholder to acquire or hold more shares in the company than the number held on the date the amendment takes effect; or

(b) increases the liability of the shareholder to the company, unless the shareholder agrees, in writing, to be bound by the amendment, before or after it is made.

Liability of personal representative

**129.** The liability of a personal representative of the estate of a deceased person, who is registered as the holder of a share comprised in the estate, shall not, in respect of that share, exceed the proportional amount available from the assets of the estate, after satisfaction of prior claims, for distribution among creditors of the estate.

- 130.** (1) The liability of an assignee of the property of a bankrupt, who is registered as the holder of a share which is comprised in the property of the bankrupt, shall not, in respect of that share, exceed the proportional amount available from the property of the estate of the bankrupt, after satisfaction of prior claims, for distribution among creditors of the estate, being property of the bankrupt which, at the time when demand is made for the satisfaction of the liability, is vested in the assignee. Liability of assignee
- (2) In this section, “ assignee ” means the assignee in whom the property of a bankrupt is vested pursuant to the Bankruptcy, Act. Cap. 82
- 131.** (1) The shareholders of a company shall, exercise the powers reserved to shareholders as specified in this Act or the articles— Exercise of powers reserved for shareholders
- (a) at a meeting of the shareholders; or
- (b) in lieu of a meeting, by a resolution made in accordance with section 77.
- (2) A power reserved to shareholders shall be exercised by ordinary resolution, unless the articles or this Act specify otherwise.
- 132.** (1) This section shall apply where a transferee company makes an offer to shareholders in a transferor company and the following conditions are satisfied: Power to acquire shares of minority on takeover
- (a) the offer by the transferee company is made to all the shareholders in the transferor company, other than those shares already held by the transferee company, its related companies or its nominees, for the transferee company or any of its related companies;
- (b) the consideration for the acquisition or a substantial part of the consideration, is an allotment of shares in the transferee company or, at the option of the holders, a payment of cash;
- (c) the same terms are offered to all the shareholders to whom the offer is made or, where there are different classes of shares, to all shareholders of the same class;
- (d) the notice of the offer sent to the shareholders includes a—
- (i) description of the effect of this section;
- (ii) statement that, if paragraph (e) is satisfied, the transferee company intends to take advantage of this section; and

- (iii) statement that a shareholder may apply to the Court, in accordance with subsection (4); and
- (e) within four months after making the offer, the offer has been accepted in respect of sufficient shares in each class to make up, together with any shares held by the transferee company, ninety percent of the shares of that class.

(2) The transferee company may, where this section applies, within sixty days from when subsection (1) is satisfied, give to each shareholder who has not accepted the offer, in respect of all of that member's shares, a notice in the prescribed form stating that—

- (a) the company intends to acquire that member's shares;
- (b) if no action is taken by the shareholder, the shares shall be compulsorily acquired in accordance with this section; and
- (c) if the offer consists of alternatives, the alternatives shall apply, unless the shareholder directs otherwise.

(3) A copy of the notice, referred to in subsection (2), shall be sent to the shareholder and the transferor company.

(4) The shareholder may, within the period beginning when the offer is made and ending ninety days after subsection (1) is satisfied, apply to the Court for an order—

- (a) prohibiting the compulsory acquisition of shares pursuant to this section; or
- (b) that the terms of the offer applying to the shareholder, in respect of the shares or of the shares of a particular class, be varied as the Court directs.

(5) The transferee company shall—

- (a) where the Court makes an order that the terms of the offer shall be varied, give notice of the varied terms to all other shareholders of the same class and, within sixty days after receiving the notice, a shareholder of that class shall be entitled to accept the original offer or the offer as varied by the Court; or
- (b) where a shareholder does not accept an offer on the acquisition day, within seven days after the acquisition day, send to the transferor company a share transfer instrument executed—



- 
- (i) on behalf of the shareholder by a person appointed by the transferee company; and
- (ii) by the transferee company on its own behalf;
- and shall transfer to the transferor company, the consideration payable by the transferee company for the shares, and the transferor company shall register the transferee company as the holder of those shares.
- (6) For purposes of this section—
- “ acquisition day ” shall be the day—
- (a) ninety days after subsection (1) is satisfied; or
- (b) on which the last of any applications made in accordance with subsection (4), is disposed of;
- whichever occurs later;
- “ transferee company ” means a company to which an interest in shares is conveyed; and
- “ transferor company ” means a company that conveys an interest in shares.
- (7) Any sums received by the transferor company in accordance with subsection (5)(b), shall be paid into a separate bank account, and any such sums and all shares or other consideration so received, shall be held by the transferor company in trust for the several persons entitled to them.

- 133.** (1) A transferee company shall where—
- (a) an offer is made to the shareholders of a company or to any of them for the purchase of their shares;
- (b) in pursuance of an offer, shares in the transferor company are transferred to another body corporate; and
- (c) after the transfer of shares, the transferee company holds more than seventy-five percent of the shares in the transferor company or in a class of those shares;

Rights of  
minority on  
takeover

within thirty days after the date of the transfer, give notice of that fact to the remaining shareholders of the company or the remaining shareholders of a particular class, as the case may be; and a shareholder may, within ninety days after receiving notice, require the transferee company to acquire all or any of that holder's shares.

- (2) For the purposes of subsection (1), where a share is transferred to or held by a—
- (a) company related to the transferee company; or

(b) nominee of the transferee company or of a related company to the transferee company;

the share shall be considered to be transferred to, or held by, the transferee company.

(3) The transferee company shall, where a shareholder requires the transferee company to acquire any shares as specified in subsection (1), be bound to acquire those shares—

(a) on the terms of the offer or on such other terms as may be agreed; or

(b) in the manner as may be directed by the Court, where the transferee company or the shareholder applies to the Court for such an order.

Remedy  
against  
oppression  
of minority  
on takeover

**134.** (1) The Court may, on the application of a member, make an order, in accordance with subsection(3), if it is satisfied that—

(a) the affairs of the company are being conducted, or the powers of the directors are being exercised, in a manner that is oppressive;

(b) an act or omission, or proposed act or omission, by or on behalf of the company has been done or is threatened, which was or is likely to be oppressive; or

(c) a resolution of the members, or any class of them, has been passed or is proposed which was or is likely to be oppressive.

(2) Subject to this section, an order made in accordance with subsection (1), may include the following:

(a) directing or prohibiting an act, or cancelling or varying a transaction or resolution;

(b) regulating the conduct of the affairs of a company;

(c) purchasing of the shares of any members by any other member or by the company and, in the case of a purchase by the company, for the reduction of the company's capital accordingly;

(d) winding up of the company; or

(e) appointing a receiver of the property of the company.

(3) Despite this Act, where the Court makes an order in accordance with subsection (1), which alters the share capital or articles, the company shall not, without leave of the Court, make any further alteration to the share capital or articles that is inconsistent with the order.

(4) Where the Court makes an order in accordance with subsection (2) (d), the Corporate Insolvency Act, 2017 shall apply to the winding up, with the necessary modifications, as if the order had been made on an application by the company for winding up by the Court.

Act No. 9 of  
2017

(5) A company shall lodge, with the Registrar, a copy of an order altering a company's share capital or articles, within fifteen days of the order being made by the Court.

(6) The Registrar shall, where an order is lodged in accordance with subsection (5), issue a replacement certificate of share capital to the company, which shall be worded to meet the circumstances of the case.

(7) A person who contravenes an order, made in accordance with this section, commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding twelve months, or to both.

(8) If a company fails to comply with subsection (5), the company and each officer in default commit an offence and is liable, on conviction, to a fine not exceeding six thousand penalty units for each day that the failure continues.

(9) In this section, "oppressive" means—

- (a) unfairly prejudicial to, or unfairly discriminatory against, a member or members of a company; or
- (b) contrary to the interests of the members as a whole.

**135.** (1) For purposes of this Act—

- (a) one or more interest groups may exist in relation to an action or proposal; and
- (b) shareholders in the same class may fall into two or more interest groups if—
  - (i) action is taken in relation to some holders of shares in a class and not others; or
  - (ii) a proposal expressly distinguishes between shareholders in a class.

Classes and  
interest  
groups

**136.** (1) A company shall not take any action that affects the rights attached to shares, unless the action has been approved by a special resolution of each interest group.

Alteration of  
shareholder  
rights

(2) For the purposes of subsection (1), the rights attached to a share include the—

- (a) rights, privileges, limitations, and conditions attached to the share by this Act or the articles, including voting rights and rights to distributions;
- (b) pre-emptive rights as provided in this Act;
- (c) right to have the procedure set out in this section and any further procedure required by the articles for the amendment or alteration of rights observed by the company; and
- (d) right that a procedure required by the articles for the amendment or alteration of rights be not amended or altered.

(3) For purposes of subsection (1), the issue by a company of further shares ranking equally with, or in priority to, existing shares, whether as to voting rights or distributions, shall be considered to be action affecting the rights attached to the existing shares, unless the—

- (a) articles expressly permit the issue of further shares ranking equally with, or in priority to, those shares; or
- (b) issue is made in accordance with the pre-emptive rights of shareholders in accordance with this Act or the articles.

Shareholder  
requiring  
company to  
purchase  
shares

**137.** A shareholder is entitled to require a company to purchase shares where—

- (a) an interest group has, in accordance with section 136 (1), approved, by special resolution, an action that affects the rights attached to the shares;
- (b) the company becomes entitled to take the action, referred to in paragraph (a), and a shareholder, who was a member of the interest group, casts all the votes attached to the shares registered in that shareholder's name; or
- (c) a resolution approving an action was passed in accordance with section 77, and a shareholder who was a member of the interest group did not sign the resolution.

Right of  
shareholder  
to commence  
action

**138.** (1) A shareholder may commence an action against the company or a director for—

- (a) breach of a duty owed by the company or director to the shareholder; or
- (b) an illegal act done by the company or a director.

(2) An action may not be commenced as specified in subsection (1) (a), to recover any loss arising from a reduction in the value of shares of a company or failure of the shares to increase in value, by reason only of a loss suffered, or gain forgone, by the company.

## PART IX

## SHARE AND SHARE CAPITAL

**139.** (1) A company other than a company limited by guarantee shall have share capital as prescribed. Share capital

(2) A company limited by guarantee shall have a guaranteed amount.

**140.** (1) A company may, unless its articles provide otherwise, by special resolution, alter its share capital as stated in the certificate of share capital by— Alteration of share capital

(a) increasing its share capital by issuing new shares of such an amount as it considers expedient;

(b) consolidating and dividing all or any of its share capital into shares of a larger amount than its existing shares;

(c) converting all or any of its paid-up shares into stock and re-converting that stock into paid-up shares of any denomination;

(d) subdividing its shares, or any of them, into shares of smaller amounts than is stated in the certificate of share capital; or

(e) cancelling shares which, at the date of the passing of the resolution, have not been allotted to any person, and diminishing the amount of its share capital by the amount of the shares so cancelled.

(2) Where shares are subdivided, in accordance with subsection (1) (d), the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived.

(3) A cancellation of un-allotted shares, in accordance with subsection (1) (e), shall be considered not to be a reduction of share capital for the purposes of this Act.

(4) Where a company has made any alteration, referred to in subsection (1), it shall within thirty days after making the alteration lodge with the Registrar a—

(a) notice in the prescribed form specifying, as the case may be, the shares increased, consolidated, divided, subdivided, converted, redeemed or cancelled, or the stock reconverted; and

(b) copy of the resolution authorising the alteration.

(5) The Registrar, where an alteration is made in accordance with subsection(1), shall alter a particular stated in the company's certificate of share capital and issue a replacement certificate of share capital which is worded to meet the circumstances of the case.

(6) If the company fails to comply with subsection (4), each officer of the company commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units.

Rights and powers attaching to shares

**141.** (1) A share in a company is personal property.

(2) Subject to subsection (3), a share in a company confers on the holder the right to—

(a) one vote on a poll at a meeting of the company on any resolution, including a resolution to—

(i) appoint or remove a director or auditor;

(ii) adopt and alter the articles;

(iii) approve an amalgamation of the company; and

(iv) put the company into liquidation in accordance with the Corporate Insolvency Act; and

(b) an equal share in dividends authorised by the board of directors and in the distribution of the surplus assets of the company.

(3) Subject to this Act, the rights specified in subsection (2) may be negated, altered or added to by the articles or in accordance with the terms on which the share is issued.

Act No. of 2017

Types of shares and rights conferred

**142.** (1) Subject to the articles, different classes of shares may be issued by the company.

(2) Despite the generality of subsection (1), shares in a company may—

(a) be redeemable;

(b) confer preferential rights to distributions of capital or income;

(c) confer special, limited, or conditional voting rights; or

(d) not confer voting rights.

Variation of class rights

**143.** (1) For the purposes of this section, the following shall be considered to be a variation of the rights of that class:

(a) the abrogation of any rights attached to a class of shares; and

(b) any resolution of a company, other than a resolution for the creation or issue of further shares, the implementation of which would have the effect of—

- (i) diminishing the proportion of the total votes exercisable at a general meeting of the company by the existing shareholders of a class; or
- (ii) reducing the proportion of the dividends or other distributions payable to the existing shareholders of a class.

(2) Where the shares of a company are divided into different classes, the rights attached to any class may not be varied, except to the extent and in the manner provided by this section.

(3) If the articles expressly forbid the variation of the rights of a class or specify the manner in which such a variation may be carried out and expressly forbid any alteration of the articles in that respect, the rights or the variation may not be made except in accordance with the written consent of all the members of that class or with the sanction of the Court under a scheme of arrangement made in accordance with the Corporate Insolvency Act.

Act No. of  
2017

(4) Where subsection (3) is not applicable, the rights attached to a class of shares may be varied with the written consent of the holders of seventy-five per cent of the issued shares of that class, or by a special resolution passed at a meeting of the holders of shares of that class.

(5) The holders of not less than fifteen per cent of the issued shares of a class may, within twenty-one days after the date of the resolution referred to in subsection (4), apply to the Court for the resolution to be cancelled and the Court may confirm or cancel the resolution.

(6) An application made in accordance with subsection (5) may be made on behalf of the persons referred to in that subsection or by such of their number as they may appoint in writing for that purpose.

(7) The company shall, if no application is made in accordance with subsection (5), within fourteen days after the end of the period prescribed in that subsection for making such an application, lodge with the Registrar a copy of each paragraph of the articles affected by the variation, in its amended form.

(8) If an application is made, in accordance with subsection (5), and the Court makes an order, the company shall, within fourteen days after the date of the order, lodge with the Registrar—

(a) the Court order; and

(b) a copy of each paragraph of the articles affected by the variation, in its amended form, if the order confirms the resolution.

(9) If a company fails to comply with subsection (7) or (8), the company and each officer in default commit an offence and are liable, on conviction, to a fine not exceeding three thousand penalty units for each day that the failure continues.

(10) Nothing in this section shall affect or derogate from the powers of the Court in relation to schemes of arrangement, takeovers and protection of minorities as provided in the Corporate Insolvency Act.

Act No. of  
2017

Pre-emptive  
rights

**144.** (1) A company shall, offer for acquisition to the existing shareholders shares, which are issued or proposed to be issued by a company, that rank or would rank as to voting or distribution rights, or both, equally with shares already issued, in a manner and on terms that would, if accepted, maintain the existing voting or distribution rights, or both, of those shareholders.

(2) An offer, made in accordance with subsection (1), shall remain open for acceptance for a reasonable time or for the period as may be specified in the Articles.

Share  
premium  
account

**145.** (1) Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the total amount of value of the premiums on these shares shall be transferred to an account, to be called “the share premium account” and the provisions of this Act relating to the reduction of share capital of a company shall, except as provided in this section, apply as if the share premium account were paid up share capital of the company.

(2) The share premium account may be applied by the company—

(a) in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares;

(b) in writing off—

(i) the preliminary expenses of the company; or

(ii) the expenses of, the commission paid or the discount allowed on any issue of shares or debentures of the company; or



(c) in providing for the premium payable on redemption of any redeemable preference shares or of any debenture of the company

**146.** A company limited by shares shall—

(a) issue to each qualified person named in the application for incorporation as a shareholder, within a reasonable time after its incorporation, the number of shares specified in the application as being the number of shares to be issued to that person; and

(b) in the case of an amalgamated company, issue to each person entitled to a share or shares, in accordance with the amalgamation proposal, the share or shares to which that person is entitled, within reasonable time after the amalgamation comes into effect.

Issue of shares on incorporation and amalgamation

**147.** Subject to this Act and the articles of a company, the board of directors may, issue shares to any person and in any number as the board considers appropriate.

Issue of other shares

**148.** (1) A shareholder may forfeit or surrender shares to the company in accordance with the articles.

Forfeiture and surrender of shares

(2) If a member fails to pay a call on shares, the member may, subject to the articles, forfeit the shares to the company.

(3) The Registrar shall register a forfeiture or surrender of shares lodged in the prescribed manner and form.

**149.** (1) The board of directors may, subject to a special resolution of the shareholders, allot shares of the company.

Return on allotment of shares

(2) The company shall, within ten days of the allotment of shares, lodge, with the Registrar, a notice in the prescribed form, accompanied by the special resolution for the allotment of the shares by the company.

(3) If a company fails to comply with this section, each officer of the company commits an offence.

**150.** (1) A company may, subject to confirmation by the Court in accordance with subsection (3), if authorised by its articles, by special resolution, reduce its share capital in any manner, and may, in particular—

Reduction of share capital

(a) extinguish or reduce the liability on any of its shares;

(b) with or without extinguishing or reducing liability on any of its shares—

- (i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or
- (ii) pay off any paid-up share capital which is in excess of the wants of the company;
- (c) accept the surrender of shares by any of its shareholders; and

may, where necessary, reduce the amount of its shares accordingly, except that the share capital shall not be reduced below the prescribed minimum.

(2) The company shall, not less than thirty days before passing the resolution to reduce the share capital in accordance with subsection (1), issue a notice, of the proposed reduction, in a daily newspaper of general circulation in Zambia.

(3) The company shall, within twenty-one days after passing the resolution to reduce its share capital, apply to the Court for an order confirming the reduction.

(4) The company shall, where the Court confirms a reduction of the company share capital in accordance with subsection (3), within fourteen days of the confirmation, give notice of the reduction to the Registrar, in the prescribed manner and form, specifying the amount of the reduction and the reduced amount of its share capital.

(5) The Registrar shall, on receipt of the notice referred to in subsection (4), together with the prescribed fee, issue the company with a replacement certificate of share capital.

(6) A company shall not take an action to—

- (a) extinguish or reduce liability in respect of an amount unpaid on a share; or
- (b) reduce its share capital for any purpose, other than for declaring that its share capital is reduced by an amount that is not represented by the value of its assets;

unless there are reasonable grounds on which the directors may determine that, immediately after the taking of such action, the company will be able to satisfy the solvency test.

(7) This section shall, unless the Court directs otherwise, apply to any reduction of share capital if the—

- (a) proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital; or
- (b) payment to any shareholder of any paid-up share capital.

(8) The Court may direct that subsections (12) and (13) do not apply to a specified class or classes of creditors.

(9) If subsection (7) is not applicable, subsections (12) and (13) do not apply unless the Court directs that they apply.

(10) A company may agree, in writing, with a creditor that the company shall not reduce its share capital—

(a) below a specified amount without the prior consent of the creditor; or

(b) unless specified conditions are satisfied at the time of the reduction.

(11) A resolution to reduce the share capital passed in breach of an agreement, referred to in subsection (10), is invalid.

(12) A creditor of the company, who on a date fixed by the Court, is entitled to any debt or claim which the creditor would be entitled to under distributions made in a winding up, is entitled to object to the reduction.

(13) The Court shall settle a list of creditors entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of the creditors and the nature and amount of their debts or claims, and may publish notices fixing a day within which creditors, not yet entered on the list, shall lose their right to object, if they have not presented a claim to be entered on the list.

(14) The Court may, where a creditor on the list referred to in subsection (13), fails to consent to the reduction, dispense with the consent of that creditor, if the company secures payment of that creditor's debt or claim by appropriating—

(a) the full amount of the debt or claim, if the company admits the full amount of the debt or claim, or undertakes to provide for the debt or claim; or

(b) an amount fixed by the Court, if the company fails to 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.

**151.** (1) The Court may make an order confirming the reduction of share capital, if satisfied that every creditor of the company who is entitled to object to the reduction—

(a) consented to the reduction; or

(b) the creditor's debt or claim has been discharged, determined or secured.

Confirmation  
of reduction  
by Court

(2) The Court may, on making an order in accordance with subsection (1)—

(a) direct that the company shall, during a period specified in the order, add to its name, as the last words thereof, the words “ and reduced ”; or

(b) require the company to publish—

(i) a notice of the reduction, in the prescribed form, on receipt of the replacement certificate of share capital; or

(ii) the reasons for the reduction or such other information, with regard to the reduction, as the Court may consider expedient for purposes of giving proper information to the public.

(3) Where a company is ordered to add to its name the words “ and reduced ” as specified in subsection (2)(a), those words shall, until the expiry of the period specified in the order, be treated as part of the name of the company.

Consideration  
for shares

**152.** (1) The consideration for issue of a share may be in the form of cash, promissory notes, contracts for future services, real or personal property, or other securities of the company.

(2) A shareholder is not liable to pay or provide any consideration in respect of an issue of shares unless the—

(a) articles of the company specify the consideration to be paid or provided for those shares; or

(b) shareholder is liable to pay or provide consideration for those shares pursuant to a pre-incorporation contract or a contract entered into after the incorporation of the company.

Consideration  
to be  
determined  
by board

**153.** (1) The board of directors shall, before issuing shares in accordance with section 147—

(a) determine the consideration for, and the terms on which, the shares shall be issued;

(b) if the shares are to be issued for consideration other than cash, determine the reasonable present cash value of the consideration; and

(c) resolve that the—

(i) consideration for, and terms of, the issue are fair and reasonable to the company and to all existing shareholders; and

(ii) present cash value of the consideration to be paid for the issue of the shares is not less than the amount to be credited for the issue of the shares.

(2) The directors who vote in favour of a resolution, required by subsection (1), shall sign a declaration—

- (a) stating the consideration for, and the terms of, the issue;
- (b) describing the consideration in sufficient detail to identify it;
- (c) where a present cash value has been determined in accordance with subsection (1) (b), stating the value and basis for assessing it;
- (d) stating that, in their opinion, the consideration for and terms of issue are fair and reasonable to the company and to all existing shareholders; and
- (e) if the shares are to be issued other than for cash, stating that, in their opinion, the present cash value of the consideration to be provided for the issue of the shares is not less than the amount to be credited for the issue of the shares.

(3) The board of directors shall, before the issued shares are credited as fully or partly paid up, other than for cash—

- (a) determine the reasonable present cash value of the consideration; and
- (b) resolve that, in its opinion, the present cash value of the consideration is—
  - (i) fair and reasonable to the company and to all existing shareholders; and
  - (ii) not less than the amount to be credited in respect of the shares.

(4) The directors who vote in favour of a resolution, required by subsection (3), shall sign a declaration—

- (a) describing the consideration in sufficient detail to identify it;
- (b) specifying the present cash value of the consideration and the basis for assessing it; and
- (c) stating that the present cash value of the consideration is—
  - (i) fair and reasonable to the company and to all existing shareholders; and
  - (ii) not less than the amount to be credited in respect of the shares.

(5) The board of directors shall, deliver copies of the declarations, made in accordance with subsections (2) and (4), to the Registrar for registration, within ten days of the declarations being signed.

(6) For purposes of this section, shares that are, or are to be, credited as paid up, whether wholly or partly, as part of an arrangement that involves the transfer of property or the provision of services and an exchange of cash or cheques or other negotiable instruments, whether simultaneously or not, shall be treated as paid up other than in cash to the value of the property or services.

(7) A director who fails to comply with this section commits an offence.

(8) Nothing in this section applies to the issue of shares in a company on the—

(a) conversion of convertible securities; or

(b) exercise of an option to acquire shares in the company.

(9) If the board of a company fails to comply with subsection (5), every director commits an offence.

Exceptions  
to  
consideration  
for shares

**154.** Section 152 shall not apply to the—

(a) issue of shares that are fully paid up from the reserves of a company to all shareholders of the same class in proportion to the number of shares held by each shareholder;

(b) consolidation and division of the shares or any class of shares in a company in proportion to those shares or the shares in that class; and

(c) sub-division of the shares or any class of shares in a company in proportion to those shares or the shares in that class.

Consideration  
to issue of  
options and  
convertible  
securities

**155.** (1) The board of directors shall, before issuing any securities that are convertible into shares in the company or any options to acquire shares in the company—

(a) determine the consideration payable with respect to the convertible securities or options and, in either case, the shares and the terms on which the shares shall be issued;

(b) if the shares are to be issued for consideration, other than cash, determine the reasonable present cash value of the consideration;

- 
- (c) resolve that the consideration payable and the terms of the issue of the convertible securities or options and, in either case, the shares are fair and reasonable to the company and to all existing shareholders; and
- (d) if the shares are to be issued, other than for cash, resolve that the present cash value of the consideration to be provided is not less than the amount to be credited for the issue of the shares.
- (2) The directors who vote in favour of a resolution, required by subsections (1)(c) and (d), shall make a declaration—
- (a) stating the consideration for, and the terms of the issue of, the convertible securities or options and, in either case, the shares;
- (b) describing the consideration in sufficient detail to identify it;
- (c) where a present cash value has been determined, in accordance with subsection (1) (b), stating that value and the basis for assessing it;
- (d) stating that the consideration for and terms of issue of the convertible securities or options and, in either case, the shares are fair and reasonable to the company and to all existing shareholders; and
- (e) if the shares are to be issued, other than for cash, stating that the present cash value of the consideration to be provided is not less than the amount to be credited for the issue of the shares.
- (3) The board of directors shall within ten days of the declarations being signed, deliver copies of the declarations, made in accordance with subsections (2) (d) and (e), to the Registrar, in the prescribed form, for registration.
- (4) For purposes of this section, shares that are to be credited as paid up, whether wholly or partly, as part of an arrangement that involves the transfer of property or provision of services and an exchange of cash or cheques or other negotiable instruments, whether simultaneously or not, shall be treated as paid up, other than in cash, to the value of the property or services.
- (5) A director, who fails to comply with subsection (2), commits an offence.
- (6) If the board of directors fails to comply with subsection (3), every director of the company commits an offence.

- Subsequent issue of shares
- 156.** (1) The board of directors shall not, without the consent of a shareholder, issue new shares that increase the liability of that shareholder to the company
- (2) Any issue of shares that is done contrary to subsection (1) is void.
- When share is issued
- 157.** A share shall be considered issued when the name of the holder is entered on the share register of the company.
- Board to authorise distribution of dividends
- 158.** (1) Subject to this Act and the articles, the board of directors may, if satisfied that the company shall immediately after a distribution of dividends satisfy the solvency test, authorise a distribution of dividends by the company, in an amount stated, and to a shareholder that may be entitled.
- (2) The directors who vote in favour of a distribution of dividends shall sign a declaration stating that, in their opinion the company shall immediately after the distribution satisfy the solvency test and specifying the grounds for that opinion.
- (3) If, after a distribution of dividends is authorised but before it is made, the board of directors ceases to be satisfied that the company shall, immediately after the distribution is made, satisfy the solvency test, a distribution made by the company shall be considered not to have been authorised.
- (4) In applying the solvency test for the purposes of this Act—
- (a) debts include fixed preferential returns on shares ranking ahead of those in respect of which a distribution is made, except where that fixed preferential return is expressed in the articles, as being subject to the power of the directors to make distributions, but does not include debts arising by reason of the authorisation; and
- (b) liabilities include the amount that would be required, if the company were to be removed from the Register after the distribution, to repay all fixed preferential amounts payable by the company to shareholders at that time, or on earlier redemption, except where such fixed preferential amounts are expressed in the articles as being subject to the power of directors to make distributions, subject to paragraph (a), excluding dividends payable in the future.
- (5) A director who fails to comply with subsection (2) commits an offence.



- 
- 159.** A company shall not distribute dividends to shareholders, except out of the profits arising or accumulated from the business of the company. Dividends to be paid out of profits
- 160.** The board of directors may, subject to the articles, issue shares to shareholders who have agreed to accept the issue of shares, wholly or partly, in lieu of a proposed dividend or proposed future dividends if— Shares in lieu of dividends
- (a) the right to receive shares, wholly or partly, in lieu of the proposed dividend or proposed future dividends has been offered to all shareholders of the same class on the same terms;
  - (b) all shareholders elected to receive the shares in lieu of the proposed dividend and relative voting or distribution rights, or both, would be maintained;
  - (c) the shareholders to whom the right is offered are afforded a reasonable opportunity of accepting it;
  - (d) the shares issued to each shareholder are issued on the same terms and subject to the same rights as the shares issued to all shareholders in that class who agree to receive the shares; and
  - (e) the provisions governing issue of shares are complied with by the board of directors.
- 161.** (1) A company may recover a distribution of dividends made to a shareholder at a time when the company did not, immediately after the distribution, satisfy the solvency test unless the— Recovery of distributions of dividends
- (a) shareholder—
    - (i) received the distribution in good faith and without knowledge of the company's failure to satisfy the solvency test; or
    - (ii) has altered the shareholder's position in reliance on the validity of the distribution; and
  - (b) Court is satisfied that it would not be just or equitable to require repayment in full or in part, from the shareholder.
- (2) If, in a distribution of dividends made to shareholders—
- (a) the procedure set out in this Act has not been followed; or
  - (b) reasonable grounds for believing that the company would satisfy the solvency test, in accordance with this Act, did not exist at the time the declaration was signed;

a director who failed to take reasonable steps to ensure compliance with the procedure or signed the declaration, as the case may be, shall be personally liable to the company, to repay to the company the portion of the dividends distributed that cannot be recovered from the shareholders.

(3) If it is determined that a distribution of dividends was not authorised in accordance with this Act, a director who—

(a) ceased, after authorisation but before the making of the distribution, to be satisfied on reasonable grounds that the company would satisfy the solvency test immediately after the distribution is made; and

(b) failed to take reasonable steps to prevent the distribution being made;

shall be personally liable to repay to the company so much of the dividends distributed as cannot be recovered from shareholders.

(4) The Court may, in an action against a director or shareholder, in accordance with this section, if satisfied that the company could, by making a distribution of dividends of a lesser amount, have satisfied the solvency test—

(a) permit the shareholder to retain; or

(b) relieve the director from liability in respect of;

an amount equal to the value of any dividends distributed that could properly have been made.

Reduction of shareholder's liability and distribution

**162.** (1) If a company proposes to alter its articles, acquire shares issued by itself or redeem shares, in a manner which would cancel or reduce the liability of a shareholder to the company in relation to a share held prior to that alteration, acquisition, or redemption, the proposed cancellation or reduction of liability shall be treated for purposes of—

(a) sections 159 and 160, as if it were a dividend; and

(b) section 161, as if it were a distribution of dividends.

(2) Where a company alters its articles, acquires shares or redeems shares in a manner which cancels or reduces the liability of a shareholder to the company, in relation to a share held prior to that alteration, acquisition or redemption, that cancellation or reduction of liability shall be treated for purposes of this section as a distribution of the amount by which that liability was reduced.

(3) If the liability of a shareholder of an amalgamating company in relation to a share held before the amalgamation is—

- (a) greater than the liability of that shareholder to the amalgamated company, in relation to a share or shares into which that share is converted; or
- (b) cancelled by the cancellation of that liability;

the reduction of liability effected by the amalgamation shall be treated for the purposes of this Act, as a distribution by the amalgamated company of the amount by which that liability was reduced to that shareholder, whether or not that shareholder becomes a shareholder of the amalgamated company.

**163.** (1) Subject to sections 170, 171 and 172, a company other than a public limited company, may by special resolution acquire its own shares for a consideration as specified in this section.

Company  
may acquire  
fully  
paid-up  
shares

(2) The board of directors shall, within fourteen days of acquisition of the shares, lodge with the Registrar a notice in the prescribed form of such acquisition accompanied by a declaration by the directors that the company shall remain solvent after the acquisition.

(3) A member or creditor of the company or the Registrar may apply to the Court, prior to the acquisition, for an annulment of the special resolution, made in accordance with subsection (1).

(4) A director who makes a declaration of solvency as referred to in subsection (2), without reasonable grounds for believing that the company will remain solvent after the acquisition commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

(5) If the board of directors fails to comply with subsection (2), every director of the company commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

**164.** (1) Subject to section 162, a company may purchase or acquire shares issued by the company if it is expressly permitted to do so by its articles.

Acquisition  
of  
company's  
own shares

(2) Nothing in this Act limits or affects—

- (a) an order of the Court that requires a company to purchase or acquire its own shares; or
- (b) any provision of this Act which relates to the right of a shareholder to require a company to purchase shares.

Board may  
make offer  
to acquire  
shares

**165.** (1) The board of directors may make an offer to acquire shares issued by the company, if the offer is to—

(a) all shareholders to acquire a proportion of their shares that—

(i) if accepted, would not affect relative voting and distribution rights; and

(ii) give an opportunity to accept the offer; or

(b) one or more shareholders to acquire shares and—

(i) to which all shareholders have consented in writing; or

(ii) which is expressly permitted by the articles and is made in accordance with the procedure set out in this Act.

(2) Where an offer is made, in accordance with subsection (1) (a)—

(a) the offer may permit the company to acquire additional shares from a shareholder to the extent that another shareholder does not accept the offer or accepts the offer only in part; and

(b) in which the number of additional shares exceeds the number of shares that the company is entitled to acquire, the number of additional shares shall be reduced proportionately.

(3) The board of directors may make an offer, in terms of subsection (1), if it has resolved that the—

(a) acquisition is in the best interests of the company and its shareholders;

(b) terms of the offer and the consideration offered for the shares are fair and reasonable to the company its shareholders; and

(c) board is not aware of any information that has not been disclosed to the shareholders—

(i) which is material to an assessment of the value of the shares; and

(ii) as a result of which the terms of the offer and consideration offered for the shares are unfair to shareholders accepting the offer.

(4) The resolution, required by subsection (3), shall set out in full the reasons for the board of director's resolutions.

(5) The directors who vote in favour of a resolution, required by subsection (3), shall sign a declaration as to the matters set out in that subsection.

(6) The board of directors shall not make an offer in terms of subsection (1) if, after the passing of a resolution required by subsection (3) but before the making of the offer to acquire the shares, the board—

(a) ceases to be satisfied that the—

(i) acquisition is in the best interest of the company; and

(ii) terms of the offer and the consideration offered for the shares are fair and reasonable to the company; or

(b) becomes aware of information that has not been disclosed to the shareholders—

(i) which is material to an assessment of the value of the shares; or

(ii) as a result of which the terms of the offer and consideration offered for the shares would be unfair to the shareholders accepting the offer.

(7) A director who fails to comply with subsection (5) commits an offence.

**166.** (1) The board of directors may make an offer to acquire shares in terms of this Act, if the board resolves that the—

(a) acquisition shall benefit the remaining shareholders; and

(b) terms of the offer and the consideration offered for the shares are fair and reasonable to the remaining shareholders.

Special offers to acquire shares

(2) The resolution to be made by the board of directors as specified in subsection (1), shall set out, in full, the reasons for the board's resolutions.

(3) The directors who vote in favour of a resolution, made in accordance with subsection (1), shall sign a declaration as to the matters set out in that subsection.

(4) The board of directors shall not make an offer, as specified in subsection (1), if, after the passing of a resolution required by that subsection, but before the making of the offer to acquire the shares, the board ceases to be satisfied as to the matters resolved in terms of that subsection.

(5) The board of directors shall, before an offer is made in accordance with subsection (1), send to each shareholder a disclosure document that complies with subsection (3).

(6) An offer, in accordance with subsection (1), shall be made not less than fourteen days and not more than twelve months after the disclosure document, specified in subsection (5), has been sent to each shareholder.

(7) Subsections (5) and (6) shall not apply to an offer to a shareholder by a company, if the offer is in relation to shares quoted on a registered securities exchange market and the number of those shares is less than the minimum holding of shares prescribed by that exchange.

(8) A shareholder or the company may apply to the Court for an order restraining the proposed acquisition of shares on the grounds that—

- (a) it is not in the best interest of the company or for the benefit of the remaining shareholders; or
- (b) the terms of the offer and the consideration offered for the shares are not fair or reasonable to the company or the remaining shareholders.

(9) A director who fails to comply with subsection (3) commits an offence.

(10) If the board of directors fails to comply with subsection (5), every director of the company commits an offence.

Disclosure document

**167.** For the purposes of section 166, a disclosure document is a document that sets out the—

- (a) nature and terms of an offer, and if made to specified shareholders, the names of those shareholders;
- (b) nature and extent of any interest of a director in any share which is the subject of the offer; and
- (c) text of the resolution required by section 166 (2), together with such further information and explanation as may be necessary to enable a shareholder to understand the nature and implications, for the company and its shareholders, of the proposed acquisition of shares.

Securities exchange acquisitions subject to prior notice to shareholders

**168.** (1) The board of directors may make offers on one or more securities exchanges to all shareholders to acquire shares, if the board resolves—

- (a) to acquire not more than a specified number of shares, by means of offers on one or more securities exchanges;

- 
- (b) that the acquisition is in the best interest of the company and its shareholders;
  - (c) that the terms of the offer and the consideration offered for the shares are fair and reasonable to the company and its shareholders; and
  - (d) that the board is not aware of any information that has not been disclosed to shareholders—
    - (i) which is material to an assessment of the value of the shares; and
    - (ii) as a result of which the terms of the offer and consideration offered for the shares are unfair to shareholders accepting the offer.

(2) The resolution to be made, as specified in subsection (1), shall set out in full the reasons for the board's resolution.

(3) The directors who vote in favour of a resolution, made in accordance with subsection (1), shall make a declaration as to the matters set out in that subsection.

(4) A director, who is authorised by a resolution of the board of directors, may make any of the offers specified in subsection (1).

(5) An offer, referred to in subsection (1), shall not be made if—

- (a) the number of the shares to be acquired, when aggregated with any shares already acquired, would exceed the maximum number of shares the board of directors resolved to acquire in accordance with that subsection.
- (b) after the passing of a resolution, required by that subsection, but before the making of the offer to acquire the shares, the board of directors ceases to be satisfied that the—
  - (i) acquisition is in the best interest of the company and its shareholders; and
  - (ii) terms of the offer and the consideration offered for the shares are fair and reasonable to the company and its shareholders; or
- (b) the board of directors becomes aware of any information specified in subsection (1)(d).

(6) The board of directors shall, before an offer is made, in accordance with subsection (1), send to each shareholder a disclosure document that complies with sections 166 and 167.

(7) The offer, made in accordance with subsection (1), shall be made not less than fourteen days and not more than twelve months after the disclosure document, specified in subsection(6), has been sent to each shareholder.

(8) A shareholder or the company may apply to the Court for an order restraining a proposed acquisition of shares on the grounds that—

- (a) it is not in the best interest of the company or the shareholders; or
- (b) the terms of the offer and, if it is disclosed, the consideration offered for the shares are not fair or reasonable to the company or its shareholders.

(9) A director who fails to comply with subsection (3), commits an offence.

(10) If the board of directors fails to comply with subsection (5) every director commits an offence.

Disclosure document for securities exchange acquisitions

**169.** (1) For purposes of section 168, a disclosure document is a document that sets out the—

- (a) maximum number of shares that the board of directors resolves to acquire;
- (b) nature and terms of the offer made;
- (c) nature and extent of any relevant interest of a director in the shares to be acquired; and
- (d) text of the resolution required by section 168, together with such further information and explanation as may be necessary to enable a shareholder to understand the nature and implications, for the company and its shareholders, of the proposed acquisition of shares.

(2) Nothing in subsection (1) shall require the board of directors to disclose the consideration the board of directors proposes to offer for the acquisition of the shares.

Securities exchange acquisitions not subject to prior notice to shareholders

**170.** (1) Despite section 163, the board of directors may acquire shares on a securities exchange from its shareholders if—

- (a) prior to the acquisition, the board resolves that the—
  - (i) acquisition is in the best interest of the company and the shareholders;
  - (ii) terms of, and consideration for, the acquisition are fair and reasonable to the company; and



- (iii) board is not aware of any information that is not available to shareholders, which is material to an assessment of the value of the shares and as a result of which, the terms of, and consideration for, the acquisition are unfair to shareholders from whom any share is acquired; and
- (b) the number of the shares to be acquired, when aggregated with any other shares acquired pursuant to this section in the preceding twelve months, does not exceed five percent of the shares in the same class as at the date twelve months prior to the acquisition of the shares.
- (2) The board of directors shall, within fourteen days after shares are acquired, send to each securities exchange on which the shares of the company are listed, a notice in the prescribed form containing the—
- (a) class and number of shares acquired;
- (b) consideration paid or payable for the shares acquired; and
- (c) identity of the seller, if known to the company and if the seller was not the beneficial owner, the identity of the beneficial owner.
- (3) The board of directors shall, within three months after the shares are acquired, send to each shareholder a notice in the prescribed form containing the particulars referred to in subsection (2).
- (4) A director who is authorised by a resolution of the board, may make an acquisition specified in subsection (1).
- (5) If the board of directors fails to comply with subsection (2) or subsection (3), every director commits an offence.

**171.** (1) Shares that are acquired by a company other than in accordance with this Act, shall be considered to be cancelled immediately on acquisition.

Cancellation  
of shares  
repurchased

(2) For purposes of subsection (1), shares shall be acquired on the date on which the company would, if it were not for this section, become entitled to exercise the rights attached to the shares.

(3) On the cancellation of a share, in accordance with this section, the—

- (a) rights and privileges attached to that share shall expire; or
- (b) share may be reissued in accordance with this Part.

Enforceability  
of contract  
to  
repurchase  
shares

**172.** (1) A contract with a company, providing for the acquisition by the company of its shares, shall be specifically enforceable against the company, unless the performance of the contract by the company would result in the company being unable to satisfy the solvency test.

(2) A company shall have the burden of proving that performance of the contract would result in the company being unable to satisfy the solvency test.

(3) A party to a contract with a company, for purposes of this section, shall retain the status of a claimant entitled to be paid as soon as the company is lawfully able to pay or, prior to the removal of the company from the Register, to be ranked subordinate to the rights of creditors but in priority to the other shareholders, until a company has fully performed a contract referred to in subsection (1).

Company  
may hold its  
own shares

**173.** (1) A share acquired by a company, shall not be considered to be cancelled, as provided by section 171, if the—

(a) articles expressly permit the company to hold its own shares;

(b) board of directors resolves that the share shall not be cancelled on acquisition; and

(c) number of the shares acquired, when aggregated with shares of the same class held by the company in terms of this section at the time of the acquisition, does not exceed five percent of the shares of that class previously issued by the company, excluding shares previously considered to be cancelled in accordance with section 171.

(2) A share acquired by a company, in accordance with section 171, which, as provided in this section, is not considered to be cancelled, shall be held by the company in itself.

(3) The board of directors may, by resolution, cancel a share that the company holds in itself.

Suspension  
of rights and  
obligations  
attaching to  
shares held  
by company  
in itself

**174.** (1) The rights and obligations attaching to a share held by a company in itself, in accordance with this Act, shall not be exercised by or against the company while it holds the share.

(2) Despite the generality of subsection (1), a company shall not, while holding a share in itself, in accordance with this Act—

(a) exercise any voting rights attaching to the share; or

(b) make or receive any distribution authorised or payable in respect of the share.

**175.** (1) Section 189 shall apply to the transfer of a share held by a company in itself, as if the transfer was an issue of the share in accordance with section 147.

Reissue of shares held by company in itself

(2) Subject to subsection (1), the transfer of a share by a company in itself is not subject to this Act or the articles in relation to the issue of shares, except to the extent that the articles expressly apply to the transfer of shares.

**176.** (1) For purposes of this Act, a share shall be redeemable if the articles—

Redeemable shares

- (a) provide for the company to issue redeemable shares; or
- (b) the terms of issue of the share provide for the redemption of that share by the company—
  - (i) at the option of the company or the holder of the share; or
  - (ii) on a date specified in the articles or the terms of issue of the share.

(2) The consideration for the redemption of a share, in accordance with subsection (1), shall be—

- (a) specified;
- (b) calculated by reference to a formula; or
- (c) required to be fixed by a suitably qualified person who is not associated with or interested in the company.

**177.** (1) A company shall not exercise an option to redeem shares, unless the option is exercised in relation to—

Redemption at option of company

- (a) all shareholders of the same class and in a manner that shall not affect relative voting and distribution rights;
- (b) one or more shareholders and—
  - (i) all shareholders have consented in writing; or
  - (ii) the option is expressly permitted by the articles and is exercised in accordance with the relevant procedure set out in this Act.

(2) A company shall not exercise an option to redeem shares unless, before the exercise of the option, the board of directors has resolved that the—

- (a) redemption of the shares is in the best interest of the company;
- (b) consideration for the redemption of the shares is fair and reasonable to the company; and

(c) board is satisfied, on reasonable grounds, that the company shall, immediately after the share is redeemed, satisfy the solvency test.

(3) The resolution, required to be made as specified in subsection (2), shall set out, in full, the grounds for the board of director's resolution.

(4) The directors who vote in favour of a resolution, made in accordance with subsection (2), shall sign a declaration as to the matters set out in that subsection.

(5) A company shall not exercise an option to redeem shares, in terms of subsection (1) if, after the passing of a resolution made in accordance with this section but before the exercise of the option to redeem the shares, the board of directors ceases to be satisfied that the—

(a) redemption of the shares is in the best interest of the company; or

(b) consideration for the exercise of the option is fair and reasonable to the company.

(6) Section 160 shall apply, in relation to the redemption of a share at the option of the company, with such modifications as may be necessary.

(7) A director who fails to comply with subsection (4) commits an offence.

Special  
redemption  
of shares

**178.** (1) A company may exercise an option to redeem shares, in accordance with section 176, if the board of directors resolves that the—

(a) redemption of the shares is of benefit to the remaining shareholders; and

(b) consideration for the redemption of the shares is fair and reasonable to the remaining shareholders.

(2) The resolution to be made as specified in subsection (1), shall set out, in full, the grounds for the directors' resolution.

(3) The directors who vote in favour of a resolution, made in accordance with subsection (1), shall sign a declaration as to the matters set out in that subsection.

(4) A company shall not exercise an option to redeem shares, as provided by section 176, if, after the passing of a resolution in accordance with subsection (1), but before the option is exercised, the board of directors ceases to be satisfied that the—

- (a) redemption of the shares is of benefit to the remaining shareholders; or
- (b) consideration for the redemption of the shares is fair and reasonable to the remaining shareholders.

(5) The board of directors shall, before exercising the option referred to in subsection (1), send to each shareholder, a disclosure document that complies with section 179, after the resolution is passed.

(6) The option, referred to in subsection (1), shall be exercised not less than fourteen and not more than thirty days after the disclosure document has been sent to each shareholder.

(7) A shareholder or the company may apply, to the Court, for an order restraining the proposed exercise of an option on the grounds that—

- (a) it is not in the best interest of the company or to the benefit of the remaining shareholders; or
- (b) the consideration for the redemption is not fair or reasonable to the company or the remaining shareholders.

(8) A director who fails to comply with subsection (3) commits an offence.

(9) If the board of directors fails to comply with subsection (5), every director of the company commits an offence.

**179.** For purposes of section 177, a disclosure document is a document that sets out the—

Disclosure document

- (a) nature and terms of the redemption of the shares, and if the option to redeem the shares is to be exercised in relation to specified shareholders, the names of those shareholders; and
- (b) text of the resolution specified in that section, together with such further information and explanation as may be necessary to enable a reasonable shareholder to understand the nature and implications, for the company and its shareholders, of the proposed redemption.

**180.** (1) Where a company redeems shares, in accordance with section 177, the redeemed shares shall be considered to be cancelled immediately on redemption.

Cancellation of redeemed shares

(2) On the cancellation of a share in terms of this section the—

- (a) rights and privileges attached to that share shall expire; and

(b) share may be reissued in accordance with this Part.

Redemption  
at option of  
shareholder

**181.** (1) Subject to this section, if a share is redeemable at the option of the shareholder, and the holder gives proper notice, in the prescribed form, to the company requiring the company to redeem the share—

(a) the company may redeem the share on the date specified in the notice, or if no date is specified, on the date of receipt of the notice;

(b) the share shall be considered to be cancelled on the date of redemption; and

(c) from the date of redemption, the former shareholder ranks as an unsecured creditor of the company for the consideration payable on redemption.

(2) A redemption in terms of this section is not a distribution for the purposes of section 158.

Redemption  
on fixed date

**182.** (1) Subject to this section, if a share is redeemable on a specified date the—

(a) company shall redeem the share on that date;

(b) share shall be deemed to be cancelled on that date; and

(c) former shareholder ranks as an unsecured creditor of the company for the consideration payable on redemption from that date.

(2) A redemption in accordance with this section is not a distribution for the purposes of sections 157 and 158.

Restriction  
on financial  
assistance in  
acquisition  
of shares

**183.** (1) Subject to this Part, a company shall not give financial assistance to a person for purposes of acquiring shares in the company.

(2) Subject to this Part, where a person has acquired shares in a company and liability has been incurred by that person or any other person, for the purpose of the acquisition, the company shall not give any financial assistance, directly or indirectly, for the purpose of reducing or discharging the liability incurred.

(3) This section shall not prohibit—

(a) a distribution of a company's assets by way of dividend lawfully made or a distribution made in the course of winding up of the company;

(b) the allotment of bonus shares;

(c) anything done in terms of an order of the Court, as specified in this Act;

(d) anything concerning a scheme of arrangement as provided in the Corporate Insolvency Act, 2017;

Act No. 9 of  
2017

(e) anything done in accordance with an arrangement made between a company and its creditors which is binding on the creditors as provided in the Corporate Insolvency Act, 2017;

Act No. 9 of  
2017

(f) a reduction of a company's share capital confirmed by order of the Court, as specified in this Part; or

(g) redemption of a share as specified in this Part.

(4) This section does not prohibit the—

(a) lending of money by a company in the ordinary course of its business, if the lending of money is part of the ordinary business of the company;

(b) provision by a company, in accordance with an employee's share scheme, of money for acquisition of fully paid-up shares in the company to be held by, or for the benefit of, employees of the company, including any director holding a salaried position in the company; or

(c) making, by a company, of loans to persons, other than directors, employed in good faith by the company, with a view to enabling those persons acquire fully paid-up shares, other than as nominees of the company.

(5) A public company shall not, in giving financial assistance to a person, in accordance with subsection (4), reduce its net assets, other than distributable profits.

(6) A reference in this section to “ a person incurring any liability” includes a reference to a person changing that person's financial position by making any agreement or arrangement, whether enforceable or unenforceable and whether made on the person's own account or with any other person, or by any other means.

(7) If a company fails to comply with subsection (1) or (2), the company and each officer in default commit an offence and are liable, on conviction, to a fine not exceeding two hundred thousand penalty units or, in the case of each officer in default, to imprisonment for a period not exceeding two years, or to both.

**184.** (1) A private company may give financial assistance for the acquisition of shares in—

Relaxation of  
restrictions  
for private  
companies

(a) itself as specified in with this section;

(b) another private company that is its holding company as specified in this section, unless it is the subsidiary of a—

- (i) body corporate not incorporated in Zambia; or
  - (ii) public company;
- that is also a subsidiary of the holding company concerned.

(2) Financial assistance shall not be given, in accordance with this section, unless the—

- (a) company proposing to give the financial assistance is a wholly owned subsidiary; or
- (b) giving of the assistance is approved by a special resolution of the company.

(3) A company shall not give financial assistance for the acquisition of shares in its holding company, unless approved by special resolution of —

- (a) the holding company; and
- (b) any other company which is both the company's holding company and a subsidiary of the holding company, referred to in paragraph (a), other than a wholly owned subsidiary.

(4) Where the board of directors is proposing to give financial assistance and, where the shares to be acquired are shares in its holding company, the boards of directors of the companies referred to in subsections (3)(a) and (b) shall, not more than seven days before the special resolution is put to a meeting, make a statutory declaration in the prescribed form complying with subsection (5), and shall make the declaration available, together with the auditors' report, for inspection by members at a meeting at which the resolution is to be voted on.

(5) A statutory declaration, for the purposes of subsection (4), shall—

- (a) contain particulars of the assistance to be given and of the business of the company of which they are directors, as may be prescribed;
- (b) identify the person to whom the assistance is to be given;
- (c) state that, to the best of the board's knowledge and belief, the company shall be able to pay its debts—
  - (i) in full, within twelve months of the commencement of the winding up of the company, if it is intended to commence the winding up of the company within twelve months of the date of the declaration; or



(ii) as they fall due during the year immediately following that date, in any other case.

(6) The board of directors shall, in forming its views for the purposes of the statutory declaration, take into account any liabilities of the company which the Court would be required by the Corporate Insolvency Act, 2017, in relation to winding up, to take into account in determining whether the company is insolvent.

Act No. 9 of  
2017

(7) The auditors' report, required by subsection (5), to accompany the statutory declaration shall—

- (a) be addressed to the directors who made the declaration; and
- (b) state that the auditors have enquired into the state of affairs of the company and are not aware of any thing to indicate that the opinion expressed by the directors in the declaration is unreasonable in all the circumstances.

(8) Where a special resolution is required by this section to be passed approving the giving of financial assistance, financial assistance shall not be given less than thirty days after the date on which the—

- (a) special resolution is passed; or
- (b) last of the resolutions is passed, where more than one such resolution is passed;

unless every member which passed the resolution who was entitled to vote on the resolution, or any of the resolutions, voted in favour of the resolution.

(9) Where a special resolution is passed by a company, in accordance with this section, an application may be made to the Court for the cancellation of that resolution, by not less than twenty percent of the members, being persons who did not consent to, or vote in favour of, the resolution, within twenty-one days after the making of the resolution.

(10) Where an application is made in accordance with subsection (9), for the cancellation of a special resolution made for purposes specified in this section, financial assistance shall not be given before the final determination of the application, unless the Court orders otherwise.

(11) Financial assistance shall not be given in terms of this section, more than sixty days after the date on which the—

- (a) directors of the company proposing to give the financial assistance made the statutory declaration required by subsection (4); or

(b) earliest of the declarations required by the subsection is made, where the company is a subsidiary and both its directors and the directors of any of its holding companies made such a declaration;

unless the court, on an application for the cancellation of any of the resolutions, orders otherwise.

(12) A company shall lodge with the Registrar, a statutory declaration referred to in subsection (4), together with the auditors' report and a copy of the special resolution, within twenty-one days after the—

(a) passing of the special resolution, if there was no application in terms of subsection (9); or

(b) Court's decision, if such an application was made but rejected by the Court.

(13) If a company fails to comply with subsection (12), the company and each officer of the company in default commit an offence and shall be liable on conviction to the general penalty specified in this Act.

(14) A director who makes a statutory declaration, for the purposes of this section, without having reasonable grounds for the opinion expressed in that declaration, commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding twelve months, or to both.

Holding  
companies  
and  
subsidiary  
companies

**185.** (1) For purposes of this section, the composition of a company's board of directors is controlled by another company, if more than half of the directors—

(a) of the other company is able, without the consent or concurrence of any other person, to appoint or remove a director; or

(b) a person's appointment as a director follows from the person's appointment as a director of the other company.

(2) Subject to this subsection, in determining whether the composition of a company's board of directors is controlled by another company, shares held or power exercisable—

(a) by a person—

(i) who is an effective nominee of the other company shall be deemed to be held or exercisable by the other company;

- (ii) by virtue of a debenture of the company or trust deed for securing any issue of debentures shall be disregarded; and
- (iii) only by way of security for the purposes of a transaction entered into in the ordinary course of business, shall be disregarded, if the ordinary business of the person includes the lending of money; or

(b) in a fiduciary capacity, shall be disregarded.

(3) For the purposes of this section, a member is the effective nominee of another company if the member is—

- (a) a nominee of the other company;
- (b) a subsidiary of the other company; or
- (c) nominated by a person who is an effective nominee of the other company, in accordance with paragraph (a) or (b).

**186.** (1) Subject to this section, a subsidiary shall not hold shares in its holding company.

Subsidiary may not hold shares in holding company

(2) An issue of shares by a holding company to its subsidiary is void.

(3) A transfer of shares in a holding company to its subsidiary is void.

(4) Despite subsection (1), where a company which holds shares in another company, becomes a subsidiary of the other company, the company may continue to hold the shares, but shall not exercise any voting rights attaching to the shares.

(5) Nothing in this section shall prevent a subsidiary from holding shares in its holding company, in the subsidiary's capacity as a personal representative or an assignee, unless the holding company or another subsidiary has a beneficial interest under a trust, other than an interest that arises by way of security, for the purposes of a transaction made in the ordinary course of business relating to the lending of money.

(6) This section shall apply to a nominee of a subsidiary in the same way it applies to the subsidiary.

**187.** (1) The board of directors shall issue to a shareholder, on request, a statement that sets out the—

Statement of shareholder's rights

- (a) class of shares held by the shareholder, the total number of shares of that class issued by the company, and the number of shares of that class held by the shareholder;

(b) rights, privileges, conditions and limitations, including restrictions on transfer and attaching to shares held by the shareholder; and

(c) relationship of the shares held by the shareholder to other classes of shares.

(2) The board of directors is not obliged to provide a shareholder with a statement if—

(a) a statement has been provided within the previous six months;

(b) the shareholder has not acquired or disposed of shares since the previous statement was provided;

(c) the rights attached to shares of the company have not been altered since the previous statement was provided; and

(d) there are special circumstances that make it reasonable for the board to refuse the request.

(3) A statement issued in accordance with this section, is not evidence of title to the shares or matters set out in it.

(4) A statement issued in accordance with this section, shall state in a prominent place that it is not evidence of title to the shares or of the matters set out in it.

(5) If the board of directors fails to comply with subsection (1), every director of the company commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand penalty units.

Transfer of  
shares

**188.** (1) Subject to the articles, fully paid-up shares in a company may be transferred by entry of the name of the transferee on the share and beneficial ownership register and evidenced by registration with the Registrar.

(2) For the purpose of transferring shares, a share transfer form signed by the present holder of the shares or by the personal representative of the present holder shall be delivered to—

(a) the company; or

(b) an agent of the company who maintains the share register in accordance with section 194.

(3) A share transfer form shall, where registration as holder of the shares imposes a liability to the company on the transferee, be signed by the transferee.

(4) The personal representative of a shareholder may transfer a share without being a shareholder at the time of transfer.

(5) A company shall, within twenty-one days of receipt of a share transfer form, in accordance with subsection (2) and, if applicable, subsection (3), enter or cause to be entered the name of the transferee on the share register as holder of the shares, unless—

- (a) the board of directors resolves, within that period, to refuse or delay the registration of the transfer, and the resolution sets out in full the reasons for doing so;
- (b) notice of the resolution, made in accordance with paragraph (a), is sent within seven days of the resolution being passed, to the transferor and the transferee, and lodged with the Registrar; and
- (c) this Act or the articles expressly permit the board of directors to refuse or delay registration for the reasons stated in the resolution.

(6) A transferee of shares, in a company, shall, within fourteen days of the transferee's name being entered on the share register, as specified in subsection (1), notify the Registrar in the prescribed form and pay a fee as may be prescribed.

(7) The prescribed form, referred to in subsection (6), shall be signed by both the transferor and the transferee.

(8) Subject to the articles, the board of directors may refuse or delay the registration of a transfer of shares, if the shareholder fails to pay to the company, an amount due in respect of those shares, either by way of consideration for the issue of the shares or in respect of sums payable by the shareholder in accordance with the articles.

(9) If a company fails to comply with subsection (5), the company and each officer in default, commits an offence and is liable, on conviction, to a fine not exceeding twenty thousand penalty units.

(10) A person who fails to comply with subsection (6) commits an offence.

**189.** (1) Subject to any limitation or restriction on the transfer of shares in the articles and this Act, shares in a company shall be transferable without restriction—

- (a) provided they are fully paid up; and
- (b) by a transfer in accordance with section 187.

Restrictions  
on  
transferability

(2) The articles of a private company shall not impose any restriction on the transferability of shares after they have been issued, unless all the shareholders have agreed in writing.

(3) The board of directors shall refuse to register a transfer of shares to any person who—

(a) is under eighteen years of age;

(b) has been declared by the Court or a court of competent jurisdiction of another country to be of unsound mind;  
or

(c) is an undischarged bankrupt.

Transmission  
of shares by  
operation of  
law

**190.** (1) Despite the articles, shares in a company may pass by operation of law.

(2) In the case of the death of a shareholder of a company the—

(a) survivor or survivors where the deceased was a joint holder; and

(b) personal representative of the deceased where the deceased was a sole holder or last survivor of joint holders;

shall be the only persons recognised by the company as having title to the deceased's interest in the shares.

(3) Nothing in this section shall release the estate of a deceased shareholder from liability in respect of a share with unpaid liability, whether the share was jointly held or not.

(4) A representative on whom the ownership of a share devolves, by reason of the person being the personal representative, receiver or assignee in bankruptcy of the holder or by operation of law may, on such evidence being produced as the board of directors may reasonably require—

(a) be registered as the holder of the share; or

(b) transfer the share to another person without first being registered as the holder of the share.

(5) The board of directors shall have the same right to decline or delay registration of a transfer by the representative as it would have had in the case of a transfer by the registered holder, but shall have no right to refuse registration of the representative.

(6) A representative or a transferee shall, prior to being registered as a member, be entitled to the same dividends, rights and remedies as if the representative were a member, except that the representative shall not, subject to an order by the Court made in accordance with this Act, be entitled to vote at a meeting of the company.

(7) The board of directors may give notice requiring the representative to elect to be registered as a member or to transfer the share, and if the notice is not complied with within ninety days, the company may suspend payment of all dividends or other moneys payable in respect of the share until the notice has been complied with.

**191.** (1) A company shall accept the production of any document which is by law sufficient evidence that the ownership of a share has been transmitted by operation of law.

Evidence of transmission of shares by operation of law

(2) A person to whom ownership of a share is transmitted, in accordance with section 190, shall, within fourteen days of the transmission of the share, notify the Registrar of the transmission in the prescribed manner and form.

(3) A person who fails to comply with subsection (2) is liable to an administrative penalty.

**192.** A company shall not have or claim a lien on shares on which there is no unpaid liability nor shall any lien extend to sums due from a shareholder, except in respect of the unpaid liability on the shares.

Company's lien on shares

**193.** (1) Subject to this section and to the articles, the board of directors may create and issue, whether in connection with the issue of any of the company's shares or otherwise, rights or options in favour of a director, officer or employee of the company or of any subsidiary of the company which entitle the holder to acquire shares of any class from the company, on such consideration, terms and conditions as may be fixed by the board of directors.

Rights and options to subscribe for share issue to directors, officers and employees

(2) The terms and conditions of rights or options, referred to in subsection (1), including the time within which and the value at which they may be exercised and any limitations on transferability, shall be incorporated in the instrument evidencing the rights or options.

(3) Where the board of directors proposes to issue rights or options to—

- 
- (a) one or more of the persons, referred to in subsection (1), as an incentive to continued service with the company or a subsidiary company; or
  - (b) an assignee on behalf of the persons, referred to in subsection (1);

the issue shall be authorised at a general meeting, by the passing of a special resolution, or shall be authorised by and be consistent with, a scheme adopted at a general meeting, by special resolution.

(4) If there are pre-emptive rights in any of the shares proposed to be issued, in accordance with subsection (3), the issue or scheme, as the case may be, shall be approved by the vote or written consent of the holders of more than fifty percent of the shares, who are entitled to exercise pre-emptive rights with respect to the shares, and the vote or written consent shall release the pre-emptive rights.

(5) In this section, a special resolution authorising the issue of rights or options, or a scheme adopted by special resolution, shall include the—

- (a) material terms and conditions upon which the rights or options are to be issued, including any restrictions on the number of shares that eligible individuals may have the right or option to acquire;
- (b) method of administering the scheme, in the case of a scheme;
- (c) terms and conditions of payment for shares in full or by instalments;
- (d) limitations on the transferability of the shares; and
- (e) voting and dividend rights to which the holders of the shares may be entitled.

(6) The terms and conditions referred to in subsection (5)(a), prior to the full payment for shares, shall not provide for a share certificate to be delivered to a shareholder or confer a right to vote in respect of such shares.

(7) In the absence of fraud in a transaction, the decision of the—

- (a) board of directors; or
- (b) general meeting, where the directors or a quorum are not disinterested in the issue or scheme;

shall be conclusive as to the adequacy of the consideration received or to be received by the company for the issue of rights or options and for the acquisition of shares in the company.



(8) This section shall not apply to the right of holders of convertible debentures to acquire shares on the exercise of a conversion option.

**194.** (1) A company may, where it has accumulated a sum of undivided profits which, with the approval of the shareholders may be distributed among the shareholders in the form of a dividend or bonus, by special resolution, return the same, or any part thereof, to the shareholders in reduction of the paid-up capital of the company, the unpaid capital being thereby increased by a similar amount.

Power to return accumulated profits in reduction of paid-up share capital

(2) The company shall, in the case of a special resolution reducing share capital, within twenty-one days after making the special resolution, in accordance with subsection (1), lodge with the Registrar a return in the prescribed form giving the details required.

(3) The resolution, lodged in accordance with subsection (2), shall take effect from the date of lodgement.

(4) A reduction of share capital, as provided in this Act, shall not apply to a reduction of paid-up share capital, in accordance with this section, except as provided in subsection (2).

(5) The Registrar shall not register a reduction of paid-up share capital made, in accordance with this section, unless the Registrar is satisfied that the relevant tax laws have been complied with.

**195.** (1) A company shall maintain a share and beneficial ownership register, in any form and manner, that records the shares issued by the company and states—

Company to maintain share and beneficial ownership register

(a) whether, under the articles or terms of issue of the shares, there are any restrictions or limitations on the transfer; and

(b) where the inspection of any document that contains the restrictions or limitations may be done.

(2) The share and beneficial ownership register shall state, with respect to each class of shares, the—

(a) names and the latest known address of each person who is, or has within the last ten years been, a shareholder or a beneficial owner;

(b) number of shares of that class held by each shareholder or a beneficial owner within the last ten years;

(c) the nature of the associated voting rights of the shares in respect of beneficial owners; and

(d) date of any—

- (i) issue of shares to;
- (ii) repurchase or redemption of shares from; or
- (iii) transfer of shares by or to;

each shareholder within the last ten years, and in relation to the transfer, the name of the transferor or transferee.

(3) An agent of the company may maintain the share and beneficial ownership register of the company.

(4) If a company fails to comply with subsections (1) and (2), the company commits an offence.

Place of  
share and  
beneficial  
ownership  
register

**196.** (1) A company may, if expressly permitted by its articles, divide its share and beneficial ownership register into two or more registers which may be kept in different places.

(2) The principal register shall be kept at the company's registered office.

(3) Where a share and beneficial ownership register is divided into two or more registers kept in different places—

- (a) notice of the place where each register is kept shall be lodged with the Registrar within fourteen days after the share register is divided or the place where a register is kept is altered;
- (b) a copy of every register shall be kept at the same place as the principal register; and
- (c) if an entry is made in a register other than the principal register, a corresponding entry shall be made, within fourteen days, in the copy of the register kept with the principal register.

(4) In this section “principal register” means, if the share and beneficial ownership register is—

- (a) not divided into two or more registers, the share and beneficial ownership register; and
- (b) divided into two or more registers, the register described as the principal register in the last notice sent to the Registrar.

(5) If a company fails to comply with subsection (2) or subsection (3), the company and every director of the company commit an offence.

- 197.** (1) Subject to this Act, the share certificate issued by a company to a person, in accordance with section 203, and entry of the name of the person in the company's share register shall be *prima facie* evidence that legal title to the shares vests in that person.
- Evidence of legal title to shares
- (2) A registered holder of a share in a company shall be entitled to—
- (a) exercise the right to vote and exercise other rights and powers attaching to the share; and
- (b) receive notices and distributions in respect of the share.
- 198.** (1) The board of directors shall have a duty to take reasonable steps to ensure that the share and beneficial ownership register is properly kept and that matters to be recorded therein are promptly entered on it in accordance with section 195.
- Directors' duty to supervise share and beneficial ownership register
- (2) A director who fails to comply with subsection (1) commits an offence.
- 199.** (1) Where the share and beneficial ownership register of a company has an error and the company fails to correct the error within reasonable time, after it is brought to the attention of the company, or the error causes loss to a person, the person aggrieved or a shareholder of the company may apply to the Court for—
- Power of court to rectify share register
- (a) rectification of the share and beneficial ownership register;
- (b) compensation for loss sustained as a result of the error;
- or
- (c) both rectification and compensation.
- (2) The Court may, on an application, made in accordance with this section, decide on a question—
- (a) relating to the entitlement of a party to the application to have the applicant's name entered in, or omitted from, the share register; and
- (b) for rectification of the register.
- 200.** Subject to section 189, a notice of a trust, express, implied or constructive, shall be entered in the share and beneficial ownership register and lodged with the Registrar.
- Trusts to be entered on beneficial ownership register
- 201.** (1) Despite this Act, a personal representative—
- Personal representative to be registered
- (a) whose name is registered in the share and beneficial ownership register of a company as the holder of a share in that company; or

(b) beneficially entitled to a share in a company, with the consent of the company;

is entitled to be registered as the holder of that share as personal representative.

(2) The registration of an assignee, executor, or administrator in terms of this section, shall not constitute notice of a trust.

Assignee of  
bankrupt to  
be registered

**202.** (1) Despite this Act, an assignee of the property of a bankrupt is entitled to be registered as the holder of a share held by the bankrupt.

(2) The assignee of the property of a bankrupt beneficially entitled to a share in a company shall, with the consent of the company and the registered holder of that share, be entitled to be registered as the holder of the share as the assignee of the property of the bankrupt.

Issue of  
share  
certificate

**203.** (1) Subject to subsection (2), a company whose shares are not subject to a listing agreement with a securities exchange shall, within twenty-one days after the issue or registration of a transfer of shares in the company, as the case may be, send a share certificate to every holder of the shares stating the—

- (a) name of the company;
- (b) class of shares held by that person;
- (c) number of shares held by that person; and
- (d) amount paid on the shares and the amount, if any, remaining unpaid.

(2) A shareholder may apply to the company for a certificate relating to some or all of the shareholder's shares in the company.

(3) The company shall, within twenty-one days after receiving an application for a share certificate, referred to in subsection (2)—

(a) if the application relates to some of the shares, separate the shares shown in the register as owned by the applicant into separate parcels, one parcel being the shares to which the share certificate relates and the other parcel being any remaining shares; and

(b) in all cases, send a certificate to the shareholder stating the—

- (i) name of the company;
- (ii) class of shares held by the shareholder; and
- (iii) number of shares held by the shareholder to which the certificate relates.

(4) Despite this Act, where a share certificate has been issued, a transfer of shares to which the share certificate issued relates shall not be registered by the company, unless a share transfer form as specified in this Act, is accompanied by—

- (a) the share certificate relating to the share; or
- (b) evidence as to the loss or destruction of the share certificate;

and if required, an indemnity in a form determined by the board of directors.

(5) Subject to subsection (1), where shares to which a share certificate relates are to be transferred, and the share certificate is sent to the company to enable the registration of the transfer, the share certificate shall be cancelled and no further share certificate shall be issued, except at the request of the transferee.

(6) If a company fails to comply with subsection (1) or subsection (3), every director of the company commits an offence.

**204.** A term that is expressed in a debenture or in a deed securing a debenture, that is issued or executed by a company, shall not be invalid by reason only that it provides that the debenture is —

- (a) irredeemable; or
- (b) redeemable only on the occurrence of a contingency, however remote, or on the expiration of a period, however long.

Perpetual  
debenture

**205.** (1) A company that has redeemed debenture previously issued by it may—

- (a) re-issue the debentures; or
- (b) issue other debentures in their place.

Power to  
reissue  
redeemed  
debenture

(2) Subsection (1) shall apply, unless the company—

- (a) enters into a contract providing otherwise, or the articles contain a provision to the contrary; or
- (b) has, by passing a resolution or by some other act, indicated its intention that the debentures are cancelled.

(3) The debentures shall, on a re-issue of redeemed debentures or of other debentures in their place, be treated as having, and as always having had, the same priority as the redeemed debentures.

(4) The debentures of a company deposited to secure advances, whether on current account or otherwise, shall not be treated as redeemed by reason that the company's account is no longer in debit while the debentures are deposited.

(5) The re-issue of a debenture or the issue of another debenture in its place in terms of this section, shall not be treated as the issue of a new debenture for the purposes of any provision limiting the amount or number of debentures to be issued.

Specific performance of contracts for debenture subscription

**206.** (1) The Court may order the specific performance of a contract with a company to take up and pay for any debenture of the company.

(2) The Court shall not refuse to order the specific performance of a contract of that kind on the ground that the contract is one to lend money.

Shareholding in regulated companies

**207.** (1) The Registrar shall, on being notified by a regulator that the shareholding in a regulated company requires to be altered and on payment of prescribed fees by the company, alter the shareholding accordingly.

(2) Despite section 193, the Registrar shall not register a transfer of shares in a regulated company if the transfer would contravene any other written law.

## PART X

### PUBLIC ISSUE OF SHARES

Offer of sale by company

**208.** (1) For purposes of this Act, where a company allots or agrees to allot any of its shares or debentures to the public by invitation—

(a) to acquire any of its shares or debentures—

(i) an invitation to the public so made shall be considered to be made by the company as well as by the person who in fact made it; and

(ii) a person who acquires any of the shares or debentures in response to the invitation shall be considered to be an allottee from the company of those shares or debentures; and

(b) in respect of any of the shares or debentures—

(i) within six months after the allotment or agreement to allot; or

(ii) before the company has received the whole of the consideration in respect of the shares or debentures;

the allotment or agreement to allot is made by the company, with a view to an invitation to the public, in respect of those shares or debentures.

**209.** (1) The first publication of a prospectus shall be the date of registration of the prospectus.

First  
publication  
of  
prospectus

(2) Where shares or debentures, to which an invitation relates, are dealt in on a securities exchange or where a prospectus states that an application has been or will be made for permission to deal in the shares or debentures on the stock exchange, and the company is required to advertise the prospectus in a newspaper to comply with the requirements of that stock exchange, the first publication of the prospectus shall be when the prospectus is first so advertised.

(3) The requirement to publish a prospectus, as specified in subsection (2), shall not apply to offers to the public of the following types of securities:

- (a) shares issued in substitution for shares of the same class already issued, if the issuing of such new shares shall not involve an increase in the issued capital;
- (b) securities offered in connection with a takeover by means of an exchange offer, provided that a document is available containing information which is regarded by the competent authority as being equivalent to that of the prospectus;
- (c) securities offered, allotted or to be allotted in connection with a merger or division, provided that a document is available containing information which is regarded by the competent authority as being equivalent to that of the prospectus;
- (d) dividends paid out to existing shareholders in the form of shares of the same class as the shares in respect of which such dividends are paid, provided that a document is made available containing information on the number and nature of the shares and the reasons for, and details of, the offer; and
- (e) shares offered, allotted or to be allotted to existing or former directors or employees by their employer or by an affiliated undertaking, except that—
  - (i) the company has its head office or registered office in Zambia; and
  - (ii) a document containing information on the number and nature of the transferable securities and the reasons for, and details of, the offer is made available.

Invitations  
to public to  
acquire  
shares and  
debentures

**210.** (1) In this section, “company” means a public company and includes a public company proposed to be formed.

(2) A person shall not make an invitation to the public to acquire shares in a company unless the company is a public company and the invitation complies with this Part.

(3) A person shall not make an invitation to the public to acquire debentures in a company, unless the—

(a) company is a public company;

(b) debentures are created by deed under the common seal of the company in favour of assignees for the debenture holders; and

(c) invitation complies with this Part or is supervised by the Court.

(4) A person shall not make an invitation to the public to acquire equity shares in a company unless—

(a) all the equity shares in the company are already issued;

(b) the shares to which the invitation relates carry an unrestricted right to vote at a general meeting; and

(c) on a poll, a constant number of votes which, in proportion to nominal value, is the same in the case of every share.

(5) Subsection (4) shall not prohibit an invitation to acquire equity shares that do not comply with that subsection, if the—

(a) rights making them equity shares are expressed by the terms of issue to be conditional on the exercise by the holder of an option;

(b) shares will comply with that subsection if the option is exercised; and

(c) shares are issued, and the invitation made, in fulfilment of an obligation entered into by the company before the commencement of this Act.

(6) If a person acquires shares or debentures in a company as a result of an invitation to the public, in contravention of this section, that person shall be entitled to recover compensation for any loss sustained by that person from the person making the invitation, and where the person making the invitation is a body corporate, from an officer in default.

(7) If an invitation to the public is made, in contravention of this section, each person making the invitation and, where such a person is a body corporate, each officer in default commits an



offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

**211.** (1) Subject to this section, a person may invite the public to acquire shares or debentures of a public company only if—

- (a) within six months prior to the making of the invitation a prospectus relating to the shares or debentures, that complies with this Part, is registered by the Registrar;
- (b) every person to whom the invitation is made is given a true copy of the prospectus at the time when the invitation is first made to that person; and
- (c) every copy of the prospectus states on its face—
  - (i) that it has been registered by the Registrar; and
  - (ii) the date of registration.

Prospectus required for invitation to public to purchase shares or debentures

(2) An invitation published in a newspaper or magazine advertisement that summarises the contents of a prospectus shall be considered as satisfying subsection (1) (b), if the advertisement—

- (a) omits, or is not accompanied by any kind of application form for, shares or debentures;
- (b) states with reasonable prominence—
  - (i) where copies of the full prospectus may be obtained;
  - (ii) that the prospectus has been registered;
  - (iii) the date of registration; and
- (c) is in terms previously approved, in writing, by the Registrar.

**212.** A prospectus lodged with the Registrar shall—

- (a) not contain any untrue or misleading statement;
- (b) contain all information that prospective purchasers of the shares or debentures and their advisors would reasonably expect to be provided in order to make a decision on the purchase; and
- (c) either—
  - (i) deal with matters and provide for reports specified in the Third Schedule; or
  - (ii) be made only to existing members or debenture holders of the company, whether or not an applicant for shares or debentures shall have the right to renounce in favour of other persons.

Contents of prospectus

**213.** (1) This section applies to a prospectus which contains a statement purporting to be made by an expert.

Expert's consent

(2) A prospectus which contains a statement, referred to in subsection (1), shall not be lodged with the Registrar, unless it is accompanied by the written consent of an expert, that the expert has given consent to the inclusion of the statement.

(3) If the expert withdraws consent to the inclusion of the statement, the expert shall without delay, in the prescribed manner and form, notify the Registrar and the person responsible for issuing the prospectus to that effect.

(4) A person responsible for issuing a prospectus shall cease from issuing the prospectus, after receiving a notice from an expert, made in accordance with subsection (3).

(5) A person who contravenes subsection (4), and if that person is a body corporate, each officer, in default, commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

Registration  
of  
prospectus

**214.** (1) The Registrar shall not register a prospectus for shares or debentures in a company, unless the copy lodged complies with this section.

(2) The prospectus, referred to in subsection (1), shall be signed by each—

- (a) person named in the prospectus as a director or proposed director of the company or by that person's agent, authorised in writing; and
- (b) other person making the invitation or that person's agent, authorised in writing.

(3) For the purpose of subsection (2)(b), where the invitation is made by a body corporate or members of a firm, it shall be sufficient if the copy is signed on behalf of the body corporate by not fewer than two directors or, in the case of a firm, by not less than two of the partners, and each such director or partner may sign by an agent, authorised in writing.

(4) There shall be endorsed on or attached to a copy of the prospectus, referred to in subsection (1)—

- (a) the consent of an expert required by section 213; and
- (b) a certified copy or translation of each of the documents required to be available for inspection in accordance with paragraph 49 of the Third Schedule.

(5) The Registrar may, where a company has already lodged with the Registrar a certified copy or translation, referred to in subsection (4)(b), waive the requirement that it be attached or endorsed, if the Registrar is satisfied that the copy initially delivered is readily identifiable and accessible.

(6) A prospectus shall state at its head that a copy of the prospectus has been registered by the Registrar and the Registrar assumes no responsibility as to its contents.

(7) A prospectus shall be accompanied by a statutory declaration by a director and the secretary of the company stating that the prospectus complies with the requirements of this Part.

(8) The Registrar shall, on registering a prospectus, issue a certificate stating that the prospectus has been registered.

**215.** (1) A company shall not accept or retain subscriptions to an issue of debentures in excess of the amount of the issue disclosed in the prospectus, unless the prospectus specifies—

Over-subscription in debenture issue

- (a) that the company expressly reserves the right to accept or retain over-subscriptions; and
- (b) a limit, expressed as a specific sum or money, on the amount of over-subscriptions that may be accepted or retained, being an amount not exceeding twenty-five per cent above the amount of the issue as disclosed in the prospectus.

(2) Subject to this Act, where a company specifies in a prospectus relating to a debenture issue that it reserves the right to accept or retain over-subscriptions, the prospectus shall—

- (a) not contain any statement of, or reference to, the asset backing for the issue, other than a statement or reference to the total assets and the total liabilities of the company and of its guarantor companies; and
- (b) contain a statement or reference as to what the total assets and total liabilities of the company would be if over-subscriptions to the limit specified in the prospectus were accepted or retained.

**216.** (1) Where a prospectus states or implies that application has been or may be made for permission for the shares or debentures offered in the prospectus to be listed for quotation on the official list of a securities exchange, then, subject to subsection (8), allotment of shares or debentures shall not be made on an application made in terms of the prospectus, except in accordance with this section.

Reference to stock exchange listing in prospectus-allotment of shares

(2) An allotment may be made if the permission, referred to in subsection (1), has been—

(a) applied for, in the form prescribed by the stock exchange, before the third day on which the stock exchange is open, after the date of issue of the prospectus; or

(b) granted before the determination day.

(3) A company shall, within fourteen days after the determination day, if the conditions of subsection (2) are not satisfied on the determination day, repay, without interest, any money received from an applicant in respect of the prospectus.

(4) The directors shall, if the company fails to repay money in accordance with subsection (3), in addition to the liability of the company but subject to subsection (5), be jointly and severally liable to repay that money, with interest at the ruling bank rate, from the end of that period of fourteen days.

(5) A director shall not be liable, in accordance with subsection (4), if the director proves that the default in the repayment of the money was not due to any misconduct or negligence on that director's part.

(6) A company shall, for so long as the conditions of subsection (2) are not satisfied, keep in a separate bank account all money received in respect of a prospectus.

(7) A condition that requires or binds an applicant for shares or debentures to waive compliance with any requirement of this section is void.

(8) The Registrar may, on the application of a company made before the determination day, by notice in the *Gazette* and in a daily newspaper of general circulation in Zambia or other media, except that this section shall not apply to the allotment of the shares or debentures.

(9) For purposes of this section, a statement in a prospectus to the effect that the articles comply with, or have been drawn up so as to comply with a condition imposed by a securities exchange shall, unless the contrary intention appears, be taken to imply that an application has been, or may be, made for permission for the shares or debentures offered by the prospectus to be listed for quotation on the official list of the securities exchange.

(10) For purposes of this section, where a stock exchange grants the permission referred to in subsection (9), subject to any condition that may be imposed, the permission shall be considered to be granted when the board of directors gives to the securities exchange a written undertaking to comply with the condition.

(11) For purposes of this section, “the determination day” is, subject to subsection (12), the day forty-two days after the issue of the prospectus.

(12) A securities exchange may, before the determination day, notify the applicant referred to in subsection (9), that a later day, not more than ninety days after the issue of the prospectus, shall be the determination day.

**217.** (1) Subject to this section, where a prospectus—

- (a) contains a statement which is untrue or, in the context, misleading;
- (b) omits any matter which is material or fails to set out any report required by this Act;

Civil liability  
for  
misstatements  
or omissions  
in  
prospectus

the persons specified in subsection (2), are liable to pay compensation to a person who acquires shares or debentures on the faith of the prospectus for any loss that person sustains by reason of the untrue statement or omission.

(2) The following persons are liable to pay compensation in accordance with subsection (1):

- (a) a person making the invitation to which the prospectus relates;
- (b) a person who was a director of a body corporate making the invitation, at the time when the prospectus was published;
- (c) where the prospectus was made by a company to whose shares or debentures the invitation relates, a—
  - (i) person who has consented to being named in the prospectus as a director immediately or after an interval of time; and
  - (ii) promoter of a company who was a party to the preparation of the prospectus; or
- (d) the expert, if the untrue statement or omission is in a statement by an expert, who consented to the publication of the prospectus.

(3) A person is not liable, in accordance with this section, if the person proves that—

- (a) as regards any untrue statement that is not—
  - (i) a statement or report made by an expert, other than that person;
  - (ii) a public official document or statement; or

- 
- (iii) an extract from a document referred to in paragraph (i) or (ii);
- the person had reasonable ground to believe and did believe up to the time of the publication of the prospectus or, where the waiting period applies, up to the expiration of the waiting period, that the statement was true;
- (b) any untrue statement or public official document or report by an expert, other than that person or an extract there from—
- (i) was a correct and fair copy of the statement, report or extract; and
- (ii) the person had reasonable ground to believe, at the time of the publication of the prospectus, that the person making the statement was competent to make it, had given consent and had not withdrawn the consent before the date of registration of the prospectus;
- (c) the person was not aware of the omission, or that the matter omitted was material, up to the time of the publication of the prospectus or, where the waiting period applies, when the waiting period expires;
- (d) after the publication of the prospectus, but before expiry of the waiting period, the person, on becoming aware of any untrue statement in the prospectus or omission, after the publication of the prospectus but before the expiry of the waiting period, withdrew consent to the prospectus and gave notice of the withdrawal and the reason for the withdrawal; or
- (e) the prospectus was published without the person's knowledge, and on becoming aware of the publication, gave notice that the prospectus was published without the person's knowledge.

(4) A person is not liable in accordance with this section and subsection (2)(b)(i), if that person proves that, having consented to being named as a director, the person withdrew consent before the registration of the prospectus and the prospectus was published without the person's consent.

(5) A person is not liable, in accordance with this section and subsection (2)(d), if that person proves that—

- 
- (a) the person was competent to make the statement and had reasonable grounds to believe, up to the date of publication of the prospectus or, where the waiting period applies, up to the expiry of the waiting period, that the statement was true; or
- (b) after lodgment of the prospectus with the Registrar, but before publication of the prospectus, or where the waiting period applies, before the expiry of the waiting period, on the person becoming aware of the untrue statement or omission, the person withdrew consent in writing and gave notice of the withdrawal and the reason for it.

(6) A person making an invitation to which a prospectus relates and a person who was a director making the invitation at the time when the prospectus was published, except a person without whose knowledge or consent the prospectus was published is liable to indemnify a person—

- (a) named in a prospectus as a director or, having agreed to become a director, does not consent to becoming a director or had withdrawn consent before the publication of the prospectus and did not authorise or consent to the publication of the prospectus; or
- (b) whose consent is required for the publication of a prospectus and the person has not given consent or has withdrawn it before the publication of the prospectus;

against all damages, costs and expenses to which the person may be made liable by reason of the person's name being inserted in the prospectus or the inclusion in the prospectus of a statement purporting to be made by the person as an expert or in defending legal proceedings brought against the person in respect of the prospectus.

(7) A notice that is required to be given in accordance with this section shall be in the prescribed form and shall be published in a daily newspaper of general circulation in Zambia.

**218.** (1) A person who authorises the publication of a prospectus, advertisement or circular in relation to an invitation to the public to acquire shares or debentures of a company, that contains an untrue statement or omits truthfully to state any of the matters which it is required by this Act to state, commits an offence and shall be liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

Offence of  
misstatement  
or omission  
in  
prospectus

(2) It shall be a defence to an offence specified in subsection (1) that the—

- (a) untrue or omitted statement was immaterial; or
- (b) person had reasonable grounds to believe, up to the time of publication of the prospectus, that the statement was true.

(3) For the purposes of this section, a person shall not be regarded as having authorised the publication of a prospectus by reason only of the person having given the consent, required by section 213, and the Registrar shall not be regarded as having authorised the publication of an advertisement or circular by reason of the Registrar having issued the certificate referred to in section 214(8).

Stop trading  
order

**219.** (1) The Registrar may apply to the Court for an order provided for in subsection (2), where it appears to the Registrar that a prospectus that has been registered—

- (a) contains a statement, promise, estimate or forecast that is false or misleading, whether or not the statement or other specified particular was false or misleading at the time the prospectus was lodged;
- (b) fails to comply in a material respect with this Part; or
- (c) conceals or omits to state a material fact so that a statement in the prospectus is rendered misleading in the context in which it appears.

(2) The Court may make any of the following orders in respect of an application made in accordance with subsection (1):

- (a) cancel the registration of the prospectus and direct the person or persons making the invitation to the public to which the prospectus relates to—
  - (i) withdraw the prospectus;
  - (ii) cease to accept further subscriptions or purchases of shares or debentures offered in the prospectus; and
  - (iii) repay, with interest, any money received from applicants with respect to the prospectus;
- (b) declare any contract for the subscription or purchase of shares or debentures offered in the prospectus to be voidable;
- (c) direct the person or persons making the invitation to the public, to which the prospectus relates, to immediately re-issue the prospectus amended in such terms as the court directs; or



(d) protect the rights of persons injuriously affected by the issue of the prospectus, as the Court considers just in the circumstances.

(3) The Court may, in exercising its powers in terms of this section, on the application of the Registrar and on being satisfied of the existence of a *prima facie* case, make such interim orders, as it considers necessary, applying for a period of not more than fourteen days after the date of the order.

**220.** Where an invitation is made to the public to acquire shares or debentures of a company, an agreement for the acquisition of the shares or debentures made before the end of the waiting period, other than a *bona fide* underwriting agreement, is not enforceable by the company or promoters.

Enforceability of agreement before end of waiting period

**221.** Where an invitation is made to the public in respect of shares or debentures of a company, an application for such shares or debentures shall not be revocable during a period of seven days commencing on the expiry of the waiting period, unless, before the expiry of that period of seven days, a person responsible for the prospectus has given notice to the public which has the effect of excluding or limiting the responsibility of the person giving it for any misstatement or omission in the prospectus.

Withdrawal of application after waiting period

**222.** (1) An allotment of shares offered by a company to the public shall not be made, unless the—

Allotment and minimum subscription

(a) minimum subscription has been subscribed as required by this Act; and

(b) sum payable on application for the shares so subscribed has been received by the company.

(2) Where a cheque is given in payment of the sum, referred to in subsection (1), the sum shall not be regarded as having been received by the company until the cheque is paid by the bank on which it is drawn.

(3) The minimum subscription shall be calculated on the value of each share.

(4) The amount payable, on application, on each share offered to the public shall not be less than five per cent of the nominal amount of the share.

(5) If subsection (1) has not been complied with, after the expiry of four months from the first issue of the prospectus, any money received from an applicant for the shares shall, without delay, be repaid, without interest, to the applicant.

(6) Subject to subsection (7), if any money referred to in subsection (5) is not repaid within five months after the issue of the prospectus, the directors shall be jointly and severally liable to repay that money with interest at the ruling bank rate, from the expiry of the period specified in this subsection.

(7) A director is not liable, as provided in subsection (6), if that director proves that the default in the repayment of the money was not due to any misconduct or negligence on that director's part.

(8) An allotment made by a company to an applicant in contravention of this section shall, despite that the company is in the course of being wound up, be voidable at the option of the applicant by written notice given to the company within thirty days after the date of the allotment.

(9) A director who wilfully contravenes, or wilfully authorises or permits the contravention of this section shall be liable to compensate the company and the allottee for any loss, damages or costs which the company or the allottee has sustained or incurred as a result of the contravention.

(10) Proceedings for the recovery of any compensation in terms of subsection (9) shall not be commenced more than two years after the date of the allotment.

(11) A condition that requires or binds an applicant for shares to waive compliance with a requirement of this section shall be void.

(12) A company shall not allot, and an officer or promoter of a company shall not authorise or permit the allotment of, shares or debentures to the public, on the basis of a prospectus, more than six months after the publication of the prospectus.

(13) An allotment of shares or debentures shall not be void or voidable by reason only that it was made in contravention of subsection (12).

Statement in  
lieu of  
prospectus

**223.** (1) A company which fails to issue a prospectus on, or with reference to, its formation shall not allot any of its shares or debentures, unless it has, not less than three days before the first allotment of the shares or debentures, lodged with the Registrar a statement in lieu of a prospectus.

(2) A statement in lieu of a prospectus shall be—

(a) signed by every person who is named in the statement as a director or a proposed director or by that person's agent authorised in writing; and

(b) in the form of a prospectus and deal with such matters specified in the Third Schedule as apply to the formation of a company.

**224.** A condition that requires or binds a person to waive compliance with this Part or attributes to that person, notice of a contract, document or other matter not specifically referred to in a prospectus, advertisement or circular, is void.

Prohibition of waiver and notice clause

## PART XI

### DEBENTURES AND CHARGES

**225.** (1) A company may raise loans by the issue of a debenture or a series of debentures.

Issue of debentures

(2) A debenture may be secured by a charge over property of the company or be unsecured.

(3) Debentures which are declared to be of the same series by virtue of the terms—

(a) that are stipulated in the debenture;

(b) of a resolution authorising the issue of the debenture; or

(c) of a trust deed relating to a debenture issued by a company; shall rank equally in all respects, despite the debentures having been issued on different dates.

(4) A debenture stock shall be created—

(a) by deed, under the common seal of the company and in favour of assignees for the debenture stockholders; and

(b) as stock, of a specified total amount, parts of which, represented by debenture stock certificates, are issued to separate holders.

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

(6) A condition, contained in a debenture or in a trust deed for securing a debenture, is not invalid by reason only that the debenture has been made irredeemable or redeemable, only on the occurrence of a contingency, however, remote or on the expiration of a period, however, long.

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

Documents of title to debentures

(2) Sections *one hundred and eighty-eight to one hundred and ninety-one* apply, with the necessary modifications, in relation to debentures and debenture holders.

(3) Where a company imposes a restriction on the right to transfer debentures, notice of the restriction shall be endorsed on the face of the debenture or debenture stock certificate, issued in accordance with subsection (1), and in the absence of such endorsement, the restriction shall not be effective with regards to a transferee for value, whether or not the transferee has notice of the restriction.

(4) If a company fails to comply with subsection (1), the company and each officer in default commits an offence and is liable, on conviction, to a fine not exceeding one thousand penalty units for each day that the failure continues.

Liability of  
assignee

**227.** (1) A company shall not, indemnify or compensate a person, who is an assignee for debenture holders of the company or a related company for any liability which would attach to the assignee or for the cost of meeting any such liability, in respect of a breach of trust or failure to show due care and diligence, having regard to the powers, authorities or discretion conferred on the assignee by the trust deed.

(2) A term in a contract between a company and an assignee that purports to indemnify or compensate the assignee in contravention of subsection (1), is void.

(3) A debenture holder may, by special resolution, release anything done or not done by an assignee.

(4) The Court may, on the application of a debenture holder, remove an assignee of any debenture, and appoint another assignee, if satisfied that the assignee has interests which conflict or may conflict with those of the debenture holders or that, for any other reason, is undesirable that the assignee should continue to act.

(5) The Court may, on an application being made in accordance with subsection (4), order the applicant to give security for the payment of the assignee's costs.

Appointment  
as assignee  
for  
debenture  
holders

**228.** (1) The following persons are not eligible for appointment or competent to act as assignee for a holder of a debenture issued by a company:

(a) an individual under the age of eighteen years;

(b) a person—

(i) under any legal disability;

- (ii) prohibited or disqualified from so acting by order of a court of competent jurisdiction;
  - (iii) who is an officer or auditor of the company or a related company or who has been such an officer or auditor within the preceding two years, save with the leave of the court;
  - (iv) who has been convicted within the preceding five years of an offence involving fraud or dishonesty; or
  - (v) who has been removed, by order of Court, within the preceding five years from an office of trust; or
- (c) an undischarged bankrupt as provided in any other written law or, subject to an order by the Court, under the written laws of another country.

(2) A person who, in contravention of this section, acts or continues to act as an assignee for debenture holders commits an offence and is liable, on conviction, to a fine not exceeding one thousand penalty units for each day that the contravention continues or to imprisonment for a period not exceeding twelve months, or to both.

**229.** (1) A copy of a trust deed, securing an issue of debentures, shall be provided to a holder of the debentures, at the holder's request and on payment of the sum of one hundred fee units, or such lesser sum as may be required by the company, within seven days after receipt of the request.

Right to  
copies of  
trust deed

(2) Subject to the Credit Reporting Act, 2017, a company shall, within seven days of a request being made by an assignee in the prescribed form, furnish the assignee with the names, addresses and other registered particulars of the debenture holder for whom that person is an assignee.

Act No. of  
2017

(3) If a company fails to comply with this section, the company and each officer in default commit an offence and are liable, on conviction, to a fine not exceeding one thousand penalty units for each day that the failure continues.

**230.** (1) A company shall not issue an unsecured debenture, debenture stock certificate or prospectus relating to unsecured debentures, unless the term "unsecured debenture" or such other term is stated on the document issued by the company.

Unsecured  
debentures  
to be so  
described

(2) If a company fails to comply with this section, the company and each officer in default commit an offence and are liable, on conviction, to a fine not exceeding two hundred thousand penalty units for each day that the failure continues.

Register of debenture holders

**231.** (1) A company which issues or has issued debentures shall maintain a register of debenture holders.

(2) If a company fails to comply with this section, the company and each officer in default commit an offence and are liable, on conviction, to a fine not exceeding two hundred thousand penalty units for each day that the failure continues.

Holder of debentures secured by trust deed

**232.** (1) A registered debenture holder shall have votes in proportion to the value of the debentures held with respect to debentures of a company that are secured by a trust deed, unless the trust deed provides otherwise.

Meetings of other debenture holders

**233.** (1) A debenture not secured by a trust deed may provide for the convening of a general meeting of the debenture holders or classes of debenture holders and for the passing of resolutions binding on all the debenture holders or on all classes of debenture holders.

(2) The Court may, despite any provision in a debenture regarding meetings, direct a meeting, of debenture holders of any class, to be held and conducted in a manner, and to consider such matters, as the Court considers appropriate and may give such ancillary or consequential directions as it considers necessary.

(3) This section shall, subject to subsection (4) and unless the debentures provide otherwise, apply to a meeting held in accordance with this section, with the necessary modifications.

(4) A registered debenture holder shall have votes in proportion to the value of the debentures held, unless a debenture provides otherwise.

Reissue of redeemed debentures

**234.** (1) A company shall not—

(a) re-issue a debenture which has been redeemed; or

(b) issue a new debenture in place of a redeemed debenture on condition that the new debenture shall have the same priority as the redeemed debenture.

(3) The issue of a new debenture in place of a redeemed debenture shall not be treated as the issue of a new debenture for the purposes of any provision limiting the amount or number of debentures which may be issued.

(4) An issue or re-issue of debentures that contravenes this section is void.

**235.** Where a charge is made to secure—

- (a) an indeterminate amount; or
- (b) a fluctuating amount advanced on a current account by, or due and owing to, the person entitled to the charge;

Charge to secure fluctuating amount

the charge shall not be considered to be redeemed by reason only that the current account ceases to be in debit or by reason only that no amount is due or owing, as the case may be.

**236.** (1) This section shall apply to any charge on property of the company, whether or not it is required to be registered in accordance with this Act.

Company's register of charges

(2) A company which has any property that is subject to a charge shall open and maintain a register of charges in which the company shall, on the creation of a charge over property of the company, or on the acquisition of property subject to a charge, enter the following particulars:

- (a) the date of creation of the charge or the date of acquisition of the property, as the case may be;
- (b) a short description of the liability whether present or prospective that is secured by the charge;
- (c) a short description of the property charged;
- (d) the name of the assignee, if the charge secures debentures under a trust deed; and
- (e) if the charge does not secure debentures under a trust deed the name of the—
  - (i) chargee; and
  - (ii) person whom the company believes to be the holder of the charge.

(3) A register, opened and maintained in accordance with subsection (1), shall be open for inspection by any—

- (a) member or creditor of the company or by Registrar or an agent of the Registrar, without charge; and
- (b) other person on payment of an amount required by the company, not exceeding one hundred fee units or such higher amount as may be prescribed.

(4) If a company fails to comply with this section, the company and each officer in default commit an offence and are liable, on conviction, to a fine, not exceeding two hundred thousand penalty units.

Registrar's  
register of  
charges

**237.** (1) The Registrar shall maintain a register containing, with respect to each company, the particulars of the charges of the company that are lodged in accordance with this Part.

(2) The register, maintained in accordance with subsection (1), shall include, with respect to each company, a chronological index of the charges of the company.

Registration  
of charges  
by  
companies  
Cap. 415  
Act No. 3  
of 2016

**238.** (1) For purposes of this section, a charge over the property or undertaking of a company does not apply—

(a) on a charge and to the extent to which the Trade Charges Act, 1973 and the Movable Property (Security Interest) Act, 2016 apply;

(b) on a ship or aircraft or any share in a ship or aircraft; and

(c) over shares in another body corporate, not being a charge—

(i) in favour of a broker who has paid for a share purchased or applied for on behalf of the company; or

(ii) created or accompanied by delivery of the certificates for the shares.

(2) Subject to this section, if a company—

(a) creates a charge to which this section applies; or

(b) acquires property that is subject to a charge to which this section applies;

the company shall, within twenty-one days after the date of the creation of the charge, or after the acquisition of the property, as the case may be, lodge with the Registrar in the prescribed form the particulars referred to in subsection (3), together with—

(a) particulars of the instrument by which the charge is created or evidenced, sufficient to identify the instrument, if the charge is created or evidenced by an instrument registered in accordance with this or any other Act; or

(b) a certified copy of the instrument, if any, by which the charge is created or evidenced, in any other case.

(3) The particulars required for the purposes of subsection (2), are as follows:

(a) date of creation of the charge;

(b) date of acquisition of the property by the company, where the property was subject to the charge when acquired by the company;

(c) amount secured by the charge;



- 
- (d) short particulars of the property charged;
  - (e) names of the charges; and
  - (f) other particulars of the charge, as may be prescribed.

(4) This section shall apply in relation to any instrument creating or evidencing or purporting to create or evidence a charge over property located outside Zambia, notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situated.

(5) Where a negotiable instrument has been given to a company to secure the payment of any debts owed to the company, the deposit of the instrument for securing an advance to the company, shall not, for the purposes of this section, be considered to be a charge on the debts owed to the company.

(6) A debenture that entitles a holder to a charge on land shall not, for the purposes of this section, be considered to be an interest in land.

(7) Where a series of debentures is created by a company and contains, or gives by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled in all respects equally, subsection (3) shall be satisfied by the lodgement of the following particulars:

- (a) the total amount secured by the whole series;
- (b) the date of the resolution authorising the issue of the series and the date of the document, if any, by which the security is created or defined;
- (c) a description of the property charged; and
- (d) the names of the assignees, if any, for the debenture holders, accompanied by a certified copy of the document containing the charge, or, if there is no such document, a certified copy of one of the debentures of the series;

accompanied by particulars of the date and amount of issue, where more than one issue of debentures is made in a series, which shall be lodged within twenty-one days after any issue.

(8) Where a company pays, whether absolutely or conditionally a commission or allowance or gives a discount, to a person in consideration of that person—

- (a) subscribing or agreeing to subscribe for debentures of the company; or
- (b) procuring or agreeing to procure subscriptions for such debentures;

the particulars required to be lodged, in accordance with this section, shall include the amount or rate per centum of the commission, allowance or discount paid or made.

(9) The deposit of debentures as security for a debt of the company shall not for the purposes of this section be regarded as an issue of such debentures at a discount.

Certificate to  
be issued by  
Registrar

**239.** The Registrar shall, where the particulars and documents relating to a charge, that are required by this Part to be lodged with the Registrar, are lodged within the time required, issue a certificate of registration of the charge within fourteen days stating the date of lodgement and, if applicable, the amount secured, and the certificate shall be conclusive evidence that the requirements of this Part as to registration have been complied with.

Priorities

**240.** (1) Subject to subsection (2)—

(a) any consent, whether express or implied, given by a person who would otherwise be entitled to priority, charges required by this Part to be registered shall have priority in relation to one another in accordance with the times at which they were lodged as provided in the Movable Property (Security Interest) Act, 2016; and

Act No. 3 of  
2016

(b) where a charge, other than a floating charge, gives security over property required to be registered with the Registrar in accordance with this Part, and over other property, subsection (1)(a) shall apply, in respect of the first-mentioned property, but not in respect of the other property

(2) Subsection (1) shall not affect the priorities between successive charges affecting the same property, where any other written law provides for priorities between those charges.

Entries of  
satisfaction  
and release  
of property  
from charge

**241.** (1) A creditor shall lodge a discharge for the release of property where a debt has been satisfied in whole or in part.

(2) If there is lodged, with the Registrar, a statement in the prescribed manner and form, signed on behalf of a company and by the person entitled to a charge to the effect that—

(a) the debt for which the charge was given has been paid or satisfied in whole or in part; or

(b) part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking;

the Registrar shall enter the fact stated in the register of charges and the statement shall, in favour of the liquidator and any creditor of the company, be binding on the person entitled to the charge who signed the statement and on any other person claiming through that person.

**242.** (1) Where a variation is made to the terms of a charge registered in accordance with this Part, other than a satisfaction or release to which section 241 applies, particulars of the variation shall be lodged with the Registrar in the prescribed form, within twenty-one days of the making of the variation.

Variation of registered charge

(2) The particulars, referred to in subsection (1), shall identify the terms of the original charge that have been varied and shall indicate the nature of the variation made in each such term.

(3) Where the effect of a variation, referred to in subsection (1), is to increase the extent of the security or the amount for which security is available, the increase shall, for the purposes of determining priorities in charges, be treated as if it were a charge for an amount of the increase and whose particulars were lodged at the time that the particulars of the variation were lodged.

(4) Where a registered charge by its terms, secures a fluctuating amount, or an initial sum together with the words “ further advances ”, the making of a further advance to the company shall not, for the purposes of this section, constitute a variation in the terms of the charge.

**243.** (1) If a person enters into possession of any of the property of a company as mortgagee under any powers contained in a charge, the person shall, within seven days after so doing, lodge a notice to that effect in the prescribed form with the Registrar.

Registration of enforcement of security by mortgagee

(2) Where a person who is in possession as mortgagee of property of a company goes out of possession, the mortgagee shall, within fourteen days thereafter, lodge a notice to that effect in the prescribed form with the Registrar.

(3) A person who fails to comply with this section commits an offence, and is liable on conviction, to a fine not exceeding one thousand fee units for each day that the failure continues.

**244.** Where a company issues a debenture forming one of a series of debentures, or a certificate of debenture stock, and the payment of the debenture is secured by a charge registered in accordance with this Part, the company shall endorse on the debenture or certificate of debenture stock, a statement that registration has been effected and specifying the date of registration.

Endorsement of registration on debentures

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

(3) A person who—

(a) causes to be endorsed on a debenture or certificate of debenture stock a statement that registration has been effected, which that person knows to be false in any particular; or

(b) authorises or permits the delivery of a debenture or certificate of debenture stock bearing an endorsed statement that registration has been effected, which that person knows to be false in any particular;

commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years or to both.

Extension of  
time for  
lodgement

**245.** (1) Where under this Act a document is required to be lodged with the Registrar within a specified period, the period shall be extended by fourteen days in relation to a document executed or made in a place outside Zambia.

(2) The Registrar may, before the end of any period fixed for the lodgement of a document or particulars, at the request of the person concerned, extend the period for lodgement by such a period, and on such terms, as the Registrar considers reasonable in the circumstances.

(3) Subject to this section, where any document or particulars are lodged with the Registrar after the end of the period fixed for its lodgement, the Registrar shall accept the documents or particulars for registration.

(4) The Registrar may reduce or waive any prescribed fee in relation to the extension of time in this section if the Registrar is satisfied that the failure to lodge the document or particulars was caused or continued solely through administrative oversight and that no person is likely to have suffered damage or to have been prejudiced as a result of the failure.

## PART XII

### ACCOUNTING RECORDS, AUDIT AND ANNUAL RETURNS

Accounting  
records

**246.** (1) The board of directors shall cause accounting records to be kept that—

- (a) correctly record and explain the transactions of the company; and
- (b) shall enable the financial—
- (i) position of the company to be determined with reasonable accuracy; and
  - (ii) statements of the company to be readily and properly audited.
- (2) Without limiting the generality of subsection (1), the accounting records shall include—
- (a) entries of money received and spent each day and the matters to which it relates;
  - (b) a record of the assets and liabilities of the company;
  - (c) if the company's business involves dealing in goods, a record of goods bought and sold;
  - (d) if the company's business involves providing services, a record of services provided and relevant invoices.
- (3) The accounting records shall be kept in written form and in English.
- (4) If the board of directors fails to comply with the requirements of this section, every director of the company commits an offence and is liable, on conviction, to a fine not exceeding twenty thousand penalty units.

**247.** (1) A company shall keep its accounting records at the company's registered office.

Company to keep accounting records

(2) If a company fails to comply with subsection (1), every director commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units.

**248.** A company shall, at its registered office, make its accounting records available for inspection to the directors, secretary and auditors of the company, at all reasonable times, without charge.

Inspection of accounting records

**249.** (1) Subject to this section, the annual financial statements of a company shall, in respect of the financial year concerned, state the total amount of—

Annual financial statements to include amounts paid to directors

- (a) emoluments paid to, or receivable by, the directors for their services; and
- (b) any compensation paid to, or receivable by, the directors or past directors in respect of loss of office;

- (2) The amount to be shown, in respect of—
- (a) subsection (1) (a), shall include emoluments paid to, or receivable by, a person in respect of that person's services—
- (i) as director or director of its subsidiary; or
  - (ii) in connection with the management of the affairs of the company or a subsidiary;
- (b) subsection (1) (b), shall include sums paid to, or receivable by, a director or past director by way of compensation for loss of office—
- (a) as director; or
  - (b) in connection with the management of the affairs of the company or its subsidiary, where the loss arose from the loss of office as director.
- (3) Where an amount to be stated in subsection (1) or (2), includes an amount to be paid by, or receivable from, a person other than the company, the accounts shall state the subtotals of the amounts receivable from, or paid by—
- (a) the company;
  - (b) the company's subsidiaries; and
  - (c) any other person.
- (4) For the purposes of this section—
- “ compensation for loss of office ” includes sums paid as consideration for or in connection with a person's retirement from office; and
- “ emoluments ” includes fees and percentages paid to a director, any sums paid by way of expenses and allowances and the estimated money value of any other benefits received by the director, other than in cash.

Annual financial statements to include particulars of loans to officers

- 250.** (1) The annual financial statements of a company shall state the—
- (a) particulars of any relevant loan made during the financial year to which the accounts apply, including any loan which was repaid during that year; and
  - (b) amount of any relevant loan, whenever made, which remained outstanding at the end of the financial year.
- (2) If the company fails to comply with this section, the auditors shall include in the auditors' report on the statement of financial position of the company, so far as they are reasonably able to do so, a statement giving the particulars specified in subsection (1).

(3) For the purposes of this section, a relevant loan is a loan, other than a loan referred to in subsection (4), made by the company, a subsidiary of the company or any other person under a guarantee from, or on a security provided by, the company or a subsidiary of the company to—

- (a) an officer of the company; or
- (b) any person who, after the making of the loan, during the financial year, became an officer of the company.

(4) This section does not apply to a loan that was made by a company or a subsidiary of the company and was not made under a guarantee from, or on a security provided by, the company or subsidiary—

- (a) in the ordinary course of its business, where the ordinary business of the company includes the lending of money; or
- (b) to an employee of the company, or by an employee of the subsidiary, if the loan does not exceed fifty monetary units and is certified by the directors or subsidiary of the company, as the case may be, to have been made in accordance with any practice adopted or about to be adopted by the company or subsidiary with respect to loans to its employees;

(5) For the purposes of this section, a subsidiary of a company is a body corporate which was a subsidiary of the company at the end of the financial year of the company during which the loan concerned was made.

**251.** (1) A person who is, or has, at any time within the previous five years, been a director or officer of a company shall, on the request of the company, provide the company with such information relating to the person as may be necessary for the purposes of sections 249 and 250.

Director to make disclosure of loans and receipts

(2) A person who fails to comply with this section commits an offence and is liable, on conviction, to a fine not exceeding ten thousand penalty units.

**252.** (1) The statement of financial position of a company's annual financial statements, to be laid before the company in a general meeting or delivered to the Registrar, shall be signed on behalf of the company by not less than two directors or, where the company has only one director, by that director.

Statement of financial position to be signed by directors

- (2) If the statement of financial position is—
- (a) laid before the company in a general meeting or delivered to the Registrar without being signed as required by this section; or
  - (b) not a copy laid or delivered, but is issued, circulated or published without—
    - (i) being signed as required by this section; or
    - (ii) a copy of the signature or signatures;

the company and each officer in default commit an offence and are liable, on conviction, to a fine not exceeding one hundred thousand penalty units.

- (3) If a copy of the statement of financial position is issued, circulated or published without having annexed to it copies of—
- (a) the statement of income;
  - (b) any group accounts; and
  - (c) the auditors' report;

the company and each officer in default commit an offence and are liable, on conviction, to a fine not exceeding one hundred thousand penalty units.

Appointment  
of auditors

**253.** (1) Subject to section 263, a company shall, within three months after its incorporation, appoint an auditor of the company, who shall hold office until the close of the company's first annual general meeting.

(2) An appointment, made in accordance with subsection (1), shall be made by the company by an ordinary resolution.

(3) Despite an agreement between a company and an auditor, the company may, by ordinary resolution, remove the auditor before the expiration of the auditor's term of office, except that the auditor shall be remunerated for the work done.

(4) If a company fails to appoint an auditor within ninety days after the end of the financial year, each director commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units.

(5) The provisions of this section do not apply to small private companies.

Auditing  
firm

**254.** An auditing firm may be appointed to be the auditor of a company if—

- (a) at least one partner of the firm is ordinarily resident in Zambia;



- (b) all or some of the partners, including the partner who is ordinarily resident in Zambia, are qualified for appointment as auditors;
- (c) the firm is not indebted to the company; or
- (d) a partner of the firm is not a member, director or employee of the company or a related company.

**255.** An auditor's report shall be signed, on behalf of a firm appointed as the auditor of a company, by a partner of the firm who is a qualified auditor.

Signing of auditor's report

**256.** A person shall not be appointed as auditor of a company unless that person is qualified and is registered to practice as an auditor by a body regulating the audit practice in Zambia.

Qualifications of auditors

**257.** (1) An auditor may be reappointed by an ordinary resolution by the company at the annual general meeting.

Reappointment of auditor

(2) An auditor of a company shall not be reappointed at an annual general meeting if the auditor has given notice to the company that the auditor does not wish to be reappointed.

(3) Despite subsection (1), an auditor shall only be reappointed continuously for a period not exceeding a total of six years.

**258.** An auditor of a company shall ensure, in carrying out the duties of an auditor in accordance with this Part, that the auditor's judgement is not impaired by reason of any relationship with, or interest in, the company or a related company.

Auditor to avoid conflict of interest

**259.** (1) An auditor of a company shall prepare an audit report and present it at an annual general meeting.

Auditor's report

(2) An auditor's report shall contain information, as required by the auditing standards prescribed by a body regulating the practice of auditing in Zambia.

(3) An auditor shall, in addition to the report referred to in subsection (1), report on whether there—

- (a) is a relationship, interest or debt which the auditor has in the company; and
- (b) are serious breaches of corporate governance principles or practices by the directors.

(4) An auditor shall, within ninety days of signing an audit report, issue a management letter highlighting major weaknesses, breaches or other concerns noted during the audit.

(5) An auditor who contravenes this section shall be charged in accordance with the law regulating the practice of auditing in Zambia.

- Access to information
- 260.** (1) The board of directors or an officer of the company shall ensure that an auditor of the company has access to information, explanations, accounting records and other documents of the company.
- (2) Where the board of directors or an officer of the company fails to comply with subsection (1), the board of directors or an officer of the company commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units.
- (3) It shall be a defence to a member of the board or an officer of the company charged with an offence, in accordance with subsection (1) that the officer was—
- (a) not in possession or control of the information required; or
  - (b) unable to give the explanations required, by reason of the duties assigned, or the position held by, the officer.
- Auditor's attendance at annual general meeting
- 261.** The board of directors shall ensure that an auditor of the company—
- (a) attends an annual general meeting and is heard on any part of the business of the meeting which concerns the auditor; and
  - (b) receives the notices and communications that members are entitled to receive relating to an annual general meeting.
- Furnishing auditor's report
- 262.** The auditor of a company shall, on completing an audit report, submit the report to the board of directors within an agreed time frame and reserve a copy of the report for the debenture holders or their assignees, except that where there is no agreed time frame, submit the report within ninety days after completion of the audit.
- Small private company need not appoint auditor
- 263.** (1) Despite section 253, a small private company need not appoint an auditor.
- (2) Where a small private company appoints an auditor, the provisions relating to appointment of auditors, as specified in this Act, shall apply.
- Appointment of auditor for small private company
- 264.** (1) Despite this Act, where, at or before the time required for the holding of an annual meeting of a small private company, notice of intention to appoint an auditor is given to the board of directors, signed by shareholders who hold not less than fifty percent of the shares of the company, the company shall appoint an auditor.

(2) A resolution to appoint an auditor shall cease to have effect at the next annual general meeting.

**265.** (1) Subject to section 253, the board of directors shall ensure that, within three months following the end of the financial year, an audit is conducted, in accordance with subsection (2), and the report of the financial affairs is signed by not less than two directors or, where the company has only one director, by the director.

Preparation  
of audited  
financial  
statement

(2) The audited financial statement of a public company shall be submitted, to the Registrar, within thirty days of it being adopted by the shareholders.

(3) A company which fails to submit audited financial statements, as required by subsection (2), commits an offence and is liable, on conviction, to a fine not exceeding one thousand penalty units for each day that the failure continues.

**266.** The financial statements of a company shall comply with standards prescribed by the body regulating the practice of accountancy in Zambia.

Standards  
for financial  
statement  
preparation

**267.** (1) A company that has one or more subsidiaries shall prepare, within six months after the end of its financial year, consolidated financial statements.

Obligation to  
provide  
consolidated  
financial  
statement

(2) A consolidated financial statement shall—

(a) be signed by not less than two directors of the holding company or, where the holding company has only one director, by the director;

(b) not be required in the case of a subsidiary of a company incorporated in Zambia; and

(c) in the case of a company which is required to comply with International Accounting Standards, contain a consolidated—

(i) financial statement for the group, as at the date of that financial statement; and

(ii) statement of comprehensive income.

**268.** Where a company becomes a subsidiary of another company during the accounting period to which group financial statements relate, the consolidated profit and loss statement, or the consolidated income and expenditure statement for the group, shall relate to the profit or loss of the subsidiary for each part of that accounting period during which it was a subsidiary and not to any other part of that accounting period.

Compre-  
hensive income  
statement  
when  
company  
becomes  
subsidiary

Date for financial statement of subsidiary	<p><b>269.</b> Where the date of a financial statement of a subsidiary is not the same as that of the holding company, the group financial statements shall—</p> <p>(a) where the date of the financial statement of the subsidiary does not precede that of the company by more than ninety days, incorporate the financial statements of the subsidiary for the accounting period ending on that date; or</p> <p>(b) incorporate interim financial statements of the subsidiary completed for a period that is the same as the accounting period of the company.</p>
Annual return to Registrar	<p><b>270.</b> (1) A company shall, within ninety days after the end of each financial year, lodge, with the Registrar, an annual return in the prescribed form.</p> <p>(2) An annual return that is not filed, within the period specified in subsection (1), shall attract a penalty as prescribed.</p> <p>(3) An annual return shall be signed by a director or the secretary and shall, in the case of a public limited company, include annual audited financial statements and updated beneficial ownership information.</p> <p>(4) The Registrar shall cause to be published in the <i>Gazette</i> or in a daily newspaper of general circulation in Zambia or on the website of the Agency or in any other media, a list of companies whose annual returns are overdue.</p> <p>(5) The Registrar is not liable for any publication made in good faith in terms of subsection (4).</p>
Filing of annual returns in receivership or liquidation Act No. of 2017	<p><b>271.</b> Where a company has been placed in receivership or is in the process of being wound up in accordance with the Corporate Insolvency Act, 2017, the receiver or liquidator of the company shall cause an annual return to be filed until the completion of the receivership or winding up.</p>
No change return	<p><b>272.</b> (1) Where the status of a company has not changed during the financial year, the company shall file a “no change” return, in the prescribed form, indicating the financial year in which the return is filed and containing a general statement that there has been no change in any given particulars in the return, since the filing of the previous return.</p>

(2) Despite the filing by a company of a “no change” return, the Registrar may cause to be inspected any records of a company which the Registrar considers necessary for the better carrying out of this Act.

**273.** A public company shall lodge, with the Registrar, together with the annual return, a certified copy of every financial statement, statement of comprehensive income, group accounts, directors’ report and auditors’ report sent to members and debenture holders since the last annual return was made.

Documents lodged with annual return of public company

**274.** Where a company adopts a date other than the one recognised for the financial year, it shall give notice of the adopted date to the Registrar, in the prescribed manner and form.

Notice of adopted date given to Registrar

**275.** Subject to section 277, the board of directors shall prepare an annual report on the affairs of the company during the accounting period ending on that date.

Obligation to prepare annual report

**276.** The board of directors shall cause a copy of the annual report to be sent to every shareholder not less than twenty-one days before the date fixed for the annual general meeting.

Submitting annual report to shareholders

**277.** (1) An annual report shall be in writing, dated and shall—  
(a) contain information describing—

Content of annual report

(i) the company’s affairs, so far as is reasonable for the members to have an appreciation of such affairs, being information which is not harmful to the business of the company or a subsidiary; and

(ii) any change in the nature of the business of the company or its subsidiary and the classes of business in which the company has an interest, whether as a member of another company or otherwise, during the accounting period; and

(b) include the financial statements and any group financial statements for the accounting period completed and signed in accordance with this Act;

(c) include an auditor’s report, where an auditor’s report is required to be included in relation to the financial statements or group financial statements;

(d) include updated beneficial ownership information in respect of shares;

(e) state particulars of entries in the interests register made during the accounting period;

- (f) state the amount which represents the total of the remuneration and benefits due or received by the company and any related company, corporation or institution by—
- (i) executive directors engaged full-time by the company and related companies, corporations, or institutions, including all bonuses and commissions received by the executive directors; and
  - (ii) non-executive directors;
- (g) state the total amount of donations made by the company and any subsidiary during the accounting period;
- (h) state the names of the persons—
- (i) holding office as directors at the end of the accounting period; and
  - (ii) who ceased to hold office as directors during the accounting period;
- (i) state the amounts payable as audit fees by the company to an auditor of the company and, as a separate item, fees payable by the company for other services provided by the auditor; and
- (j) be signed on behalf of the company by not less than two directors or, where the company has only one director at the completion of the annual financial statements, by the director.

(2) A company whose subsidiary company is located outside Zambia shall comply with this section within sixty days after the dates specified in this section.

Inspection  
of  
company's  
records

**278.** (1) A company shall make available for inspection, by the Registrar, a delegate of the Registrar or a member or a person authorised in writing by the member, the records specified in section 279, if the Registrar or the member suspects any non-compliance by directors or executive officers.

(2) A written notice of intention to inspect records of a company shall be served on the company not less than three days in advance of the inspection.

Records to  
be made  
available for  
inspection  
by members

**279.** For the purposes of section 278, the records to be made available for inspection include—

- (a) minutes of meetings and resolutions of members;
- (b) copies of written communications to shareholders or to holders of a class of shares during the preceding five years, including annual reports, financial statements and group financial statements;

- (c) beneficial ownership records;
- (d) certificates given by directors;
- (e) records relating to directors; and
- (f) the interests register, where applicable.

**280.** Documents that are to be inspected shall be available for inspection during business hours at the place where the company's records are kept for the inspection period specified in section 281. Manner of inspection

**281.** (1) An inspection period is the period commencing on the third weekday after the day on which notice of intention to inspect is served on a company by a person referred to in section 278, and ending on the eighth weekday after the notice is received. Commencement of inspection

(2) A member or a person authorised in writing by the member may, on a written request and after payment of a fee, request for a copy of, or extract from, a document which is available for inspection.

### PART XIII

#### AMALGAMATION

**282.** (1) Two or more companies may amalgamate and continue as one of the companies in the amalgamation or as an entity incorporated in accordance with this Act. Amalgamation

(2) The Competition and Consumer Protection Act, 2010, shall apply to an amalgamation undertaken in accordance with this Part in addition to the requirements of this Part. Act No. 24 of 2010

**283.** A person undertaking an amalgamation shall, in a proposal to amalgamate, set out the terms of the amalgamation, in particular the— Amalgamation proposal

- (a) name of the amalgamated company;
- (b) registered office of the amalgamated company;
- (c) full names and residential addresses of directors of the amalgamated company;
- (d) address for the registered office of the amalgamated company;
- (e) share structure of the amalgamated company, specifying the—
  - (i) number of shares of the company; and
  - (ii) rights, privileges, limitations and conditions attached to each share of the company;
- (f) manner in which the shares of each company that is proposed to be amalgamated are to be converted into shares of the amalgamated company;

- (g) consideration that the holders of those shares are to receive;
- (h) payment to be made, if any, to a shareholder or a director of the amalgamated company;
- (i) details of any arrangement necessary to complete the amalgamation and the subsequent management and operation of the amalgamated company;
- (j) copy of the articles of the amalgamated company; and
- (k) date on which the amalgamation shall become effective.

Amalgamation  
resolution

**284.** (1) The board of each company which is proposed to be amalgamated shall resolve that the—

- (a) amalgamation is in the best interest of the company; and
- (b) board of directors is satisfied, on reasonable grounds specified, that the amalgamated company shall, immediately after the amalgamation, satisfy the solvency test.

(2) The directors who vote in favour of a resolution to amalgamate as specified in this section, shall make a declaration as to the matters resolved in subsection (1).

Documents  
for  
submission  
to  
shareholders

**285.** The board of directors of each company which is to be amalgamated shall, not less than thirty days before the amalgamation is proposed to take effect, send to each shareholder—

- (a) a copy of the proposal for amalgamation;
- (b) copies of the declarations made by the directors in compliance with section 284;
- (c) a summary of the principal provisions of the articles of the company;
- (d) a statement—
  - (i) that a copy of the articles of the proposed amalgamated company shall be supplied to a shareholder who requests it;
  - (ii) setting out the rights of shareholders; and
  - (iii) of any material interests of the directors, whether in that capacity or otherwise; and
- (e) such other information and explanation as may be necessary to enable a shareholder to understand the nature and implications for the company and its shareholders of the proposed amalgamation.



- 
- 286.** The board of directors of each amalgamating company shall, not less than thirty days before the amalgamation is proposed to take effect—
- (a) send a copy of the proposal to amalgamate to every secured creditor;
- (b) give public notice of the proposed amalgamation, in the prescribed form, including a statement that—
- (i) copies of the proposal to amalgamate are available at the registered offices of the companies to be amalgamated and at such other places, as may be specified for inspection, during normal business hours; and
- (ii) a shareholder or creditor of the amalgamating company, or any person to whom the company is under an obligation, is entitled to be supplied at no cost, with a copy of the proposal to amalgamate on request.
- 287.** A proposal to amalgamate shall be approved by special resolution of the shareholders of each amalgamating company to be amalgamated.
- 288.** The board of directors of each company to be amalgamated shall, not less than thirty days before the amalgamation is proposed to take effect, give written notice of the proposed amalgamation to every creditor of the company.
- 289.** For the purpose of effecting an amalgamation, the following documents shall be lodged with the Registrar:
- (a) an application for registration of the amalgamated company in the prescribed form signed by each of the persons named in the proposal to amalgamate as a director or secretary of the amalgamated company consenting to act as a director or secretary of the amalgamated company;
- (b) the special resolution required by section 287, together with the approved proposal to amalgamate;
- (c) a declaration—
- (i) stating that the amalgamation has been approved in accordance with this Act which shall be signed by not less than two directors of each company to be amalgamated or, where a company has only one director, by the director; and
- Procedures before amalgamation
- Approving amalgamation proposal
- Notice of amalgamation to creditors
- Lodgement of documents for amalgamation

- (ii) signed by the board of directors of the amalgamated company stating that, where the proportion of the claims of creditors of the amalgamated company in relation to the value or the assets of the company is greater than the proportion of the claims of creditors of the amalgamated company in relation to the value of the assets of the amalgamated company, no creditor shall be prejudiced by that fact.

Certificate of amalgamation or of incorporation

**290.** The Registrar shall, on receiving the documents specified in section 289—

- (a) where the amalgamated company is the same as one of the companies being amalgamated, issue a certificate of amalgamation; or
- (b) where the amalgamated company is a new company—
- (i) enter the particulars of the company on the Register; and
- (ii) issue a certificate of incorporation in the prescribed form and manner, to the company.

Removing amalgamating companies from Register

**291.** The Registrar shall, where appropriate, remove from the Register the names of the companies which have been amalgamated and retain only the name of the amalgamated company.

Property, rights, powers and privileges of amalgamated company

**292.** The property, rights, powers and privileges of each company which has been amalgamated, which has been removed from the Register, shall be the property, rights, powers and privileges of the amalgamated company.

Liabilities and obligations of amalgamated company

**293.** An amalgamated company shall continue to be liable for all the liabilities and obligations of each of the companies which have been amalgamated and all pending proceedings by or against such companies shall be continued by or against the amalgamated company.

Enforcement of Court ruling by or against amalgamated company

**294.** The decision of the Court in favour of, or against, a company which has been amalgamated may be enforced by, or against, the amalgamated company.

Objection to amalgamation

**295.** A shareholder, debenture holder, creditor or other interested person may make an objection to an amalgamation before the Court.

<b>296.</b> A provision in a proposal to amalgamate relating to the conversion of shares and rights of shareholders in the companies to be amalgamated shall have effect according to the terms of the amalgamation.	Conversion of shares and rights in amalgamation proposal
--	--

## PART XIV

## FOREIGN COMPANIES

<b>297.</b> Subject to the other provisions of this Part, this Part applies to an existing foreign company as if—	Application of Act to existing foreign company
---	--

(a) it had been duly registered in accordance with this Act as a foreign company; and

(b) any document that, in accordance with the repealed Act, was duly lodged by it with the Registrar, or duly registered by the Registrar, had been duly lodged or registered in accordance with this Act.

<b>298.</b> The Registrar shall maintain a Register of Foreign Companies for the purposes of this Part.	Register of Foreign Companies
---	-------------------------------

<b>299.</b> (1) A body corporate formed outside Zambia may register as a foreign company by lodging with the Registrar an application for registration accompanied with other documents specified in this section.	Registration of foreign company
--	---------------------------------

(2) An application, provided for in subsection (1), shall be in the prescribed form and include the following particulars:

(a) the name of the company;

(b) the nature of the company's business or main objects;

(c) the beneficial ownership of the shareholding in the country of incorporation;

(d) the relevant particulars of the persons who are to be the local directors specifying which person is to be the local chairperson;

(e) the number and par value, if any, of the company's authorised and issued shares, and the amount paid thereon, distinguishing between the amounts paid and payable in cash and the amounts paid and payable other than in cash, if the company has shares; (f) the address of the company's registered or principal office in the country of its incorporation;

(g) subject to subsection (5), the physical address of an office in Zambia to be the company's registered office; and

(h) a postal address of the company in Zambia.

(3) The application, referred to in subsection (1), may specify a date, not less than twelve months and not more than fifteen months after the date of lodgement of the application, on which the second financial year of the company shall begin.

(4) The application, referred to in subsection (1), shall be accompanied by—

- (a) a certified copy of the charter, statutes, regulations, memorandum and articles, or other instrument constituting or defining the constitution of the company and, if the instrument is not written in English, a certified translation of the instrument;
- (b) in relation to each documentary agent and local director, a statement signed by the documentary agent or local director accepting appointment as such; and
- (c) the particulars and documents referred to in section 238(2) relating to a charge on any property in Zambia acquired by the company, not less than fourteen days before the lodgement of the application or, if there are no such charges, a statement in the prescribed form to that effect.

(5) If a foreign company has not set up or acquired an established place of business at the time it lodges an application for registration as a foreign company, it shall do so within twenty-eight days after the lodgement.

(6) For the purposes of this section, the relevant particulars of a person in the case of—

- (a) an individual are:
  - (i) present, and if any, former forenames and surname;
  - (ii) residential and postal address; and
  - (iii) business occupation, if any; and
- (b) a body corporate, are its:
  - (i) name and, if a company, its designating number;
  - (ii) registered office; and
  - (iii) registered postal address.

Established  
place of  
business

**300.** (1) For purposes of this Part, and subject to this section, a foreign company has an “established place of business” if it has any of the following in Zambia—

- (a) a branch or management office;
- (b) an office for the registration of transfer of shares;
- (c) a factory or mine; or
- (d) any other fixed place of business.

(2) An agent, in Zambia, of a foreign company in which the agent does not—

- (a) have, or habitually exercise, a general authority to negotiate and conclude contracts on behalf of the body corporate; or
- (b) maintain a stock of merchandise belonging to that body corporate from which the agent regularly fills orders on behalf of the foreign company;

is not an established place of business of the foreign company for the purpose of this Part.

(3) For purposes of this Part, where a foreign company carries on business dealings in Zambia, through a broker or general commission agent acting in the ordinary course of business, the office of the broker or agent shall not be considered to be an established place of business of the body corporate.

(4) Where a foreign company has a subsidiary which is incorporated in Zambia or has an established place of business in Zambia, the—

- (a) office of the subsidiary; or
- (b) established place of business of the subsidiary;

shall not be regarded for that reason only as an established place of business of the body corporate.

**301.** (1) For purposes of this Act, the “financial year” of a foreign company is the period of twelve months that begins on one accounting date of the company and ends on the day before the next.

Financial  
year of  
foreign  
company

(2) The first “accounting date” of a foreign company is the date—

- (a) of its registration as a foreign company; or
- (b) on which it first had an established place of business.

(3) Subject to this section, the subsequent accounting dates of a foreign company are the—

- (a) date specified in the application for its registration as the date on which the second financial year of the company will begin, and anniversaries of that date, if the application for registration specified such a date; or
- (b) anniversaries of the date of its incorporation, if the application for registration did not specify such a date.

(4) A foreign company may change an accounting date, by lodging a notice of the change in the prescribed form with the Registrar, except that the change does not result in a financial year being longer than fifteen months.

(5) Where a foreign company changes an accounting date pursuant to this section, the subsequent accounting dates of the company are unless changed in accordance with this section, the anniversaries of that date.

Returns  
required on  
alteration of  
registered  
particulars

**302.** (1) A foreign company shall lodge a notice with the Registrar, within sixty days after the date of effect of an alteration—

(a) in the charter, statutes, regulations, memorandum and articles, or other instrument relating to the foreign company within sixty days of the alteration being made;

(b) of the particulars contained in the application, referred to in section 299(2); or

(c) to the particulars in section 299 (2) (a), (b), (e) or (f).

(2) The foreign company shall, in the case of an alteration to any of the particulars, referred to in section 299 (2) (c), (d), (g) or (h), lodge a notice of the alterations with the Registrar, within twenty-eight days after the date on which the alteration takes effect.

(3) Where the particulars lodged in terms of this section include the name of a person appointed as a documentary agent or local director or manager, the notice shall be accompanied by a consent signed by the person to act in that capacity.

Foreign  
company to  
appoint local  
director

**303.** (1) A foreign company shall appoint at least one local director.

(2) A contravention by a foreign company of subsection (1) which continues for more than sixty days shall constitute a ground for winding up the company by the Court on the application of the Registrar.

(3) A company which intends to decrease the number of its local directors, where the company has more than one local director, shall notify the Registrar in the prescribed form and manner.

(4) A company shall not appoint, as a local director, an individual who is not qualified to be a director as specified in this Act.

**304.** (1) If a local director acts ostensibly on behalf of the foreign company, in the course of carrying on the business of the company, the act shall bind the foreign company, unless the—

Responsibilities of local directors

- (a) local director lacked the authority so to act; and
- (b) person with whom the local director dealt with had actual knowledge of the lack of authority or, having regard to the person's position with, or relationship to, the foreign company the person ought to have known of the lack of authority.

(2) A foreign company shall, in legible Roman characters, state the forenames or the initials and surname of the local director and any former forename or surname of the local director in all trade circulars and business correspondence on or in which the company's name appears and which are despatched by or on behalf of the foreign company—

- (a) in Zambia, whether to persons in Zambia or not;
- (b) outside Zambia, exclusively to persons in Zambia; or
- (c) exclusively for the purposes of the company's operations in Zambia.

(3) The Registrar may, if special circumstances exist which justify an exemption from the requirements of subsection (2), by notice published in the *Gazette* and in a daily newspaper of general circulation in Zambia and subject to any conditions specified in the notice, exempt a foreign company from the requirements of this sub-section.

(4) A foreign company shall maintain a register of its local directors, at its registered office or the office notified to the Registrar for the purposes of section 307, and section 31 shall apply to the register, with the necessary modifications.

**305.** (1) A document may be served on a foreign company by—

Service on foreign company

- (a) leaving it at an address registered as the address of a documentary agent of the foreign company;
- (b) personal service on a documentary agent of the company, if the agent is an individual;
- (c) leaving it at the registered office of the foreign company, if the company has no registered documentary agent, or at the registered address of such an agent;
- (d) personal service on a local director;

- (e) leaving it at the registered office or principal place of business of the foreign company in the country of its incorporation; or
- (f) by personal service on a director or secretary of the foreign company in the country of its incorporation.

(2) A document sent by registered or other receipted post to the address registered as the postal address of a documentary agent shall be taken to have been served on the foreign company if it is proved, by a receipt issued or otherwise, that the document, or a post office notification of the document, was delivered to the registered postal address.

(3) Service, in accordance with subsection (1), other than paragraph 1(c), shall continue to be effective in relation to the foreign company for a period of two years after the company ceases to be registered as a foreign company.

(4) Nothing in this section shall derogate from the power of the Court to direct how service of a document relating to legal proceedings before the Court shall be effected.

Annual  
accounts of  
foreign  
company

**306.** (1) A foreign company shall, within nine months after the end of each financial year of the foreign company, lodge with the Registrar in the prescribed form, annual accounts and an auditors' report corresponding as nearly as practicable with the annual accounts and auditors' report in relation to the operations and assets of the company in Zambia as specified in Part XII, if the operations and assets were the whole operations and assets of a public company incorporated in accordance with this Act.

(2) For the purposes of subsection (1), a foreign company shall appoint an auditor or auditors.

(3) An auditor of a foreign company shall be a—

- (a) qualified and registered to practice in Zambia by a body regulating the audit practice in Zambia; or
- (b) firm of registered accountants.

(4) If a foreign company is required by its articles or provisions of a constitutive document regulating its conduct, by whatever name called, or by the laws of the country in which it is incorporated, to circulate annual accounts to its members or lay them before its members at an annual general meeting, the company shall, within twenty-eight days after complying with the requirements, lodge with the Registrar a certified copy of the accounts, together with, if the accounts are in a language other than English, a certified translation of the accounts in English.



(5) A foreign company may, in its statement of comprehensive income, referred to in subsection (1), make such apportionments and add such notes and explanations as are, in the foreign company's opinion, necessary or desirable to give a true and fair view of the profit or loss on its operations in Zambia, and for this purpose may debit a reasonable rate of interest on capital employed in Zambia.

(6) The Registrar may, in relation to the accounts and reports referred to in subsection (1), on the application or with the consent of the local directors modify any of the requirements of this section or Part XII to suit the circumstances of the foreign company, except that the accounts and reports give a true and fair view of the profit or loss of the operations of the foreign company and the state of affairs of the company in Zambia.

**307.** (1) A foreign company shall keep—

Maintenance  
of  
accounting  
records

(a) such accounting records that correctly record and explain the transactions of the foreign company relating to its operations and assets in Zambia, including any transactions as trustee, and the financial position of the company in relation to the operations and assets;

(b) its accounting records in such a manner as will enable the—

(i) preparation of true and fair accounts of the operations and assets of the foreign company; and

(ii) accounts of the foreign company to be conveniently and properly audited in accordance with this Part;

(c) its accounting records for a period of ten years after the completion of the transactions to which they relate; and

(d) at its registered office, or at another office notified to the Registrar in writing, such statements and records, with respect to the matters dealt with in its accounting records, that would enable the foreign company to prepare true and fair accounts, together with any documents required by this Part to be attached to the accounts.

(3) A company shall keep its accounting records in—

(a) writing or any form that enables the accounting records to be readily accessible and readily convertible into writing; and

(b) English, unless the use of another language is approved, in writing, by the Registrar.

(4) A foreign company shall make its accounting records available, in writing, at all reasonable times for inspection, without charge, by its auditors and local directors and the Registrar or a delegate of the Registrar.

(5) If a foreign company fails to comply with this section the—

(a) Registrar may apply for an order that the foreign company be wound up in accordance with section 312; and

(b) foreign company and each officer in default commit an offence and shall be liable on conviction to the general penalty specified in this Act.

(6) The Registrar may, if special circumstances of a company justify, exempt the foreign company generally or in respect of any particular financial year from any provision of this section.

Name of  
foreign  
company

**308.** (1) Subject to this section, the name of a foreign company registered in Zambia shall be—

(a) the name of the foreign company as incorporated in the country of its incorporation, if that name is in English; and

(b) a translation or transliteration in English of the name of the company as incorporated in the country of its incorporation, as the company chooses, if that name is not in English.

(2) The Registrar may, on the application of a foreign company, whether before or after registration of the company, permit the company to have a different name in Zambia.

(3) The Registrar may, where the name of the foreign company is likely to cause confusion with the name of another body corporate or is otherwise undesirable, direct the foreign company to change its name to another name, approved by the Registrar, for use in Zambia.

(4) The Registrar shall not register a body corporate applying for registration as a foreign company, unless the body corporate complies with the direction made by the Registrar in subsection (3).

(5) The Registrar shall, where the foreign company fails to comply with the direction made in accordance with subsection (3), within forty-two days after the issue of the direction, register the designating number of the company, together with the words “Foreign Company”, as the name of the company.

(6) A change of name, in accordance with this section, or the use of a name different from the name used by the foreign company in the country of its incorporation, shall not affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the foreign company, and any legal proceedings that might have been continued or commenced by or against the foreign company by its former name may be continued or commenced by or against the company under its new name.

**309.** Section 43 shall apply to a foreign company, as if its name included, at the end of it, the words—

Publication  
of name of  
foreign  
company

- (a) “ incorporated in ” followed by the name of the country of its incorporation; and
- (b) “ with limited liability ”; if the liability of the members is limited;

but shall not apply in relation to business correspondence of the foreign company despatched outside Zambia.

**310.** Section 238 shall apply in relation to a foreign company as if a reference to—

Registration  
of charges  
by foreign  
company

- (a) a company were a reference to the foreign company;
- (b) a charge were a reference to a charge over property of the foreign company situated in Zambia; and
- (c) the acquisition of property by the foreign company included a reference to the acquisition of property before its registration as a foreign company.

**311.** (1) Where—

Notification  
of winding  
up of foreign  
company

- (a) a winding-up order is made by a court of the country of incorporation of a foreign company;
- (b) a resolution is passed or other appropriate proceedings are taken in the country of incorporation of a foreign company leading to the voluntary winding up of the company; or
- (c) the company is dissolved or otherwise ceases to exist, according to the law of the country of incorporation of the foreign company;

the foreign company or if the company is dissolved, the documentary agents and local directors of the company shall lodge a notice with the Registrar within twenty-eight days after the event occurs.

(2) A foreign company shall, where an event referred to in subsection (1)(a) or (b) occurs, cause a statement to appear, in legible Roman characters, on every invoice, order or business letter thereafter issued in Zambia by or on behalf of the foreign company, to the effect that the company is being wound up in the country of its incorporation.

(3) A person who carries on, or purports to carry on, business in Zambia on behalf of a foreign company after the date on which it was dissolved or otherwise ceased to exist in the country of its incorporation commits an offence and is liable, on conviction, to a fine not exceeding thirty thousand penalty units for each day that the person carries on business.

(4) Nothing in this section shall derogate from the provisions of section 312.

Winding up  
of foreign  
company in  
Zambia

**312.** (1) A foreign company may be wound up in accordance with this section whether or not the foreign company has been dissolved or has otherwise ceased to exist according to the law of the country of its incorporation.

(2) For the purposes of a winding-up, in accordance with this section, the foreign company shall be treated as if it were a company incorporated in Zambia whose whole operations and assets were the operations and assets in Zambia of the foreign company.

Act No. 9 of  
2017

(3) Subject to this section, the Corporate Insolvency Act, 2017, shall apply, with necessary modifications, to the winding up of a foreign company.

Act No. 9 of  
2017

(4) A foreign company may be wound up by the Court on the following grounds, in addition to the grounds referred to in the Corporate Insolvency Act, 2017, if the—

- (a) foreign company is in the course of being wound up, voluntarily or otherwise, in the country of its incorporation;
- (b) company is dissolved in the country of its incorporation or has ceased to carry on business in Zambia, or is carrying on business for the purposes only of winding up its affairs; or
- (c) Court considers that the foreign company is being operated in Zambia for an unlawful purpose.

(5) The Court may, in the winding-up order, made in accordance with this section or on subsequent application by the liquidator, direct that all transactions in Zambia by or with the foreign company shall be considered to be, or have been, validly done despite the transactions occurring after the date when the company was dissolved or otherwise ceased to exist according to the law of the country of its incorporation, and may make the order on such terms and conditions as the Court considers appropriate.

**313.** (1) If a foreign company ceases to have an established place of business in Zambia, it shall, within twenty-eight days thereafter, lodge with the Registrar a notice of that fact, in the prescribed form.

Cessation of  
business of  
foreign  
company

(2) The Registrar shall register the notice, referred to in subsection (1), and the company shall, subject to this section, cease to be a foreign company registered in Zambia.

(3) A foreign company shall maintain a documentary agent and continue to notify the Registrar of the particulars of its documentary agents, for a period of two years after lodging the notice of its ceasing to have an established place of business in Zambia.

(4) Where the Registrar has reason to believe that a foreign company has ceased to have an established place of business in Zambia, the Registrar shall serve a notice on the foreign company of the fact and stating the effect of subsection (5).

(5) If, at the end of ninety days after the giving of a notice as specified in subsection (4), the Registrar is not satisfied that the foreign company is maintaining an established place of business in Zambia, the foreign company shall be considered as having lodged a notice in accordance with subsection (1) on that day.

(6) A person who, while a body corporate was registered as a foreign company, would have had the right to inspect a document or register held by the Registrar in relation to the foreign company shall have the right to do so during a period of two years following the lodging by the company of the notice specified in subsection (1).

**314.** (1) Part X applies in relation to a foreign company, with the necessary modifications, as if the foreign company were a public company.

Invitation to  
public  
relating to  
foreign  
companies

(2) The Registrar may, at the request of a foreign company, waive or modify the provisions of Part X in relation to a foreign company;

(3) A prospectus registered by a foreign company, for purposes of an invitation to the public to acquire shares or debentures, shall, in addition to complying with Part X and subject to any modifications made in terms of subsection (2), also contain particulars of the—

- (a) instrument constituting or defining the constitution of the foreign company;
- (b) law, or provisions having the force of law, by or under which the incorporation of the foreign company was effected;
- (c) an address, in Zambia, where copies of the foregoing, or, if the same are in a language other than English, certified translations thereof, may be inspected;
- (d) date on which, and the country in which, the foreign company was incorporated; and
- (e) nature of the liability of the members.

(4) A breach of subsection (2) shall be considered to be a breach of section 218.

Invitation to public relating to other foreign corporates

**315.** (1) In this section, “ non-Zambian company ” means a body corporate formed or proposed to be formed outside Zambia, other than a foreign company.

(2) Part X shall apply, with the necessary modifications, to a non-Zambian company as if it were a public company.

(3) The Registrar may, at the request of a non-Zambian company, waive or modify the provisions of Part X in relation to a non-Zambian company.

(4) A prospectus registered by a non-Zambian company for the purposes of an invitation to the public to acquire shares or debentures shall, in addition to complying with Part X and subject to any modifications made in terms of subsection (2), also contain particulars of the—

- (a) instrument constituting or defining the constitution of the company;
- (b) law, or provisions having the force of law, by or under which the incorporation of the foreign company was effected;
- (c) address in Zambia where copies of the foregoing, or, if the same are in a language other than English, certified translations thereof, may be inspected;
- (d) date on which and the country in which the company was incorporated; and
- (e) nature of the liability of the member.

(5) A breach of subsection (3) shall be deemed to be a breach of section 218.

**316.** (1) If a foreign company fails to comply with any obligation imposed on it by this Part, the foreign company and any officer or documentary agent in default commit an offence and is liable, on conviction, to the general penalty specified in this Act.

Penalties  
and  
disabilities

(2) If a local director or a documentary agent of a foreign company wilfully fails to comply with any of the obligations imposed by this Part, the local director or documentary agent commits an offence.

(3) Subsections (1) and (2) shall not apply to an act or omission which constitutes an offence under another provision of this Part or Act.

(4) Subject to this section, if a foreign company fails to lodge with the Registrar a document required by this Part to be lodged, the rights of the foreign company under or arising out of, or incidental to, a contract made in Zambia while the failure continues shall not be enforceable by action or other legal proceedings.

(5) The Court may, on the application of a foreign company to which subsection (4) applies and if it is satisfied that it is just and equitable to do so, grant relief, either generally or on conditions, from any disability imposed by subsection (4).

(6) Nothing in this section shall prejudice the rights of any other party against the foreign company in respect of a contract referred to in subsection (4).

(7) If another party commences an action or proceedings against a foreign company to which subsection (4) applies, this section shall not preclude the foreign company from enforcing in the action or proceedings by way of counter-claim, set-off or otherwise, such rights as it may have against the party in respect of that contract.

## PART XV

### DEREGISTRATION OF COMPANIES

**317.** (1) Despite the Corporate Insolvency Act, 2017, but subject to the this Act, the Registrar may deregister a company where the—

- (a) company has not filed annual returns for two consecutive years;
- (b) Court, on an application by the Registrar, issues an order that the company be deregistered;

Power of  
Registrar to  
deregister  
company  
Act No. 9 of  
2017

(c) Registrar has reasonable cause to believe that a company is a dormant company; or

(d) company applies for de-registration for reason that it is a dormant company.

(2) The Registrar shall, before de-registering a company in accordance with subsection (1), give notice in writing, in the prescribed manner and form to the company or shareholders or promoters of the company, of the intention to de-register the company and shall—

(a) give reasons for the intended de-registration; and

(b) require the company to show cause, within a period of thirty days, why the company should not be de-registered.

(3) Where a company takes remedial measures to the satisfaction of the Registrar, within the period referred to in subsection (2), the Registrar shall not de-register the company.

(4) The Registrar shall, in making the Registrar's final determination on the de-registration of the company consider the submissions made by the company, in accordance with subsection (2), and shall consider any remedial measures taken in accordance with subsection (3).

(5) The Registrar may de-register a company if after being notified, in accordance with sub-section (2), that the company failed to show cause why it should not be de-registered or did not take any remedial measures to the satisfaction of the Registrar, within the specified period.

(6) A company on being de-registered shall—

(a) cease to be entitled to the rights and benefits, conferred in this Act, with effect from the date of the deregistration;

(b) take down any certificate or licence on display in every place of business of the company; and

(c) if the de-registration is due to subsection 1(a) or (b), being a company which is not a dormant company, comply with the Corporate Insolvency Act, 2017.

(7) The Registrar shall, on de-registration of a company, in accordance with this section—

(a) publish a notice of the de-registration, in the prescribed manner and form, in the *Gazette* and may be published in a daily newspaper or other media of general circulation in Zambia; and



(b) take any additional steps necessary to inform the public of the de-registration of the company.

(8) A company that has been de-registered in accordance with this section, shall not, from the date it receives a notice of de-registration from the Registrar—

(a) enter into any new contract or business relating to the affairs of the company;

(b) renew or vary a contract relating to the affairs of the company.

(9) The Corporate Insolvency Act, 2017, shall apply to a company which has been deregistered due to the reasons specified in subsection 1(a) or (b).

Act No. 9 of  
2017

**318.** (1) A company may, in the prescribed manner and form, request the Registrar to deregister the company in accordance with section 317(1)(d).

Deregistration  
on  
application  
by company

(2) A request made, in accordance with subsection (1), shall be accompanied by the prescribed fee and a—

(a) copy of the special resolution signed by the members of the company to have the company de-registered;

(b) summary of accounts, if any; and

(c) statutory declaration by two or more directors of the company on the assets of the company stating that the company has no debts or liabilities.

(3) The Registrar shall cause to be published in the *Gazette* and in a daily newspaper of general circulation in Zambia or other media a notice of intention to deregister the company as requested.

(4) After the expiration of ninety days from the publication of the notice, referred to in subsection (1), the Registrar shall, unless cause to the contrary is shown, deregister the company and shall cause notice thereof to be published in the *Gazette* and in a daily newspaper of general circulation in Zambia.

(5) On the publication of the notice that a company has been deregistered the liability, if any, of every officer and member in respect of any act or omission that arose before the company was de-registered, shall continue, and may be enforced in accordance with this Act as if the company had not been de-registered.

Registrar to act as representative of deregistered company in certain events

**319.** (1) The Registrar may, after a company has been deregistered in accordance with this Part, represent the company if satisfied that—

(a) if the company was still existing, it would be bound to carry out, complete or give effect to a transaction or matter; or

(b) an administrative act or decision requires to be done by or on behalf of the company.

(2) Despite the generality of subsection (1), the Registrar shall have power to execute or sign any relevant instrument or document and when so executing or signing an instrument or document, endorse thereon a note or memorandum to the effect that the Registrar has done so in accordance with this section, and such an execution or signature shall have the same force, validity and effect as if the company had been in existence and had executed the instrument or document.

(3) The Registrar shall not incur any liability to any person by reason of any act done or caused to be done by the Registrar in accordance with this section.

(4) A person aggrieved by a decision of the Register may appeal in accordance with this Act.

## PART XVI

### ADMINISTRATION OF ACT

Administration of Act

**320.** (1) This Act shall be administered by the Agency.

(2) In this Part, officer means an employee or agent of the Agency.

Establishment of Companies Office

**321.** There shall be established under the Agency an office to be called the Companies Office.

Powers of Registrar

Act No. 15 of 2010

**322.** The Registrar shall exercise the powers and perform the functions assigned to the Registrar by this Act and the Patents and Companies Registration Agency Act, 2010, except that any power conferred or duly imposed on the Registrar by this Act may be exercised or performed by the Registrar personally or by an officer acting under the delegation or control or direction of the Registrar.

Appointment of officers

**323.** The Agency may, on such terms and conditions as it may determine, appoint such officers as it considers necessary for the carrying out of its functions in accordance with this Act.

**324.** (1) The seal of the Agency, kept in terms of the Patents and Companies Registration Act, 2010, shall be used for the purposes of this Act and the impression thereof made for such purposes, shall be judicially noticed.

Seal of  
Agency  
Act No. 15  
of 2010

(2) On the commencement of this Act, any impression of a seal made for purposes of this Act before the commencement of this Act, shall be considered to be an impression of the seal of the Agency.

**325.** (1) The Registrar shall maintain the registers required by this Act, together with any other registers that the Registrar considers necessary or convenient for the purposes of this Act.

Keeping of  
registers and  
lodged  
documents

(2) The Registrar shall, where a document is lodged in accordance with this Act, register the document, or a copy thereof, and keep it.

(3) The registers and other documents kept by the Registrar, for purposes of this Act, may be recorded or stored in handwritten, typed form or by electronic or photographic process.

(4) For the purposes of this section—

(a) the information in a register, kept in accordance with the repealed Act, shall, if it is information that would have been required to be kept on a register had this Act been in force, be deemed to be information required to be kept on a register in compliance with this Act; and

(b) a document lodged for the purposes of the repealed Act shall be deemed to be a document lodged in accordance with this Act.

**326.** (1) Subject to this Act, the registers, or any document lodged at the Companies Office shall, on payment of the prescribed fees, be open to inspection by the public during prescribed hours.

Inspection of  
registers

(2) The Register of Companies shall be *prima facie* evidence of any matters required or authorised in accordance with this Act to be entered therein.

**327.** (1) The Registrar may, for the purpose of ascertaining whether a company or an officer of the company is complying with this Act or regulations made in accordance with this Act, on giving fourteen days' written notice to the company, call for the production of, or inspect, any book required to be kept by the company.

Inspection  
of records

(2) The Court may, on application by the Registrar or by a member or creditor of the company, or a person claiming an interest which the Court considers sufficient, where a company or an officer, receiver or liquidator of the company—

(a) fails to comply with a provision of this Act which requires the company, or the officer, receiver or liquidator of the company to lodge or deliver a return, account, or other document, or to give notice of any matter; and

(b) continues to fail to comply with the provision for the period of fourteen days after receiving the notice requiring compliance with that provision;

make an order directing the company and any officer thereof, or the receiver or liquidator, to comply with the provision within such time as may be specified in the order, and may provide that all costs of and incidental to the application shall be borne by the company or by the officer, receiver or liquidator of the company responsible for the failure.

Waiver of fees

**328.** (1) The Registrar may waive the whole or any part of a fee payable in accordance with this Act, subject to rules issued by the Board of the Agency.

(2) Where a provision in this Act refers to a prescribed fee and no fee has been prescribed for the purposes of the provision, the fee applicable to lodgements in general shall apply.

Collection of information

**329.** (1) The Registrar may, by notice in writing, direct a—

(a) company; or

(b) person who is, or has been an officer or director of a company;

to submit to the Registrar, within the period stated in the notice, specified information with regard to the operations of the company.

(2) The notice, referred to in subsection(1), shall—

(a) not require a company or person to submit information, less than fourteen days after the date on which the notice is served;

(b) be published in the *Gazette* and may be published in a daily newspaper of general circulation in Zambia; and

(c) be served on the company or person named in the order.

(3) A company or person shall be considered to have received the notice, served in accordance with subsection (1), on the earliest of the dates on which the notice was served.

(4) The Registrar may, for the purpose of ensuring that the information, submitted following a notice served, in accordance with this section, is correct and complete, require a company or person to whom the notice applies to—

- (a) produce specified records or documents for inspection, before a specified officer and at a specified time; or
- (b) submit other information, within a specified period.

(5) The Registrar may, in writing, authorise a person to make an enquiry for the purpose of—

- (a) obtaining information which a company has failed to furnish, as required of it in accordance with subsection (1);
- (b) satisfying the Registrar that the information furnished by a company, following a notice served in accordance with subsection (1), is correct and complete;
- (c) obtaining such information as may be necessary to make the information or statistics furnished correct and complete;

and the powers of the person authorised shall extend to the investigation of any matter relevant for the purposes of the enquiry.

(6) If a company, served with a notice in accordance with this section, fails to provide the information or furnishes information which is incorrect or incomplete in a material respect, the company and each officer in default commit an offence, and are liable on conviction to a fine not exceeding one hundred thousand penalty units.

(7) A person who fails to comply with a notice served in accordance with this section commits an offence.

## PART XVII

### ENFORCEMENT AND GENERAL PROVISIONS

**330.** (1) The Court may, on the application of a person referred to in subsection (2), make an order restraining a company or a director from engaging in conduct that contravenes or would contravene the articles or this Act. Injunction

(2) For the purposes of subsection (1), an application may be made by—

- (a) the company;
- (b) a director or member;
- (c) an entitled person; or
- (d) the Registrar.

(3) The Court may not make an order in terms of this section, in relation to conduct or a course of conduct that has been completed.

Derivative  
actions

**331.** (1) Except as provided in this section, a director or an entitled person shall not bring or intervene in any proceedings in the name of, or on behalf of, a company or its subsidiary.

(2) Subject to subsection (4), the Court may, on the application of a director or an entitled person, grant leave to—

(a) bring proceedings in the name and on behalf of the company or any subsidiary; or

(b) intervene in proceedings to which the company or any related company is a party for the purpose of continuing, defending, or discontinuing the proceedings on behalf of the company or subsidiary, as the case may be.

(3) Despite the generality of subsection (2), the Court shall, in determining whether to grant leave in accordance with that subsection, have regard to the—

(a) likelihood of the proceedings succeeding;

(b) costs of the proceedings in relation to the relief likely to be obtained;

(c) action already taken, if any, by the company or its subsidiary to obtain relief; or

(d) interests of the company or its subsidiary in the proceedings being commenced, continued, defended, or discontinued, as the case may be.

(4) The Court may grant leave, in accordance with subsection (2), if satisfied that—

(a) the company or its subsidiary does not intend to bring, diligently continue or defend, or discontinue the proceedings, as the case may be; or

(b) it is in the interests of the company or subsidiary that the conduct of the proceedings should not be left to the directors or to the determination of the members as a whole.

(5) A notice of the application, made in accordance with subsection (2), shall be served on the company or subsidiary.

(6) A company or its subsidiary—

(a) may appear and be heard; and

(b) shall inform the Court, whether or not it intends to bring, continue, defend, or discontinue the proceedings, as the case may be.

**332.** (1) The Court may, on the application of a director, or an entitled person to whom leave was granted, in terms of section 331, order that the whole or part of the costs of bringing or intervening in proceedings be met by the company, including any costs relating to any settlement, compromise or discontinuance approved in accordance with section 334.

Costs of derivative action to be met by company

(2) A director or an entitled person may bring an application for costs as specified in this section at the same time an application is brought in terms of section 331 to bring or intervene in the proceedings, and the Court may make an order on that application at the same time that the Court grants leave in accordance with section 331.

**333.** (1) The Court may make any order as it may consider appropriate in relation to proceedings commenced with leave of the Court in accordance with section 331.

Powers of Court where leave is granted

(2) Without limiting the generality of subsection(1), the Court may—

(a) make an order—

- (i) authorising a member or any other person to control the conduct of the proceedings;
- (ii) requiring the company or the board of directors to provide information or assistance in relation to the proceedings; or
- (iii) directing that any amount ordered to be paid by a defendant in the proceedings shall be paid, in whole or in part, to its subsidiary or an entitled person rather than to the company; or

(b) give directions for the conduct of the proceedings.

**334.** Proceedings commenced with leave of the court in accordance with section 331, may not be settled, compromised or discontinued, without leave of the Court.

Compromise, settlement, or withdrawal of derivative action

**335.** (1) A member or former member of a company may bring an action against a director for breach of a duty owed to the member or former member.

Actions by member against director

(2) An action may not be brought as specified in subsection (1), to recover any loss in the form of a reduction in the value of shares in a company or a failure of the shares to increase in value by reason only of a loss suffered, or a gain forgone, by the company.

Actions by members against company	<b>336.</b> A member may bring an action against the company for breach of a duty owed by the company to the member.
Actions by member to require company to act	<b>337.</b> Despite section 336, the Court may, on the application of a member, make an order requiring the board of directors to take any action that is required by the articles or this Act to be taken and, on making the order, the Court may grant such other consequential relief as it considers appropriate.
Representative actions	<p><b>338.</b> The Court may, where a member brings proceedings against the company or a director and other members have the same or substantially the same interest in relation to the subject matter of the proceedings, appoint that member to represent all or some of the members having the same or substantially the same interest and may, for that purpose, make such order as it considers appropriate including an order—</p> <p style="margin-left: 40px;">(a) as to the control, conduct and costs of the proceedings; or</p> <p style="margin-left: 40px;">(b) directing the distribution of any amount ordered to be paid by a defendant in the proceedings among the members represented.</p>
Ratification of certain actions of directors	<p><b>339.</b> (1) The exercise by the board of directors of a power vested in the members, or any other person, may be ratified or approved by those members or that person, in the same manner in which the power may be exercised.</p> <p>(2) The exercise of a power that is ratified, as specified in subsection (1), shall be considered to be a proper and valid exercise of that power.</p> <p>(3) The ratification or approval specified in this section of the exercise of a power by the board of directors shall not prevent the Court from exercising a power which might, if it were not for the ratification or approval, be exercised in relation to the action of the board of directors.</p>
Exercise of discretionary power	<b>340.</b> Subject to this Act, where any discretionary or other power is given to the Registrar, the Registrar shall not exercise that power adversely or arbitrarily and a person challenging a decision of the Registrar shall have the right to apply to the Court.
Appeal against a decision of Registrar	<b>341.</b> Subject to this Act, a person aggrieved by a decision of the Registrar may within thirty days after the date on which the person is notified of the decision, appeal to the Court against the decision, and the Court may confirm, reverse or vary the decision or make such order or give such directions in the matter as it considers just and equitable.



- 342.** (1) The Registrar may sit with such number of assessors, in all proceedings brought before the Registrar, as the Board of the Agency may determine. Registrar to sit with assessors in determining matter
- (2) The Registrar shall appoint the assessors, referred to in subsection (1), as and when required and such assessors shall be remunerated by the Agency as may be prescribed.
- 343.** Where the Registrar is required in this Act to do any act or thing and no time or period is provided within which the act or thing is to be done, the Registrar shall do the act or thing as soon as practicable. Registrar to act as soon as practicable
- 344.** (1) Where an aggrieved person appeals to the Court, the Registrar shall act in accordance with the decision of the Court, subject to any further appeal. Registrar to act in accordance with decision of Court
- (2) Unless otherwise directed by the Court, the Registrar may submit to the Court a statement, in writing, signed by the Registrar, giving particulars of the proceedings that were before the Registrar in relation to the matter in issue, the practice of the Companies Office in similar cases and such other matters within the particular knowledge of the Registrar and the statement shall form part of the evidence in the proceedings before the Court.
- 345.** When a matter to be decided by the Registrar, in accordance with this Act, appears to the Registrar to involve a complex point of law or is of unusual importance, the Registrar may, after giving notice to the parties, refer such a matter to the Attorney-General for advice or to the Court for determination, and shall thereafter act in accordance with the advice of the Attorney-General or decision of the Court or a decision substituted therefor on appeal to the Court of Appeal or Supreme Court, as the case may be. Reference to Court by Registrar
- 346.** (1) In any legal proceeding in which the relief sought includes alteration, revocation or rectification of the register, the Registrar shall have the right to appear and be heard and shall appear if so directed by the Court. Registrar to appear in legal proceedings
- (2) The Registrar may, unless otherwise directed by the Court, in lieu of appearing and being heard, submit to the Court a statement in writing, signed by the Registrar, giving particulars of the—
- (a) proceedings before the Registrar in relation to the matter in issue;
- (b) grounds of any decision given by the Registrar affecting the matter in issue;

- (c) practice of the Companies Office in like cases; or
- (d) matters relevant to the issue as the Registrar considers necessary;

and the statement shall be considered to form part of the evidence in the proceedings.

Immunity of officers as regards official acts

**347.** (1) The Registrar and any officer of the Agency shall not be liable for any act or omission by reason of, or in connection with, any action or investigation required or authorised by this Act, any treaty or convention or any report or other proceedings consequent on any such action or investigation.

(2) The Registrar shall not be liable for any damage that may be caused by the publication, in good faith, of a matter relating to the affairs of a company in the *Gazette*, in a daily newspaper of general circulation in Zambia, other media or displaying such matter in a prominent public place or on the website of the Agency or in any other media.

Requests for information

**348.** Subject to this Act, the Registrar shall, on the request of any person and on payment of the prescribed fee, or furnish a certificate in respect of the document or copies of any document, which is open to public inspection and which is lodged in the Register or any other register, maintained in accordance with this Act.

Registration of documents

**349.** (1) Where this Act requires a document or particulars to be lodged with the Registrar, the Registrar shall register them in the form and manner prescribed or, if no manner is prescribed for the document or particulars, the Registrar shall determine the manner and form of lodgement.

(2) For purposes of this Act, a document or particulars shall be taken not to have been lodged with the Registrar until a fee, prescribed in accordance with this Act, has been paid to the Registrar.

(3) Subject to this Act, where this Act requires a document or particulars to be lodged, a company shall lodge a separate document or set of particulars.

(4) Where the Registrar considers that a document or particulars lodged with the Registrar—

- (a) contain matter which is contrary to any written law;
- (b) by reason of an error, omission or misdescription, have not been duly completed;
- (c) are insufficiently legible;
- (d) are written on material insufficiently durable; or
- (e) otherwise do not comply with the requirements of this Act;

the Registrar may refuse to register the document or particulars in that state and direct that they be amended or completed in a specified manner and re-submitted.

(5) Where the Registrar gives a direction, as specified in subsection (4), the document or particulars shall be considered not to have been lodged.

(6) The Registrar may require a document or a fact stated in a document, lodged with the Registrar, to be verified by statutory declaration.

(7) Where the Registrar is required or permitted by this Act to cause a copy or particulars of a document lodged, with the Registrar, to be published in the *Gazette* or in a daily newspaper of general circulation in Zambia or other media, the Registrar may require the lodgement, with the Registrar, of any such document in duplicate or the provision of any such particulars, and may withhold registration of the document until the requirement has been complied with.

(8) Where this Act provides that a document to be lodged shall be “ in the prescribed form ”, the Registrar shall accept for lodgement and registration a document that contains all the information required and varies from the prescribed form in essential respects only.

**350.** (1) The Registrar may, before the end of the period fixed for lodgement of a document or particulars, at the request of the person concerned, extend the period for lodgement by such period, and on such terms as the Registrar considers reasonable in the circumstances.

Extension of  
time

(2) Subject to this section, where a document or particulars are lodged with the Registrar, after the end of the period fixed for their lodgement, the Registrar shall accept the document or particulars for registration on payment of such additional fee as may be prescribed.

(3) The Registrar may reduce or waive an additional fee imposed, in terms of subsection (2), if the Registrar is satisfied that the failure to lodge the document or particulars was caused or continued solely through administrative oversight and that no person is likely to have suffered damage or to have been prejudiced as a result of the failure.

**351.** (1) Subject to this Act, where this Act requires a document or register to be prepared, kept, maintained or lodged, the document shall be in English.

Documents  
to be in  
official  
language

- (2) Where the Registrar approves the lodgement of a document which, or part of which, is in a language other than English, the Registrar may require a certified translation into English to be annexed to it.
- 352.** A person who is required by this Act to take an oath or swear to the truth of an affidavit may, in lieu thereof, make an affirmation or declaration in accordance with the law relating to affirmations or declarations in Zambia.
- 353.** (1) A certificate signed by the Registrar and certifying that an entry which the Registrar is authorised by this Act to make, has or has not been made, or that any other thing which the Registrar is so authorised to do has or has not been done, shall be *prima facie* evidence of the matter so certified.
- (2) A copy of any entry in any register or of any document kept in the Companies Office or an extract from any such register or document, certified by the Registrar, may be admitted in evidence without further proof and without production of the original.
- 354.** Where the Registrar is satisfied that a certificate of incorporation has been lost or destroyed or cannot be produced, the Registrar may cause a duplicate of it to be sealed, on payment of such fees as may be prescribed.
- 355.** (1) A document authorised or required to be filed with, or delivered to the Registrar in accordance this Act, may be filed or delivered by means of a device or facility that records or stores information electronically or by other means and permits the information so recorded or stored to be readily inspected or reproduced in usable form.
- (2) A document or certificate required to be signed, issued or kept by the Registrar may be signed, issued or kept in electronic form.
- (3) Meetings or resolutions, required by this Act, may be held or passed by electronic means.
- (4) A document delivered to the Registrar, which appears to the Registrar to be incomplete or internally inconsistent, may be corrected by the Registrar, but only—
- (a) on instructions given by the company or as required by any other written law; and
  - (b) if the company has not withdrawn its consent to instructions given in accordance with this section.

(5) For purposes of subsection (4), the following requirements shall be met as regards instructions:

- (a) instructions must be given in response to an enquiry by the Registrar;
- (b) the Registrar shall be satisfied that the person giving the instructions is authorised to do so by the—
  - (i) person by whom the document was delivered; or
  - (ii) company to which the document relates; and
- (c) the instructions shall meet requirements by the Registrar as to—
  - (i) the form and manner in which they are given; and
  - (ii) authentication.

(6) The company's consent to instructions, given in accordance with this section, and any withdrawal of such consent, shall be notified to the Registrar in hard copy or electronic form

(7) A document that is corrected in accordance with this section shall be treated as having been delivered when the correction is made.

(8) The Registrar may accept a replacement for a document previously delivered that did not comply with the requirements for proper delivery or contained unnecessary or erroneous material.

(9) A replacement document shall not be accepted, unless the Registrar is satisfied that it has been delivered by the—

- (a) person by whom the original document was delivered; or
- (b) company to which the original document relates;

and that it complies with the requirements for proper delivery.

(10) The power of the Registrar to impose requirements as to the form and manner of delivery includes power to impose requirements as to the identification of the original document and the delivery of the replacement in a form and manner enabling it to be associated with the original.

**356.** A company shall retain records or books required to be kept in accordance with this Act for a minimum period of ten years and in accordance with the Financial Intelligence Centre Act, 2010.

Retention of records

Act No. 46 of 2010

**357.** A company that fails to keep records or books, as required to be kept in accordance with this Act, commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units.

Failure to keep books

Failure to provide documents	<p><b>358.</b> (1) A company that fails or delays to provide the Registrar with documents, as required by this Act, commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units.</p> <p>(2) Where the documents, referred to in subsection (1), are fraudulent, a company that wilfully provides them commits an offence and is liable, on conviction, to a fine not exceeding one hundred and fifty thousand penalty units.</p>
Furnishing false document Cap. 87	<p><b>359.</b> Without prejudice to the Penal Code, a director or employee of a company who knowingly makes, submits or authorises the making or submission of a false or misleading statement or report with regard to—</p> <ul style="list-style-type: none"> <li>(a) a director, officer, employee, inspector, shareholder, debenture holder or assignee for debenture holders of the company;</li> <li>(b) where the company is a subsidiary, a director, officer, employee or inspector of its holding company;</li> <li>(c) a stock exchange or an officer of a securities exchange; or</li> <li>(d) the property of the company;</li> </ul> <p>commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.</p>
Fraudulent use or destruction of property Cap. 87	<p><b>360.</b> Without prejudice to the Penal Code, a director, officer, employee or shareholder of a company who fraudulently—</p> <ul style="list-style-type: none"> <li>(a) takes or applies property of the company for that director's, officer's or employee's or shareholder's own use or benefit or for a use or purpose other than the use or purpose of the company; or</li> <li>(b) conceals or destroys property of the company;</li> </ul> <p>commits an offence and is liable on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.</p>
Falsification of records Cap. 87	<p><b>361.</b> Without prejudice to the Penal Code, a director, officer, employee, or shareholder of a company who, with intent to defraud or deceive a person—</p> <ul style="list-style-type: none"> <li>(a) destroys, displaces, mutilates, alters, falsifies or is a party to the destruction, mutilation, alteration or falsification of any register, accounting records, book, paper or other document belonging or relating to the company; or</li> </ul>

(b) makes, or is a party to the making of a false entry in a register, accounting record, book, paper, or other document belonging or relating to the company;

commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment not exceeding five years or to both.

**362.** Without prejudice to the Penal Code, a director of a company who—

(a) by false pretences or other fraud, induces a person to give credit to the company; or

(b) with intent to defraud a creditor of the company—

(i) gives, transfers or causes a charge to be given on property of the company to another person;

(ii) causes property of the company to be given or transferred to a person; or

(iii) causes or is a party to an execution being levied against property of the company;

commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

**363.** Without prejudice to the Penal Code, where a person has been convicted of—

(a) an offence in connection with the promotion, formation or management of a company;

(b) an offence involving fraud; or

(c) a breach of professional confidentiality;

that person shall not, during the period of three years following the conviction or the judgment, be a director or promoter of, or in any way, whether directly or indirectly, be concerned with, or take part in, the management of a company, unless that person first obtains leave of the Court, which may be given on such terms and conditions as the Court considers appropriate.

**364.** (1) A person who fails to comply with this Act regarding the requirement to be registered, commits an offence, and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units.

(2) A person who, not being a body corporate—

(a) trades or carries on business in Zambia under a name or title which includes the word “Limited”, “PLC”, “Corporation” or any contraction or imitation thereof, or any equivalent in a language other than English; or

Penalties for carrying on business fraudulently  
Cap. 87

Persons prohibited from managing companies  
Cap. 87

Failure to comply with registration requirements and improper use of “PLC” or “Limited”

(b) whose members have limited liability under the laws of the country of its incorporation, trades or carries on business in Zambia under a name or title the last word of which is “Limited” or any contraction or imitation thereof, or any equivalent in a language other than English;

commits an offence and is liable, on conviction, to a fine not exceeding one thousand penalty units for each day that the person trades or carries on business under that name or title.

Imprisonment  
for failure to  
pay fine  
Cap 88

**365.** Where a court issues a warrant in accordance with section 312 of the Criminal Procedure Code for the commitment of a person to prison for a failure by the person to pay a fine imposed on the person for an offence provided for in this Act, the period of imprisonment specified in the warrant shall not exceed one day for every three penalty units of the fine that remain unpaid.

Exemption  
from liability  
for actions  
or omissions

**366.** A person shall not be liable to an action in damages for anything done or omitted to be done by that person in the exercise or performance of a power or function conferred or imposed on that person by or in accordance with this Act, unless the act or omission was in bad faith or was due to want of reasonable care or diligence.

Deceiving or  
influencing  
Registrar or  
officer

**367.** (1) A person who, for the purpose of—

- (a) deceiving the Registrar or an officer in the administration of this Act; or
- (b) procuring or influencing the doing or omission of anything or matter as specified in this Act; or

makes or submits a false statement or representation, whether orally or in writing, knowing the same to be false, commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

(2) A person who, having innocently made a false statement or representation, whether orally or in writing, for the purpose of procuring or influencing the doing or omission of anything in relation to any matter in this Act and who on becoming aware that such statement or representation was false, fails to advise the Registrar of such falsity within a reasonable time, commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

Aiding and  
abetting  
offences

**368.** (1) A person commits an offence if the person—

- (a) aids, abets, counsels or procures; or
- (b) is in any way, directly or indirectly, knowingly a party to;



the doing of an act outside Zambia which, if it were done in Zambia, would be an offence against this Act, commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

(2) Subsection (1) shall not affect the provisions of the Penal Code. Cap. 87

**369.** (1) A person who in connection with the person's business, uses any means that would reasonably lead other persons to believe that the person's office is, or is officially connected with, the Companies Office, by— False representation about Companies Office

(a) placing, or allowing to be placed, the name of the company, on a building in which the person's office is situated;

(b) placing on a document, as a description of the person's office or business the words "Companies Office" or "office for registration or incorporation of companies", or words of similar import, whether alone or together with other words;

(c) impersonating or falsely purporting to be an employee or agent of the Agency; or

(d) using when advertising the person's office or business;

commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or imprisonment for a period not exceeding two years, or to both.

(2) An offence specified in this section is an offence of strict liability.

**370.** (1) The Registrar may impose an administrative penalty on a person for any failure to comply with this Act. Administrative penalties

(2) An administrative penalty, referred to in subsection (1), shall not exceed the amount prescribed by the Minister for each day during which such failure continues.

(3) An administrative penalty, imposed in accordance with subsection (1), shall be paid to the Agency within the period specified by the Registrar.

(4) If any person fails to pay an administrative penalty, within the period specified in subsection (2), the Registrar may, by way of civil action in a competent court, recover the amount of the administrative penalty from such person as an amount due and owing to the Agency.

Offences by  
body  
corporate or  
unincorporated body

**371.** Where an offence under this Act is committed by a body corporate or unincorporated body, and the director, manager or shareholder of that body is suspected to have committed the offence and is charged of that offence, that director, manager or shareholder of the body corporate or unincorporated body is liable, upon conviction, to the penalty specified for the offence, unless the director, manager or shareholder proves to the satisfaction of the court that the act constituting the offence was done without the knowledge, consent or connivance of the director, manager or shareholder or that the director, manager or shareholder took reasonable steps to prevent the commission of the offence.

General  
offences  
Cap. 87

**372.** Without prejudice to the Penal Code, a person who—

- (a) fails to comply with a request, direction or order issued in accordance with this Act, by the Court, the Registrar or any other authorised person;
- (b) is knowingly a party to the carrying on of any business of a company for a fraudulent purpose;
- (c) makes use of a name or title which the person is not, in accordance with this Act, authorised to use;
- (d) knowingly is a party to a company carrying on business with intent to defraud a creditor of the company or any other person;
- (e) divulges or makes use of information obtained in accordance with this Act which the person is not otherwise authorised to disclose;
- (f) wilfully falsifies any information required in accordance with this Act;
- (g) is required to provide a document and wilfully—
  - (i) makes, or authorises the making of, a statement that is false or misleading; or
  - (ii) omits or authorises the omission of, anything, the omission of which makes the document false or misleading in a material respect;
- (h) in relation to a mechanical, electronic, or other device used in connection with the keeping or preparation of a register, accounting book, paper, or other document belonging to a company in accordance with this Act, knowingly—
  - (i) records or makes available to a person false information on a matter; or
  - (ii) omits or authorises the omission of, anything, the omission of which makes the document false or misleading in a material respect;

- 
- (i) impersonates a shareholder or debenture holder for the purpose of obtaining an advantage;
  - (j) makes or causes to be made—
    - (i) a false entry in a register established in accordance with this Act; or
    - (ii) writing falsely purporting to be a copy of an entry in the register; or
    - (iii) produces or tenders or causes to be produced or tendered in evidence any such writing;
  - (k) uses the name or unique registration number or seal of a company, or issues a letter, bill or document relating to the company otherwise than in accordance with this Act or any other law;
  - (l) alters, defaces, makes additions to, or partly removes, erases or obliterates a document issued by the Registrar;
  - (m) in the exercise of any powers or functions conferred upon that person by this Act or by regulations made in accordance with this Act, fails to act in accordance with the instrument which confers the function or power; or
  - (n) otherwise contravenes this Act or regulations made under it;

commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

**373.** A person who contravenes any provision of this Act, where no specific penalty has been provided is liable, on conviction, to a fine not exceeding four hundred thousand penalty units or to imprisonment for a term not exceeding four years, or to both, and, if the person is a foreigner, to the variation or revocation of that person's immigration permit.

General  
penalty

**374.** The Minister may, prescribe a payable fee for any act to be performed by the Registrar or any document to be lodged with the Agency.

Prescribed  
fee

**375.** (1) The Minister may, by statutory instrument, make regulations for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act, other than a matter required or permitted to be prescribed by any other person or body.

Regulations

(2) Without limiting the generality of subsection (1), such regulations may be made on the—

- (a) conduct of the business of the Companies Office;

- (b) form and content of any application, notice, return, account, book, record, certificate, licence or other document required for the purposes of this Act;
- (c) payment of fees and charges in respect of any matter or anything done or provided for by this Act;
- (d) procedure to be followed in connection with any application or request to the Registrar or any proceeding before the Registrar;
- (e) additional obligations and procedures for the determination of beneficial ownership and timely access to beneficial ownership information by the public;
- (f) the provision of copies of any documents required in accordance with this Act, and the certification of such copies;
- (g) the making of inspections and searches in accordance with this Act, including the times when they may be made;
- (h) the conduct of any proceeding or transaction in accordance with this Act;
- (i) the service of notices and other documents in accordance with this Act; and
- (j) any matter necessary or convenient to be provided for in relation to the transition between the repealed Act and this Act.

Repeal of  
Cap. 388

**376.** (1) The Companies Act, 1994 is repealed.

(2) Despite subsection (1), the provisions set out in the Fourth Schedule shall apply for purposes of this Act.

Transitional  
provisions

**377.** (1) A company incorporated under the repealed Act shall continue to operate as if incorporated under this Act.

(2) A charge relating to movable assets under the repealed Act shall continue in force as if registered in accordance with this Act and shall be registered within a period of twelve months in accordance with this Act and the Movable Property (Securities) Act, 2016.

(3) A church of faith based organisation that was incorporated as a company before the commencement of this Act shall continue as if incorporated under this Act.

FIRST SCHEDULE

(Section 12(3))

STANDARD ARTICLES

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES,  
UNLIMITED AND PUBLIC LIMITED COMPANIES

*Table of Divisions*

1. Interpretation
2. Share Capital and Variation of Rights
3. Calls on Shares
4. Lien
5. Forfeiture of Shares
6. Transfer of Shares
7. Transmission of Shares
8. Conversion of Shares into Stock
9. Alteration of Capital
10. General Meetings
11. Proceedings at General Meetings
12. Directors
13. Borrowing Powers
14. Proceedings of Directors
15. Managing Director
16. Associate Directors
17. Secretary
18. Seal
19. Inspection of Records
20. Dividends and Reserves
21. Capitalisation of Profits
22. Winding up
23. Indemnity

**1. Interpretation**

1. (1) In these regulations, unless the context otherwise requires:

“ Act ” means the Companies Act;

“ prescribed rate of interest ” means the rate of interest prescribed in regulations made in accordance with the Act for the purposes of the Standard Articles;

“ seal ” means the common seal of the company and includes any official seal of the company;

“ resolution ” means an ordinary resolution of the company;

“ secretary ” means any person appointed to perform the duties of a secretary of the company.

(2) Unless the context otherwise requires, an expression if used in a provision of these regulations that deals with a matter dealt with by a particular provision of the Act, has the same meaning as in that provision of the Act.

**2. Share Capital and Variation of Rights**

2. Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, but subject to the Act, shares in the company may be issued by the directors and any such share may be issued with such preferred, deferred or other special rights or such restrictions, whether with regard to dividend, voting, return of capital or otherwise, as the director may determine.

3. The directors shall not issue any rights or options to shares in favour of any persons unless the issue has been authorised at a general meeting by a special resolution.

4. Subject to the Act, any preference shares may, with the sanction of a resolution, be issued on the terms that they are, or at the option of the company are liable to be redeemed.

5. (1) If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the company is being wound-up, be varied with the consent in writing of the holders of three-quarters of the issued shares of that class, or with the sanction of a special resolution passed at a separate meeting of the holders of the shares of the class.

(2) The provisions of the Act and these regulations relating to general meetings apply so far as they are capable of application and with the necessary modifications to every such class meeting except that—

(a) where a class has only one member-that member shall constitute a meeting;

(b) in any other case- a quorum shall be constituted by two persons who, between them, hold or represent by proxy one third of the issued shares of the class; and

(c) any holder of shares of the class, present in person or by proxy, may demand a poll.

(3) The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall, unless otherwise expressly provided by the terms of issue of the shares of that class, be varied by the creation or issue of further shares ranking equally with the first-mentioned shares.

6. (1) The Company may make payments by way of brokerage or commission on the issue of shares.

(2) Such payments shall not exceed the rate of 10 per cent of the price at which the shares are issued or an amount equal to 10 per cent of that price, as the case may be.

(3) Such payments may be made in cash, by the allotment of fully or partly paid shares or partly by the payment of cash and partly by the allotment of fully or partly paid shares.

7. (1) Except as required by law, the company shall not recognise a person as holding a share upon any trust.

(2) The company shall not be bound by or compelled in any way to recognise (whether or not it has notice of the interest or rights concerned) any equitable, contingent, future or partial interest in any share or unit of a share or (except as otherwise provided by these regulations or by law) any other right in respect of a share except an absolute right of ownership in the registered holder.

8. (1) A person whose name is entered as a member in the register of members shall be entitled without payment to receive a certificate in respect of the share under the seal of the company in accordance with the Act but, in respect of a share or shares held jointly by several persons, the company shall not be bound to issue more than one certificate.

(2) Delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.

(3) If a share certificate is defaced, lost or destroyed, it may be renewed on payment of the fee allowed by the Act, or such lesser sum, and on such terms (if any) as to evidence and the payment of costs to the company of investigating evidence, as the directors decide.

### **3. Calls on Shares**

9. (1) The directors may make calls upon the members in respect of any money unpaid on the shares of the members (whether on account of the nominal value of the shares or by way of premium) and not by the terms of issue of those shares payable at fixed times, except that no call shall exceed one-quarter of the sum of nominal values of the shares or be payable earlier than thirty days from the date fixed for the payment of the last preceding call.

(2) Each member shall, upon receiving at least fourteen days' notice specifying the time or times and place of payment, pay to the company, at the time or times and place so specified the amount called on his shares.

(3) The directors may revoke or postpone a call.

10. A call shall be considered to have been made at the time when the resolution of the directors authorising the call was passed and may be required to be paid in instalments.

11. The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.

12. If a sum called in respect of a share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment of the sum to the time of actual payment at such rate not exceeding the prescribed rate of interest as the Directors determine, but the directors may waive payment of that interest wholly or in part.

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



14. The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

15. (1) The directors may accept from a member the whole or a part of the amount unpaid on a share although no part of that amount has been called up.

(2) The directors may authorise payment by the company of interest upon the whole or any part of an amount so accepted, until the amount becomes payable, at a rate agreed upon between the directors and the member paying the sum subject to sub-regulation (3).

(3) For the purposes of sub-regulation (2), the rate of interest shall not be greater than—

(a) if the company has, by resolution, fixed a rate, the rate so fixed; and

(b) in any other case, the prescribed rate of interest.

#### **4. Lien**

16. (1) The company has a first and paramount lien on every share (not being a fully paid share) for all money (whether presently payable or not) called or payable at a fixed time in respect of that share.

(2) The company also has a first and paramount lien on all shares (other than fully paid shares) registered in the name of a sole holder for all money presently payable by him or his estate to the company.

(3) The directors may at any time exempt a share wholly or in part from the provisions of this regulation.

(4) The company's lien (if any) on a share extends to all dividends payable in respect of the share.

#### **5. Forfeiture of Shares**

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

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

18. (1) If the requirements of a notice served under regulation 17 are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

(2) Such a forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.

19. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and, at any time before a sale or disposition, the forfeiture may be cancelled on such terms as the directors think fit.

20. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall remain liable to pay to the company all money that, at the date of forfeiture, was payable by him to the company in respect of the shares (including interest at the prescribed rate of interest from the date of forfeiture on the money for the time being unpaid if the directors think fit to enforce payment of the interest), but his liability shall cease if and when the company receives payment in full of all the money (including interest) so payable in respect of the shares.

21. A statement in writing declaring that the person making the statement is a director or a secretary of the company, and that a share in the company has been duly forfeited on a date stated in the statement, shall be prima facie evidence of the facts stated in the statement as against all persons claiming to be entitled to the share.

22. (1) The company may receive the consideration (if any) given for a forfeited share on any sale or disposition of the share and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of.

(2) On the execution of the transfer, the company shall register the transferee as the holder of the share.

(3) The transferee shall not be bound to see to the application of any money paid as consideration.

(4) The title of the transferee to the share shall not be affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the share.

23. The consideration referred to in regulation 22 shall be applied by the company in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue (if any) shall (subject to any like lien for sums not presently payable that existed upon the shares before the sale) be paid to the person entitled to the shares immediately before the transfer.

24. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum that, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the shares or by way of premium, as if that sum had been payable by virtue of a call duly made and notified.

## **6. Transfer of Shares**

25. (1) Subject to these regulations, a member may transfer all or any of his shares by instrument in writing in a form prescribed for the purposes of section 188 of the Act or in any other form that the directors approve.

(2) An instrument of transfer referred to in sub-regulation (1) shall be executed by or on behalf of both the transferor and the transferee.

26. The instrument of transfer shall be left for registration at the registered office of the company, together with such fee (if any) not exceeding two penalty units as the directors require, accompanied by the certificate of the shares to which it relates and such other information as the directors properly require to show the right of the transferor to make the transfer, and thereupon the company shall subject to the powers vested in the directors by these regulations, register the transferee as a shareholder.

27. The directors may decline to register a transfer of shares, not being fully paid shares, to a person of whom they do not approve and may also decline to register any transfer of shares on which the company has a lien.

28. The directors may refuse to register any transfer that is not accompanied by the appropriate share certificate, unless the company has not yet issued the share certificate or is bound to issue a renewal or copy of the share certificate.

29. The registration of transfers may be suspended at such times and for such periods as the directors from time to time determine, provided that the periods do not exceed in the aggregate thirty days in any year.

#### **7. Transmission of Shares**

30. In the case of the death of a member, the survivor where the deceased was a joint holder, and the legal personal representatives of the deceased where that person was a sole holder, shall be the only persons recognised by the company as having any title to his interest in the shares, but this regulation does not release the estate of a deceased joint holder from any liability in respect of a share that had been jointly held by him with other persons.

31. (1) Subject to any written law relating to bankruptcy, a person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such information being produced as is properly required by the directors, elect either to be registered as a holder of the share or to have some other person nominated by that person registered as the transferee of the share.

(2) If the person becoming entitled elects to be registered, that person shall deliver or send to the company a notice in writing signed by that person stating that that person so elects.

(3) If he elects to have another person registered, he shall execute a transfer of the share to that other person.

(4) All the limitations, restrictions and provisions of these regulations relating to the right to transfer, and the registration of the transfer of share are applicable to any such notice or transfer as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.

32. (1) Where the registered holder of a share dies or becomes bankrupt, his personal representatives or the assignee of his estate, as the case may be, shall be upon the production of such information as is properly required by the directors, entitled to the same dividends and other advantages, and to the same rights (whether in relation to meetings of the company, or to voting or otherwise), as the registered holder would have been entitled to if he had not died or become bankrupt.

(2) Where two or more persons are jointly entitled to any share in consequence of the death of the registered holder, they shall, for the purposes of these regulations, be deemed to be joint holders of the shares.

---

**8. Conversion of shares into stock**

33. The company may, by resolution, convert all or any of its paid up shares into stock and reconvert any stock into paid up shares of any nominal value.

34. (1) Subject to sub-regulation (2), where shares have been converted into stock, the provisions of these rules relating to the transfer of shares apply, so far as they are capable of application, to the transfer of the stock or of any part of the stock.

(2) The directors may fix the minimum amount of stock transferable and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the aggregate of the nominal values of the shares from which the stock arose.

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

(2) No privilege or advantage shall be conferred by any amount of stock that would not, if existing in shares, have conferred that privilege or advantage.

**9. Alteration of Capital**

36. The provisions of these regulations that are applicable to paid up shares shall apply to stock, and references in those provisions to share and shareholder shall be read as including references to stock and stockholder, respectively.

37. The company may by resolution increase its authorised share capital by the creation of new shares of—

- (a) such amount as is specified in the resolution;
- (b) consolidating and dividing all or any of its authorised share capital into shares of larger amount than its existing shares;
- (c) by subdividing all or any of its shares into shares of smaller amount than is fixed by the certificate of share capital, so that in the subdivision the proportion between the amount paid and the amount (if any) unpaid on each such share of a smaller amount is the same as it was in the case of the share from which the share of a smaller amount is derived; and

(d) by cancelling shares that, at the date of passing of the resolution, have not been taken or agreed to be taken by any person or have been forfeited, and reduce its authorised share capital by the amount of the shares so cancelled.

38. (1) Subject to any resolution to the contrary, all unissued shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances allow, to the sum of the nominal values of the shares already held by them.

(2) The offer shall be made by notice specifying the number of shares offered and delimiting a period within which the offer, if not accepted, will be deemed to be declined.

(3) After the expiration of that period or on being notified by the person to whom the offer is made that he declines to accept the shares offered, the directors may issue those shares in such manner as they think most beneficial to the company.

(4) Where, by reason of the proportion that shares proposed to be issued bear to shares already held, some of the first-mentioned shares cannot be offered in accordance with sub-regulation (1), the directors may issue the shares that cannot be so offered in such manner as they think most beneficial to the company.

39. Subject to the Act, the company may, by special resolution, reduce its share capital, any capital redemption reserve fund or any share premium account.

#### **10. General Meetings**

40. (1) A director may, whenever he thinks fit, convene a general meeting.

(2) If no director is present within Zambia, any two members may convene a general meeting in the same manner, or as nearly as possible, as that in which such meetings may be convened by a director.

(3) A general meeting shall be held in Zambia unless all the members entitled to vote at that meeting agree in writing to a meeting at a place outside Zambia.

41. (1) A notice of a general meeting shall specify the place, the day and the hour of meeting and, except as provided by sub-regulation (2), shall state the general nature of the business to be transacted at the meeting.

(2) It shall not be necessary for a notice of an annual general meeting to state that the business to be transacted at the meeting includes the declaring of a dividend, the consideration of annual accounts and the reports of the directors and auditors, the election of directors in the place of those retiring or the appointment and fixing of the remuneration of the auditors.

### **11. Proceedings at General Meetings**

42. (1) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

(2) For the purpose of determining whether a quorum is present, a person attending as a proxy, or as representing a body corporate or association that is a member, shall be deemed to be a member.

43. If a quorum is not present within half an hour after the time appointed for the meeting—

(a) where the meeting was convened upon the requisition of members, the meeting shall be dissolved; or

(b) in any other case—

(i) the meeting shall stand adjourned to such day, and at such time;

(ii) place, as the directors determine or, if no determination is made by the directors, to the same day in the next week at the same time and place; and

(iii) if a quorum is not present at the adjourned meeting within half an hour after the time appointed for the meeting—

A. two members shall constitute a quorum;  
or

B. the meeting shall be dissolved, if two members are not present.

44. (1) If the directors have elected one of their number as chairman of their meetings, he shall preside as chairman at every general meeting.

(2) Where a general meeting is held and—

(a) a chairman has not been elected as provided by sub-regulation (1); or

- (b) the chairman is not present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act;
- (c) the member present shall elect one of their number to be chairman of the meeting.

45. (1) The chairman may with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(2) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

(3) Except as provided by sub-regulation (2), it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

46. (1) At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded—

- (a) by the chairman;
- (b) by at least three members present in person or by proxy;
- (c) by a member or members present in person or by proxy and representing not less than one tenth of the total voting rights of all the members having the right to vote at the meeting; or
- (d) by a member or members holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

(2) The demand for a poll may be withdrawn.

47. (1) If a poll is duly demanded, it shall be taken in such manner and (subject to sub-regulation (2)) either at once or after an interval or adjournment or otherwise as the chairman directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded.

(2) A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith.



48. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, in addition to his deliberative vote (if any), shall have a casting vote.

49. Subject to any rights or restrictions for the time being attached to any class or classes of shares at meetings of members or classes of members—

(a) each—

(i) registered member, or registered member of that class;

(ii) person on whom the ownership of a share of such a registered member has evolved by operation of law;

(iii) proxy or attorney of a person referred to in paragraph (i) or (ii);

if the person is not present at the meeting; shall be entitled to vote;

(b) on a show of hands, each person present who is entitled to vote shall have one vote; and

(c) on a poll, every person present who is entitled to vote shall have votes.

50. In the case of joint holders, the vote of the senior who tenders a vote whether in person or by proxy or by attorney, shall be accepted to the exclusion of the votes of the other joint holders and, for this purpose, seniority shall be determined by the order in which the names stand in the register of members.

51. If a member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, his committee or assignee or such other person as properly has the management of that persons estate may exercise any rights of the member in relation to a general meeting as if the committee, assignee or other person were the member.

52. A member shall not be entitled to vote at a general meeting unless all polls and other sums presently payable by him in respect of shares in the company have been paid.

53. (1) An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered

(2) Any such objection shall be referred to the chairman of the meeting, whose decision shall be final.

(3) A vote not disallowed pursuant to such an objection shall be valid for all purposes.

54. (1) An instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing or, if the appointer is a body corporate, either under seal or under the hand of an officer or attorney duly authorised.

(2) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides the proxy shall not be entitled to vote in the resolution except as specified in the instrument.

(3) An instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

(4) A proxy need not be a member of the company.

(5) An instrument appointing a proxy shall be in the following form or in as similar a form as the circumstances allow.

Name of Company: .....

I/we ....., of being a member/members of the above named company, hereby of or, in his absence of as my/our proxy to vote for me/us on my/our behalf at the annual/extraordinary general meeting of the company to be held on the.....day of.....20.....and at any adjournment of that meeting:

\*in favour of/against resolution No.: .....

\*in favour of/against resolution No.: .....

\*in favour of/against resolution No.: .....

Unless otherwise instructed, the proxy will vote as that person thinks fit.

Signed: .....

Date: .....

\*Strike out whichever is not desired.

55. An instrument appointing a proxy shall not be treated as valid unless the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a notarially certified copy of that power or authority, is or are deposited, not less than forty-eight hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument

proposes to vote, or, in the case of a poll, not less than twenty-four hours before the time appointed for the taking of the poll, at the registered office of the company or at such other place in Zambia as is specified for that purpose in the notice convening the meeting.

56. A vote given in accordance with the terms of an instrument of proxy or of a power of attorney shall be valid notwithstanding the previous death or unsoundness of mind of the principal, the revocation of the instrument (or of the authority under which the instrument was executed) or of the power, or the transfer of the share in respect of which the instrument or power is given, unless notice in writing of the death, unsoundness of mind, revocation or transfer has been received by the company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

## **12. Directors**

57. The company may by ordinary resolution fix a share qualification for directors, but unless and until a qualification is so fixed, there shall be no share qualification.

58. In addition to the circumstances in which the office of a director becomes vacant by virtue of the Act, the office of a director shall become vacant if the director makes any arrangement or composition with his creditors generally.

## **13. Borrowing powers**

59. (1) Subject to sub-regulation (2), the directors may exercise the powers of the company to borrow money, to charge any property or business of the company or all, or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the company or of any other person.

(2) The amount of any borrowings outstanding at any time shall not exceed the amount of issued share capital of the company at the time.

## **14. Proceedings of Directors**

60. The provisions of section 107 of the Act (providing that a director who is materially interested in a contract or arrangement to be considered at a meeting of the company or of the directors should not be counted in the quorum or vote on the matter) may be suspended or relaxed, whether generally or in respect of a particular transaction, by a resolution of the company.

61. (1) A director may, if the other directors approve, appoint a person as an alternate director in accordance with the Act.

(2) An alternate director shall be entitled to notice of meetings of the directors.

(3) An alternate director may, subject to the instrument of appointment, exercise any powers that the appointer may exercise.

62. At a meeting of directors, the quorum shall be two, or such larger number as is determined by resolution of the company.

63. In the event of a vacancy or vacancies in the office of a director or offices of directors, the remaining directors may act but, if the number of remaining directors is not sufficient to constitute a quorum at a meeting of directors, they may act only for the purpose of increasing the number of directors to a number sufficient to constitute such a quorum or of convening a general meeting of the company.

64. (1) The directors shall elect one of their number as chairman of their meetings and may determine the period for which he shall hold office.

(2) Where meeting of directors is held and—

(a) a chairman has not been elected as provided by sub-regulation (1); or

(b) the chairman is not present within ten minutes after the time appointed for the holding of the meeting or is unwilling to act; the directors present shall elect one of their number to be a chairman of the meeting.

65. (1) The directors may delegate any of their powers to a committee or committees consisting of such of their number as they think fit.

(2) A committee to which any powers have been so delegated shall exercise the powers delegated in accordance with any directions of the directors and a power so exercised shall be deemed to have been exercised by the directors.

(3) The members of such a committee may elect one of their number as chairman of their meetings.

(4) Where such a meeting is held and—

(a) a chairman has not been elected as provided by sub-regulation (3); or

(b) the chairman is not present within ten minutes after the time appointed for the holding of the meeting or is unwilling to act; the members present may elect one of their number to be chairman of the meeting.

(5) A committee may meet and adjourn as it thinks proper.

(6) Questions arising at a meeting of a committee shall be determined by a majority of votes of the members present and voting.

(7) In the case of an equality of votes, the chairman, in addition to his deliberative vote (if any), has a casting vote.

#### **15. Managing Director**

66. (1) The directors may, upon such terms and conditions and with such restrictions as they think fit, appoint an executive director in accordance with the Act and confer upon the executive director any of the powers exercisable by them.

(2) Any powers so conferred may be concurrent with, or be to the exclusion of the powers of the directors.

(3) The directors may at any time withdraw or vary any of the powers so conferred on a managing director.

#### **16. Associate Directors**

67. (1) The directors may from time to time appoint any person to be an associate director and may from time to time terminate any such appointment.

(2) The directors may from time to time determine the powers, duties and remuneration of any person so appointed.

(3) A person so appointed shall not be required to hold any shares to qualify him for appointment but, except by the invitation and with the consent of the directors, shall not have any right to attend or vote at any meeting of directors.

#### **17. Secretary**

68. A secretary of the company shall hold office on such terms and conditions, as to remuneration and otherwise, as the directors determine.

#### **18. Seal**

69. (1) The directors shall provide for the safe custody of the seal.

(2) The seal shall be used only by the authority of the directors, or of a committee of the directors authorised by the directors to authorise the use of the seal, and every document to which the seal is affixed shall be signed by a director and be countersigned by another director, a secretary or another person appointed by the directors to countersign that document or a class of documents in which that document is included.

**19. Inspection of Records**

70. Subject to the Act, the directors shall determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the company or any of them will be open to the inspection of members other than directors, and a member other than a director shall not have the right to inspect any document of the company except as provided by law or authorised by the directors or by a resolution of the company.

**20. Dividends and Reserves**

71. (1) The company by resolution may declare a dividend if, and only if, the directors have recommended a dividend.

(2) A dividend shall not exceed the amount recommended by the directors.

72. The directors may authorise the payment by the company to the members of such interim dividends as appear to the directors to be justified by the profits of the company.

73. Interest shall not be payable by the company in respect of any dividend.

74. A dividend shall not be paid except out of profits of the company.

75. (1) The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as reserves, to be applied, at the discretion of the directors, for any purpose for which the profits of the company may be properly applied.

(2) Pending any such application, the reserves may, at the discretion of the directors, be used in the business of the company or be invested in such investments as the directors think fit.

(3) The directors may carry forward so much of the profits remaining as they consider ought not to be distributed as dividends without transferring those profits to a reserve.

76. (1) Subject to the rights of persons (if any) entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect of which the dividend is paid.

(2) All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is

paid, but, if any share is issued on terms providing that it will rank for dividend as from a particular date, that share shall rank for dividend accordingly.

(3) An amount paid or credited as paid on a share in advance of a call shall not be taken for the purposes of this regulation to be paid or credited as paid on the share.

77. The directors may deduct from any dividend payable to a member all sums of money (if any) presently payable by him to the company on account of calls or otherwise in relation to shares in the company.

78. (1) If the company declares a dividend it may by resolution direct the directors to pay the dividend wholly or partly by the distribution of specific assets, including paid up shares in, or debentures of, any other corporation.

(2) Where a difficulty arises in regard to such a distribution, the directors may settle the matter as they consider expedient and in particular may issue fractional certificates and fix the value for distribution of the specific assets or any part of those assets, and may determine that cash payments will be made to any members on the basis of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in assignees as the directors consider expedient.

79. (1) Any dividend, interest or other money payable in cash in respect of shares may be paid by cheque sent through the post directed to—

(a) the registered address of the holder or, in the case of joint holders, to the registered address of the joint holder named first in the register of members; or

(b) to such other address as the holder or joint holders in writing directs or direct.

(2) Any one of two or more joint holders may give effectual receipts for any dividends, interests or other money payable in respect of the shares held by them as joint holders.

## **21. Capitalisation of Profits**

80. (1) Subject to sub-regulation (2), the company may resolve—

(a) to capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account or the statement of comprehensive income or otherwise available for distribution to members; and

- (b) to apply the sum, in any of the ways mentioned in sub-regulation (3), for the benefit of members in the proportions to which those members would have been entitled in a distribution of that sum by way of dividend.
- (2) The company shall not pass a resolution under sub-regulation (1) unless it has been recommended by the directors.
- (3) The ways in which a sum may be applied for the benefit of members under sub-regulation (1) shall be—
- (a) in paying up any amounts unpaid on shares held by members;
  - (b) in paying up in full unissued shares or debentures to be issued to members as fully paid; or
  - (c) partly under paragraph (a) and partly under paragraph (b).
- (4) The directors shall do all things necessary to give effect to the resolution and, in particular, to the extent necessary to adjust the rights of the members among themselves and may—
- (a) issue fractional certificates or make cash payments in cases where shares or debentures become issuable in fractions; and
  - (b) authorise any person to make, on behalf of all the members entitled to any further shares or debentures upon the capitalisation, an agreement with the company providing for the issue to them, credited as fully paid up, of any such further shares or debentures or for the paying up by the company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised; and any agreement made under an authority referred to in paragraph (b) shall be effective and binding on all the members concerned.

## 22. Winding-up

81. (1) If the company is wound up, the liquidator may, with the sanction of a special resolution, divide among the members in kind the whole or any part of the property of the company and may for that purpose set such value as the liquidator considers fair upon any property to be so divided and may determine how the division is to be carried out as between the members or different classes of members.



(2) The liquidator may, with the sanction of a special resolution, vest the whole or any part of any such property in assignees upon such trusts for the benefit of the contributories as the liquidator thinks fit, but so that no member is compelled to accept any shares or other securities in respect of which there is any liability.

**23. Indemnity**

82. Every officer, auditor or agent of the company shall be indemnified out of the property of the company against any liability incurred by him in his capacity as officer, auditor or agent in defending any proceedings, whether civil or criminal, in which judgment is given in that favour or in which that person is acquitted or in connection with any application in relation to any such proceedings in which relief is under the Act granted to him by the court.

SECOND SCHEDULE

(Section 12(3))

ARTICLES OF ASSOCIATION

OF

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY  
GUARANTEE

*Table of Divisions*

1. Name and Location
2. Purpose and Mission
3. General Policies
4. Membership
5. Government and Representation
6. Means
7. Prohibitions
8. Statement of Faith
9. Amendments
10. Dissolution
11. Board of Directors
12. Executive Committee
13. National Workers
14. National Coordinator/Director
15. Sub-Committees
16. Branches
17. Inspection of Accounts and List of members
18. Body body corporate
19. Winding-up
20. Indemnity

1. (1) In these regulations, unless the context otherwise requires—

“ Articles ” means the articles of the Company;

“ The Office ” means the registered office of the company;  
and

“ The Seal ” means the common seal of the Company.

(2) Unless the context otherwise requires, words or expressions contained in these regulations bear the same meaning as in the Act.

### **Members**

2. Each subscriber to an application for incorporation of the company and such other persons as are admitted to membership in accordance with the articles shall be the members of the company. No person shall be admitted as a member of the company unless by a resolution of the company, and by signing a declaration of guarantee and delivering it to the company.

3. A member may at any time withdraw from the company by giving at least seven days' written notice to that effect.

### **General Meetings**

4. All general meetings other than annual general meetings shall be called extraordinary general meetings.

5. The Directors may call a general meeting whenever they consider necessary and, on the requisition of members pursuant to the provisions of the Act, shall forthwith proceed to convene an extraordinary general meeting on a date not later than six weeks after receipt of the requisition. If there are no sufficient directors present within Zambia to call a general meeting, any one Director, or any two members may convene a general meeting in the same manner, or in a manner as similar as possible to that in which such a meeting may be convened by a Director.

6. A general meeting shall be held in Zambia unless all the members entitled to vote at the meeting agree in writing to hold the meeting at a place outside Zambia.

**Notice of General Meeting**

7. An annual general meeting and a general meeting called for the passing of a special resolution or resolution appointing a person as a Director shall be called by at least twenty-one days' notice. All other general meetings shall be called by at least fourteen days' notice, but a general meeting may be called by shorter notice if it is so agreed by all the members entitled to attend and vote at the meeting.

8. A notice of a general meeting shall specify the date, place, and hour of the meeting and the general nature of the business to be transacted and, in the case of an annual general meeting, shall specify the meeting as such.

9. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at the meeting.

**Proceedings at General Meetings**

10. A business shall not be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. For the purpose of determining whether a quorum is present, a person attending as a proxy, or as a representative of a body corporate or association that is a member shall be deemed to be a member.

11. If a quorum is not present within half an hour after the time appointed for the meeting—

(a) where the meeting was convened upon the requisition of members, the meeting shall be dissolved; or

(b) in any other case—

(i) the meeting shall stand adjourned to such day, and at such time and place, as the directors determine or, if no determination is made by the directors, to the same day in the next week at the same time and place; and

(ii) if a quorum not present at the adjourned meeting within half an hour after the time appointed for the meeting—

A. two members shall constitute a quorum;  
or

B. the meeting shall be dissolved, if two member are not present.

12. (1) If the directors have selected one of their number as chairman of their meetings, that person shall preside as a chairman at every general meeting of the company.

(2) Where a general meeting is held and—

(a) a chairman has not been elected as provided above; or

(b) the chairman is not present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling act;

the members present shall elect one of their number to be chairman of the meeting.

13. (1) The chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(2) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Except as provided in the preceding paragraph, it shall not be necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting.

14. (1) At a general meeting, a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is demanded (before or on the declaration of the result of the show of hands)—

(a) by the chairman;

(b) by at least three members present in person or by proxy;  
or

(c) by a member or members present in person or by proxy and representing not less than one tenth of the total rights of all the members having the right to vote at the meeting.

(2) The demand for a poll may be withdrawn.

15. (1) If a poll is duly demanded, it shall be taken in such manner, either at once or after an initial meeting, adjournment or otherwise, as the chairman directs and the result of the poll shall be the resolution of the meeting at which the poll was demanded.

(2) A poll demanded on the election of the chairman or on a question of adjournment shall be taken forthwith.

16. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, in addition to the chairman’s deliberate vote (if any), shall have a casting vote.

17. Subject to any rights or restrictions for the time being, at a meeting of members, each registered member, proxy or attorney of a member who is not present at the meeting shall be entitled to vote.

18. On a show of hands, each person present who is entitled to vote shall have one vote, and on a poll, every person present who is entitled to vote shall have a vote in accordance with section 67 of the Act.

19. (1) An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered. Any such objection shall be referred to the chairman of the meeting, whose decision shall be final. A vote not disallowed pursuant to such objection shall be valid for all purposes.

(2) An instrument appointing a proxy shall be in writing under the hand of the appointed or his attorney duly authorized in writing or, if the appointer is a body corporate, either under seal or under the hand of an officer or attorney duly authorized.

(3) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy shall not be entitled to vote in the resolution except as specified in the instrument.

(4) An instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

(5) A proxy need not be a member of the company.

(6) An instrument appointing a proxy shall be in the following form or in similar form as the circumstances require.

Name of Company: .....  
I/ We .....  
of .....  
Being a member/members of the above named accompany.

Hereby appoint .....  
of.....  
.....  
.....

Or in his absence .....  
of .....  
.....

As my/our proxy to vote for me/us on my/our behalf at the annual/  
extraordinary general meeting of the company to be held on the  
..... day of ..... 20.....

\* in favour of/against resolution No.: .....

\* in favour of /resolution No.: .....

\* in favour resolution No.: .....

Unless otherwise instructed, the proxy will vote as he thinks fit.

Signed: .....

Date:.....

\*Strike out whichever is not desirable.

20. An instrument appointing a proxy shall not be treated as valid unless the instrument and the power of attorney or other authority (if any) under which the instrument is signed or a notarially certified copy of that power or authority are deposited, not less than forty-eight hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or in the case of a poll, not less than twenty-four hours before the time appointed for the taking of the poll, at the registered office of the company or at such other place in Zambia as shall be specified for that purpose in the notice convening the meeting.

21. A vote given in accordance with the terms of an instrument of proxy or of a power of attorney shall be valid notwithstanding that the principal has since died, become of unsound mind or revoked the instrument (or the authority under which the instrument was executed) or the power, unless notice in writing of the death, unsoundness of mind or revocation has been received by the company at the company's registered office before the commencement of the meeting or adjourned meeting at which the instrument is to be used or the power exercised.

### **Directors**

22. In addition to the circumstances in which the office of director becomes vacant by virtue of the Act, the office of director makes any arrangement or composition with his creditors generally.

**Borrowing Powers**

23. The board of directors may exercise the powers of the company to borrow money, to charge any property or business of the company and to issue debentures or give any other security for a debt, liability or obligation of the company or of any person.

**Powers and Duties of Directors**

24. The affairs of the company shall be managed by the directors, who may pay all expenses incurred in registering the company and may exercise all such powers of the company as are not, by the Act or these articles, required to be excised by the company in a general meeting, subject nevertheless to the provisions of the Act and these articles.

25. The board may from time to time and at any time by power of attorney appoint a body corporate, firm or person or body of persons, whether nominated directly or indirectly by the directors to be the attorney or attorneys of the company for such purposes and with such powers, authorities and discretion (not exceeding those vested in or exercisable by the directors under these articles) and for such period and subject to such conditions as they consider necessary.

**Proceedings of Directors**

26. The provisions of section 107 of the Act providing that a director who is materially interested in a contract or arrangement to be considered at a meeting of the company should not be counted in quorum or vote on the matter may be suspended or relaxed, whether generally or in respect of a particular transaction, by a resolution of the company.

**Alternate Directors**

27. (1) A director may, if the others approve, appoint a person as an alternate director in accordance with the Act.

(2) An alternate director may, subject to the instrument of appointment, exercise any powers that the appointer may exercise.

28. (1) At a meeting of directors, the quorum shall be two, or such larger number as shall be determined by resolution of the company.

(2) In the event of a vacancy or vacancies in the office of director, the remaining directors or director may act but if the number of remaining directors is not sufficient to constitute a quorum at a meeting of directors, the remaining directors or director may act only for purposes of increasing the number of director to a number sufficient to constitute such quorum or of convening a general meeting of the company.



29. (1) The directors may delegate any of their powers to committees consisting of such of their number as they consider appropriate. Powers so delegated and exercised shall be deemed to have been exercised by the directors.

(2) The members of such a committee may elect one of their number as chairman of their meetings. Where such a meeting is held, and a chairman has not been elected as provided above, or the chairman is not present within ten minutes after the appointed time for the holding of the meeting or is unwilling to act, the members present may choose one of their number to be chairman of the meeting.

(3) Questions arising at a meeting of a committee shall be determined by a majority of votes of the members present and voting. In the event of an equality of votes, the chairman, in addition to his deliberate vote (if any) shall have a casting vote.

#### **Executive Director**

30. The board of directors may, upon such terms and conditions and with such restrictions as it considers necessary, appoint an executive director in accordance with the Act and confer upon the executive director any of the powers exercisable by the board. Any powers so conferred may be concurrent with, or to the exclusion of the powers of the board. The board may at any time withdraw or vary any of the power so conferred on the executive director.

#### **Remuneration of Directors**

31. The directors shall be entitled to such remuneration as the company may, by ordinary resolution, determine and, unless the resolution provides otherwise, the remuneration shall be deemed to accumulate from day to day.

#### **Directors' Expenses**

32. The directors may be paid all travelling, hotel, and other expenses properly incurred by them in connection with their attendance at meetings of directors or committees of directors or general meetings of the company or otherwise in connection with the discharge of their duties as directors.

**Secretary**

33. A secretary of the company shall hold office on such terms and conditions as to remuneration and otherwise, as the board may determine.

**Minutes**

34. The board shall cause minutes to be recorded in books kept for that purpose—

- (a) of all appointments of officers made by the directors; and
- (b) of all proceedings at meetings of the company, of the directors and of committees of directors, including the names of the directors present at such meetings.

**The Seal**

35. The board shall provide for the safe custody of the seal. The seal shall be used only with the authority of the board, or of a committee of directors authorized by the board and every document to which the seal is affixed shall be signed by a director and counter-signed by the directors to counter-sign that document or a class of documents in which that document is included.

**Inspection of Records**

36. Subject to the Act, the board shall determine whether and to what extent, at what time, places and under what conditions, the accounting records and other documents of the company or any of them will be open to the inspection of members other than directors, and a member other than a director shall not have the right to inspect any document of the company except as provided by law or authorized by the board or by a resolution of the company.

**Indemnity**

37. An officer, auditor or agent of the company shall be indemnified out of the property of the company against any liability incurred by the officer, auditor or agent in that capacity in defending any proceedings, whether civil or criminal, in which relief is granted to the officer, auditor or agent by the court under the Act.

38. (1) We the several persons whose names and addresses are subscribed, wish to be formed into a COMPANY LIMITED BY GUARANTEE in pursuance of this application, and—

(2) We agree that if, upon the winding up of the company, there remains after the discharge of all its debts and liabilities any property of the company, that property will not be distributed among the members, but will be transferred to some other company having similar objects, or applied to some other charitable object, such other company or charity to be determined by ordinary resolution of the members in a general meeting prior to the dissolution of the company.

(3) We respectively declare that if, upon the winding up of the company, the assets of the company prove insufficient to discharge all the debts and liabilities of the company, we guarantee to contribute to the discharge of those debts and liabilities an amount set against our respective names.

**SUBSCRIBERS' NAMES, ADDRESSES AND  
GUARANTEED AMOUNT**

<i>Forenames &amp; Surnames</i>	<i>Residential, Postal, Email Addresses and Phone No</i>	<i>Nationality and NRC No. or Passport No.</i>	<i>Guaranteed Amount</i>	<i>Signature</i>

**WITNESS:**

Full Name: .....

Occupation: .....

Address: .....

Signature: .....

## THIRD SCHEDULE

*(Section 212)*

## CONTENTS OF PROSPECTUS

1. In this Schedule, unless the context otherwise requires—  
“company” includes a company proposed to be formed;  
“proposed subsidiary” in relation to a company, means a body corporate in which the company proposes to acquire securities and which, by reason of the acquisition or anything to be done in consequence thereof or in connection therewith, will become a subsidiary of the company.
2. The prospectus shall state at its head -  
“A copy of this prospectus has been delivered to the Registrar of Companies for registration. The Registrar has not checked and will not check the accuracy of the statements made and accepts no responsibility therefor or for the financial soundness of the company or the value of the securities concerned.”
3. The reports set out in a prospectus for purposes of this Schedule shall be made by a person or persons duly qualified under Part XII of this Act to be appointed as auditors of the company.
4. Where reports prepared for the purposes of this Schedule would not otherwise give a true and fair view of the matters required to be covered by the reports, the persons charged with the preparation of the reports shall add such information and explanations as well to give a true and fair view of those matters.
5. If any of the information required for the purposes of reports for this Schedule is for reasons beyond the power of the company not available, that fact and the reasons therefor shall be stated.

**Matters to be specified in Prospectus**

6. The full name of the company.
7. (1) A full description of the securities which the public are being invited to acquire, and of the terms on which they are being invited to acquire them, including—
  - (a) the date prior to the expiration of which applications will not be accepted or treated as binding;
  - (b) the total amount payable for each share or debenture and the amount thereof payable on application and allotment, if securities are being offered for subscription or purchase; and

(c) the policy which will be adopted if applications exceed the shares or debentures on offer.

(2) Where the securities are unsecured debentures they shall be described as “ unsecured ”.

8. Whether or not an application has been or is being made to a stock exchange for permission to deal in the securities concerned and—

(a) if so, the name of the stock exchange; or

(b) if not, a statement that there will not be a market for the securities and that any holder wishing to dispose of his securities may be unable to do so.

9. The full name (including any former or other names), residential and postal addresses and business occupation of each person making the invitation, other than the company.

10. The situation of the company’s registered office, and its postal address.

11. The full name (including any former or other names), residential and postal addresses and business occupation of every director or proposed director and of the secretary or proposed secretary of the company, and particulars of all other directorships held by each director or proposed director.

12. Other than for a proposed company, the names, addresses and professional qualifications of the company’s auditors.

13. The name and address of any underwriter of the invitation.

14. The names and addresses of the company’s bankers, stockbrokers and legal practitioners.

15. If the invitation relates to debentures, the names and addresses of any trustees for debenture holders, the date of the resolutions creating the debentures, and short particulars of the security therefor or, if the debentures are unsecured, a statement to that effect.

16. The nature of the business or businesses of the company or, if the company has no business, its principal objects.

17. The restrictions, if any, upon the business of the company contained in the articles.

18. A brief summary of the history of the company.

19. The names, countries of incorporation, and nature of the businesses of all subsidiaries of the company and of all bodies body corporate in which the company is beneficially entitled to equity shares conferring the right to exercise more than twenty-five per cent of the votes exercisable at a general meeting of the body body corporate.

20. If the company is a subsidiary, the name, country of incorporation and nature of the business of each holding company and, in the case of a holding company that is a member of the company, the number of shares in each class of the company held by the holding company.

21. The name, country of incorporation, and nature of the business of any proposed subsidiary of the company.

22. Where the company is proposing to acquire a business, a full description, of the nature of that business.

23. The situation, area and tenure (including, where appropriate, the rent and unexpired term of any lease or concession) of the main places of business of the company and its subsidiaries and proposed subsidiaries.

24. A statement as to—

(a) the financial and trading prospects of the company together with any material information which may be relevant thereto; and

(b) any material changes in the financial or trading position of the company which may have occurred since the end of the last completed financial year of the company.

25. A statement by the directors of the company that in their opinion the company's working capital is sufficient or, if not, how it is proposed to provide the additional working capital thought by the directors to be necessary.

26. The amount or estimated amount of the expenses incidental and preliminary to the invitation (including the expenses of any application to a stock exchange for permission to deal in the securities concerned in the invitation) and by whom such expenses are payable.

27. Particulars of any commissions payable, or paid within the two preceding years, as commission for acquiring any shares or debentures of the company or of any of its subsidiaries and proposed subsidiaries.

28. Where the company is inviting the public to subscribe for any of its shares or debentures—

- (a) a statement or an estimate of the net proceeds of the issue and a statement as to how such proceeds were or are to be applied;
- (b) the minimum amount which in the opinion of the company's directors must be raised by the issue in order to provide the sums, or, if part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters:
  - (i) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;
  - (ii) any expenses incidental and preliminary to the invitation and issue (including the expenses of any application to a stock exchange for permission to deal in the shares or debentures) payable by the company, and any commission be payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for any share or debentures of the company;
  - (iii) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters;
  - (iv) working capital; and
- (c) the amounts to be provided in respect of the matters stated in paragraph (b) otherwise than out of the proceeds of the issue, and the sources out of which these amounts are to be provided.

29. Where a person other than the company is inviting the public to purchase any shares or debentures of the company (whether or not the invitation is also made by the company)—

- (a) if the shares or debentures were issued by the company for cash—a statement of the price per share or debenture at which those shares or debentures were issued, and of the total net proceeds of the issue;
- (b) if the shares or debentures were issued by the company for a consideration other than cash—a statement of the nature of the consideration and an estimate by the directors of its fair value and of the price per share or debenture which it represents;

(c) if the person making the invitation did not acquire the shares or debentures directly from the company on their issue—

(i) if he purchased them for cash—a statement of the price per share or debenture at which he purchased them (or, if purchased over a period of time at different prices, the lowest and highest prices) and the total purchase price paid by him; or

(ii) if he acquired them for a consideration other than cash—a statement of the nature of the consideration and an estimate by him of its fair value and of the price per share or debenture which it represents.

30. The authorised capital of the company and the number and description of the company's authorised shares of each class and issued shares of each class.

31. The amount paid on the issued shares of each class—

(a) in cash; and

(b) otherwise than in cash.

32. The amount, if any, remaining payable on the shares of each class previously issued, distinguishing between the amount presently due for payment and the amount not yet due for payment.

33. The number of unissued shares of each class agreed to be issued and the amounts payable therefor, distinguishing between amounts payable in cash and amounts payable otherwise than in cash.

34. If the company's shares are divided into different classes, the rights in respect of voting, repayment, and dividends and other special rights attached to the several classes and a statement as to the consents necessary for the variation of such rights.

35. The amounts of the dividends (if any) per share paid by the company in respect of each class of shares in each of the ten completed financial years of the company immediately preceding the date of publication of the prospectus, or in respect of each of the financial years since the incorporation of the company if this occurred less than ten years before the publication, and particulars of any cases in which no dividends have been paid in respect of any class of shares in any of those years.



36. If any of the company's shares are redeemable preference shares, the earliest date on which the company has power to redeem them.

37. The name of each person who holds more than 25 per cent of the company's shares or any class of shares and the number and description of the shares held or owned.

38. The name of each person who is the beneficial owner of the company's shares or any class of shares and the number and description of the shares held or owned.

39. The amount of the outstanding debentures issued or agreed to be issued by the company and any of its subsidiaries and proposed subsidiaries or, if none, a statement to that effect.

40. Particulars of any bank overdrafts of the company and any of its subsidiaries and proposed subsidiaries as at the latest practical date (which shall be stated) or, if there are no bank overdrafts, a statement to that effect.

41. The nature of the consideration for the issue of any of the company's shares or debentures issued or proposed to be issued otherwise than for cash.

42. Particulars of any share or debentures of any of the company's subsidiaries and proposed subsidiaries which have, within two years immediately preceding the publication of the prospectus, been issued, or which are proposed to be issued otherwise than for cash and the nature of the consideration.

43. Particulars of any shares or debentures of the company or any of its subsidiaries and proposed subsidiaries which have, within two years immediately preceding the publication of the prospectus, been issued, or which are proposed to be issued, for cash, the price and terms upon which the same have been or are to be issued and (if not already fully paid) the dates when any instalments are payable.

44. Particulars of any shares or debentures of the company or any of its subsidiaries and proposed subsidiaries which are under option, or agreed conditionally or unconditionally to be put option, with the price to be paid for the securities option, the duration of the option, the consideration for which the option was granted and—

(a) where the option is to all the shareholders or debenture holders or any class thereof or to employees generally—a statement of that fact; or

(b) in any other case—the name and address of each grantee.

45. (1) Subject to subclause (2), where any property has been acquired or is proposed to be acquired by the company or any of its subsidiaries and proposed subsidiaries—

- (a) the names and addresses of the vendors;
- (b) the amount paid or to be paid in cash, shares, debentures or otherwise to the vendor, and, where there is more than one separate vendor or the company or subsidiary or proposed subsidiary is a sub-purchaser, the amount so paid or to be paid to cash vendor, distinguishing between the amounts paid or to be paid—
  - (i) in cash;
  - (ii) in shares;
  - (iii) in debentures;
- (c) the nature of, and value attributed to, any other consideration;
- (d) the amount (if any) paid or payable for goodwill;
- (e) full particulars of the nature and extent of the interest, direct or indirect, of every director or proposed director of the company or any of its subsidiaries and proposed subsidiaries in the property; and
- (f) short particulars of the property.

(2) Subclause (1) shall not apply where the contract for the acquisition of the property was—

- (a) completed, and any purchase money fully paid, more than two years before the date of publication of the prospectus; or
- (b) entered into in the ordinary course of business and there is no connection between the contract and the invitation.

46. Unless more than two years have elapsed since the registration of the company—

- (a) the amount or estimated amount of the expenses incidental or preliminary to the promotion and registration of the company and by whom those expenses have been paid or are payable;
- (b) the names of the promoters of the company;
- (c) the amount of any cash or securities paid, or benefit given or proposed to be given, to any promoter and the consideration for such payment or benefit; and
- (d) full particulars of the nature and extent of the interest of every director and proposed director in the promotion of the company.

47. Where the prospectus includes a statement purporting to be made by an expert, a statement that the expert has given and has not withdrawn his written consent to the publication of the prospectus with the statement included in the form and in the context in which it is included.

48. The dates of, parties to, and general nature of, every material contract (other than contracts entered into in the ordinary course of business or completed more than two years before the date of publication of the prospectus).

49. (1) A reasonable time (not being less than twenty-eight days) during which, and place at which, subject to this clause, the following documents (or certified copies thereof), may be inspected—

(a) the company's certificate of incorporation, certificate of share capital and articles;

(b) where the invitation relates to debentures—the debenture trust deed;

(c) each contract disclosed pursuant to clause 48 of this Schedule or, in the case of a contract not reduced to writing, a memorandum giving full particulars thereof;

(d) the annual accounts (including any group accounts), auditor's report and directors' report for each of the last five financial years, or, where part of that period fell before the commencement of this Act, all similar accounts and reports produced by the company in respect of that part of the period;

(e) the annual accounts (including any group accounts), auditors' report and directors' report in respect of each subsidiary and proposed subsidiary, for each of the last five financial years, or where—

(i) part of that period fell before the commencement of this Act; or

(ii) the subsidiary or proposed subsidiary is not a company to which this Act applies;

all similar accounts and reports produced by the subsidiary or proposed subsidiary in respect of that period or part of the period;

(f) all other reports, letters, statement of financial positions, valuations and statements by an expert any part of which is extracted or referred to in the prospectus; and

(g) a written statement, signed by the accountants making the report required under this schedule, setting out the adjustments made by them in arriving at the figures shown in their report and giving the reasons therefor.

(2) If any part of any of the above-mentioned documents is in a language other than English, a certified translation into English of that part of the document shall be made available for inspection instead of the original or a certified copy.

(3) Paragraph (1) (e) shall not require to be made available for inspection the profit and loss accounts and statement of financial positions of a subsidiary or business in respect of any financial years in which the profits or losses and assets and liabilities of the subsidiary or business are dealt with in the accounts or group accounts of the company.

50. The names and addresses of the persons making the reports required under this Schedule.

#### **Reports to be set out in Prospectus**

51. A report with respect to—

(a) the profits or losses of the company in respect of—

(i) each of the ten completed financial years immediately proceeding the publication of the prospectus, (or since the incorporation of the company if less than ten years); and

(ii) the period from the end of the last financial year to the latest practicable date being a date less than ninety days before the date of the publication of the prospectus, if the last financial year of the company ended ninety days or more before the date of the publication of the prospectus; or

(b) if the company has subsidiaries—a report as required by paragraph (a) with respect to the profits or losses of the company and of its subsidiaries, so far as such profits or losses can properly be regarded as attributable to the interests of the company.

52. A report with respect to—

(a) the assets and liabilities of the company as at the end of its last financial year or, if the financial year ended ninety days or more before the date of publication of the prospectus, as at the latest practicable date, being a date less than ninety days before the date of publication of the prospectus; or

(b) if the company has subsidiaries—a report of the kind required by paragraph (a) with respect to the assets and liabilities of the company, and of its subsidiaries so far as such assets can properly be regarded as attributable to the interests of the company.

53. A report with respect to the aggregate emoluments paid by the company to the directors of the company or any related body body corporate during the last period for which the accounts have been made up and the amount, if any, by which such emoluments would differ from the amounts payable under any arrangement in force at the date of publication of the prospectus.

54. (1) A report with respect to profits or losses of—

(a) each proposed subsidiary of the company;

(b) each business acquired by the company within ten years before the date of publication of the prospectus; and

(c) each body body corporate that became a subsidiary of the company within ten years before the date of publication of the prospectus; in respect of—

(i) each of the ten financial years immediately preceding the publication of the prospectus, (or each financial year since the commencement of that business or the incorporation of that subsidiary or proposed subsidiary, if less than ten years); and

(ii) if the last financial year of that business, subsidiary or proposed subsidiary ended ninety days or more before the date of the publication of the prospectus—the period from the end of the last financial year to the latest practicable date, being a date less than ninety days before the date of the publication of the prospectus.

(2) The report shall deal with such of the profits or losses of a subsidiary or proposed subsidiary as can properly be regarded as attributable to the interests of the company.

(3) Where the report relates to any financial year before the subsidiary became a subsidiary of the company or relates to a proposed subsidiary, only such of its profits or losses shall be regarded as attributable to the interests of the company as would have been properly so attributable if the company had held the securities in the subsidiary or proposed subsidiary which it holds at the date of publication of the prospectus or proposes to acquire.

(4) Where any such subsidiary or proposed subsidiary itself has subsidiaries, the report shall extend to the profits or losses of its subsidiaries so far as the same can properly be regarded as attributable to the interests of the company.

(5) The report need not extend to any period in respect of which the profits or losses of that business or the appropriate part of the profits or losses of that subsidiary are dealt with in the report required under clause 51.

55. (1) A report with respect to the assets and liabilities of each proposed subsidiary of the company and each business or subsidiary acquired since the latest date up to which the accounts of the company have been made, as at the end of the last financial year of the business, subsidiary or proposed subsidiary, or, if the financial year ended ninety days or more before the date of publication of the prospectus, as at the latest practicable date not being more than ninety days before the date of publication of the prospectus.

(2) The report shall deal with the assets and liabilities of the business, subsidiary or proposed subsidiary so far as such assets and liabilities can properly be regarded as attributable to the interests of the company.

(3) In relation to a proposed subsidiary, only such assets and liabilities shall be regarded as attributable to the interests of the company as would have been properly so attributable if the company had held the securities in the proposed subsidiary which it proposes to acquire.

(4) Where any such subsidiary or proposed subsidiary itself has subsidiaries, the report shall extend to the assets and liabilities of its subsidiaries so far as the same can properly be attributable to the interest of the company.

56. A report with respect to any other matters which appear to the persons charged with making the reports to be relevant having regard to the purposes of the reports.

## FOURTH SCHEDULE

*(Section 376(2))*

## TRANSITIONAL PROVISIONS

- |   |   |
|---|---|
| <p>1. A person holding office at the commencement of this Act shall remain in office as if that person had been appointed in accordance with this Act but shall comply with the requirements of this Act within two years of the commencement of this Act.</p>  | <p>Effect of this Act on persons holding office at commencement of Act</p>  |
| <p>2. Any act done or executed in accordance with the repealed Act and in force and operative at the commencement of this Act shall have effect as if done or executed in accordance with this Act.</p>   | <p>Acts done under Cap 388 to remain valid</p>  |
| <p>3. (1) Existing companies' articles of association in force and operative at the commencement of this Act shall have effect as if made in accordance with this Act.</p>  | <p>Existing companies' articles of association and resolutions of shareholders at commencement of Act to remain in effect</p> |
| <p>(2) Where a company formed prior to the commencement of this Act has, pursuant to its articles of association, or a resolution of the meeting of shareholders, authorised the board of the company to issue shares and some part of the authorised capital remains unissued, the board shall have authority to issue shares under this Act on the terms and conditions, and up to the limit expressed, in the articles of association, or the resolution, without requiring the authority of a further resolution of the shareholders.</p> | <p>Cap. 388</p>   |
| <p>(3) Where an existing company incorporated in accordance with the repealed Companies Act, adopts articles of association in accordance with this Act the Registrar shall issue to the company a replacement certificate of incorporation worded to meet the circumstances of the case upon payment of the prescribed fee.</p>  | <p>Cap. 388</p>   |
| <p>(4) An existing company shall not amend its articles unless, after the amendment, the articles are expressed in terms of and consistent with this Act.</p>   |   |
| <p>(5) If an existing company fails to comply with subsection (4), the company and every officer of the company commit an offence, and is liable on conviction to a fine not exceeding one hundred thousand penalty units or, in the case of the officer, to imprisonment for a period not exceeding two years, or to both.</p>   |   |

---

Effect of repeal of Cap. 388 on judicial proceedings	4. All proceedings, judicial or otherwise, commenced and pending before the commencement of this Act shall be continued as if commenced in accordance with this Act.
Register, fund or account under Cap. 388	5. A register, fund or account kept in accordance with the repealed Act, relating to organisation of companies shall be considered to be part of the register, fund or account kept in accordance with this Act.
Effect of repeal of Cap. 388 on existing companies	6. (1) A company registered in accordance with the repealed Act, shall be considered to be registered under this Act, and this Act shall extend and apply to the company accordingly. (2) A reference in this Act, express or implied, to the date of registration of a company referred to in subsection (1) shall be construed as a reference to the date on which the company was registered in accordance with the repealed Act.
Fee, charge or sum paid or unpaid in accordance with repealed Act	7. A fee, charge or sum paid or unpaid before the coming into force of this Act shall be considered to be paid or unpaid, as the case may be, in accordance with this Act.
Approval of acts and resolutions	8. An approval given, or authorisation granted, and in force before the coming into force of this Act or any act or thing done in accordance with the repealed Act, shall be considered to have been given, granted or done in accordance with the relevant provisions of this Act and any such approval or authorisation shall remain valid for the period specified under the repealed Act.

---