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# COMPANIES LAW 5759-1999

## PART ONE: INTERPRETATION

### Definitions

1. In this Law –
  - "**debenture**" – a document issued by a company that evidences the existence of a monetary obligation owed by the company and defines its conditions, exclusive of capital notes and bills of exchange issued by the company in the course of its business;
  - "**secured debenture**" – a debenture, in which the company's obligation under it is secured by a charge on some or all of the company's assets;
  - "**means of control**" – each of the following:
    - (1) the right to vote at the company's General Meeting;
    - (2) the right to appoint a Director of the company;
  - "**General Meeting**" – an Annual Meeting or an extraordinary meeting of the shareholders;
  - "**Extraordinary Meeting**" – a General Meeting of the shareholders, which is not an Annual Meeting;
  - "**Category Meeting**" – a meeting of holders of a category of shares;
  - "**Annual Meeting**" – a shareholders meeting under section 60;
  - "**stock exchange**" – a stock exchange in Israel, a stock exchange abroad and also a regulated market, as defined in the Joint Investment Trusts Law 5754-1994, which received approval by whoever is authorized to give it under the Law of the state in which it operates;
  - "**stock exchange in Israel**" – a stock exchange that received a permit under the Securities Law;
  - "**Court**" – the District Court;
  - "**substantial shareholder**" – a person who holds 5% or more of the company's issued share capital or of voting rights in it;
  - "**interested party**" – a substantial shareholder, a person with the power to appoint one or more Directors or the General Manager, and a person who serves in the company as a Director or as General Manager;
  - "**controlling parcel**" – shares that give 25% or more of all the voting rights at the General Meeting;
  - "**dividend**" – any asset given by the company to a shareholder by virtue of his right as a shareholder, whether in cash or in any other manner, including a transfer in kind without equivalent consideration, and exclusive of bonus shares;
  - "**Director**" – a member of the company's Board of Directors and a person who de facto serves in a Director's position, no matter what his title;
  - "**Outside Director**" – within its meaning in Part Six, Chapter One, Article Five;
  - "**holding**" and "**acquisition**" – within their meaning in the Securities Law;
  - "**private offering**" – an offer to issue securities of a public company, which is not an offering to the public, or an offering by a public company to sell its securities that it acquired under section 308, and which is not

an offering to the public;

**"substantial private offering"** – a private offering to which the provisions of section 270(5) apply;

**"purchase offer"** – a proposal to acquire shares, which is addressed to the company's shareholder public;

**"Board of Directors committee"** – a committee set up by the Board of Directors under the provisions of section 110;

**"stock exchange member"** – a person who is a member of a stock exchange in accordance with the stock exchange by-laws, within their meaning in section 46 of the Securities Law;

**"company"** – a company incorporated under this Law, under the Companies Ordinance, the Companies Ordinance 1921 or the Companies Ordinance 1919;

**"subsidiary"** – within its meaning in the Securities Law;

**"registration company"** – within its meaning in the Securities Law;

**"public benefit company"** – within its meaning in Chapter One "A" in Part Nine;

**"merging company"** – a target company and an absorbing company;

**"private company"** – a company that is not a public company;

**"public company"** – a company, the shares of which are listed for trading on a stock exchange or were offered to the public by prospectus, within its meaning in the Securities Law, or were offered to the public abroad under a public offering document required under a statute abroad, and which are held by the public;

**"absorbing company"** – a company, to which all the assets and obligations of the target company pass at a merger;

**"associated company"** – within its meaning in the Securities Law;

**"foreign company"** – a body corporate, other than a partnership, which was incorporated abroad;

**"target company"** – one or more companies about to merge into an absorbing company in a manner that will result in the company's liquidation;

**"Trust Law"** – the Trust Law 5739-1979;

**"Amutot Law"** – the Amutot (Nonprofit Companies) Law 5740-1980;

**"Securities Law"** – the Securities Law 5728-1968;

**"distribution"** – giving a dividend or undertaking to give it, either directly or indirectly, and also acquisition; and for this purpose,

**"acquisition"** – the direct or indirect acquisition or provision of financing for the acquisition – by a company, its subsidiary or another body corporate under its control – of the company's shares or of securities that are convertible into the company's shares or that can be realized as the company's shares, or the redemption of redeemable securities that are part of the company's equity in accordance with section 312(d), and including an undertaking to do any of these things – all that on condition that the seller is not the company itself or another body corporate that is wholly owned by the company;

**"day of incorporation"** – the date set by the Registrar in the company's Certificate of Incorporation as its day of incorporation;

**"entrepreneur"** – a person who performs an act in the name of and in place of a company that has not yet been incorporated;

**"index"** – the Consumer Price Index which the Central Bureau of Statistics publishes;

**"merger"**, for purposes of Part Eight – the transfer of all assets and liabilities, including conditional, future, known and unknown liabilities of an target company to an absorbing company, in consequence of which the target company liquidates itself in accordance with section 323;

**"share"** – an array of rights in a company, prescribed in Law and in the by-laws;

**"bonus shares"** – shares with a company allocates without consideration to its shareholders who are entitled thereto;

**"number of votes"** – the number of votes of persons voting, in accordance with the voting rights prescribed for the shares by virtue of which vote the shareholders who participate in the meeting;

**"ID number"** –

- (1) in respect of a company registered in Israel – its registration number;
- (2) in respect of a registered company that is registered abroad – the state in which it is registered and its registration number, if it has a registration number;
- (3) in respect of any other body corporate that has a registration number under an enactment – its registration number;
- (4) in respect of an individual Israel resident – his ID number in the Population Register;
- (5) in respect of an individual who is not an Israel resident – the state where the passport was issued and the passport number;

**"address"** –

- (1) in respect of an individual Israel resident – his address, as recorded in the Population Register, and if he gave another address – the address he gave;
- (2) in respect of an individual who is not an Israel resident – his residential address, and if he gave another address – the address he gave;
- (3) in respect of a company registered in Israel – the address of its registered office;
- (4) in respect of a company registered abroad – the address of its office abroad, and if it gave an address in Israel – the address it gave;
- (5) in respect of any other body corporate that has a registered address under an enactment – its registered address;

**"offeror"**, in a purchase offer – the person who makes the purchase offer;

**"pledge"** – within its meaning in the Pledges Law 5727-1967, as well as a floating charge;

**"presence of shareholder"**, at a General Meeting – the shareholder's presence in person or by an agent, or by means of a proxy statement as said in section 87;

**"officer"** – Director, General Manager, Chief Business Manager, Deputy General Manager, Vice General Manager, any person who holds a said position in the company, even if he has a different title, and

also any other manager who is directly subject to the General Manager;

**"security"** – includes a share, a debenture, or rights to acquire, convert or sell each of those, all whether they are registered or to bearer;

**"offeree"**, in a purchase offer – the owner of the shares, acquisition of which is proposed in the purchase offer;

**"series of debentures"** – two or more debentures of equal rank in respect of the monetary obligation and the surety for its payment;

**"personal interest"** – a person's personal interest in an act or a transaction of a company, including the personal interest of his relative and of another body corporate in which he or his relative is an interested party, and exclusive of a personal interest that stems from the fact of holding shares in the company;

**"transaction"** – an agreement or contract, as well as a unilateral decision by a company to grant a right or other benefit;

**"exceptional transaction"** – a transaction that is not in the ordinary course of the company's business, a transaction not on market conditions or a transaction that is liable to have a substantial effect on the company's profitability, property or obligations;

**"act"** – a legal act, whether by deed or abstention;

**"substantial act"** – an act that is liable to have a substantial effect on the company's profitability, property or obligations;

**"Companies Ordinance"** – the Companies Ordinance (New Version) 5743-1983;

**"premium"** – an amount, by which the consideration for an allocation of the company's shares exceeds the nominal value of those shares;

**"relative"** – spouse, brother or sister, parent, parent's parent, offspring or the spouse's offspring and the spouse of each of these;

**"Auditor"** – a Certified Public Accountant appointed in order to perform audit activities, as said in section 154;

**"Securities Authority"** – the Authority, within its meaning in the Securities Law;

**"Registrar of Endowments"** – within its meaning in the Trust Law;

**"Companies Registrar", "Registrar"** – the Companies Registrar, as said in section 36;

**"share certificate"** – a certificate that states that its holder is the owner of a bearer share;

**"floating charge"** – within its meaning in the Companies Ordinance;

**"control"** – within its meaning in the Securities Law;

**"derivative action"** – an action brought by a plaintiff in the name of a company because of its grounds for the action;

**"Memorandum"** – within its meaning in the Companies Ordinance, as it was immediately before this Law came into effect;

**"Certificate of Incorporation"** – a certificate signed by the Registrar that certifies the company's registration;

**"share document"** – a document in which the name of the owner registered in the company registers is stated, stating the number of shares he owns;

**"by-laws"** – a company's by-laws, as first submitted to the Registrar with the registration or as lawfully changed;

**"the Minister"** – the Minister of Justice.

## PART TWO: FOUNDING THE COMPANY

### CHAPTER ONE: INCORPORATION

#### Article One: The Right to Incorporate

##### The right to incorporate

2. Every person has the right set up a company, on condition that none of the company's objectives contradict the Law, are immoral or conflict with public order.

##### Company of one person

3. A company can have a single shareholder.

#### Article Two: The Legal Personality

##### The company's legal personality

4. A company is a legal personality qualified for every right, obligation and act that conforms to its character and nature as an incorporated body.

##### Existence of the company

5. The company is in existence from the day of incorporation stated in the Certificate of Incorporation, and until the incorporation lapses in consequence of the company's liquidation.

##### Raising the curtain

6. (a) (1) In exceptional cases, in which the separate legal personality was used in one of the manners said below, the Court may charge a company's debt against a shareholder, if it finds that under the circumstances of the case it is just and right to do so:
  - (a) in a manner liable to defraud somebody or to discriminate a creditor of the company;
  - (b) in a manner that subverts the purpose of the company, assuming an unreasonable risk in respect of its ability to repay its debts;on condition that the shareholder was aware of the said use and taking into consideration his holdings, the way he met his obligations toward the company under sections 192 and 193 and taking into account the company's ability to meet its obligations.
- (2) For the purposes of this subsection a person shall also be deemed to have been aware of the use said in paragraph (1)(a) or (b), if he had suspicions about the conduct or about the possibility that circumstances causing the said use existed, but refrained from examining the matter, except



- when he merely acted negligently.
- (b) The Court may relate an attribute, right or obligation of a shareholder to the company and a right of the company to its shareholder, if it concluded that – under the circumstances of the case – it is just and right to do so, having taken into consideration the intention of the statute or of the agreement that applies to the matter before it.
  - (c) The Court may suspend a shareholder=s right to repayment of the company debt to him until after the company paid in full its obligations toward other creditors of the company, if it concluded that conditions existed for relating a debt of the company to the shareholder, as said in subsection (a).

### **Restriction on occupation**

7. If the Court ordered that a company's debts be related to one of its shareholders, under the provisions of section 6(a), then it may order that – during a period which it shall set and which shall not be longer than five years – that person cannot be a Director or General Manager of a company, or be directly or indirectly involved in the foundation and management of a company.

## **Article Three: Establishment and Registration of Company**

### **Application for registration**

8. If a person wishes to register a company, then he shall submit to the Registrar an application on a form prescribed by the Minister, and he shall attach to it:
- (1) a copy of the by-laws;
  - (2) the first Directors' declaration of their willingness to be Directors, as prescribed by the Minister.

### **Fees**

9. (a) When a person applies to have a company registered, he shall pay a fee (hereafter: registration fee) when he submits the application.
- (b) A company shall pay an annual fee each year.
  - (c) In this section, Acompany@ includes a foreign company.

### **Certificate of Incorporation**

10. (a) The Registrar shall register a company, if he finds that all requirements under this Law in respect of registration and of any matter that is a condition therefor have been met.
- (b) The Registrar shall give each company a registration number, as said in section 38(c), and he shall state it in the Certificate of Incorporation.
  - (c) When a company has been registered, then the Registrar shall deliver the Certificate of Registration to it.

- (d) The Certificate of Registration that was delivered to the company shall be conclusive evidence that all the requirements under this Law on the matter of registration and on any matter that is a condition therefor have been met.
- (e) The provision of subsection (d) shall not repair any fault in the by-laws, nor shall it prevent the need for its correction.

#### **Article Four: The Company's Purpose**

##### **The Company's Purpose**

- 11. (a) The company's purpose is to operate according to business considerations for the production of profits, and among those considerations may also be taken into account the interests of its creditors and employees and the public interest; a company may also contribute a reasonable amount to a worthy cause, even if the contribution is not within the framework of aforesaid business considerations, if a provision to that effect was made in the by-laws.
- (b) The provisions of subsection (a) shall not apply to a company, in whose by-laws it is stated that it was established only for the achievement of public purposes for the benefit of the public.

#### **Article Five: Acts Performed by Entrepreneur**

##### **Approval of acts**

- 12. (a) A company may approve acts of an entrepreneur, which were carried out in its name or in its place before its incorporation.
- (b) Retroactive approval is the same as authorization in advance, on condition that a right acquired by another person (in this Article: third party) in good faith and for consideration before the approval shall not be infringed.

##### **Status of third party in respect of initiative**

- 13. (a) If a third party knew of the existence of the initiative at the time of the act said in section 12, then he has the choice to consider the entrepreneur his counterpart or to retract the act and to sue the entrepreneur for his damages, if one of the following applies:
  - (1) the company did not approve the act within one year after it was done;
  - (2) the circumstances indicate that the company is not going to be incorporated, on condition that the third party so informed the entrepreneur 30 days in advance;
  - (3) the company did not approve the act within 30 days after the third party so demanded of it.
- (b) If the company approved the act, then the entrepreneur no longer has any right or obligation in connection with it.

- (c) The entrepreneur and the third party may make the provisions of this section conditional.

**Ignorance of the initiative**

- 14. If, when the act took place, the third party did not know of the initiative, then the following provisions shall apply:
  - (1) the entrepreneur's act shall obligate or entitle the entrepreneur, as the case may be;
  - (2) when the company has been incorporated, then it may approve the act, on condition that the approval not negate the nature, conditions and circumstances of the act; when the company has approved the act, then the act shall obligate the company and the entrepreneur, jointly and severally, and it shall entitle only the company.

**CHAPTER TWO: BY-LAWS**

**Article One: Contents of the By-laws and Their Change**

**Company by-laws**

- 15. Every company shall have by-laws, as specified in this Article.

**Effect of by-laws**

- 16. The company's by-laws, as registered at the time of incorporation, are in effect from the incorporation.

**By-laws as a contract**

- 17. (a) The by-laws shall be treated like a contract between the company and its shareholders and between the shareholders themselves.
  - (b) Changes in the by-laws shall be made in the manner prescribed in this Law.

**Particulars that must be included in by-laws**

- 18. The company's by-laws shall include the following particulars:
  - (1) the name of the company;
  - (2) the company's objectives;
  - (3) particulars on the registered share capital, as said in sections 33 and 34;
  - (4) particulars on the limitation of liability, as said in section 35.

**Particulars that may be included in by-laws**

- 19. The company may include in the by-laws subjects that relate to the company or to its shareholders, including the following:
  - (1) the rights and obligations of the company's shareholders;
  - (2) provisions on ways of managing the company, and the number of Directors;
  - (3) any other subject, which the shareholders deemed proper to

regulate in the by-laws.

#### **Change of by-laws**

20. (a) A company may change its by-laws by a decision adopted by an ordinary majority at a General Meeting of the company, unless the by-laws provide that some other majority is necessary, or if a decision according to section 22 was adopted.
- (b) If this Law includes a provision which may be made conditional, or if the by-laws include a provision according to which a certain majority is required for a change of some or all provisions of the by-laws, then the company shall be entitled to change the said provision only by decision adopted at a General Meeting by that certain majority or by a proposed majority, whichever is greater.
- (c) If the company's shares are divided into categories, then a change that infringes on the rights of a category of shares shall be made in the company's by-laws only with the approval of a General Meeting of that category, unless the by-laws provide otherwise; the provisions of subsections (a) and (b) shall apply, mutatis mutandis, to the adoption of decisions by a Category Meeting.
- (d) Notwithstanding the provisions of this section, a change of by-laws that obligates a shareholder to acquire additional shares or to increase the extent of his liability shall not obligate the shareholder without his consent.

#### **Effect of change and report**

21. (a) A change of the by-laws, other than a change as said in section 40, is in effect from the day on which the resolution thereon was adopted in the company or at a later date set by the company in its resolution.
- (b) If a company adopted a resolution on a change of its by-laws, then it shall deliver the text of the decision to the Registrar within 14 days after the date of the decision.

#### **Restriction on possibility of changing by-laws**

22. (a) A company may, in its by-laws or in another contract, restrict its power to change the by-laws or any of their provisions, if a decision to that effect was adopted by a General Meeting by the majority required for a change of the by-laws.
- (b) A decision adopted as said in subsection (a) shall be treated like a decision to change the by-laws and the provisions of this Article shall apply to it.

#### **Signing the by-laws**

23. (a) The by-laws shall be signed by the first shareholders, and the shares allocated to them shall be stated in it, as well as the name, address and ID number of each shareholder.
- (b) An attorney shall certify the signatories' identities by his signature on the by-laws.

### **Transitional provisions about the memorandum and by-laws**

24. A company incorporated before this Law went into effect may –
- (1) change the provisions prescribed in its memorandum in the manner and on the conditions prescribed therefor in the Companies Ordinance, as it read immediately before this Law went into effect, subject to the provisions of paragraph (5); however, notwithstanding the provisions of the Companies Ordinance, a company may change the provisions prescribed in its memorandum in respect of its capital and the name of the company, by a majority of 75% of all participants in the vote, other than abstentions; the change of the registered capital is in effect from the day on which the decision on the change was adopted, and changing the company=s name does not require the Minister=s approval;
  - (2) change its memorandum or repeal it in the manner prescribed under section 350(a), (i), (j), (k) and (l);
  - (3) change the provisions prescribed in its by-laws by a resolution adopted by a General Meeting by a majority of 75% of the participants in the vote, other than abstentions; or by another majority if so provided in the company's memorandum and by-laws;
  - (4) prescribe in the by-laws, subject to the provisions of section 20(b), a provision on the majority required to change provisions of the by-laws, by a resolution adopted by a General Meeting by a majority of 75% of the participants in the vote, other than abstentions; or by greater majority if such a majority is prescribed in the company's memorandum or by-laws; when a new provision has been prescribed as aforesaid, then the provisions of section 20(b) shall apply to its change;
  - (5) prescribe in the memorandum, by a resolution adopted by a General Meeting by a majority of 75% of the participants in the vote, other than abstentions, a provision to change the majority required to change provisions of the memorandum, which the General Meeting is qualified to change; the provisions of section 20(b) shall apply to this matter, mutatis mutandis.

## **Article Two: The Company's Name**

### **Choosing the name**

25. A company may be registered under any name, subject to the provisions of this Article and the provisions of any enactment.

### **"Ltd" at the end of the company's name**

26. The name of a company, in which the liability of shareholders is limited as said in section 35, shall at the end include the notation "Limited" or "Ltd."

### **Misleading name**

27. (a) A company shall not be registered under a name that –
- (1) is the name of a body corporate duly registered in Israel, or similar enough to it to mislead;
  - (2) is a registered trademark in respect of goods or services in which there are dealings for purposes that are similar to the purposes of the company that applied for registration, or a name similar enough to it to mislead, unless it was proven to the Registrar that the owner of the trademark agreed thereto in writing; for this purpose, "**registered trademark**" – within its meaning in the Trademarks Ordinance (New Version) 5732-1972.
- (b) Without derogating from the provisions of subsection (a), a company shall not be registered under a name which the Registrar believes to be deceptive or misleading.

### **Name contrary to public order**

28. A company shall not be registered under a name that is liable to injure public order or sensibilities.

### **Registrar's power to order a change of name**

29. (a) If a company was registered under a name which under the provisions of this Article should not have been registered, then the Registrar may demand that it change its name.
- (b) If the company did not deliver to the Registrar – within four months after the date of the demand – notice of the decision to change its name, then the Registrar may change its name to a name of his choice.
- (c) If the Registrar decided to change a company's name, then he shall send the company a change of name certificate, and the change shall be treated as if had been made by decision of the company and of the Registrar.
- (d) The Minister may prescribe provisions on the publication of a change of name.

### **Injunction**

30. The Court may, on the company's application, order any person who took its name or a name similar enough to it to be misleading, or on the application of whoever was injured by the registration of a company in violation of the provisions of section 27, order the company to refrain from using the name, unless he is satisfied that the defendant's right to use the name predates that of the applicant.

### **Change of name**

31. (a) A company may change its name with the Registrar's approval, and the provisions of sections 25 to 30 shall apply, mutatis mutandis, to the application for the change and to the requested name.
- (b) If the Registrar approved a company's change of name, then the

Registrar shall register the new name instead of the previous name and he shall issue it a change of name certificate.

### **Article Three: The Company's Objectives**

#### **Stating the company's objectives in the by-laws**

32. The company shall state its objectives in its by-laws by setting one of the following objectives:
- (1) to engage in any legal occupation;
  - (2) to engage in any legal occupation, other than categories of occupations specified in the by-laws;
  - (3) to engage in categories of occupations specified in the by-laws.

### **Article Four: Registered Share Capital and Its Division**

#### **Registered share capital**

33. In its by-laws the company shall determine its registered share capital, including the number and categories of shares.

#### **Nominal value of shares**

34. (a) The company's shares may all have a nominal value or all be without nominal value.
- (b) If the company's shares are without nominal value, then only their number shall be stated in the by-laws; if the company's shares have a nominal value, then in addition to their number the nominal value of each share shall also be stated in the by-laws.
- (c) If the company's shares are without nominal value, then the provisions of this Law on registered and issued share capital shall apply, mutatis mutandis, so that the number of shares prescribed in the by-laws shall be the registered share capital, and the number of shares allocated by the company shall be the issued capital.

### **Article Five: Limited Liability**

#### **Limited liability**

35. (a) The shareholders' liability for the company's obligation may be unlimited, and that shall be stated in the by-laws; if the shareholders' liability is limited, then the manner of limitation shall be specified in the by-laws.
- (b) If the company's shares have a nominal value, then the shareholders are liable at least to the payment of the nominal value, unless the provisions of section 304 apply.

## **CHAPTER THREE: COMPANIES REGISTRAR**

### **Article One: Office of the Companies Registrar**

#### **Appointment and qualifications of the Registrar and his Deputy**

36. (a) The Minister shall appoint a State employee, who is qualified to serve as Magistrates Court judge, to be the Companies Registrar, and he shall head the Office of the Companies Registrar.
- (b) The Minister may appoint a State employee to be Deputy Companies Registrar, and he may endow him with the Registrar's powers.
- (c) If the Registrar is unable to exercise his office, then the Minister may endow an employee of the Ministry of Justice with some or all of the Registrar's powers.

#### **The Registrar's powers**

37. (a) The Registrar shall determine whether the conditions and requirements prescribed in this Law on the following matters have been met:
- (1) incorporation of a company;
  - (2) change of a company's name;
  - (3) recording a document;
  - (4) merger.
- (b) In order to ascertain that a company does what it is obligated to do under this Law, the Registrar may order it to produce for his inspection – within a period of not less than 14 days after the demand – the registers and books, which the company must keep under this Law and which are open for public inspection, or up-to-date copies of them.
- (c) If the Registrar finds that the said registers and books are not up-to-date, then he may order the company to bring them up-to-date within a period that he shall prescribe.

### **Article Two: Keeping Registers**

#### **Keeping registers and receiving documents**

38. (a) The Registrar shall keep registers for each company and he shall accept documents and reports to be recorded or to be filed in the company's files, all as the Minister prescribed.
- (b) The Minister may order that the delivery of documents and reports, and the recording or filing in the company's files be only by way of electronic communication (hereafter: electronic filing or reporting).
- (c) The Registrar shall keep a Register of Companies, in which he shall register every company and give it an identity number, and the Registrar may give different types of numbers to categories of



companies, as the Minister shall prescribe.

#### **Submission of documents for recording**

39. (a) Every document and every report that must be submitted to the Registrar shall bear the company's identity number and shall be signed by one of the officers of the company, stating his name and position, as certification that the particulars in it are correct and complete; for purposes of this section, "**officer of the company**" – including the company secretary or a person authorized by it for purposes of this section.
- (b) Notwithstanding the provisions of subsection (a), a document or report submitted by a company in receivership or liquidation may be signed by the receiver or liquidator.
- (c) The provisions of this section shall apply when there is no different provision on the matter under any enactment.
- (d) If the Minister made an order on electronic reporting, then he may prescribe that the provisions of subsection (a) on an officer's signature not apply to documents and reports submitted in the said manner.

#### **Validity depends on recording**

40. The acts specified below by a company shall be of no effect, unless they have been recorded:
- (1) a change of the company's name under the provisions of section 31;
  - (2) a change of the company's objectives;
  - (3) a change of the by-laws, in consequence of which a company becomes a public benefit company, as said in section 345B(c).

#### **Copies as evidence**

41. (a) A copy certified by the Registrar of any document kept or recorded by him shall be accepted in any legal proceeding as the original, and it shall constitute conclusive proof that the original document is in the Office of the Companies Registrar.
- (b) If the Minister made an order on electronic filing, then the provisions of subsection (a) shall apply to a printout of the said reports; for purposes of this section, "**printout**" – as defined in the Computers Law 5755-1995.

#### **Denial of knowledge**

42. That a document was recorded or exists in the company or with the Registrar is not, by itself, proof of the knowledge of its contents.

#### **Inspection**

43. The registers kept by the Registrar in the registers office shall be open to inspection by the public, and every person may inspect them and receive certified copies of their contents, whether through the Registrar or through others whom the Registrar authorized for this purpose, all as the Minister prescribed.

### **Regulations**

44. The Minister may prescribe the following:
- (1) recording and filing procedures, and also the manner in which documents and reports are to be submitted for said recording and filing, all including electronic recording and filing;
  - (2) the manner in which registers are to be kept in the registers office, and the manner of their inspection by the public;
  - (3) forms that must be used for the purposes of this Law and the particulars that are to be included in them, including the manner of transmitting the information by electronic reporting;
  - (4) the manner in which the Registrar is to perform his obligations under this Law;
  - (5) particulars which a company or a foreign company must deliver to the Registrar about each shareholder or holder of some other right, and also about its creditors and officers;
  - (6) amounts of registration fees, of annual fees, and also of other fees and payments which the Minister prescribed to be paid for acts and services which the Registrar provides under this Law; the Minister may set different amounts of fees and payments for different companies, by criteria that he shall prescribe; the Taxes (Collection) Ordinance shall apply to the collection of fees under this paragraph.

### **Article Three: Appeal**

#### **Appeal**

45. (a) If a person deems himself injured by a decision of the Registrar, then he may appeal against the Registrar's decision before the Court.
- (b) The Minister may prescribe regulations on the law procedure in appeals.

## **PART THREE: COMPANY STRUCTURE**

### **CHAPTER ONE: THE COMPANY'S ORGANS, THEIR AUTHORITY AND LIABILITY FOR THEIR ACTIVITY**

#### **Article One: Organs**

#### **Organs**

46. The company's organs are the General Meeting, the Board of Directors, the General Manager and any person whose action on a certain matter

– according to an enactment or by virtue of the by-laws – is deemed the company's action on that matter.

**Action by organ is action by the company**

47. The action and intentions of an organ are actions and intentions of the company.

**Article Two: Division of Powers between Main Organs**

**Powers of organs**

48. (a) The General Meeting shall have the powers specified in Article Two of Chapter Two.  
(b) The Board of Directors shall have the powers specified in Article One of Chapter Three  
(c) The General Manager shall have the powers specified in Chapter Four.  
(d) All organs of the company have all the auxiliary powers required for the exercise of their powers.

**Residual powers**

49. Any power of the company, which was not assigned to another organ by the Law or the by-laws may be exercised by the Board of Directors.

**Transfer of powers between organs under the by-laws**

50. (a) A company may make provisions in its by-laws, according to which its General Meeting can assume powers assigned to another organ, and also that powers assigned to the General Meeting be transferred to the Board of Directors, all for a specific matter or for a specific period of time.  
(b) If the General Meeting assumed powers which under this Law are assigned to the Board of Directors, then the rights, obligations and responsibility of the Board of Directors in connection with the exercise of those powers shall apply to the stockholders, mutatis mutandis, and as part thereof the provisions of Chapters Three, Four and Five of Part Six shall apply to them, taking into account their holdings in the company, their participation in the Meeting and how they voted.

**Taking the General Manager's powers**

51. The Board of Directors may order the General Manager how to act on a certain matter; if the General Manager did not comply with the instruction, then the Board of Directors may exercise the necessary power to carry out the order in his place, even if the by-laws include no provision on this.

**Organ unable to exercise its function**

52. (a) If the Board of Directors is unable to exercise its powers, and if

the exercise of one of its powers is essential for the orderly management of the company, then – as long as it is unable to exercise its function – the General Meeting may exercise it in its place, even if there is no provision to that effect in the by-laws, on condition that the General Meeting determined that the Board of Directors really is unable to do so and that the exercise of the function is vital as aforesaid; the provision of section 50(b) shall apply to the exercise of the Board of Directors' powers by the General Meeting.

- (b) If the General Manager is unable to exercise his powers, then the Board of Directors may exercise them in his place, even if there is no provision to that effect in the by-laws.

### **Article Three: Company's Liability for Activity of Its Organs**

#### **Company's liability in tort**

- 53. (a) A company is directly liable in tort for a civil wrong committed by one of its organs.
- (b) The provision of subsection (a) shall not derogate from the company's vicarious liability in tort under any enactment.

### **Article Four: Liability of Individual Members of Organs**

#### **Liability of individual members of organs**

- 54. (a) Relating an organ's act or intention to the company shall not derogate from the personal liability, which individual members of an organ would bear, if not for that relation.
- (b) repealed

### **Article Five: Preventing a Digressive Act**

#### **Act that digresses from an authorization**

- 55. (a) A company and persons who act on its behalf shall not carry out any act that digresses from the objectives prescribed in the by-laws, and they shall also not carry out any act without authorization or any act that digresses from the authorization.
- (b) If an act said in subsection (a) was carried out or if there are grounds to assume that such an act will be carried out, then the Court may – on application by the company, by a shareholder or creditor of the company who suspects that his rights will be infringed – make an order to stop or to prevent the act.

#### **Act that digresses from the objectives or without authorization**

- 56. (a) If an act performed for a company digresses from the company's objectives, or if it is performed without authorization or in

digression from the authorization, then it shall be of no effect for the company, unless the company approved the act in the manner prescribed in subsection (b), or if the party toward whom the act was performed did not know and was not required to know about the digression or the lack of authorization.

- (b) The company's retroactive approval of an act that digressed from the company's objectives shall be given by the General Meeting, by a decision adopted by the majority required for changing the company's objectives; a said approval of an act without authorization or in digression from the authorization shall be given by the organ that was qualified to give the authorization.
- (c) An approval said in subsection (b) shall not infringe any right acquired by another person in good faith and for consideration before the approval was given.

## **CHAPTER TWO: GENERAL MEETING**

### **Article One: Powers of the General Meeting**

#### **Powers vested in the General Meeting**

57. The company's decisions on the following matters shall be adopted by the General Meeting:
- (1) changes in the by-laws, as said in section 20;
  - (2) exercise of the powers of the Board of Directors in accordance with the provisions of section 52(a);
  - (3) appointment of the company's Auditor, the terms of his employment and termination of his employment in accordance with the provisions of sections 154 to 167;
  - (4) appointment of Outside Directors, in accordance with the provisions of section 239;
  - (5) approval of acts and transactions that require approval by the General Meeting under the provisions of sections 255 and 268 to 275;
  - (6) the increase and reduction of the registered share capital, in accordance with the provisions of sections 286 and 287;
  - (7) a merger, as said in section 320(a).

#### **Must not make conditional**

58. (a) A company must not make the provisions of section 57 conditional.
- (b) The company may, in the by-laws, add subjects on which decisions shall be adopted at the General Meeting; however, a transfer in the by-laws of powers to the General Meeting, in respect of subjects for which this Law vests the power in some other organ, without the possibility of making that conditional in the by-laws, shall be done under the provisions of section 50.

#### **Appointment of Directors**

59. The annual General Meeting shall appoint the Directors, unless there is a different provision in the by-laws.

### **Article Two: Annual Meeting and Extraordinary Meeting**

#### **Convening an Annual Meeting**

60. (a) A company shall hold an Annual Meeting every year and not later than fifteen months after the last Annual Meeting.
- (b) The agenda of the Annual Meeting shall include a discussion of the financial reports and of the report by the Board of Directors; the agenda may include the appointment of Directors, the appointment of an Auditor, as well as a subject, the discussion of which at the Annual Meeting is prescribed in the by-laws, or any

other subject put on the agenda as said in section 66.

#### **Failure to hold Annual Meeting**

61. (a) A private company may include an provision in its by-laws, according to which it does not have to hold an Annual Meeting as said in section 60, except to the extent that that is necessary in order to appoint an Auditor; if a said provision was included, then the company may refrain from holding Annual Meetings, except when one of the shareholders or one of the Directors demanded that the company hold it.
- (b) If no Annual Meeting was held, then the company shall once a year send the shareholders registered in its Shareholders Register financial reports as said in section 172, not later than on the latest date on which it would have had to hold the Annual Meeting, if had its by-laws had not included a provision as said in subsection (a).

#### **Annual meeting convened by the Court**

62. (a) If an Annual Meeting was not held as said in section 60, or after holding it was demanded as said in section 61, then the Court may – on application of a shareholder or of a Director in the company, order that it be convened.
- (b) If the Court ordered as aforesaid, then the company shall bear reasonable expenses incurred by the applicant in the Court proceeding, as the Court determined, and the Directors responsible for not convening the meeting shall repay them to the company.

#### **Convening an Extraordinary Meeting**

63. (a) The Board of Directors of a private company shall convene an Extraordinary Meeting at its own decision and on the demand of each of the following:
- (1) one Director;
  - (2) one or more shareholders who have at least 10% of the issued share capital and at least 1% of the voting rights in the company, or one or more shareholders who have at least 10% of the voting rights in the company.
- (b) The Board of Directors of a public company shall convene an Extraordinary Meeting at its own decision, and also on the demand of each of the following:
- (1) two Directors or one fourth of the serving Directors;
  - (2) one or more shareholders who have at least 5% of the issued share capital and at least 1% of the voting rights in the company, or one or more shareholders who have at least 5% of the voting rights in the company.
- (c) If a Board of Directors received a demand to convene an Extraordinary Meeting, then it shall convene it within 21 days after the demand was delivered to, it for a time which it shall set in the invitation under section 67 or in the notice under section 69, on condition that – for a public company – the date of the meeting be

not later than 35 days after the notice was made public, unless a different provision was prescribed for a meeting to which Article Seven applies, and – for a private company the provisions of section 67 shall apply.

#### **Meeting convened by shareholders**

64. (a) If the Board of Directors did not convene the Extraordinary Meeting that was demanded under section 63, then whoever made the demand – and in the case of shareholders – also part of them who hold more than half of their voting rights may by themselves convene the meeting, on condition that it is not held later than three months after the demand was submitted as aforesaid, and it shall be convened – as far as possible – in the manner in which meetings are convened by the Board of Directors.
- (b) If a General Meeting was convened as said in subsection (a), then the company shall cover the reasonable expenses incurred by the person who demanded it and the Directors responsible for the failure to convene it must repay them to the company.

#### **Application to the Court**

65. (a) If the Board of Directors did not call an Extraordinary Meeting demanded under section 63, then the Court may – on application by the person who made the demand – order that it be convened.
- (b) When the Court ordered as aforesaid, then the company shall cover the reasonable expenses incurred in the legal proceeding by the person who made the demand and the Directors responsible for the failure to convene it must repay them to the company.

### **Article Three: Convening and Conducting the General Meeting**

#### **Agenda**

66. (a) The agenda at a General Meeting shall be determined by the Board of Directors, and it shall also include subjects, because of which the convening of an Extraordinary Meeting was demanded under section 63, as well as any subject requested as said in subsection (b).
- (b) One or more shareholders who hold no less than 1% of the voting rights at the General Meeting may request that the Board of Directors include a subject on the agenda of a General Meeting that will be convened in the future, on condition that the subject is one suitable for discussion at a General Meeting.
- (c) At a General Meeting decisions shall be adopted only on subjects that were specified in the agenda.

#### **Time for delivery of invitations in a private company**



67. Invitations to a General Meeting in a private company shall be delivered to every person entitled to participate in it not later than seven days before the time for convening it, on condition that it is not delivered more than 45 days before the time for convening it, all if not otherwise prescribed in the by-laws.

**Contents of invitation to a General Meeting in a private company**

68. (a) In an invitation to a General Meeting of a private company shall be stated the time and place where the General Meeting will take place, and also the agenda and reasonable details of the subjects for discussion.
- (b) If the agenda includes a proposal for a change of the by-laws, then the wording of the proposed change shall be stated.

**Notice of General Meeting in a public company and its contents**

69. (a) A notice of a General Meeting in a public company shall be made public or delivered, as the Minister prescribed.
- (b) repealed
- (c) The notice shall include the agenda, proposed resolutions and also arrangements on votes by ballot under the provisions of Article Seven.
- (d) The Minister may – after consultation with the Securities Authority – prescribe provisions on the subject of this section, including on the manner of giving details of the subjects, unless provisions on this matter are prescribed in another enactment.

**Regulations on General Meeting decisions**

70. The Minister may prescribe that – when the text of decisions was specified in invitations or notices – the General Meeting may adopt decisions that differ from the text of the decisions on the agenda, and that on subjects and according to criteria that he will prescribe.

**Proof of share ownership in a public company**

71. A shareholder in a public company, who intends to vote at a General Meeting, is entitled to receive, unconditionally and in the manner to be prescribed by the Minister, from the Stock Exchange member through whom the share is held, certification that proves his ownership of the share (in this Law: proof of ownership); the Minister may prescribe conditions and circumstances, under which payment will be required for proof of ownership, and the amount of payment or the maximum payment.

**General Meeting convened by the Court**

72. When there is no practical possibility of convening or conducting a General Meeting in the manner prescribed therefor in the by-laws or in this Law, then the Court may – on application by the company, by a shareholder entitled to vote at the meeting or by a Director – order that a meeting be convened and conducted in the manner which the Court will prescribe, and to that end it may issue any supplementary

instructions, which it deems appropriate.

**Meeting in Israel**

73. If a public company's shares were offered only to the public in Israel or are only traded on a stock exchange in Israel, then it shall hold a General Meeting in Israel.

### **Deferring a General Meeting**

74. (a) A General Meeting in which a quorum is present may decide to defer the meeting, the discussion or the adoption of a decision on a subject specified in the agenda, to another date and place, as it shall decide; the deferred meeting shall only discuss subjects that were on the agenda and on which no decision was adopted.
- (b) If a General Meeting was deferred by more than 21 days, then notices and invitations to the deferred meeting shall be issued as said in sections 67 to 69.
- (c) If a General Meeting was deferred by no more than 21 days without a change of the agenda, then notice of the new date and invitations shall be given as soon as possible and not later than 72 hours before the General Meeting; the said notices and invitations shall be given according to sections 67 and 69(a), mutatis mutandis

### **Category meeting**

75. The provisions of this Article and of Articles Four, Five and Six shall apply, mutatis mutandis, to Category Meetings which the company must hold.

## **Article Four: General Meeting in a Private Company**

### **Decision without meeting**

76. In a private company a General Meeting resolution may be adopted without calling and without convening a meeting, on condition that the resolution was adopted unanimously by all shareholders entitled to vote at the General Meeting.

### **Holding meetings by communications**

77. A private company may – unless a contrary provision is prescribed in the by-laws – hold a General Meeting by use of any means of communication, so that all participating shareholders can hear each other at the same time.

## **Article Five: Quorum at a General Meeting and Chairman of the Meeting**

### **Quorum at General Meeting**

78. (a) The quorum for holding a General Meeting is the presence – within half an hour after the time set for opening the meeting – of at least two shareholders who have at least 25% of the voting rights.
- (b) If a quorum is not present at the end of half an hour after the time set for opening the meeting, then the meeting shall be postponed by one week, to the same day, same time and same place, or to a

later date, if that was stated in the invitation to the meeting or in the notice of the meeting.

- (c) The provisions of this section shall not apply to a company that has one shareholder.

#### **Quorum at deferred meeting**

- 79. (a) If a quorum is not present at a meeting deferred as said in sections 74 or 78 (b) half an hour after its set time, then the meeting shall be held with any number of participants.
- (b) Notwithstanding the provisions of subsection (a), if a General Meeting was convened at the demand of shareholders as said in sections 63 or 64, then the deferred meeting shall only be held if at least shareholders in the number required for the convening of a meeting, as said in section 63, are present.

#### **Chairman of General Meeting**

- 80. (a) At every General Meeting a chairman shall be elected for that meeting.
- (b) The election of the meeting's chairman shall be held at the beginning of the meeting's discussions, which shall be opened by the chairman of the Board of Directors or by a Director whom the Board of Directors authorized to do so.

#### **Freedom to make conditional**

- 81. Some or all of the provisions in this Article may be made conditional in the by-laws.

### **Article Six: Voting at a General Meeting**

#### **Freedom to differentiate**

- 82. (a) In its by-laws a company may prescribe different voting rights for different categories of shares.
- (b) The provision of subsection (a) shall not derogate from the provision of any other enactment.
- (c) If the company did not prescribe different voting rights in its by-laws, then each share shall have one vote.

#### **Manner of voting at meeting**

- 83. (a) A share holder in a public company may vote in person or through a proxy, and also a vote by ballot under the provisions of Article Seven.
- (b) A share holder in a private company may vote in person or through a proxy, unless the by-laws provide otherwise.
- (c) A share holder in a private company may vote in writing, if provisions to that effect are made in the by-laws.

#### **Vote by count of votes**

84. A decision at a General Meeting shall be adopted by a count of votes; a private company may in its by-laws prescribe a different way of deciding.

#### **Majority at General Meeting**

85. Decisions of a General Meeting shall be adopted by an ordinary majority, unless a different majority is prescribed by Law or by the by-laws.

#### **Proclamation as evidence**

86. The chairman's proclamation that a decision was adopted or rejected at a General Meeting, whether unanimously or by a certain majority, shall be a priori evidence of its contents.

### **Article Seven: Vote by Ballot and Position Paper**

#### **Vote at General Meeting by Ballot**

87. (a) The shareholders in a public company may vote at General Meetings and at Category Meetings on the following subjects by means of ballots, on which the shareholder shall indicate how he votes:
- (1) the appointment and discharge of Directors;
  - (2) approval of acts and of transactions that require approval by the General Meeting under the provisions of sections 255 and 268 to 275;
  - (3) approval of a merger under section 320;
  - (4) any other subject in respect of which it is prescribed in the by-laws or under them that decisions of the General Meeting also be adopted by voting by ballot;
  - (5) additional subjects, which the Minister prescribed under section 89.
- (b) A ballot shall be sent by the company to all its shareholders; a shareholder may indicate on the ballot how he votes and send it to the company.
- (c) A ballot, on which a shareholder indicated how he votes and which reached the company by the last date set therefor, shall be deemed presence at the Meeting, for purposes of the quorum said in section 78.
- (d) If a ballot on a certain matter not voted on at the General Meeting is received by the company as said in subsection (a), then it shall be deemed an abstention on the vote at that meeting on a decision to hold a deferred meeting under the provisions of section 74, and it shall be counted at the deferred meeting held under the provisions of sections 74 or 79.

#### **Addressing the shareholders**

88. (a) The Board of Directors, as well as the person at whose demand the Board of Directors calls the General Meeting under the provisions of section 63, may address the shareholders in writing through the company, in order to convince them how to vote on any of the subjects said in section 87, which will be raised at that meeting (hereafter: position paper); the company shall send the position papers under this subsection to the shareholders at its expense, together with the ballot for that meeting.
- (b) If a General Meeting was called and subjects from among those specified in section 87 are on its agenda, then a shareholder in the company may address the company and request that a position paper on his behalf be sent to the other shareholders in the company; a position paper under this subsection may be at the shareholder's expense or at that of the company, all as the Minister prescribed according to the provision of section 89; however, a company may decide that all position papers under this subsection be at its expense.
- (c) A company's Board of Directors may send a position paper to the shareholders, in response to a position paper sent as said in subsections (a) or (b), or in response to some other approach to the shareholders.
- (d) A shareholder, within the meaning of section 177(1), is entitled to receive from the Stock Exchange member through whom the share is held – subject to the provisions under section 89(5) and unconditionally – a ballot and position papers.

### **Regulations**

89. The Minister may, in consultation with the Minister of Finance and the Securities Authority, prescribe provisions on ballots and position paper under this Article, inter alia on the following matters:
- (1) Subjects to which this Article shall apply, in addition to the subjects prescribed in section 87;
  - (2) granting partial or complete exemption from the application of sections 87 and 88, in respect of categories of certain companies, according to a classification which he shall prescribe, also taking into account the proportion of holdings of the controlling member in those companies, the majority required to adopt decisions at the General Meetings of certain companies, and also taking into account where the company's securities are listed for trading;
  - (3) granting exemption from sending ballots and position papers to part of the shareholders in certain companies, taking into account the portion of voting power or the value of the shares held by them, and in the case of shareholders said in section 177(1) – also taking into account the extent of voting power and the value of shares held with each stock exchange member separately in each securities account;
  - (4) the manner of delivering ballots and position papers to the shareholders, and the manner of sending ballots to the company, including through stock exchange members or through a body

- corporate under their control or through some other body corporate, the obligation to attach certification that attests to the ownership of the shares on the determining date, and also times and schedules for the performance of the acts necessary to realize the provisions of this Article;
- (5) the maximum amount to be paid for the dispatch of ballots or of position papers, and the manner in which the payments of expenses for the above dispatch shall be allocated, as said above, between the various factors that participate in it;
  - (6) the publication of position papers and ballots in a manner to be determined, instead of their delivery to the shareholders;
  - (7) the manner of supervising implementation of the provisions of this Article, including the matter of the obligation to keep records of the implementation of provisions which he prescribed;
  - (8) a pattern for the text of a ballot and of a position paper on subjects, to which this Article applies.

### **Article Eight: Minutes of the Meeting**

#### **Protocols of General Meetings**

90. (a) The company shall edit the protocols of proceedings at General Meetings and it shall keep them in its registered office during a period of seven years after the date of the meeting.
- (b) A protocol signed by the chairman of the Meeting constitutes a priori proof to its contents.
  - (c) A Register of the protocols of General Meetings shall be kept in the company's registered office and shall be open to inspection by its shareholders, and a copy thereof shall be sent to each shareholder who so requested.

### **Article Nine: Defects in Convening the Meeting**

#### **Defects in convening the meeting**

91. (a) On the application of a shareholder, the Court may order the annulment of a decision adopted at a General Meeting, that was convened or conducted without satisfying all the conditions set therefor in this Law or in the by-laws.
- (b) If the defect in convening related to the notice about the place where or the time when the meeting was convened, then a shareholder who arrived at the meeting in spite of the defect shall not be entitled to demand that the decision be nullified.

## **CHAPTER THREE: BOARD OF DIRECTORS**

### **Article One: Powers of the Board of Directors**

#### **Powers and responsibilities of the Board of Directors**

92. (a) The Board of Directors shall formulate the company's policy and shall supervise the exercise of the General Manager's office and his acts, and as part thereof it –
- (1) shall determine the company's plans of activity, the principles for financing them and the order of priority among them;
  - (2) shall examine the company's financial situation and set the framework of credit which the company may take;
  - (3) shall determine the organizational structure and the wage policy;
  - (4) may decide to issue a series of debentures;
  - (5) is responsible for the preparation and approval of the financial reports said in section 171;
  - (6) shall report to the Annual Meeting about the state of the company's affairs and on its business results, as said in section 173;
  - (7) shall appoint and dismiss the General Manager, as said in section 250;
  - (8) shall decide on the acts and transactions that require its approval in accordance with the by-laws or under the provisions of sections 255 and 268 to 275;
  - (9) may allocate shares and securities convertible into shares up to the limit of the company's registered share capital, under the provisions of section 288;
  - (10) may decide on a distribution said in sections 307 and 308;
  - (11) shall express its opinion on a special purchase offer, as said in section 329;
  - (12) in a public company a minimum number shall be set of Directors on the Board of Directors, who have expertise in accounting and finance, within its meaning in section 240 (in this Law: Directors with expertise in accounting and finance); the Board of Directors shall set the said minimum number, taking into consideration, inter alia, the type of company, its size, the extent and complexity of the company's activity, and subject to the number of Directors set in the by-laws under section 219.
- (b) The powers of the Board of Directors under this section cannot be delegated to the General Manager, except as specified in section 288(b)(2).

#### **Board of Directors composed of a single person**

93. (a) In a private company the Board of Directors may be composed of a single person.
- (b) The provisions of this Article shall apply to a Board of Directors



composed of a single person; the provisions of Article Six shall apply, mutatis mutandis, to the decisions of a said Board of Directors; the other provisions of this Chapter shall not apply to a Board of Directors composed of a single person.

## **Article Two: Chairman of the Board of Directors**

### **Election of the Chairman of the Board of Directors**

94. (a) The Board of Directors of a public company shall elect one of its members to serve as Chairman of the Board of Directors, unless a different method of appointment is prescribed in the by-laws.
- (b) In a private company it is not obligatory to appoint a Chairman of the Board of Directors; if in a private company no Chairman of the Board of Directors was appointed, then each of the Directors may convene the Board of Directors and set its agenda, unless there is a different provision in the by-laws.

### **Restriction on election of Chairman of the Board of Directors**

95. (a) In a public company its General Manager shall not serve as Chairman of the Board of Directors, except under the provisions of section 121(c).
- (b) In a public company the powers of the General Manager shall not be vested in the Chairman of the Board of Directors, except under the provisions of section 121(c).
- (c) The provisions of subsection (a) shall not apply during three months after the company became a public company.

### **Conducting meetings of the Board of Directors**

96. (a) The Chairman of the Board of Directors shall conduct the meetings of the Board of Directors;
- (b) If the Chairman of the Board of Directors is absent from a meeting, then the Board of Directors shall elect one of its members to conduct the meeting and to sign the minutes of its deliberations, but the person elected shall not have a casting vote in votes of the Board of Directors, as said in section 107, all if not otherwise provided in the by-laws.

## **Article Three: Convening the Board of Directors**

### **Board of Directors meetings**

97. The Board of Directors shall hold meetings in accordance with the company's needs and at least once a year, and in a public company at least once in three months.

### **Convening the Board of Directors**

98. (a) The Chairman of the Board of Directors may convene the Board

- of Directors at any time.
- (b) The Board of Directors shall hold a meeting on a specified subject on the demand of any of the following:
    - (1) two Directors, and in a company in which the Board of Directors numbers up to five Directors – one Director;
    - (2) one Director, if a provision to that effect is included in the company's by-laws or if what is said in section 257 occurred..
  - (c) The Chairman of the Board of Directors shall convene the Board of Directors upon a demand said in subsection (b) or if what is said in section 122(d) applies because of a notice or report from the General Manager or because of a notice from the Auditor of the company under section 169.
  - (d) If a meeting of the Board of Directors was not convened within 14 days after the date of a demand said in subsection (b), or after the date of a notice or report of the General Manager to which what is said in section 122(d) applies, or after notice of the Auditor under section 169, then each of those enumerated in subsections (a) and (b) may convene a meeting of the Board of Directors, which shall discuss the subject specified in the demand, notice or report, as the case may be, unless the by-laws include a different provision on the time of the meeting.

#### **Article Four: Meetings of the Board of Directors and Their Conduct**

##### **Agenda**

99. The agenda of a meeting of the Board of Directors shall be set by the Chairman of the Board of Directors, and it shall include:
- (1) subjects determined by the Chairman of the Board of Directors;
  - (2) subjects determined as said in section 98;
  - (3) any subject which a Director or the General Manager requested – at a reasonable time before the meeting was convened – of the Chairman of the Board of Directors to include in the agenda, unless the by-laws provide otherwise.

##### **Notice of meeting of the Board of Directors**

100. (a) Notice of a meeting of the Board of Directors shall be delivered to all its members at a reasonable time before the meeting, unless there is a different provision on the time of the delivery in the by-laws.
- (b) A notice under subsection (a) shall be delivered to the Director's address that was given to the Company in advance, and in it shall be stated the time of the meeting and the place where it will convene, as well as reasonable details on all the subjects on the agenda, all if not prescribed otherwise in the by-laws.
  - (c) In a public company the by-laws cannot make conditional the obligation to give – as part of the notice of a meeting of the Board

of Directors – reasonable details of all the subjects on the agenda.

#### **Holding meetings by communications**

101. The Board of Directors may – unless this possibility is negated in the by-laws – hold meetings by use of any means of communication, on condition that all participating Directors can hear each other at the same time.

#### **Convening the Board of Directors without notice**

102. Notwithstanding the provision of section 100, the Board of Directors may – with the consent of all the Directors – convene for a meeting without notice, unless this possibility is negated in the by-laws.

#### **Decisions adopted without meeting**

103. (a) The Board of Directors may adopt decisions even without an actual meeting, on condition that all the Directors entitled to participate in the deliberations and to vote on the matter brought up for a decision agreed not to convene for a discussion of that matter, unless this possibility is negated by the by-laws.
- (b) If decisions were adopted as said in subsection (a), then a protocol of the decisions – including the decision not to convene a meeting – shall be drawn up and signed by the chairman of the Board of Directors.
- (c) The provisions of section 108 shall apply, mutatis mutandis, to a decision said in subsection (a).
- (d) The Chairman of the Board of Directors is responsible for the implementation of the provisions of this section.

#### **Quorum at the Board of Directors**

104. The quorum for opening a meeting of the Board of Directors is a majority of members of the Board of Directors, unless the by-laws prescribe differently.

### **Article Five: Voting in the Board of Directors**

#### **Voting in the Board of Directors**

105. When the Board of Directors votes each Director shall have one vote, unless the by-laws prescribe differently.

#### **Voting agreements**

106. A Director, by being qualified as such, shall not be party to any voting agreement, and a voting agreement shall be deemed a violation of the obligation of loyalty.

#### **Adoption of decisions**

107. Decisions of the Board of Directors shall be adopted by an ordinary

majority; in case of a tie vote the Chairman of the Board of Directors shall have an additional vote, all if not prescribed differently in the by-laws.

## **Article Six: Protocols of Board of Directors Meetings**

### **Protocols of Board of Directors meetings**

108. (a) The company shall prepare protocols of proceedings at Board of Directors meetings and keep them for a period of seven years after the date of the meeting. in Its registered office or at another address in Israel, of which it shall inform the registrar.
- (b) A protocol approved and signed by the Director who chaired the meeting constitutes a priori proof of its contents.

## **Article Seven: Defects in Convening a Board of Directors Meeting**

### **Defects in convening the meeting**

109. (a) A decision adopted by a Board of Directors meeting that convened without the prior conditions for its meeting having been met (hereafter: defect in the meeting) may be nullified on the demand of any one of the following:
- (1) a Director who participated in the meeting, on condition that he demanded to refrain from adopting the decision in respect of which the defect existed, before it was adopted;
  - (2) a Director who was entitled to be invited to the meeting, but was not present at it, and that within a reasonable time after he learned of the decision, and not later than the first Board of Directors meeting that takes place after he learned of the decision;
  - (3) if the defect in convening related to the time or place of the meeting, then a Director who came to the meeting in spite of the said defect shall not be entitled to demand nullification of the decisions.
- (b) The provisions of subsection (a) shall not derogate from the validity of an act performed for the company and which meets the provisions of section 56(a).

## **Article Eight: Committees of the Board of Directors**

### **Setting up committees**

110. (a) The Board of Directors may set up Board of Directors committees, unless the by-laws provide otherwise.
- (b) A person who is not a member of the Board of Directors shall not

- serve on a Board of Directors committee, to which the Board of Directors delegated any of its powers.
- (c) A person who is not a member of the Board of Directors may serve on a Board of Directors committee which advises the Board of Directors or only makes recommendations, unless the by-laws provide otherwise.

#### **Committee activities**

- 111. (a) A decision adopted or an act performed in a Board of Directors Committee by virtue of authority delegated to it by the Board of Directors is equivalent to a decision adopted or an act performed in the Board of Directors, unless the by-laws prescribe otherwise.
- (b) A Board of Directors Committee shall give current reports to the Board of Directors on its decisions or recommendations.
- (c) Articles Two and Seven shall also apply, mutatis mutandis, to meetings of the committees and on the way they are conducted.
- (d) Protocols of Board of Directors Committees shall be drawn up and kept as said in section 108.

#### **Restriction on delegation of powers**

- 112. (a) The Board of Directors is not entitled to delegate its powers to Board of Directors Committees on the following subjects:
  - (1) determination of the company's economic policy;
  - (2) a distribution, unless it is a case of acquiring the company's shares in accordance with a framework determined in advance by the Board of Directors;
  - (3) determining the Board of Directors' stand on a matter that requires approval by the General Meeting, or giving an opinion as said in section 329;
  - (4) appointment of Directors, if the Board of Directors is entitled to appoint them;
  - (5) an issue or allocation of shares or of securities convertible into shares or realizable as shares, or of series of debentures, except as specified in section 288(b);
  - (6) approval of financial reports;
  - (7) Board of Directors approval of transactions and acts that require Board of Directors approval under the provisions of sections 255 and 268 to 275.
- (b) A company is not entitled to make the provisions of subsection (a) conditional in its by-laws, but it may prescribe additional subjects in its by-laws, on which decisions shall be adopted only by the Board of Directors.
- (a) The Board of Directors may set up committees on the subjects enumerated in subsection (a) only in an advisory capacity.

#### **Cancellation of committee decisions**

- 113. The Board of Directors may cancel decisions of a committee appointed by it, but the cancellation shall not infringe on the validity of a committee decision, according to which the company acted toward

another person who did not know of its cancellation.

## **Article Nine: Audit Committee**

### **Appointment of Committee**

114. The Board of Directors of a public company shall appoint an Audit Committee from among its members, and the provisions of Article Eight shall apply to it, mutatis mutandis.

### **Committee members**

115. (a) The number of members of the Audit Committee shall not be fewer than three, and all Outside Directors shall be members of it.
- (b) The Chairman of the Board of Directors and any Director who is employed by the company or regularly gives it services shall not be members of the Audit Committee.
- (c) A controlling member or his relative shall not be members of the Audit Committee.

### **Invitations to meetings**

116. (a) The company's Internal Auditor shall be given notice of Audit Committee meetings and he may participate in them.
- (b) The Internal Auditor may request of the chairman of the Audit Committee that he convene the committee in order to discuss a subject which he specified in his request, and the chairman of the Audit Committee shall convene it within a reasonable time after the date of the request, if he thinks that there is a good reason therefor.
- (c) Notice of Audit Committee meetings, in which a subject connected with the audit of the financial reports is to be raised, shall be delivered to the Auditor, who shall be entitled to participate in the meeting.

### **Tasks of the Audit Committee**

117. The following are the tasks of the Audit Committee:
- (1) to find any defects in the business management of the company, also in consultation with the company's Internal Auditor or with its Auditor, and to propose to the Board of Directors ways of correcting them;
- (2) to decide whether to approve acts and transactions that require the approval of the Audit Committee under sections 255 and 268 to 275.

### **Audit Committee in a private company**

118. (a) In a private company the Board of Directors may appoint an Audit Committee from among its members, for whom the provisions of section 115(b) hold true; the tasks of the Audit Committee shall be

- as specified in section 117.
- (b) An Audit Committee with tasks as said in section 117(2) shall – In a private company – not be appointed with a majority of members who are substantial shareholders or their relatives.

## **CHAPTER FOUR: GENERAL MANAGER**

### **Appointment of General Manager**

119. (a) A public company shall appoint a General Manager and it may appoint more than one General Manager.
- (b) A private company may appoint one or more General Managers; if it did not appoint a General Manager, then it shall be managed by the Board of Directors.

### **Responsibility of General Manager**

120. The General Manager is responsible for the current operation of the company's affairs within the bounds of the policy determined by the Board of Directors and subject to its directions.

### **Powers of the General Manager**

121. (a) The General Manager shall have all the powers of management and implementation, which by this Law or by the by-laws were not vested in another organ of the company, and he shall be subject to supervision by the Board of Directors.
- (b) The General Manager may – with the Board of Directors' approval – delegate powers to other persons who report to him.
- (c) Notwithstanding the provisions of section 95, the General Meeting of a public company may decide that the Chairman of the Board of Directors of the company may be authorized – for periods, each of which shall not be longer than three years after the date on which the decision was adopted – to hold the position of General Manager or to exercise his powers, on condition that the majority at the General Meeting –
- (1) include at least two thirds of the votes of shareholders who are not controlling members of the company or their representatives and who are present at the vote; the count of the aforesaid shareholders' votes shall not take abstentions into account;
  - (2) the total number of opposing votes from among the shareholders said in paragraph (1) does not exceed 1% of the total of voting rights in the company.

### **Obligation to report to Board of Directors**

122. (a) The General Manager must inform the Chairman of the Board of Directors of any extraordinary matter that is substantive for the company; if the company does not have a Chairman of the Board of Directors or if he is unable to exercise his position, then the General Manager shall inform all members of the Board of Directors as aforesaid.
- (b) The General Manager shall submit reports to the Board of Directors on subjects, at times and to an extent, as the Board of Directors will prescribe.
- (c) The Chairman of the Board of Directors may – at any time at his own initiative or on decisions by the Board of Directors – demand reports from the General Manager on subjects related to the company's affairs.
- (d) If a notice or report from the General Manager requires action on the part of the Board of Directors, then the Chairman of the Board of Directors shall convene a meeting of the Board of Directors without delay.



## PART FOUR: COMPANY ADMINISTRATION

### CHAPTER ONE: REGISTERED OFFICE

#### **Registered office**

123. (a) From the day on which a company was registered it must keep a registered office, to which every notice to the company may be addressed.
- (b) Notice of the address of the registered office shall be delivered to the Registrar with the application for the company's registration; notice of a change in the registered office's address shall be delivered to the Registrar within 14 days after the change; the Registrar shall record the address of the company's registered office.
- (c) Service of a document on the company shall consist of its deposit in the company's registered office, as recorded with the Registrar at the time of delivery, or of dispatch to it by mail.
- (d) Service of a document from the Companies Registrar to the company or from the Securities Authority to a public company may be, notwithstanding the provisions of subsection (c), by deposit in the place where the Registrar or the Securities Authority, as the case may be, is satisfied that the company actually manages its affairs.

#### **Documents to be kept in the registered office**

124. Without derogating from the provisions of any enactment, the company shall keep the following documents in its registered office:
- (1) the company's by-laws;
  - (2) protocols of sessions of General Meetings, as said in section 90;
  - (3) protocols of meetings of the Board of Directors, as said in sections 103 and 108;
  - (4) protocols of meetings of Board of Directors Committees, as said in section 111;
  - (5) copies of the company's notices to its shareholders during the last seven years;
  - (6) the company's financial reports, as said in section 171;
  - (7) the Shareholders Register, and in a public company also the Register of Substantial Shareholders, as said in sections 127 and 128;
  - (8) the Register of Directors, as said in section 224.

#### **How documents are to be kept**

125. A company may keep the aforesaid documents by electronic means, on condition that those entitled to inspect them are able to obtain copies of the documents.

#### **Getting copies**

126. (a) A person entitled to inspect documents specified in section 124 is entitled to obtain copies of them against a payment, which shall

- not exceed the company's expense only for giving the copies .
- (b) The Minister may set maximum payments.

## **CHAPTER TWO: SHAREHOLDERS REGISTER AND REGISTER OF SUBSTANTIAL SHAREHOLDERS**

### **Article One: The Registers**

#### **Shareholders Register**

127. A company shall keep a Shareholders Register.

#### **Register of Substantial Shareholders**

128. A public company shall keep a Register of Substantial Shareholders, in addition to the Shareholders Register.

#### **Inspecting the Registers**

129. The Shareholders Register and the Register of Substantial Shareholders shall be open for inspection by any person.

### **Article Two: Shareholders Register**

#### **Contents of Shareholders Register**

130. (a) In the Shareholders Register shall be recorded –
- (1) in respect of registered shares –
    - (a) the name, ID number and address of every shareholder, all as was communicated to the company;
    - (b) the number of shares and category of shares owned by each shareholder, stating their nominal value, if any, and if any amount has not yet been paid on account of the consideration set for the share – the amount that has not yet been paid;
    - (c) the date of the shares' allocation or the dates of their transfer to the shareholder, as the case may be;
    - (d) if the shares were given serial numbers, then next to the name of each shareholder the company shall state the numbers of the shares recorded in his name;
  - (2) in respect of bearer shares –
    - (a) the fact that shares were issued to bearer, the date of the allocation and the number of shares;
    - (b) the serial numbers of the bearer shares and of the share certificate.
  - (3) in respect of dormant shares, within their meaning in section 308 – also their number and the date on which they became dormant, all as is known to the company.
  - (4) in respect of shares which under section 309(b) or under section 333(b) do not carry voting rights – also their numbers and the dates on which they became shares which do not carry voting rights, all as is known to the company.

- (b) The company shall keep all the information recorded in the Shareholders Register, as said in subsection (a), and it shall bring changes in it up-to-date as early as possible after the day on which it learned of them.

#### **Entering trustee in Shareholders Register**

131. (a) A shareholder who is a trustee shall report that to the company, and the company shall register him in the Shareholders Register, stating the fact that he is a trustee, and for purposes of this Law he shall be treated like a shareholder.
- (b) The provisions of subsection (a) shall not apply to a shareholder within the meaning of section 177(1), unless a reporting obligation applies to him under other statutory provisions.

#### **Registration company**

132. (a) In a company, the shares of which are listed for trading on a stock exchange in Israel, it is possible to register in the Shareholders Register, in addition to the provisions of section 130(a)(1), also a registration company; however, a registration company shall not be deemed a shareholder in the company and the shares in its name are owned by the persons entitled to them, as said in section 177(1).
- (b) A shareholder by virtue of entitlement as said in section 177(1) may be registered in the Shareholders Register instead of the registration of those shares in the name of the registration company, and the number of shares registered in the name of the registration company shall be changed accordingly.

#### **Shareholders Register as evidence**

133. (a) The Shareholders Register shall be a priori evidence of the correctness of its contents.
- (b) If what is registered in the Shareholders Register conflicts with a share document, then the evidentiary value of the Shareholders Register outweighs the evidentiary value of the share document.

#### **Correction of entry**

134. If a person is registered in the Shareholders Register without being entitled thereto, or if he is not registered in the said Register even though he is entitled thereto, or if the entry is not complete or accurate, and if the company refused to make the necessary correction, then the Court may – on application by the injured person or by any shareholder in the company – grant the relief it deems appropriate under the circumstances of the case, including correction of the Register.

### **Article Three: Registration of Share Certificate**

#### **Issue of share certificate**

135. If a share certificate was issued in place of a registered share, then the

share shall be recorded, as said in section 130(a)(2), and the shareholder's name shall be deleted from the Shareholders Register.

#### **Cancellation of share certificate**

136. If a shareholder lawfully holds a share certificate, then he may return the certificate to the company for cancellation and for the share's conversion into a registered share; upon cancellation the name of the shareholder must be registered in the Shareholders Register, stating the number of shares registered in his name, as prescribed in section 130(a)(1), on condition that there is no provision in the by-laws that a share certificate must not be canceled.

### **Article Four: Register of Substantial Shareholders and Additional Shareholders Register Abroad**

#### **Contents of Register of Substantial Shareholders**

137. In the Register of Substantial Shareholders shall be kept all the reports received by the company under the Securities Law on the holdings of company shares by substantial shareholders.

#### **Additional Shareholders Register**

138. (a) A company may keep an additional Shareholders Register abroad (hereafter: additional Register).
- (b) If a company keeps an additional Register, then it shall state in its Register under section 130 (hereafter: Main Register) the number of shares registered in the additional Shareholders Register and their numbers, if they are numbered.

#### **Regulations**

139. The Minister may make provision on the operation of an additional Register, as said in section 138, including provisions on the up-dating of the Main Register by particulars in the additional Register.

## **CHAPTER THREE: REPORTS**

### **Article One: Reports of a Private Company**

#### **Reports of a private company**

140. A private company shall send the Registrar an annual report, as said in section 141, and it shall also report to the Registrar as specified in this Law and on the following matters:
- (1) changes in the by-laws, as said in section 21, including decisions on name changes as said in section 31, and increases or

- decreases of the registered capital, as said in sections 286 and 287;
- (2) a change of the address of the registered office, as said in section 123;
  - (3) a notice under section 159 that the company does not have an Auditor;
  - (4) appointments to the Board of Directors and changes in its composition, as said in section 223;
  - (5) share allocations, as said in section 292;
  - (6) share transfers, as said in section 299, within 14 days after the transfer;
  - (7) a merger, as said in section 317;
  - (8) conversion of a private company into a company that is a reporting body corporate, as defined in the Securities Law;
  - (9) its conversion into a private company, as said in section 343.

#### **Annual report of a private company**

141. (a) Once a year a private company shall draw up and submit to the Registrar an annual report, as the Minister shall prescribe, within 14 days after the General Meeting.
- (b) A private company that does not hold an Annual Meeting, as said in section 61, shall submit the annual report once a year, not later than 14 days after the financial reports were sent to the shareholders, and in respect of an inactive company that does not prepare financial reports under the provisions of section 172(g) – once a year.
- (c) In this Article, *A private company* – a company that is not a public company within its meaning in section 142.

### **Article Two: Reports of a Public Company**

#### **Reports of a Public Company**

142. (a) In this Article, except for purposes of section 145(1), *A public company* – including a company that is a reporting body corporate, as defined in the Securities Law.
- (b) A public company shall report to the Securities Authority, to the stock exchange at which the company's securities are listed for trading, and to the Companies Registrar, as required by this Law, by the Securities Law and by any other enactment.

#### **Inspection at the Securities Authority**

143. (a) The reports submitted to the Securities Authority as said in section 142 shall be open to inspection by the public at the Securities Authority, and any person may inspect them and obtain certified copies of their contents, either through the Securities

Authority or through others whom the Authority authorized for that purpose, unless the inspection of them was restricted under any enactment.

- (b) A certified copy as said in subsection (a) shall be accepted in any legal proceeding as an original, and it shall constitute conclusive proof of the fact that the original document is in the possession of the Securities Authority.
- (c) If rules were made under the Securities Law about electronic filing or reporting, then the provisions of subsection (b) shall apply to the output of the said reports; for the purposes of this section, "**output**" – as defined in the Computers Law 5755-1995.

144. Repealed

#### **Public company's report to the Registrar**

145. Without derogating from the provisions of any statute, a public company shall report to the Registrar under this Law only on the matters specified below:

- (1) a decision to change the name, as said in section 31;
- (2) a change in the address of the registered office, as said in section 123;
- (3) a merger, as said in section 317;
- (4) its conversion into a public company, as said in section 343.

### **CHAPTER FOUR: INTERNAL AUDITOR IN A PUBLIC COMPANY**

#### **Must appoint Internal Auditor**

146. (a) The Board of Directors of a public company shall appoint an Internal Auditor; the Internal Auditor shall be appointed on the proposal of the Audit Committee.
- (b) A person who is an interested party or an officer of the company, a relative of one of these, the Auditor or anybody on his behalf shall not serve as Internal Auditor of the company.

#### **Internal Audit Law**

147. The provisions of sections 3(a), 4(b), 8 to 10 and 14(b) and (c) of the Internal Audit Law 5752-1992 shall apply to the Internal Auditor, subject to the other provisions of this Chapter and mutatis mutandis, as the case may be.

#### **Internal Auditor's superior**

148. The Chairman of the Board of Directors or the General Manager shall be the organizational superior of the Internal Auditor, as shall be prescribed in the by-laws, or in the absence of any provision in the by-laws – as shall be prescribed by the Board of Directors.

### **Work program**

149. The Internal Auditor shall submit an annual or periodic work program for approval by the Board of Directors or for approval by the Audit Committee, or – if there is no provision in the by-laws – as the Board of Directors shall prescribe, and the Board of Directors or the Audit Committee, as the case may be, shall approve it with the changes it deems appropriate.

### **Urgent examination**

150. The Chairman of the Board of Directors or the Chairman of the Audit Committee may order the Internal Auditor to conduct an internal audit – in addition to the work program – on matters where an urgent need for an examination arose.

### **Tasks of Internal Auditor**

151. The Internal Auditor shall examine, inter alia, whether the company's acts are correct in terms of obedience to the law and of orderly business practice.

### **Submission of report**

152. The Internal Auditor shall submit a report of his findings to the Chairman of the Board of Directors, to the General Manager and to the Chairman of the Audit Committee; a report on matters which he examined under section 150 shall be submitted to the person who ordered the Internal Auditor to make the examination.

### **Termination of office**

153. (a) An Internal Auditor's term in office shall not be terminated without his concurrence, and he shall not be suspended from office, unless the Board of Directors so decided after it heard the position of the Audit Committee and after the Internal Auditor was given a reasonable opportunity to state his case before the Board of Directors and before the Audit Committee.
- (b) For the purposes of subsection (a), the quorum for opening the meeting of the Board of Directors shall not be less than a majority of the members of the Board of Directors, the provisions of the closing passage of section 104 notwithstanding.

## **CHAPTER FIVE: AUDITOR**

### **Article One: Appointment of Auditor**

#### **Must appoint Auditor**

154. (a) A company shall appoint an Auditor, who shall audit the annual financial reports and express his opinion of them (hereafter: the audit); the Minister may prescribe that certain other acts, which an

Auditor performs under any enactment also are an act of audit for purposes of this Chapter.

- (b) An Auditor shall be appointed at every Annual Meeting and shall serve in office until the end of the following Annual Meeting; however, a General Meeting may – if there is a provision to that effect in the by-laws – appoint an Auditor who shall serve for a longer period, which shall not extend beyond the end of the third annual General Meeting after the one at which he was appointed.
- (c) A private company, for which the provision of section 61 holds true, may appoint an Auditor who shall serve until the end of one audit or – if there is a provision to that effect in the by-laws – until the end of three audits.



### **Appointment of first Auditor**

155. (a) The Board of Directors may appoint the company's first Auditor at any time before the first annual General Meeting, and it may set his remuneration; the first Auditor appointed shall serve until the end of the first annual General Meeting.
- (b) If the provisions of section 61 apply to a private company, then the provisions of section 154(c) shall apply to the conclusion of the service of the first Auditor appointed by the Board of Directors.

### **Joint Auditors**

156. A company may appoint several Auditors, who shall perform the audit jointly.

### **Appointment by Extraordinary General Meeting**

157. If the position of Auditor fell vacant and the company does not have an additional Auditor, then the company's Board of Directors shall convene an Extraordinary General Meeting at the earliest possible time, and the appointment of an Auditor shall be on its agenda.

### **Inactive companies**

158. (a) Notwithstanding the provisions of section 154, if the business turnover of a private company does not exceed NS 500,000 a year or if the business turnover of a private company that is a public benefit company does not exceed the amount said in section 19(c) of the Amutot Law (in this Law: inactive company), then it may decide at a General Meeting that no auditor be appointed for it, unless shareholders who hold 10% or more of the company's issued capital object; the amount said in this subsection shall be linked to the index once a year, at the beginning of February; the Minister shall publish the said amount in Reshumot, up-dated for that year;
- in this subsection:
- "**turnover**" – the total of receipts from any source and of any kind, which were received during the previous year;
- "**year**" – a 12 month period from January through December.
- (a1) If the General Meeting decided as said in subsection (a), then the company shall do the following:
- (1) send a notice to the Registrar within 14 days after the decision;
  - (2) attach to its annual report a declaration signed by an officer, in which it states that the company did not appoint an auditor and did not draw up audited financial reports, since the conditions of subsection (a) applied.
- (b) repealed

### **Appointment by Registrar**

159. (a) If an Auditor ceased to serve in a company and if no other was appointed in his place as provided in section 157, then the company shall so inform the Registrar within 90 days after the day

on which the Auditor ceased to serve as aforesaid; however, notification to the Registrar shall not derogate from the company's obligation to appoint an Auditor, as long as no Auditor was appointed for it under subsection (b); if the company appointed an Auditor after it notified the Registrar, then it shall so inform the Registrar within 14 days.

- (b) If the Registrar received notification that an Auditor has ceased to serve, as said in subsection (a), and as long as he has not received notification that a new Auditor was appointed, then the Registrar may appoint an Auditor who shall serve in that position until the end of the next annual General Meeting, and he may set the remuneration which the company shall pay him.
- (c) The Minister may prescribe provisions and conditions for the appointment of an Auditor to be appointed by the Registrar, the beginning of his service and his remuneration.

## **Article Two: Independence**

### **Auditor=s independence**

160. (a) The Auditor shall be independent of the company, both directly and indirectly.
- (b) The Minister may prescribe provisions on the independence of the Auditor, including provisions on the independence of Certified Public Accountants who are partners in a partnership that is the Auditor, or on the independence of Certified Public Accountants who are shareholders in the Company of Certified Public Accountants that is the Auditor.

### **Must make additional audit**

161. If an audit was carried out while there were relations of dependence under section 160, then an additional audit shall be carried out by another Auditor, unless – when the matter became known to the Board of Directors – five years had passed since the said audit was carried out.

## **Article Three: Termination of Auditor's Service**

### **Termination of service**

162. (a) The General Meeting may terminate the service of an Auditor.
- (b) If the termination of an Auditor's service or its non-renewal is on the agenda of a public company, then the opinion of the Audit Committee shall be brought before the General Meeting, after the Auditor was given an appropriate opportunity to present his position before it.

### **Termination of service because of dependence**

163. (a) If the Board of Directors learned that there are relations of dependence under the provisions of section 160, then it shall inform the Auditor without delay that he must act for the instantaneous termination of the dependence; if the dependence was not terminated, then the Board of Directors shall convene an Extraordinary Meeting within a reasonable time, with the termination of the Auditor's service on its agenda.
- (b) A General Meeting convened as said in subsection (a) shall decide to terminate the Auditor's service; however, after the Auditor's position was presented to it, the General Meeting may decide not to accept the Board of Directors' proposal to terminate the service, if it concluded that the Auditor is not dependent on the company.

### **The Auditor's stand**

164. (a) The Board of Directors shall give the Auditor a reasonable opportunity to explain his stand before the General Meeting, on the agenda of which is the termination or non-renewal of his service, and as part thereof it shall invite the Auditor to participate in the meeting.
- (b) If an Auditor resigned for reasons in which the company's shareholders have an interest, then the Board of Directors shall make that known to the company..
- (c) Without derogating from the provision of any enactment, the Board of Directors shall inform the shareholders of the Auditor's reasons for his resignation in whatever detail it finds appropriate, and it may also inform them of its stand on the matter.

## **Article Four: Remuneration of Auditor**

### **Remuneration of Auditor**

165. (a) The remuneration of the Auditor for the auditing work shall be set by the General Meeting, or by the Board of Directors if the General Meeting authorized it to do so and in accordance with the terms of the authorization, or – if the matter is prescribed in the by-laws – as prescribed there.
- (b) If the remuneration for the auditing work was set by the Board of Directors, then the Board of Directors shall report the remuneration of the Auditor to the Annual Meeting.

### **Conditional remuneration and indemnification prohibited**

166. (a) A company shall not make the remuneration of the Auditor conditional on conditions that restrict the manner in which the audit is carried out or that link the remuneration to the results of the audit.
- (b) A company or any person on its behalf must not indemnify the

Auditor directly or indirectly for any obligation imposed on him for an infraction of his professional responsibility while providing services that statutorily ought to be provided by an auditor, or because he failed to fulfill any other obligation that is lawfully imposed on him.

#### **Remuneration for additional services**

167. (a) The terms for additional services by the Auditor to the company, such as do not constitute the audit, shall be set by the Board of Directors, but it may be prescribed in the by-laws that the terms for aforesaid services, including payments and undertakings by the company toward the Auditor, be set by the General Meeting;
- (b) The Board of Directors shall report to the General Meeting about the Auditor's terms for additional services, including payments and undertakings by the company toward the Auditor; for the purposes of this section, "Auditor" includes a partner, employee or relative of the Auditor, including a body corporate under his control.

### **Article Five: Powers, Obligations and Responsibility of the Auditor**

#### **Powers of the Auditor**

168. (a) The Auditor may at any time examine the documents of the company that he needs in order to fulfill his responsibility, and he shall receive explanations on them.
- (b) The Auditor may participate in every General Meeting in which financial reports on which he performed audits are to be submitted, and also in Board of Directors meetings that discuss approval of financial reports or Board of Directors meetings convened under section 169; the Board of Directors shall inform the Auditor of the time and place of the General Meeting or of the Board of Directors meeting.

#### **Obligation to report**

169. (a) If, in the course of the audit, the Auditor learns of substantive defects in the accounting control of the company, then he shall report it to the Chairman of the Board of Directors.
- (b) When the Auditor has informed the Chairman of the Board of Directors of defects said in subsection (a), then the Chairman of the Board of Directors shall without delay convene a meeting of the Board of Directors in order to discuss the subjects of which he was informed.

#### **Responsibility for opinion**

170. (a) The Auditor is responsible toward the company and toward its shareholders for what he said in his opinion on the financial reports.
- (b) The provision of subsection (a) shall not derogate from any other

responsibility on the part of the Auditor under any enactment.

## CHAPTER SIX: FINANCIAL REPORTS

### Financial reports

171. (a) A public company – including a private company that is a reporting body corporate, as defined in the Securities Law and exclusive of a public company said in subsection (d) – shall keep accounts and it shall also draw up financial reports in accordance with the Securities Law.
- (b) A private company, other than a private company that is a reporting body corporate, as defined in the Securities Law, shall keep accounts and it shall also draw up financial reports as said in this Law.
- (a) The financial reports shall be approved by the Board of Directors, signed in its name and brought before the Annual Meeting.
- (b) The provisions of this Chapter that apply to a private company shall also apply to a public company, the securities of which were offered only to the public abroad or which are listed only on an Exchange abroad.
- (c) The Minister may prescribe provisions and conditions for the procedure of approving financial reports; in respect of a company said in subsection (a), the provisions and conditions shall be prescribed after consultation with the Securities Authority.

### Drawing up financial reports in private companies

172. (a) A private company shall draw up financial reports that include a balance sheet as of December 31 (hereafter: determining date) and a profit and loss account for the one year period that ended on that day, and also additional financial reports, all as required by accepted bookkeeping rules (in this Chapter: the reports); the Auditor shall audit the reports.
- (b) A private company may prescribe in its by-laws that – notwithstanding the provisions of subsection (a) – the reports shall be for a year that does not end on the determining date, but on another date prescribed in the by-laws (hereafter: special date).
- (c) The private company's financial reports shall be drawn up within six months after the determining date or the special date, as the case may be, or within some other period prescribed in the by-laws, on condition that no period longer than nine months be prescribed.
- (d) The financial reports shall be drawn up according to accepted bookkeeping rules, and they shall properly reflect what they are supposed to reflect in accordance with those rules.
- (e) The Minister may prescribe rules on the identity and number of signatories on the reports; as long as aforesaid rules have not been prescribed, the reports shall be signed by at least one Director.
- (f) The Minister may prescribe particulars that must be included in the reports; when the Minister prescribed said particulars, then they shall apply in spite of what is prescribed by accepted

- bookkeeping rules.
- (g) An inactive company, as said in section 158, may decide by a decision adopted at a General Meeting – to which shareholders did not object as specified in section 158(a) – that it does not have to prepare financial reports under this Chapter; however, a said decision shall not derogate from any the effect of statute to prepare or submit reports, including audited reports.

#### **Presentation of reports to the shareholders**

173. (a) The Board of Directors of a private company shall bring the reports approved by it before the Annual Meeting, and in a company to which the provisions of section 61 apply it shall send the reports to the shareholders.
- (b) The Board of Directors of a private company shall bring before the Annual Meeting a report – with details it deems appropriate – that includes its explanations of the events and changes that occurred in the standing of the company and which affected the reports.
- (c) The reports shall be kept in the company's registered office for at least seven years after they were drawn up, for inspection by the private company's Directors and shareholders.
- (d) A shareholder in a private company is entitled to receive a copy of the reports and of the Auditor's opinion on them.
- (e) Copies of the reports of a private company shall be sent to all persons entitled to receive notification of General Meetings, not later than 14 days before the date for holding the Annual Meeting, all if not otherwise prescribed in the by-laws.

#### **Declaration by the Board of Directors**

174. The Board of Directors shall declare in the annual report said in section 141 that it complied with the provision of section 173(a).

#### **Must submit balance sheets**

175. (a) A private company shall attach to its annual report the balance sheet included in its reports, if at least one of the following conditions applies to it:
- (1) its by-laws do not restrict the right to transfer its shares;
  - (2) its by-laws do not prohibit an offering of its shares or debentures to the public;
  - (3) its by-laws do not limit the number of shareholders in the company to up to fifty, other than company employees or persons who were company employees and who continue to be shareholders in the company even after they ceased being company employees; for purposes of this paragraph, two or more persons who jointly own one or more shares in the company shall be deemed a single shareholder.
- (b) The Minister may prescribe that the provisions of subsection (a) do not apply, either generally or to categories of private companies.

## PART FIVE: SHAREHOLDERS

### CHAPTER ONE: SHAREHOLDERS AND SHARE DOCUMENTS

#### **Shareholder in a private company**

176. A shareholder in a private company is a person who is registered as such in the Shareholders Register, or who holds a share certificate.

#### **Shareholder in a public company**

177. A shareholder in a public company is any one of the following:

- (1) A person to whose credit a share is registered with a stock exchange member, and that share is included among the shares registered in the name of a registration company in the Shareholders Register;
- (2) a person registered as a shareholder in the Shareholders Register;
- (3) a person who holds a share certificate.

#### **Share document**

178. (a) A shareholder registered in the Shareholders Register is entitled to receive from the company a document in evidence of his ownership of the share.

- (b) A registration company is entitled to receive from the company a document in evidence of the number and category of shares registered in its name in the Shareholders Register.

#### **Share certificate**

179. If a provision to that end is prescribed in its by-laws, then a company may issue a certificate for a fully paid up share, and the provisions of section 135 shall apply.

#### **Text of share certificate and share document**

180. The Minister may prescribe provisions on the wording, format, way of preparation and printing of share documents or share certificates.

#### **Foreclosure**

181. (a) A company may, in its by-laws or in the allocation agreement, prescribe a provision according to which the Board of Directors has the right to foreclose a share allocated by the company and to sell it, if some or all of the consideration which the shareholder (hereafter: the debtor) undertook to pay was not paid by the time and on the conditions prescribed in the agreement or in the by-laws.

- (b) Shares that were foreclosed and have not yet been sold shall be dormant shares, within their meaning in section 308.

- (c) The debtor shall continue to owe the company, unless the foreclosed shares were sold and the company received the full consideration which he undertook to pay, with the addition of costs attendant upon the sale.



- (d) If the consideration received from the sale of foreclosed shares exceeded the consideration which the debtor undertook to pay, then the debtor shall be entitled to the refund of the partial consideration – if any – which he paid for them, subject to the provisions of the by-laws or of the allocation agreement, on condition that the consideration that remains in the company not be less than the full consideration which the debtor undertook to pay, with the addition of costs attendant upon the sale.
- (e) The provisions of this section shall not derogate from any other remedy of the company from the debtor.

#### **Determining date for ownership of share**

182. (a) The shareholders entitled to a dividend, as said in section 306, are the shareholders on the date of the decision on the dividend or on a later date, if another date was set in that decision.
- (b) The shareholders in a public company who are entitled to participate and vote at a General Meeting are the shareholders on the date set in the decision to convene the General Meeting, on condition that that date not be more than 21 days before the date on which the General Meeting meets, and not less than four days before the date of the meeting.
- (c) The Minister may prescribe other provisions about the dates said in subsection (b), if that is necessary for voting by ballots as said in section 87.

## **CHAPTER TWO: RIGHTS AND OBLIGATIONS OF SHAREHOLDER**

### **Rights and obligations of shareholder**

183. The rights and obligations of a shareholder are as prescribed in this Law, in the company's by-laws and under any enactment.

### **Right to information**

184. Shareholders have the right to inspect the company documents specified below:

- (1) protocols of General Meetings, as said in section 90;
- (2) the Shareholders Register and the Register of Substantial Shareholders, as said in section 129;
- (3) a document in the company's possession, as said in section 185;
- (4) by-laws and financial reports, as said in section 187;
- (5) any document which the company must submit under this Law and under any enactment to the Companies Registrar or to the Securities Authority and which is available for public inspection at the Companies Registrar or the Securities Authority, as the case may be.

### **Inspection of company documents**

185. (a) A shareholder may demand from the company, stating the

purpose of the demand, to inspect any document in the company's possession in each of the following cases:

- (1) the document relates to an act or transaction that requires approval by the General Meeting under the provisions of sections 255 and 268 to 275;
  - (2) in a private company – if that is necessary in order to reach a decision on a subject on the agenda of the company's General Meeting.
- (b) The company may refuse the shareholder's demand if it believes that the demand was not made in good faith or that the requested documents include a commercial secret or a patent, or that the disclosure of the documents is otherwise liable to have an adverse effect on the company's welfare.

#### **Information on Directors' remuneration**

186. (a) On the demand of one or more shareholders who have at least 10% of the voting power in the company, the Board of Directors of a private company that must appoint an auditor must deliver to them a notification certified by the Company's Auditor, which includes full particulars of all the payments paid by the company to each of its Directors and of undertakings to pay which it assumed, including the matter of retirement terms, in each of the last three years for which the company's financial reports have been drawn up; the amount shall also include payments received by a Director as an officer of a subsidiary of the company.
- (b) If the Board of Directors concludes that the demand was not made in good faith, then it may refuse it.

#### **Right to obtain by-laws and financial reports**

187. (a) Every shareholder is entitled to receive from the company, on his request, a copy of the by-laws and also – in a private company – a copy of the financial reports, as said in section 173(d).
- (b) The Minister may determine the entitlement of shareholders in a public company to obtain from the company a copy of the financial reports.

#### **Voting rights**

188. Every shareholder is entitled to participate in a General Meeting and to vote in it, subject to the provisions of the by-laws on the voting rights attached to each share.

#### **Right to make agreements**

189. Shareholders may make voting agreements among themselves, subject to the obligations incumbent on them under this Law.

#### **Right to dividend**

190. Every shareholder is entitled to receive dividends, in accordance with the rights attached to each share, if a distribution of dividends was decided as said in section 306.

### **Rights in case of discrimination**

191. (a) If any of the affairs of the company were conducted in a manner that discriminates against some or all of its shareholders or if there is substantive suspicion that they will be so conducted, then the Court may – on application of a shareholder – issue instructions it deems appropriate in order to correct or prevent the discriminatory treatment, including instructions according to which the company's affairs will be conducted in the future, or instructions to the company's shareholders under which they or the company – subject to the provisions of section 301 – shall acquire some of its shares.
- (b) If the Court gave instructions as said in subsection (a), then the changes made necessary thereby shall be made in the company's by-laws and decisions, as the Court shall prescribe, and those changes shall be treated as if they had been lawfully adopted by the company; a copy of the decision shall; be sent to the Companies Registrar and – if the company is a public company – to the Securities Authority.

### **Shareholders' obligations**

192. (a) In exercising his rights and fulfilling his obligations toward the company and towards the other shareholders, a shareholder shall act in good faith and in the customary manner, and he shall refrain from abusing his power in the company, inter alia, when voting at General Meetings and at Category Meetings on the following matters:
- (1) changing the by-laws;
  - (2) increasing the registered share capital;
  - (3) mergers;
  - (4) approval of acts and transactions that require approval by the General Meeting under the provisions of sections 255 and 268 to 275.
- (b) A shareholder shall refrain from taking advantage of other shareholders.
- (c) The enactments that apply to breach of contract shall apply to violations of the provisions of subsections (a) and (b), and to violations of subsection (b) shall also apply the provisions of section 191, mutatis mutandis.

### **Controlling member must act fairly**

193. (a) The following must act fairly towards the company:
- (1) a controlling member of the company;
  - (2) a shareholder who knows that how he votes will be decisive for a decision at a General Meeting or at a Category Meeting of the company;
  - (3) a shareholder who, in accordance with the provisions of the by-laws has the power to appoint or to prevent the appointment of an officer in the company, or any other

- power over the company.
- (d) The statutes that apply to breach of contract shall apply to violations of the obligation of fairness, *mutatis mutandis*, taking into consideration the status in the company of those enumerated in subsection (a).

## **CHAPTER THREE: DERIVATIVE ACTIONS AND CLASS ACTIONS**

### **Article One: Derivative Action and Derivative Defense**

#### **Prior conditions for bringing action**

194. (a) Any shareholder and any Director of a company (in the Chapter: plaintiff) may bring a derivative action if the provisions of this Article apply.
- (b) If a person wishes to bring a derivative action, then he shall write to the company and demand that it exercise its rights fully by bringing action (in this Chapter: demand).
- (c) Demands shall be addressed to the Chairman of the company's Board of Directors, and they shall specify the facts that create the grounds for the action and the reasons for bringing it.

#### **Company's reaction**

195. If a company received a demand, then it may act in one of the following ways:
- (1) perform the act or adopt the decision by which the grounds for the demand are eliminated;
  - (2) reject the plaintiff's demand for reasons that shall be specified in the decision;
  - (3) decide to bring action.

#### **Company's reply to plaintiff**

196. The company shall inform the plaintiff within 45 days after the demand was received of the way it acted, as said in section 195, giving particulars of the action taken and of the factor that decided to do so, including the names of people who participated in adopting the decision; if a participant or an officer in the company has a personal interest in the decision, then that shall be stated in the decision and in the notification to the plaintiff.

#### **Right to bring derivative action**

197. A plaintiff may, with the Court's permission, bring a derivative action under the provisions of section 198, if one of the following applies:
- (1) In his opinion, the action taken or the decision adopted did not eliminate the grounds for the action;
  - (2) the company rejected the plaintiff's demand, as said in section 195(2);
  - (3) the company informed the plaintiff that it decided to bring action, as said in section 195(3), but the action was not brought within 75 days after the notice;
  - (4) the company did not reply to the demand in accordance with the provisions of section 196.

#### **Approval of derivative action**

198. (a) A derivative requires approval by the Court, and it shall approve it if it is satisfied that the action and its conduct are, a priori, to the benefit of the company, and that the plaintiff is not acting otherwise than in good faith.
- (b) The Court may approve a derivative action before the times set in sections 196 or 197 have elapsed, if it concluded that bringing action at that time will cause it to be prescribed, and it may make its approval conditional on the fulfillment of conditions set in this Article for bringing a derivative action.
- (c) In this Article, "**Court**" – the Court qualified to hear the action.

### **Fees and costs**

199. (a) When a derivative action is brought, the plaintiff shall only pay part of the Court fees, in a proportion to be set by the Minister.
- (b) If the Court approved a derivative action, then the company shall refund the fee the plaintiff paid to him and it shall pay the remainder of the Court fees in respect of the derivative action in the manner and at the rate set by the Minister, and notwithstanding the provision of any statute non-payment of the Court fee shall not impede hearing the action; the Court may –
- (1) order how and when Court fees are to be paid, including division of payment of the fee between the plaintiff and the company;
  - (2) order the company to pay the plaintiff amounts set by it to cover his costs, or to deposit security for their payment;
  - (3) the company to deposit surety to cover the defendant=s costs.

### **Costs**

200. If the Court pronounced judgment in a derivative action and adjudged costs to the defendant, then the company shall pay the costs adjudged as aforesaid, unless the Court determined – for special reasons that shall be recorded – that the plaintiff pay the costs, and it may impose payment of the plaintiff's costs on the company, and it may also impose on the plaintiff payment of all or some of the costs caused to the company, taking into account the judgment and the other circumstances of the case.

### **Advocate=s fees in a derivative action**

- 200A.(a) The Court shall set the fees of the advocate who represented the plaintiff in a derivative action; the advocate shall not accept legal fees in an amount greater than the amount set by the Court.
- (a) The fees shall be paid by the company, unless the Court decided – for special reasons that shall be recorded – that the plaintiff pay the legal fees.

### **Remuneration**

201. If the Court found in the company's favor, then it may order

remuneration to be paid to the plaintiff who took the trouble to bring the derivative action and to prove it.

### **Arrangement or compromise**

202. A plaintiff shall drop a derivative action or make an arrangement or compromise with the defendant only with the Court's approval; all particulars of the arrangement or compromise shall be specified in the application for approval, including the consideration proposed to the plaintiff.

### **Derivative defense**

203. (a) If action was brought against a company, then the Court may – on application by a shareholder or Director (in this Chapter – defender) – permit him to defend in the company's name (hereafter: derivative defense), on condition that it is satisfied that conducting the derivative defense is to the company's benefit, and that the defender is not acting otherwise than in good faith.
- (b) The provisions of this Article on derivative actions shall apply, mutatis mutandis, to a derivative defense, as far as the Minister has not prescribed provisions for derivative defenses.

### **Prohibited distribution**

204. The creditor of a company may submit a derivative action in the company's name because of a prohibited distribution which was made in the company, and the provisions of this Article shall apply, mutatis mutandis.

### **Company being wound up**

205. No derivative action shall be brought and no derivative defense shall be conducted in the name of a company, for which a liquidator was appointed under Chapter Twelve of the Companies Ordinance.

### **Regulations**

206. The Minister may prescribe provisions on derivative actions and derivative defenses, including provisions on the procedures for their approval, the amount of Court fees and when and how they shall be collected.

*NOTE: Article Two: Class Action (sections 207, 208 and 210 through 218) was repealed and replaced by the Class Action Law 5766-2006. Section 209 was amended and remains in effect as shown below. – Tr.*

### **Financing by the Authority**

209. (a) A person who proposes to bring a class action under the provisions of the Class Action Law 5766-2006 on grounds that stem from an interest in a security issued by the Government, in

an option or future as defined in section 64(b) of the Joint Investment Trusts Law 5754-1994, or in the security of a public company, and also a class plaintiff in a said class action may apply to the Securities Authority that it bear his costs; in this section, "**public company**" – a company, the securities of which are listed for trading on an Exchange in Israel or were offered to the public in Israel under a prospectus, within its meaning in the Securities Law.

- (b) If the Securities Authority is satisfied that there is a public interest in the action and that there is reason to expect that the Court will approve it as a class action, then it may bear the plaintiff's costs in an amount and on conditions which it shall set.
- (c) If the Court finds in the plaintiff's favor, then it may order in its judgment that the Securities Authority be indemnified for its expenses.

## PART SIX: OFFICERS OF THE COMPANY

### CHAPTER ONE: APPOINTMENT AND SERVICE OF OFFICERS

#### Article One: Beginning and Termination of Director's Term of Office

##### Number of Directors

219. (a) In its by-laws a company may determine the number of its Directors and their maximum and minimum numbers.
- (b) In a private company there shall be at least one Director.
  - (c) In a public company there shall be at least two public Directors, as said in section 239, and at least one of them shall be a Director with accounting or financial expertise and the others with professional qualifications, within their meaning in section 240 (in this Law: professionally qualified Directors).
  - (d) In a public company there shall be – in addition to an outside Director with accounting and financial expertise – several Directors with accounting and financial expertise, in a number which the Board of Directors prescribed.

##### First Directors

220. The first Directors of a company shall be the Directors who were appointed by the founders and who made a declaration as said in section 8; the term of office of the first Directors shall end at the end of the first Annual Meeting, unless the by-laws prescribe otherwise.

##### Beginning of term of office

221. A Director's term of office shall begin on the day of his appointment or



at a later time, if the by-laws permit an appointment that begins in the future.

**Term of office**

222. The term of office of Directors appointed by a General Meeting shall end at the conclusion of the Annual Meeting first convened after the date of the appointment, unless there is a different provision in the by-laws.

**Reporting changes**

223. A private company shall report the appointment of a Director and the end of a Director's term of office to the Companies Registrar within 14 days after the day on which he was appointed or on which his term was concluded.

**Register of Directors**

224. In its registered office the company shall keep a Register of the members of its Board of Directors and of their substitutes, if substitutes for them were appointed under the provisions of section 237, and the Register shall be open for inspection by any person.

**Article Two: Restrictions on Appointments and Termination of Office**

**Obligation of disclosure**

225. If a person is a candidate for service as a Director, then he shall disclose to the person who appoints him whether he was convicted by a final judgment of an offense said in section 226, five years not yet having passed since the judgment that convicted him was handed down.

**Restriction on appointment because of conviction**

226. (a) In a public company a person shall not be appointed Director, if he was convicted by a final judgment of one of the offenses specified below, unless five years have passed since the judgment that convicted him was handed down:
- (1) offenses under sections 290 to 297, 392, 415, 418 to 420, and 422 to 428 of the Penal Law 5737-1977, and under sections 52C, 52D, 53(a) and 54 of the Securities Law;
  - (2) a conviction in a Court abroad for an offense of bribery, deceit, offenses of Directors in a body corporate or utilization of inside information;
  - (3) a conviction for any other offense, if the Court decided – because of its character, severity or circumstances – that he is not fit to serve as Director of a public company.
- (b) At the time of the conviction or thereafter the Court may prescribe – on application by a person who wishes to be appointed Director,

- that – in spite of his conviction as said in subsections (a)(1) and (2) and paying special attention to the circumstances under which the offense was committed – it does not prevent him from serving as Director of a public company.
- (c) The Minister may designate offenses in addition to those prescribed in subsection (a)(1).

#### **Restriction on appointment**

227. (a) A minor, a legally incompetent, or a person who was declared bankrupt shall not be appointed Director, as long as he has not been discharged, and also not a body corporate that resolved on voluntary liquidation or against which a liquidation order was issued.
- (b) If what is said in subsection (a) holds true for a candidate for Director, then he shall disclose that to the person who makes the appointment.

#### **Termination of term of office**

228. (a) Without derogating from the provisions of any enactment, in each of the following cases a Director's term of office shall be terminated before the end of the period for which he was appointed:
- (1) he resigned or was dismissed as said in sections 229 to 231;
  - (2) he was convicted of an offense, as said in section 232;
  - (3) by decision of the Court, as said in section 233;
  - (4) he was declared bankrupt, and if he is a body corporate – he decided on voluntary liquidation or a liquidation order was issued against him.
- (b) A company is not entitled to make conditions in its by-laws for the provisions of this section, but it may add in its by-laws other grounds for the termination of a Director's term of office.

#### **Director's resignation**

229. (a) A Director may resign by giving notice to the Board of Directors, to the Chairman of the Board of Directors or to the company, and the resignation shall go into effect when the notice was delivered, unless a different time was set in the notice.
- (b) The Director shall give the reasons for his resignation.
  - (c) When notice of a Director's resignation is received, then the resignation and the reasons given for it shall be brought before the Board of Directors and recorded in the protocol of the first Board of Directors meeting convened after the resignation.

#### **Dismissal of Director**

230. (a) The General Meeting may dismiss a Director at any time, unless the by-laws provide otherwise, on condition that the Director be given a reasonable opportunity to present his position to the General Meeting.

- (b) If there is a provision in the by-laws, according to which a Director is appointed otherwise than by the General Meeting, then he can be dismissed from his position only by whoever was entitled to appoint him and in the manner prescribed therefor in the by-laws, unless the by-laws provide otherwise.

#### **Must terminate term of service**

231. If the company learned that a Director was appointed in contradiction to the provisions of sections 226 or 227(a), or that Director violated the provisions of sections 225, 227(b) or 232, then – at the first Board of Directors meeting convened after it so learned – the Board of Directors shall decide to terminate the service of that Director if it concluded that the aforesaid conditions hold true, and his term of office shall end from the time of the decision.

#### **Termination of term of service in consequence of offense**

232. If a Director was convicted by a final judgment of an offense said in sections 226(a)(1) or (3), then he shall so inform the company and the term of his service shall end when the notice is given, and in a public company he can be reappointed to serve as Director only after five years passed as said in section 226.

#### **Disqualified by Court decision**

233. On application by the company, a Director, shareholder or creditor, the Court may order a Director's term of service to be terminated, if it finds that one of the following holds true:

- (1) the Director is permanently unable to exercise his office;
- (2) in respect of a Director who serves in a public company – during the term of his service he was convicted by a Court abroad of offenses specified in section 226(a)(2).

#### **Obligation of loyalty**

234. If a Director violated his obligation of disclosure under sections 225, 227(b) or 232, then he shall be deemed to have violated his obligation of loyalty to the company.

### **Article Three: Body Corporate as Director**

#### **Body corporate as Director**

235. A body corporate is qualified to serve as Director, unless the by-laws provide otherwise.

#### **Individual serves on behalf of a body corporate**

236. (a) A body corporate that serves as Director shall appoint an individual qualified to be appointed Director in the company to serve on its behalf, and it may replace him, all subject to its

- obligations toward the company.
- (b) The name of the individual who serves on behalf of the body corporate shall be registered in the Register of Directors as the person who serves on behalf of the body corporate.
  - (c) The obligations that apply to a Director shall apply, jointly and severally, to the individual who serves on behalf of a body corporate and to the body corporate.

## **Article Four: Substitute Director**

### **Substitute Director**

237. (a) A substitute for a Director (hereafter: Substitute Director) can be appointed only if there is a provision in the by-laws that permits that.
- (b) A person not qualified to be appointed Director, as well as a person who serves as Director or Substitute Director, shall not be appointed and shall not serve as Substitute Director.
- (c) Notwithstanding the provisions of subsection (b), in a private company a person who serves as Director or Substitute Director may be appointed Substitute Director, if the by-laws include a provision to that effect.
- (d) If the by-laws include a provision as said in subsection (a), then a Substitute Director may be appointed member of a Board of Directors committee together with whoever serves as Director, on condition that the candidate Substitute Director for appointment as a committee member does not serve on the same Board of Directors Committee, and that – if he is Substitute Director for an outside Director, then the candidate outside director shall have the accounting and financial expertise or the professional qualification in accordance with the replaced Director=s qualifications.
- (e) A substitute cannot be appointed Outside Director, except as specified in subsection (d).

### **Responsibility of Substitute Director**

238. (a) A Substitute Director shall be treated like a Director.
- (b) The appointment of a Substitute Director does not negate the responsibility of the Director, as whose substitute he was appointed, and it shall be in effect, taking the circumstances of the case into consideration, including the circumstances under which the Substitute Director was appointed and the length of his term of service.

## **Article Five: Outside Director**

### **Obligation to appoint**

239. (a) At least two Outside Directors shall serve in a public company.
- (b) The Outside Director shall be appointed by the General Meeting, on condition that one of the following holds true:
- (1) the majority of votes at the General Meeting includes at least one third of all the votes of the shareholders who are not controlling members in the company or their representatives and who participate in the vote; abstentions shall not be included in the total of the votes of the aforesaid

- shareholders;
- (2) the total of opposing votes from among the shareholders said in paragraph (1) does not exceed 1% of all the voting rights in the company;
- (c) The Minister may set proportions different from those set in subsection (b)(2)
- (d) If, when an Outside Director is being appointed, all members of the Board of Directors of the company are of one gender, then the Outside Director appointed shall be of the other gender.

### **Qualification for appointment**

240. (a) As Outside Directors shall be appointed Israel residents who are qualified to be appointed Directors; however, a public company, the shares of which or part thereof were offered to the public abroad, or are listed for trading on an Exchange abroad, may appoint an Outside Director who is not an Israel resident.
- (a1) (1) As Outside Directors shall be appointed persons with professional qualifications or with expertise in accounting and finance, on condition that at least one Outside Director have accounting and finance expertise.
- (2) The Minister shall, in consultation with the Securities Authority, set conditions and criteria for Directors with accounting and financial expertise and for Directors with professional qualifications.
- (b) No individual shall be appointed an Outside Director if – at the time of the appointment or during the two years that preceded the appointment – he, his relative, partner, employer or a body corporate of which he is a controlling member had an interest in the company, in a person who was a controlling member of the company at the time of the appointment, or in another body corporate;
- for purposes of this subsection –
- "interest"** – an employment relationship, commercial or professional ties in general or control, as well as service as an officer, other than service as a Director appointed to serve as Outside Director in a company about to offer shares to the public for the first time; the Minister may, in consultation with the Securities Authority, determine that – on conditions he prescribed – certain matters shall not constitute an interest.
- "other body corporate"** – a body corporate, in which the company or a controlling member of it is a controlling member at the time of the appointment or during the two years before the time of the appointment.
- (c) No individual shall be appointed an Outside Director if his other positions or affairs create or are liable to create a conflict of interest with his position as Director, or if they are liable to constrain his ability to serve as Director.
- (d) A Director in one company shall not be appointed Outside Director in another company, if at that time a Director of the other

- company serves as Outside Director in the first company.
- (e) An individual shall not be appointed Outside Director in a public company, if he is employed by the Securities Authority or employed by a stock exchange in Israel.

#### **Declaration**

241. (a) A General Meeting, on the agenda of which is the appointment of an Outside Director, shall not be convened unless the candidate declared that he meets the conditions for his appointment as Outside Director (hereafter: the declaration).
- (b) The declaration shall be kept in the company's registered office and it shall be open to inspection by all persons.
  - (c) The Minister may prescribe provisions about the declaration.

#### **First Outside Directors**

242. The first Outside Directors shall be appointed by a General Meeting, which shall be convened not later than three months after the date on which the company became a public company.

#### **Participation in committees**

243. At least one Outside Director shall serve on every committee that is empowered to exercise one of the functions of the Board of Directors.

#### **Remuneration and refund of expenses**

244. (a) An Outside Director is entitled to remuneration and to the refund of expenses, as the Minister shall prescribe in consultation with the Securities Authority.
- (b) An Outside Director shall not receive – in addition to the remuneration to which he is entitled and to the refund of expenses – any direct or indirect consideration for his service as Director of the company; for purposes of this section the grant of an exemption, an undertaking to indemnify, indemnification or insurance under the provisions of Article Three in Chapter Three shall not be deemed a consideration.

#### **Term of service**

245. (a) The term of service of an Outside Director shall be three years, and the company may – notwithstanding the provisions of section 240 – appoint him to one additional term of three years.
- (b) An Outside Director shall not be dismissed and his tenure shall not be terminated, except in accordance with the provisions of sections 233, 246 and 247.

#### **Termination of service by General Meeting**

246. (a) If the Board of Directors learns of a suspicion that an Outside Director no longer meets one of the conditions required under this Law for the appointment of an Outside Director, or of a suspicion that the Director violated his obligation of loyalty toward the company, then the Board of Directors shall discuss the matter at the meeting first convened after it learned of the matter.

- (b) If the Board of Directors determined that the Outside Director no longer meets one of the conditions required under this Law for his appointment or that he violated his obligation of loyalty, then the Board of Directors shall call an Extraordinary Meeting with removal of the Outside Director from office on its agenda.
- (c) The reasons of the Board of Directors shall be presented to the General Meeting and the Outside Director shall be given a reasonable opportunity to present his stand; the General Meeting's decision to terminate an Outside Director's term of office shall be adopted with the same majority that was necessary for his appointment.

#### **Termination of service by the Court**

247. On application by a Director or shareholder the Court may order the service of an Outside Director to be terminated, if it found that he no longer meets one of the conditions required under this Law for his appointment or that he violated his obligation of loyalty to the company.

#### **Appointment at Extraordinary Meeting**

248. If the position of an Outside Director fell vacant and if two other Outside Directors are not serving in the company, then the Board of Directors shall convene an Extraordinary Meeting at the earliest possible time, with the appointment of an Outside Director on the agenda.

#### **Must not appoint and employ**

249. A company shall not appoint a person who served in it as Outside Director to the position of an officer in it, shall not employ him as an employee and shall not accept professional services from him for consideration, either directly or indirectly, including through a body corporate under its control, unless two years have passed since the end of his service as Outside Director in that company.

#### **Outside Director of a company that became a private company**

- 249A.(a) From the day on which a public company became a private company, the provisions of this Article shall not apply to persons who serve or served as Outside Directors of the company.
- (b) If the company did not decide to continue the Director's service, then his tenure shall be terminated three months after the company became a private company.

## **CHAPTER TWO: APPOINTMENT AND DISMISSAL OF OTHER OFFICERS**

#### **Appointment and dismissal of General Manager**

250. The General Manager shall be appointed and dismissed by the Board



of Directors, unless the by-laws provide otherwise.

### **Appointment and dismissal of officers**

251. Officers of a company, other than the Directors and the General Manager, shall be appointed and dismissed – in a public company by the General Manager, and in a private company by the Board of Directors, all if there is no other provision in the by-laws.

## **CHAPTER THREE: OBLIGATIONS OF OFFICERS**

### **Article One: Obligation of Caution**

#### **Obligation of Caution**

252. (a) An officer owes the company an obligation of caution, as said in sections 35 and 36 of the Civil Wrongs Ordinance (New Version).  
(b) The provision of subsection (a) shall not derogate from an officer's obligation of caution toward any other person.

#### **Means of caution and level of competence**

253. An officer shall act at a level of competence at which a reasonable officer would have acted in the same position and under the same circumstances, inter alia by adopting means that are reasonable under the circumstances of the case to obtain information on the profitability of the act brought to him for his decision or of the act performed by him by virtue of his position, and to obtain other information of importance for the said acts.

#### **Obligation of caution for Directors with expertise or qualifications**

253A. The appointment of a Director with accounting or financial expertise or with professional qualifications under section 219(d) or 240(a1) does not change his responsibility and that of the other Directors of the company, which is imposed on them under any statute.

### **Article Two: Obligation of Loyalty**

#### **Obligation of loyalty**

254. (a) An officer owes an obligation of loyalty to the company, shall act in good faith and shall act to its benefit, and inter alia he shall –
- (1) refrain from any act that involves a conflict of interest between the performance of his function in the company and his performance of any other function or his personal affairs;
  - (2) refrain from any activity that involves competition with the company's business;
  - (3) refrain from exploiting a business opportunity of the company in order to obtain a benefit for himself or another person;
  - (4) disclose to the company any information and deliver to it any

- document that relates to its affairs, which came into his possession by virtue of his position in the company.
- (b) The provisions of subsection (a) shall not derogate from any obligation of loyalty by the officer toward any other person.

### **Approval of act**

255. (a) A company may approve any of the acts enumerated in section 254(a), on condition that all the following conditions have been met:
- (1) the officer acted in good faith and the act or its approval are not cause the company harm;
  - (2) the officer disclosed the nature of his personal interest in the act – including all substantive facts and documents – to the company at a reasonable time before the approval was discussed.
- (b) The company's approval of acts that are not substantive acts shall be given under the provisions of Chapter Five on the approval of transactions, and the company's approval of substantive acts shall be given under the provisions of Chapter Five on the approval of exceptional transactions; the provisions of Chapter Five on the validity of transactions shall apply, mutatis mutandis, to the validity of acts.

### **Remedies**

256. (a) The enactments that apply to breach of contract shall apply, mutatis mutandis, to a breach of trust committed by an officer against the company.
- (b) Without derogating from the generality of the provision of subsection (a), an officer who committed breach of trust against the company shall be treated like a person who breached his contract with the company.
  - (c) A company may cancel an act performed by an officer in the company's name toward another person or demand from that other person the compensation due to it from the officer, even without cancellation of the act, if that person knew of the officer's breach of trust toward the company, and if he knew or should have known that the act had not been approved.
  - (d) If a person received the Board of Directors' certification that all the necessary approvals of the act had been given, then it is assumed that he need not have known that the approval of the act, as required under this Chapter, was missing.

### **Disclosure of defect**

257. If a Director learns of any matter of the company in which a priori violations of Law or infractions of orderly business practice were discovered, then he shall act without delay to convene a Board of Directors meeting, as said in section 98(b)(2).

### **Article Three: Exemption, Indemnification and Insurance**

#### **Company's power to grant exemption, indemnification and insurance**

258. (a) A company does not have the right to grant any of its officers exemption from his responsibility for a breach of trust toward it.
- (b) A company has the right to grant an officer exemption from his responsibility for a breach of the obligation of caution toward it only in accordance with the provisions of this Chapter.
- (c) A company has the right to insure the responsibility of its officer or to indemnify him only in accordance with the provisions of this Chapter.

#### **Authorization to grant exemption**

259. (a) A company may in advance exempt its officer from all or some of his responsibility for damage due to his violation of the obligation of caution toward it, if there is a provision to that end in the by-laws.
- (b) Notwithstanding the provision of subsection (a), a company does not have the right to release a Director in advance from his responsibility toward it in consequence of a violation of the obligation of caution in a distribution.

#### **Permission on the matter of indemnification**

260. (a) If the company's by-laws include one of the provisions specified in subsection (b), then it may indemnify its officer in respect of a liability or expense specified in paragraphs (1), (1a) and (2), with which he was charged or which he expended in consequence of an act which he performed by virtue of holding office in it:
- (1) a monetary liability imposed on him by a judgment in favor of another person, including a judgment imposed on him in a compromise or in an arbitrator's decision that was approved by a Court;
- (1a) reasonable trial expenses, including advocates' fees, expended by an officer in consequence of an investigation or procedure conducted against him by an authority competent to conduct an investigation or procedure, and which was concluded without an indictment against him and without any monetary obligation imposed on him in lieu of a criminal proceeding, or which ended without an indictment against him, but with a monetary obligation imposed on him in lieu of a criminal proceeding for an offense that does not require proof of criminal intent; in this paragraph –
- "concluding a procedure without an indictment on a matter on which a criminal investigation was begun"** means closing the case under section 62 of the Criminal Law Procedure Law [Consolidated Version] 5742-1982 (in this subsection: the Criminal Procedure Law), or a stay of

proceedings by the Attorney General under section 231 of the Criminal Procedure Law;

**A monetary obligation in lieu of a criminal proceeding**<sup>A</sup> – a monetary obligation imposed under Law in lieu of a criminal proceeding, including an administrative fine under the Administrative Offenses Law 5746-1985, a fine for an offense designated a finable offense under the provisions of the Criminal Procedure Law, a monetary composition or a forfeit;

- (2) reasonable legal expenses, including advocates' fees, which the officer incurred or with which he was charged by the Court, in a proceeding brought against him by the company, in its name or by another person, or in a criminal prosecution in which he was found innocent, or in a criminal prosecution in which he was convicted of an offense that does not require proof of criminal intent.
- (b) The provision on indemnification in the by-laws can be any one of the following
- (1) a provision that permits the company to give an undertaking in advance that it will indemnify its officer in each of the following (in this Law: undertaking to indemnify):
    - (1) as specified in subsection (a1), on condition that the undertaking to indemnify be limited to events that – in the opinion of the Board of Directors – are to be expected in the light of what the company actually does when the undertaking to indemnify is given, and also to an amount or criterion set by the Board of Directors as reasonable under the circumstances, and that – in the undertaking to indemnify – the events are stated which according to the Board of Directors are to be expected in the light of what the company actually does when the undertaking to indemnify is given, and also the amount or criterion set by the Board of Directors as reasonable under the circumstances;
    - (2) as specified in subsections a(a1) or (2);
  - (2) a provision that permits the company to indemnify its officer retroactively (hereafter: permission to indemnify).

### **Insurance of liability**

261. If the company's by-laws include a provision to that end, then it may enter into a contract for the insurance of an officer's responsibility for any liability that will be imposed on him in consequence of an act which he performed by virtue of being its officer, in each of the following spheres:

- (1) violation of the obligation of caution towards the company or towards another person;
- (2) breach of trust against the company, on condition that the officer acted in good faith and that he had reasonable grounds to assume that the act would not cause the company any harm;

- (3) a monetary obligation that will be imposed on him to the benefit of another person.

### **Change of by-laws**

262. (a) In a private company in which the shares are divided into categories, a decision to include a provision on exemption or indemnification in the by-laws requires – in addition to approval by the General Meeting – also approval by Category Meetings.
- (b) In a public company, in which the officer is a controlling member as defined in section 268, the decision of the General Meeting to include a provision on exemption, indemnification or insurance in the by-laws requires – in addition to the majority required for a change of the by-laws – also approval by the shareholders who do not have a personal interest in the approval of the decision, as required in respect of an exceptional transaction under the provisions of section 275(a)(3).

### **Invalid provisions**

263. A provision in the by-laws, which permits the company to enter into a contract for the insurance of its officer; a provision in the by-laws or a Board of Directors decision to permit indemnification of an officer; or a provision in the by-laws that exempts an officer from responsibility toward the company for any of the following shall not be valid:
- (1) a violation of the obligation of loyalty, except in respect of indemnification and insurance against a violation of the obligation of loyalty, as said in section 261(2);
  - (2) a violation of the obligation of caution, which was committed intentionally or rashly, except when it was committed only by negligence;
  - (3) an act committed with the intention to realize a personal illegal profit;
  - (4) a fine or monetary composition imposed on him.

### **No conditions**

264. (a) Any provision in the by-laws, in a contract or given in any other manner, which directly or indirectly makes the provisions of this Article conditional shall be of no effect.
- (b) An undertaking to indemnify or to insure an officer's responsibility in consequence of a breach of trust toward the company, other than a violation of the obligation of trust said in section 261(2), shall not be valid, and an officer shall not, directly or indirectly, accept such an undertaking; acceptance of a said undertaking constitutes a breach of trust.

## **CHAPTER FOUR: RIGHTS OF DIRECTORS**

### **The right to receive information**

265. (a) Every Director has the right to examine the company's documents and registers and to receive copies of them, and to examine the company's assets to the extent necessary in order to meet his obligations as a Director.
- (b) The company has the right to prevent the examination of a company document or asset by a Director, if the Board of Directors holds that the Director does not act in good faith and that a said examination is liable to harm the company's welfare.
- (c) On application by an Outside Director the Court may prescribe that the right said in subsection (a) apply also to the documents and registers of an associated company, if it is satisfied that the requested information is important for the exercise of the Outside Director's office.

### **May employ advisers**

266. (a) In special cases an Director may – in order to exercise his office – obtain professional counseling at the company's expense, if payment of the expense was approved by the company's Board of Directors or by the Court.
- (b) Before it decides on an application said in subsection (a), the Court shall weigh, inter alia, whether the company's experts do not provide the support required by the Director for the exercise of his office, whether the amount requested is reasonable in the light of the grounds for requesting the counseling, and the company's financial condition.

### **Right to sue**

267. (a) If a Director has reasonable grounds to assume that an act by an officer is about to occur, which is liable to constitute a breach of the officer's obligation, then he may – after he acted as said in section 257, if the circumstances made that possible – apply to the Court that it enforce the obligation or prevent the act; the Court may issue an order that will prevent the act or give any other relief, which it deems appropriate under the circumstances of the case.
- (b) The company shall bear all the expenses incurred by the Director who applied to the Court under this section, including Court fees and advocates' fees, at the time set by the Court, unless the Court prescribed otherwise.

## **CHAPTER FIVE: TRANSACTIONS WITH INTERESTED PARTIES**

### **Definition of controlling member**

268. In this Chapter, "**controlling member**" – a controlling member within

the meaning of the term in section 1, including a person who holds 25% or more of voting rights at the company's General Meeting, if there is no other person who holds more than 50% of the voting rights in the company; for purposes of holding, two or more person who hold voting rights in the company and each of whom has a personal interest in the approval of the same transaction up for approval by the company shall be deemed one holder.

### **Obligation of disclosure**

269. (a) If a company officer or a controlling member in a public company knows that he has a personal interest in an existing or proposed transaction of the company, then – without delay and not later than the Board of Directors meeting at which the transaction is first discussed – he shall disclose to the company the nature of his personal interest, including every substantive fact or document.
- (b) The provision of subsection (a) shall not apply when the personal interest stems only from the personal interest of a relative in a transaction that is not exceptional.
- (c) If an interested party, within the meaning of the term in section 270(5), or a person about to become a controlling member in consequence of a private offering knows that he has a personal interest in a substantive private offering, then he shall disclose the nature of his personal interest – including every substantive fact or document – to the public company without delay.

### **Transactions that require special approval**

270. The below specified transactions of a company require approval as prescribed in this Chapter, on condition that the transaction does not harm the company's welfare:
- (1) a transaction between the company and its officer and also a transaction between the company and another person, in which an officer in the company has a personal interest; however –
- (b) an officer in a parent company and also in a subsidiary under its complete control and ownership, shall not be deemed to have a personal interest in a transaction between the parent company and the subsidiary, only because he is an officer in both;
- (c) an officer in several subsidiaries that are wholly owned and wholly controlled by the same person shall not be deemed to have a personal interest in a transaction between aforesaid subsidiaries, by the very fact of being an officer of the contracting companies;
- (2) granting exemption, insurance, an undertaking to indemnify or the indemnification of an officer who is not a Director;
- (3) a contract of the company with its Director in respect of the conditions of his service, including the grant of exemption, insurance, an undertaking to indemnify or indemnification under a permit to indemnify, as well as a company's contract with its

- Director on conditions of his employment in other assignments (hereafter: service and employment conditions);
- (4) an exceptional transaction of a public company with its controlling member or an exceptional transaction of a public company with another person in which the controlling member has a personal interest, including a private offering that is a transaction in which the controlling member has a personal interest; and also a contract of a public company with its controlling member or with his relative, and if he also is an officer of the company – in respect of his service and employment conditions, and if he is a company employee and is not its officer – in respect of his employment by the company;
  - (5) (a) a private offering, to which one of the following applies:
    - (1) the offering gives 20% or more of the total effective voting rights in the company before the issue, all or part of the consideration for which is not cash or securities listed for trading on an Exchange, or which is not on market conditions, and in consequence of it a substantial shareholder=s holdings of the company=s securities will increase, or in consequence thereof a person will become a substantial shareholder after the issue (in this Law: interested party);
    - (2) in consequence thereof a person will become a controlling member of the company;
  - (b) for the purposes of this paragraph all private offerings, for which one of the following holds true, shall be deemed a single private offering:
    - (1) they were made in the course of twelve consecutive months to the same offeree, to somebody on his behalf, to his relative, to a body corporate under his or his relative=s control, and if the offeree is a body corporate – also to controlling members of the offeree, to relatives of the controlling members or to a body corporate controlled by the controlling member of his relative;
    - (2) they were made in the course of twelve consecutive months and the same asset was fixed as consideration for them, and different securities of one company shall be deemed the same asset;
    - (3) they are part of one transaction or the one is conditional on the other;
  - (c) for purposes of  $\Delta$ market conditions $\textcircled{a}$  in this paragraph, an offer will be deemed an offer on market conditions, if the Board of Directors determined on the basis of detailed reasons that the offering is on market conditions, unless it is proven differently, and for purposes of holding in this paragraph, securities that can be converted into or exercised as shares, which that person holds or which will be issued to him under the private offering, shall be treated as if they had



been converted or exercised.

### **Transactions that are not exceptional**

271. A transaction, for which the contents of section 270(1) hold true and which is not an exceptional transaction, does require approval by the Board of Directors, unless the by-laws prescribe a different manner of approval.

### **Exceptional transactions with officers**

272. (a) A transaction by a company, for which the contents of section 270(1) hold true and which is an exceptional transaction, or for which the contents of section 270(2) hold true, requires approval by the Audit Committee and then by the Board of Directors.
- (b) If a private company does not have an Audit Committee, then the transaction requires approval only by the Board of Directors, and if the officer is a Director – then also approval by the General Meeting.

### **Service and employment conditions**

273. A transaction by a company, for which the contents of section 270(3) hold true, requires approval by the Board of Directors and then approval by the General Meeting, and in a public company the transaction requires approval by the Audit Committee before the approval by the Board of Directors.

### **Private offering**

274. A substantive private offering requires the Board of Directors' approval and thereafter approval by the General Meeting.

### **Transaction with controlling member**

275. (a) If the contents of section 270(4) hold true for transaction, then it requires approval by the following in the following order:
- (1) the Audit Committee;
  - (2) the Board of Directors;
  - (3) the General Meeting, on condition that one of the following applies:
    - (a) the majority of votes at the General Meeting includes at least one third of all the votes of shareholders who do not have a personal interest in the approval of the transaction and who participate in the vote; abstentions shall not be included in the total of the votes of the aforesaid shareholders;
    - (b) the total of opposing votes from among the shareholders said in subparagraph (a) does not exceed 1% of all the voting rights in the company.
- (b) The Minister may prescribe proportions different from that said in subsection (a)(3)(b).

### **Disclosure of personal interest**

276. If a shareholder participates in a vote under section 275, then he shall inform the company before the vote – and if the vote is by proxy, on the proxy document – whether or not he has a personal interest in the approval of the transaction; if the shareholder did not inform as aforesaid, then he shall not vote and his vote shall not be counted.

### **Cumulative approvals**

277. If more than one alternative of the alternatives said in section 271 applies to a transaction, then the transaction acquires approval according to the provisions that apply to each of the alternatives.

### **Abstention by Directors**

278. (a) If a Director has a personal interest in a the approval of a transaction – other than a transaction as said in section 271 – brought for approval by the Audit Committee or the Board of Directors, then he shall not be present at the discussion and shall not participate in the vote in the Audit Committee and at the Board of Directors.
- (b) Notwithstanding the provisions of subsection (a), a Director may be present at the discussion in the Audit Committee and he may participate in the vote, if most of the members of the Audit Committee have a personal interest in the approval of the transaction, and a Director may also be present at the discussion in the Board of Directors and he may participate in the vote, if most of the members of the Directors of the company have a personal interest in the approval of the transaction.
- (c) If most of the Directors in the company' Board of Directors have a personal interest in the approval of a transaction as said in subsection (a), then the transaction also requires approval by the General Meeting.

### **Audit Committee in a public company**

279. The Audit Committee of a public company shall not be entitled to grant an approval required under this Chapter, unless – when the approval is given – its members include two Outside Directors and at least one of them was present at the meeting, at which the Committee decided to grant the approval.

### **Invalid transaction**

280. (a) A transaction of a company with its officer or a transaction of a public company with its controlling member shall be of no effect for the company, the officer or the controlling member, if the transaction was not approved in accordance with the provisions of this Chapter, if there was a substantive defect in the process of approval or if the transaction was carried out in substantive digression from the approval.
- (b) A transaction said in subsection (a) shall also be of no effect toward any other person, if that person knew of the officer's or the controlling member's personal interest in the approval of the

transaction and if he knew or should have known that there the transaction had not been approved as required by this Chapter.

### **Cancellation of transaction**

281. A company may cancel a transaction with another person that requires approval as said in this Chapter, other than a transaction said in section 271, and it may demand compensation from him for the damage caused to it even without cancellation of the transaction, if that person knew of the personal interest of the company officer in the approval of the transaction or of the personal interest of the controlling member in the public company in the approval and if he knew or should have known that the transaction had not been approved as required by this Chapter.

### **Approval by Board of Directors**

282. If a person received the Board of Directors' certification that all the necessary approvals of the transaction had been obtained, then it is assumed that he need not have known that an approval of the transaction required under this Chapter was missing.

### **Remedies**

283. (a) If an officer did not disclose his personal interest as said in section 269, then he shall be treated like a person who committed a breach of trust; if a controlling member did not disclose his personal interest as said in that section, then he shall be treated like a person who committed a violation of his obligation of fairness.

(b) If an interested party violated the obligation to disclose as said in section 269, or if a shareholder did not disclose his personal interest as said in section 276, then the company may sue him for the damages caused to it by the lack of disclosure.

### **Regulations**

284. The Minister may – after consultation with the Securities Authority – prescribe that provisions in this Chapter shall not apply to certain categories of transactions.

## **PART SEVEN: THE COMPANY'S CAPITAL**

### **CHAPTER ONE: SECURITIES AND ACTS WITH THEM**

#### **Article One: Free to Diversify**

#### **Free to diversify**

285. A company may have shares, debentures or other securities, each of

which has different rights.

## **Article Two: Registered Share Capital**

### **Increasing the registered share capital**

286. The General Meeting may increase the company's registered share capital by categories of shares, as it shall prescribe.

### **Cancellation of registered share capital**

287. The General Meeting may cancel registered share capital that has not yet been allocated, on condition that there are no undertakings of the company – including conditional undertakings – to allocate the shares.

## **Article Three: Issuing Securities**

### **Authority to issue shares and convertibles**

288. (a) The Board of Directors may issue or allocate shares and other securities, either convertible into or realizable as shares, up to the limit of the company's registered share capital; for this purpose, securities that can be converted into or realized as shares shall be treated as if they had been converted or realized on the date of their allocation.
- (b) The power of the Board of Directors, which is specified in subsection (a), can be delegated as specified in paragraphs (1) or (2) –
- (1) to a Board of Directors committee – in respect of the issue or allocation of securities as part of an employee remuneration program, or as part of employment or remuneration contracts between the company and its employees, or between the company and the employees of a connected company, to which the Board of Directors of that company agreed in advance, on condition that the issue or allocation is under a program that includes detailed criteria and was worked out and approved by the Board of Directors;
  - (2) to a Board of Directors committee, the general manager or the person who holds the said position (in this section: the general manager), or to another person whom the general manager recommended – in respect of the allocation of shares in consequence of the exercise or conversion of the company's securities.

### **Authority to issue debentures**

289. (a) The Board of Directors may decide to issue series of debentures, within the framework of its authority to borrow in the company's

- name, and within the limits of that authority.
- (b) The provisions of subsection (a) does not negate the power of the General Manager or of a person authorized by him to borrow in the company's name, to issue individual debentures, capital notes and bills of exchange, within the limits of his authority.

#### **Entitlement to participate in future issues**

290. (a) In a private company, the issued capital of which consists of one category of shares, each shareholder shall be offered shares in proportion to his proportion of the issued share capital; the Board of Directors may offer to another person the shares a shareholder refused to acquire or to the offer of which he did not respond until the last date set therefor in the offer, all if there are no different provisions in the by-laws.
- (b) If a company incorporated before this Law went into effect and if in its by-laws it explicitly made conditional section 42 of Schedule Two of the Companies Ordinance, as it was immediately before this Law went into effect, then its by-laws shall be deemed to make the provisions of subsection (a) conditional.

#### **Allocation not for cash**

291. A company shall not allocate a share, all or part of the consideration of which is not to be paid in cash, unless the consideration for the share was specified in a written document.

#### **Report of allocation**

292. A private company must deliver the following documents to the Registrar within 14 days after the allocation of shares:
- (1) a report on a form to be prescribed by the Minister, specifying the particulars of the allocation;
  - (2) if section 291 applies to the allocation – the document said in that section.

### **Article Four: Transfer of Securities**

#### **Transferability**

293. It is assumed in respect of every security that it can be transferred in accordance with the provisions of this Law.

#### **Restriction on transferability**

294. A company may include a provision in its by-laws that restricts the transferability of shares, on conditions that shall be prescribed in the by-laws.

#### **Joint owners**

295. Part of a share cannot be transferred, but it is possible for a share to have several joint owners, and each has the right to transfer his right, unless the right to do so was restricted in the by-laws.

### **Bearer securities**

296. (a) A bearer security is a security, the consideration for which was paid to the company in full, and for which a certificate to that effect was issued.
- (b) Possession of the note is a priori proof of its ownership.

### **Negotiability**

297. A bearer security is a negotiable instrument, transferred by delivering the certificate to the transferee.

### **Acquisition on the stock exchange**

298. The provisions of section 34 of the Sale Law 5728-1968 shall apply to a person who acquired a security in trading on an exchange, and he shall be treated like a person who acquired it from a person engaged in the sale of assets of the category of the item sold, the sale being the ordinary course of his business.

### **Change of Register**

299. In each of the following cases a company shall change the entry of ownership of shares in the Shareholders Register, as said in section 130(a)(1):

- (1) a writ of the share's transfer, signed by the transferor and the transferee, was delivered to the company and the requirements of the by-laws, if any, were complied with;
- (2) a Court order to correct the register was delivered to the company;
- (3) it was proved to the company that lawful conditions for the transfer of the right have been complied with;
- (4) some other condition was complied with, which under the by-laws suffices for a change in the Shareholders Register.

### **Forced sale**

300. (a) A public company may prescribe in its by-laws that any person entitled to its shares by operation of Law – including the executor of a will, estate administrator, liquidator and trustee in bankruptcy – shall have to propose to the company or to the other shareholders that they acquire the shares to which he is entitled, against their fair value as will be agreed between the parties, and in the absence of agreement – as the Court will decide on application by the company or by the other shareholders, all subject to the provisions of the by-laws and to the provisions of this Law.
- (b) If, after 90 days passed since the proposal of the person entitled to the shares, the fair value of the shares was not agreed on, and if no application was made to the Court, then the shares shall be registered in the name of the person entitled to them.

## CHAPTER TWO: PRESERVATION AND DISTRIBUTION OF CAPITAL

### Article One: Permitted Distribution

#### Not conditional

301. (a) A company may make a distribution only under the provisions of this Chapter; however, a company may undertake in its by-laws or in a contract that it will not make distributions within limitations additional to the provisions of this Chapter.
- (b) A distribution in contradiction to the provisions of this Chapter is a prohibited distribution.

#### Permitted distribution

302. (a) A company may make a distribution out of its profits (hereafter: profit criterion), on condition that there is no reasonable suspicion that the distribution will keep the company from meeting its existing and expected obligations when they fall due (hereafter: criterion of the ability to pay).
- (b) In this section –
- "profits"**, for purposes of the profit criterion – a profit balance or profits accrued in the last two years, whichever is the larger amount, all according to the last adjusted audited or surveyed financial reports prepared by the company, subtracting earlier distributions if they were not already subtracted from surpluses, on condition that the date for which the financial reports were drawn up is not more than six months earlier than the distribution;
- "adjusted financial reports"** – financial reports adjusted to the index or financial reports that take or will take their place, all in accordance with accepted bookkeeping rules;
- "surpluses"** – amounts included in the company's equity, which stem from its net profit as determined under accepted bookkeeping rules, and also other amounts included in the equity according to accepted bookkeeping rules, which are not share capital or premiums, which the Minister decided should be treated like surpluses.
- (c) The Minister may prescribe provisions on the matter of assumptions to be made about the company's ability to comply with the conditions of the criterion of the ability to pay, as well as exemptions and relaxations on the matter of the adjustment of financial reports.

#### Distribution with Court approval

303. (a) The Court may – on application by a company – permit it to make a distribution that does not comply with the profit criterion, on condition that it is satisfied that it meets the test of the ability to pay its obligations

- (b) The company shall inform its creditors in a manner to be prescribed by the Minister that it applied to the Court as said in subsection (a).
- (c) A creditor may apply to the Court and object to the company's application for permission to make the distribution.
- (d) After the Court has given objecting creditors an opportunity to state their arguments, it may approve the company's application in whole or in part, reject it or make its approval subject to conditions.

### **Allocating shares at less than their nominal value**

304. (a) If a company decided to allocate shares with a nominal value for a consideration that is less than the nominal value, including bonus shares, then it must convert into share capital part of its profits within their meaning in section 302(b), of share premiums, or of any other source included in its equity in its last financial reports, in an amount equal to the difference between the nominal value and the consideration.
- (b) The Court may – on the company' application and on conditions which it shall prescribe – allow the company to make a share allocation for a consideration that is less than their nominal value, otherwise than provided in subsection (a).

### **Regulations**

305. The Minister may prescribe provisions for the implementation of this Chapter.

## **Article Two: Dividends**

### **Right to dividend or to bonus shares**

306. (a) A shareholder has the right to receive a dividend or bonus shares, if the company so decided.
- (b) If the company's capital includes shares of different nominal values, then the dividends or bonus shares shall be distributed in proportion to the nominal value of each share, unless the by-laws provide differently.

### **Decision to distribute dividend**

307. A company's decision to distribute dividends shall be adopted by the company's Board of Directors, but a company may prescribe in its by-laws that the decision be adopted in one of the following two manners:
- (1) at the General Meeting, after the Board of Directors' recommendation was brought before it; the meeting may accept the recommendation or reduce the amount, but it must not increase it;
  - (2) in the company's Board of Directors, after the General Meeting set the maximum amount of the distribution;
  - (3) in some other manner prescribed in the by-laws, on condition that



the Board of Directors was given a suitable opportunity to determine – before the distribution is made – that the distribution is not a prohibited distribution.

### **Article Three: Acquisition**

#### **Results of acquisition**

308. (a) If a company acquired one of its shares, then it may cancel it; if the company did not cancel the said share, then the share shall not give any rights whatsoever (hereafter: dormant share) as long as the dormant share is owned by the company.
- (a) If a company acquired securities that can be converted into or exercised as shares of the company, then it may cancel them; if the company did not cancel the said securities, then the company may again sell them; shares converted or exercised as aforesaid shall be dormant shares as long as they are owned by the company.

#### **Acquisition by controlled body corporate**

309. (a) A subsidiary or some other body corporate under the parent company's control (in this section: acquiring body corporate) may acquire shares or securities that can be converted into or exercised as shares of the parent company to the extent to which the parent company is allowed to make a distribution, on condition that the subsidiary's Board of Directors or the Directors of the acquiring body corporate determined that – had the acquisition been by the parent company – the acquisition would have been a permitted distribution.
- (b) If a parent company's share was acquired by a subsidiary or by an acquiring body corporate, then the share shall not give voting rights as long as it is owned by the subsidiary or by the acquiring body corporate.
- (c) If a prohibited distribution was made, then the refund said in section 310 shall be made to the subsidiary or to the acquiring body corporate and the provisions of section 311 shall apply, mutatis mutandis, to the Directors of the subsidiary and to the Directors of the acquiring body corporate; however, if the parent company's Board of Directors determined that the distribution is permitted, then the responsibility shall be that of the parent company's Directors, as said in section 311.
- (d) Notwithstanding the provisions of subsection (a), acquisition by a subsidiary or by an acquiring body corporate that is not wholly owned by the parent company constitutes a distribution in an amount equal to the amount of the acquisition, multiplied by the proportion of rights in the subsidiary's capital or in the capital of the acquiring body corporate held by the parent company.

### **Acquisition of securities that can be converted into shares**

309A. The acquisition of securities that can be converted into shares, up to the amount that on the last adjusted financial reports was shown as a short or long term obligation because of the said securities, shall not be deemed a distribution.

## **Article Four: Prohibited Distribution**

### **Results of prohibited distribution**

310. (a) If a company made a prohibited distribution, then the shareholder must return to the company whatever he received, unless he did not know and did not need to know that the distribution carried out was prohibited.
- (b) It is assumed that a shareholder in a public company, who at the time of the distribution is not a Director, General Manager or controlling member of the company, did not know and did not need to know that the distribution carried out was a prohibited distribution.

### **Directors' responsibility for prohibited distribution**

311. If a company carried out a prohibited distribution, then every person who was a Director at the time of the distribution shall be treated like a person who thereby committed breach of his obligations under sections 252, 253 or 254, as the case may be, unless he proved one of the following:
- (1) that he opposed the prohibited distribution and took all reasonable steps to prevent it;
  - (2) that he exercised reasonable reliance on information under which – had it not been misleading – the distribution would have permitted;
  - (3) that under the circumstances of the case he did not know and did not need to know of the distribution.

## **Article Five: Redeemable Securities**

### **Redeemable securities**

312. (a) Notwithstanding the provisions of section 302, a Company may include in its by-laws a provision that allows it to issue securities that can be redeemed on conditions that will be prescribed in the said provision (hereafter: redeemable securities).
- (b) If a company issued redeemable securities, then it is entitled to redeem them and the restrictions prescribed in this Chapter shall not apply to the redemption.
- (c) If a company issued redeemable securities, then it is entitled to attach to them some of the characteristics of shares, including the

- right to vote and the right to participate in profits.
- (d) Redeemable securities shall not be deemed part of the company's equity, no matter what they are called, unless the right to redeem them is restricted to the case of the company's liquidation after the payment of all the company's obligations to its creditors at the time of the liquidation; if the right to redeem the securities was restricted as aforesaid, then the provisions of this Law shall apply to the matter of distribution, notwithstanding the provisions of subsection (b).

### **Transitional provisions**

313. Redeemable shares issued in accordance with section 141 of the Companies Ordinance, as it stood immediately before this Law went into effect, shall be deemed part of the company's capital, and they may be redeemed subject to the provisions of this Chapter, on the conditions and in the manner prescribed in the by-laws.

## **PART EIGHT: ACQUISITION OF COMPANIES**

### **CHAPTER ONE: MERGER**

#### **Approvals in the company**

314. A merger requires approval by the Board of Directors and by the General Meeting in each of the merging companies, in accordance with the provisions of this Chapter.

#### **Merger that affects adversely a company's ability to pay**

- 315 (a) The Board of Directors of a merging company, which considers whether to approve the merger, shall discuss and determine – taking the company's financial situation into account – whether in its opinion there is a reasonable suspicion that in consequence of the merger the merged company will not be able to meet the company's obligations to its creditors.
- (b) If the Board of Directors determined that there is a suspicion as said in subsection (a), then it shall not approve the merger.

#### **Merger proposal**

316. If each of the Boards of Directors of the merging companies approved the merger, then they shall jointly draw up a proposal for the approval of the merger (hereafter: merger proposal) and sign it.

#### **Notice to Companies Registrar**

317. (a) A merging company shall deliver the merger proposal to the Companies Registrar within three days after the General Meeting was called.

- (b) A merging company shall inform the Companies Registrar of the General Meeting's decision within three days after the decision was adopted, shall inform him that notice was given to the creditors under section 318, and shall also deliver to the Registrar a copy of the Court decision under sections 319 to 321 within three days after a said decision was given.

#### **Notice to creditors**

318. (a) A merging company shall send the merger proposal to the company's secured creditors not later than three days after the date on which the merger offer was submitted to the Registrar.
- (b) A merging company shall inform its non-secured creditors of the merger proposal and its contents, as the Minister shall prescribe.

#### **Objection by creditors**

319. On the application by a creditor of a merging company the Court may order that the implementation of the merger be delayed or prevented, if it concludes that there is a reasonable suspicion that in consequence of the merger the absorbing company will not be able to meet the merging company's obligations, and it may issue instructions for the protection of the creditors' rights.

#### **Approval of merger**

320. (a) A merger requires approval by the General Meeting of each of the merging companies.
- (a1) Notwithstanding the provision of subsection (a), a merger does not require approval by a General Meeting in each of the following instances:
    - (1) in a target company that is wholly owned and controlled by the merging company;
    - (2) in the merging company, if all the following apply:
      - (a) the merger does not involve a change of the memorandum and by-laws of the merging company;
      - (b) the merging company does not allocate more than 25% of the voting power in the company as part of the merger, and in consequence of the allocation no person will become a controlling member of the merging company, as defined in section 268; for this purpose, securities that can be converted into or exercised as shares, which that person holds or which will be allocated to him as part of the merger, shall be treated as if they had been converted or exercised;
      - (c) the circumstances, which require approval by the General Meeting under subsections (c) and (d) do not obtain.
  - (b) If the target company's shares are divided into categories, then the merger also requires approval by Category Meetings in the target company.
  - (c) At the vote in the General Meeting of a merging company, shares

of which are held by the other merging company or by a person who holds 25% or more of any of the means of control in the other merging company, the merger shall not be approved if it is opposed by the shareholders who hold most of the voting rights among participants in the vote, other than abstentions, who are not part of the other merging company, the person who holds as aforesaid or anybody on their behalf, including their relatives or bodies corporate under their control; however, a person shall not be deemed to have holdings in the other merging company if his holdings stem only from the shareholdings in the merging company.

- (d) If a person holds 25% or more of any kind of means of control in several merging companies, then the merger proposal shall require approval as said in subsection (c) in each of the said merging companies.
- (e) Shareholders who participate in the vote shall inform the company before the vote – or, if the vote is by proxy, then on the proxy document – whether their shares are held by the other merging company or by a person said in subsection (c), or that they are not held as aforesaid; if a shareholder did not deliver this information, then he shall not vote and his vote shall not be counted.
- (f) The provisions of section 275(a)(3) shall not apply to a merger proposal that requires approval as said in subsection (c).

#### **Approval by the Court**

321. (a) If the General Meeting of a merging company approved the merger proposal according to section 320(a), then the Court may – on application by shareholders who hold at least 25% of all the voting rights in the company – determine that the company approved the merger, even if the merger was not approved by all Category Meetings of the merging company under section 320(b), or even if the merger proposal did not win the majority of the General Meeting of the merging company required under section 320(c).
- (b) The Court shall approve an application for approval of a merger only if it is satisfied that the merger proposal is fair and reasonable, taking into consideration the estimated valuation of the merging companies and the consideration offered to the shareholders.

#### **Restrictive trade practices**

322. If a company received notification from the Controller of Restrictive Business Practices, within the meaning of the term in the Restrictive Business Practices Law 5748-1988, then it shall inform the Registrar – within three days after it received the notification – if that can delay or impede implementation of the merger, or if it removes a said delay or impediment; when a notice of delay or impediment has been received by the Registrar, then the merger shall not be carried out as long as the

delay or impediment has not been removed.

### **Results of merger**

323. If the Companies Registrar received all the approvals of the merger required under this Chapter from each of the merging companies, and if thirty days have passed since the resolution was adopted by the General Meeting of each of the merging companies, and fifty days since the day on which the merger proposal was submitted to the Companies Registrar, then the merger shall be carried out as follows:
- (1) all assets and obligations of the target company, including conditional, future, known and unknown obligations shall be transferred and vested in the absorbing company;
  - (2) in any legal proceeding, including execution proceedings, the absorbing company shall be treated as if it were the target company;
  - (3) the Registrar shall transfer the target company's register of charges, within its meaning in section 181 of the Companies Ordinance, to the register of charges of the absorbing company;
  - (4) the target company shall be liquidated and the Registrar shall delete it from his Registers;
  - (5) the Registrar shall give the absorbing company a certificate as evidence that the merger was carried out, and he shall record the fact of the merger in the Register of the absorbing company.

### **May make conditional**

324. The provisions of this Chapter shall not prevent a company from undertaking – in a contract or in the by-laws – to refrain from entering into a merger or to make a merger subject to conditions.

### **Floating charge in merging company**

325. A floating charge on some or all of the assets of a merging company, which restricts the company's right to create charges, shall not have precedence over a floating charge created in the other merging company before the merger.

### **Regulations on merger**

326. The Minister may prescribe rules for the implementation of this Chapter, inter alia on the particulars that must be included in the merger proposal and on additional rights to of information that must be given to creditors or to categories of creditors, as well as on the registration of the transactions that arise out of the merger; in respect of a merging public company the provisions shall be made after consultation with the Securities Authority.

### **Transitional provisions on mergers**

327. (a) If a company incorporated before this Law went into effect, then it shall be assumed that its by-laws include a provision according to which approval of a merger requires a majority of three fourths of the shareholders participating in the vote – other than abstentions

- at the General Meeting, and the provisions of section 20 shall apply.
- (b) If there are floating charges – at least one of which was created shortly before this Law went into effect – on the assets of several merging companies, so that after the merger it will not be possible to differentiate between the assets covered by each floating charge, then the floating charges shall be combined at the merger, unless agreement was obtained from the creditors, for the protection of whose rights the said charges were created, that the charges be changed in a manner that creates a differentiation between the assets subject to each charge, or to the distribution of the consideration from the realization of assets subject to those charges.

## **CHAPTER TWO: SPECIAL PURCHASE OFFER**

### **Acquisition of controlling parcel or of control**

328. (a) An acquisition, in consequence of which a person becomes the owner of a controlling parcel shall not be carried out in a public company, if there is no owner of a controlling parcel in the company, and also no acquisition shall be carried out, in consequence of which the proportion of the acquirer's holdings rises above 45% of the voting rights in the company, if there is no other person who holds more than 45% of the voting rights in the company, except by way of a purchase offer under the provisions of this Chapter (hereafter: special purchase offer).
- (b) The provisions of subsection (a) shall not apply –
- (3) to an acquisition of shares in a private offering, on condition that the General Meeting approved the acquisition as a private offering, the purpose of which is to give the offeree a controlling parcel if there is no holder of a controlling parcel in the company, or as a private offering, the purpose of which is to give 45% of the voting rights in the company, if there is no person who holds 45% of the voting rights in the company;
  - (4) acquisition from the owner of a controlling parcel, in consequence of which a person will become the owner of a controlling parcel;
  - (5) acquisition from whoever holds more than 45% of the voting rights in the company, in consequence of which the purchaser's holdings will increase to more than 45% of the voting rights in the company.
- (c) To a special purchase offer shall apply the provisions of this Chapter, in addition to provisions under any enactment on purchase offers, to the extent that they do not conflict with the

provisions of this Chapter.

### **Opinion of the Board of Directors**

329. If a special purchase offer was made, then the Board of Directors of the target company shall express its opinion to the offerees on the advantages of the special purchase offer, or it shall refrain from expressing its opinion on the advantages of the special purchase offer, if it cannot do so, on condition that it report the reasons for its abstention; the Board of Directors shall also disclose any personal interest of each of the Directors in the purchase offer or in its consequences.

### **Obligations of officers**

330. (a) If an officer of a target company by virtue of his position performs acts – other than acts said in subsection (b) – the purpose of which is to cause an existing or expected special purchase offer to fail or to affect adversely the chance of its acceptance, then he shall be responsible to the offeror and to the offerees for their damages that are due to his action, unless he acted in good faith and if he had reasonable grounds for believing that the action taken was to the benefit of the company.
- (b) An officer may negotiate with the offeror about an improvement of the terms of his offer, and he may also negotiate with others in order to formulate a competing purchase offer.

### **Agreement of shareholders**

331. (a) A special purchase offer shall be addressed to all offerees, and the offerees may announce their agreement or their opposition to the special purchase offer.
- (b) A special purchase offer shall only be accepted by vote of a majority among the offerees who announced their stand on it and agreed to the offer.
- (c) Not be taken into account when counting the votes of the offerees, shall be the votes of a controlling member of the offeror or of the person who owns a controlling parcel of shares in the company or of persons on his behalf or on that of the offeror, including their relatives and bodies corporate under their control.
- (d) If a special purchase offer was accepted, then all offerees who had not announced their stand on the purchase offer or who had opposed it may agree to the proposal, not later than four days after the last date for acceptance of the purchase offer, or by another date to be set by the Minister for this purpose, and they shall be treated like persons who agreed to the offer from the beginning.

### **Minimal response**

332. A special purchase offer shall not be accepted, unless shares that carry at least 5% of the voting rights in the company were bought under it.



### **Consequences of prohibited acquisition**

333. (a) Shares acquired in violation of the provisions of this Chapter shall not carry any rights whatsoever and they shall be dormant shares, within their meaning in section 308, as long as they are owned by the acquirer.
- (b) Without derogating from the provision of subsection (a), if the proportion of a person's holdings of voting rights – other than by an acquisition in accordance with the provisions of section 328 – increased to a degree that gives him a controlling parcel, there being no holder of a controlling parcel in the company, or increased to a proportion in excess of 45% of the voting rights in the company, there being no other person who holds more than 45% of the voting rights in the company, also because company shares became dormant in consequence of a distribution, then shares in his possession in excess of 25% or of 45%, as the case may be, shall not carry voting rights as long as they are in his possession.
- (b1) As soon as possible after he learned of the fact, a shareholder shall report to the company about shares held by him, which do not give voting rights.
- (c) A violation of the provisions of this Chapter constitutes a violation of a legal obligation toward the company's shareholders.

### **Subsequent purchase offer and subsequent merger**

334. If a special purchase offer was accepted, then the offeror, any person in control of him when the offer was made and any body corporate under their control shall not make another offer to purchase the company's shares during one year after the date of the purchase offer, unless they undertook to do so in the special purchase offer.

### **Regulations**

335. The Minister may, after consultation with the Securities Authority, prescribe provisions for the implementation of this Chapter, inter alia on ways of delivering the special purchase offer to the offerees and of receiving their notifications, and as part thereof he may make applicable provisions that apply to proxies, and he may also set the times according to which a special purchase offer shall be conducted and when the Board of Directors shall give its opinion.

## **CHAPTER THREE: FORCED SALE OF SHARES**

### **Article One: Acquisition of Minority Shares by the Controlling Member in a Public Company**

#### **Full purchase offer**

336. (a) A person shall acquire shares or a category of shares of a public company to the point where after the acquisition he has a holding of more than 90% of the public company's shares or of a category of the shares, only by way of a purchase offer for all the shares or the category of shares (hereafter: full purchase offer), which was accepted in accordance with the provisions of this Chapter.
- (b) If a person holds more than 90% of all the shares of a public company, as said in subsection (a), or of a category of shares, then he shall not acquire additional shares as long as he holds shares to the said degree.
- (c) Notwithstanding the provisions of subsection (b), if on November 1, 2000, a person held shares to the extent said in subregulation (b) according to the Law in effect immediately before the said day, then he shall acquire additional shares only by means of a full purchase offer that was accepted by the offerees, where the proportion of offerees that did not accept the offer constitute less than half of the issued share capital or of the issued share capital of the category of shares in respect of which the offer was made; if a full purchase offer was accepted as said in this subsection, then all the shares the offeror had offered to acquire shall pass into his ownership, and the records of share ownership shall be changed accordingly.

#### **Forced sale**

337. (a) If a full purchase offer was accepted by the offerees, so that the holdings of offerees who did not accept the offer amount to less than 5% of the issued share capital or of the issued capital in the category of shares in respect of which the offer was made, then all the shares which the offeror intended to buy shall pass to his ownership and the Registers of share ownership shall be changed accordingly.
- (b) If a full purchase offer was not accepted as said in subsection (a), then the offeror shall not acquire from offerees who responded favorably shares that will give him a holding of more than 90% of all the shares or of all of the category of shares in respect of which the offer was made.

#### **Redress of valuation**

338. (a) On application by any person who was an offeree in a full purchase offer that was accepted as said in sections 336(c) and 337(a), the Court may determine that the consideration for the shares was less than their fair value, and that the fair value shall

- be paid as determined by the Court.
- (b) An application said in subsection (a) shall be submitted not later than three months after the date on which the full purchase offer was accepted; it is possible to request that an application said in subsection (a) be brought as a class action, and the provisions of section 209 shall apply.

### **Converting public company into private company**

339. If a full purchase offer was accepted in accordance with the provisions of this Article, and if the offer was for the company's single category of shares or for each of the categories of the company's shares held by the public, then the company shall become a private company.

### **Consequences of prohibited acquisition**

340. (a) Shares acquired in violation of the provisions of this Chapter shall not carry rights and shall be dormant shares, within their meaning in section 308, as long as they are held by the acquirer.
- (b) A violation of the provisions of this Chapter constitutes a violation of a legal obligation toward the company's shareholders.

## **Article Two: Authority to Acquire Shares of Opposing Shareholders in a Private Company**

### **Authority to acquire shares of opposing shareholders in a private company**

341. (a) If a person offered to buy the shares or a category of the shares of a private company (in this Article: the offeror), and if shareholders in whose possession are 80% of the shares to be transferred agreed to the proposal within two months, then – within one month after the end of the said two months – the offeror may, in a manner to be prescribed by the Minister, announce to every shareholder who had not agreed to the offer (in this Article: opposing shareholder) that he wishes to acquire his shares; in the count of the said shareholders shall not be included the offeror's controlling member or anybody on the controlling member's or the offeror's behalf, including their relatives and bodies corporate under their control.
- (b) If the offeror announced as said in subsection (a), then the opposing shareholders must sell their shares and the offeror must acquire them on the conditions proposed to the shareholders who agreed to the transfer, unless the Court decided otherwise on application by an opposing shareholder, which was submitted within one month after the date of the announcement.
- (c) If the offeror announced as said in subsection (a) and if no other decision was made by the Court, then one month after the date of his announcement – and if at that time an application by an

opposing shareholder was pending before the Court, after the Court decided – the offeror shall send a copy of his announcement to the company and transmit to it the consideration for the shares which he must acquire under this section and the company shall record the offeror as the owner of those shares.

- (d) A proportion different from that stated in subsection (a) may be prescribed in the company's by-laws; a decision to change the by-laws as aforesaid shall be adopted as said in section 20.

### **Transitional provision**

342. If a company incorporated before this Law went into effect, then it shall be treated as if its by-laws include a provision, according to which approval of a proposal said in section 341 shall require a majority of shareholders who have 90% of the shares to be transferred; however, a decision to change the by-laws, so that the said majority percentage will be reduced, shall be adopted in the manner prescribed under section 350(a), (i) (k) and (l), or by agreement of all shareholders in the company.

### **By-laws**

342A. The Minister may, after consultation with the Securities Authority, prescribe provisions for the implementation of this Chapter, including on the ways in which a full purchase offer is to be communicated to the offerees and their notifications are to be received, and as part thereof he may make the provisions on ballots applicable, and he may also set the times, according to which a full purchase offer shall be conducted.

## **PART NINE: GENERAL PROVISIONS**

### **CHAPTER ONE: CHANGE OF CATEGORY OF BODY CORPORATE**

#### **Company becomes a private or a public company**

343. (a) A private company that became a public company or a public company that became a private company shall so inform the Companies Registrar within 14 days after that event.
- (b) The Minister may, after consultation with the Securities Authority, prescribe provisions for the implementation of this section, including provisions on documents that shall be transmitted from the Companies Registrar to the Securities Authority, or from it to the Companies Registrar.

#### **Change of liability of shareholders**

344. (a) A company, in which the shareholders' liability is not limited may change its by-laws and prescribe – with the Court's approval of an

application under section 350(a) and on conditions which the Court shall set – that the liability of its shareholders is limited; the Minister may prescribe provisions for the implementation of this section.

- (b) A company, in which the shareholders' liability is limited may change its by-laws with the consent of all its shareholders and prescribe that the liability of its shareholders is not limited.

**Converting a cooperative society into a company**

345. (a) A registered cooperative society (in this section – society) that wishes to be registered as a company shall prepare a plan for its organization as a company and submit it for approval by the Registrar of Cooperative Societies, within the meaning of that term in the Cooperative Societies Ordinance.
- (b) The Minister may, in consultation with the Minister of Labor and Social Welfare, prescribe the conditions on which the Registrar of Cooperative Societies may approve a plan submitted to him under the provisions of subsection (a), including conditions the purpose of which is to assure that the status of the society's creditors not change for the worse.
  - (c) If the Registrar of Cooperative Societies approved the plan, then the plan shall be brought for approval of a General Meeting of the society, notification of which had been duly given 21 days in advance and in which the plan had been specified; if the plan is adopted by a majority of at least three fourths of the members entitled to vote and voting in person or by proxy, then the by-laws shall be drawn up in accordance with this Law, and a copy of thereof shall be submitted to the Companies Registrar together with the application for registration, and fees shall be paid as the Minister will prescribe.
  - (d) If the Companies Registrar approved the registration then he shall so inform the Registrar of Cooperative Societies, who shall cancel the society's registration as a Cooperative Society and publish a notice to that effect in Reshumot; after the cancellation the Companies Registrar shall register the society as a company.
  - (e) When the society has been registered as a company, the Registrar of Cooperative Societies shall transfer to the Companies Registrar a copy of all the entries in his Register of Charges, which relate to charges created by the society before it was registered as a company and which existed at the time of the registration, and official copies of all the documents in his possession that create or witness those charges, and the Companies Registrar shall register the charges and the particulars of each charge in the official copy without any fee.
  - (f) All assets and obligations, including known and unknown, existing and conditional obligations of the society shall pass to the company with the registration, and all legal proceedings to which the society is party may be continued with the company being the party to those proceedings.

## CHAPTER ONE "A": PUBLIC BENEFIT COMPANY

### Public benefit company

- 345A. (a) A public benefit company is a company the by-laws of which prescribe only public purposes and also forbid any distribution of profits or any other distribution to its shareholders (in this Chapter: distribution of profits).
- (b) In this Chapter, "**public purposes**" – any purpose specified in the Schedule; the Minister may, with approval by the Knesset Constitution, Law and Justice Committee, change the Schedule.

### Registering a public benefit company

- 345B.(a) Whoever wishes to register a company, the by-laws of which prescribe only public purposes and also forbid any distribution of profits, shall declare before the Registrar that he wishes to register a public benefit company; two copies of the following documents shall be attached to the application:
- (1) documents according to section 8, including by-laws that determine that the company is a public benefit company according to the requirements of this Chapter;
  - (2) a declaration by the first members of the Audit Committee that they are prepared to serve as Audit Committee members, formulated like the declaration of first directors, mutatis mutandis;
  - (3) the name and address of the entrepreneur;
  - (4) a detailed list of the assets that will be vested in the company, registration of which is applied for, and the sources from which they will be transferred;
  - (5) a declaration of the shareholders, the first directors and the first Audit Committee members that they know that the registration of a public benefit company is being applied for.
- (b) When the Registrar finds that the registration of a public benefit company or a change of by-laws under subsection (c) is being applied for, then he shall register the company or the change of by-laws only after the Registrar of Endowments has certified that – after its registration or after the change of the by-laws – it will comply with the conditions said in section 345A(a), that its by-laws are in accord with the provisions of this Chapter, and that after all the information requested for this purpose has been provided; the Registrar of Endowments shall give his reply within 45 days after he received all the documents and information required for this matter.
- (c) When a company has adopted a decision to change its by-laws, in consequence whereof it will meet the conditions said in section 345A(a), then it shall inform the Registrar thereof in an affidavit signed by a majority of its Directors and its general manager, and the said decision shall be of effect only after the change was registered by the Registrar; the documents said in subsection (a) shall be attached, mutatis mutandis, to the company's application

- for registration of the change of the by-laws.
- (d) After a public benefit company has been registered or after a change of by-laws has been registered, the company shall receive a certificate of registration or an amended certificate of registration, in which shall be stated that it is a public benefit company and that certification thereof by the Registrar of Endowments has been received.
  - (e) When the Registrar has registered a public benefit company or when he has registered a said change of a company's by-laws, he shall transmit to the Registrar of Endowments a copy of the certificate of registration or of the amended certificate of registration, as well as a copy of the documents delivered under subsections (a) or (c), as the case may be, for purposes of its registration in the Register, as said in section 345C.
  - (f) When a company's certificate of registration states that it is a public benefit company and the certification of its registration has been received from the Registrar of Endowments, then it shall be deemed a company registered in the Register as said in section 345C.
  - (g) If the company did not make the declaration before the Registrar as said in this section, that shall not derogate from the fact that it is a public benefit company and it must submit an application to the Registrar of Endowments for registration in the Register as said in section 345C, together with a copy of its Certificate of Incorporation and a list of the shareholders and Directors of the company, as well as the documents said in subsection (a); upon receipt of notice from the Registrar of Endowments, as said in section 345C(c), that the said company was registered in the Register, the Registrar shall amend the company's Certificate of Incorporation as said in subsection (d), *mutatis mutandis*.
  - (h) The Minister may prescribe forms for the submission of applications under this section, as well as additional documents that shall be attached to the application.

### **Register of Public Benefit Companies**

- 345C.(a) The Registrar of Endowments shall keep a register of Public Benefit Companies (in this Chapter: the Register).
- (b) The Register shall be open for inspection by the public and all persons may inspect it.
  - (c) When the Registrar of Endowments receives from the Registrar the Certificate of Incorporation of a public benefit company and the documents that were delivered to him in its respect under section 345B(e), he shall register it in the Register; when the Registrar of Endowments receives an application from a public benefit company for registration in the Register, then he shall register it in the Register and give notice of the registration to the company and to the Registrar, if he certified that its by-laws accord with the provisions of this Chapter, and that after all the information requested on this matter was provided.

- (d)
  - (1) Without derogating from the obligation of a public benefit company to submit an application for its registration under the provisions of section 345B, if the Registrar of Endowments learns in some other manner that there is a company that acts only for public purposes and prohibits the distribution of profits, then he shall register it in the Register.
  - (2) Registration as said in paragraph (1) shall be made after the Registrar of Endowments sends notice to the company by registered mail, that he intends to register it in the Register; if the company does not react to the notice within 45 days after the notice was sent, then the Registrar of Endowments shall register it in the Register and give notice thereof to the company and to the Registrar.
  - (3) When the Registrar received the notice from the Registrar of Endowments he shall correct the company's Certificate of Incorporation as said in section 345B(d) and deliver it to the company, and the company shall be deemed a public benefit company.
- (e) The Minister may prescribe the particulars that are to be included in the Register.

#### **Adding "P.B.C." to the company's name**

- 345D. (a) A public benefit company that is registered in the Register shall write next to its name on every document, sign or publication issued on its behalf the remark "Public Benefit Company" or "(P.B.C.)".
- (b) A company that is not a public benefit company, as well as a public benefit company that was not registered in the register, shall not add the remark said in subsection (a) to its name and it shall not present itself in any other manner as a public benefit company.

#### **Restrictions on changes of the by-laws**

- 345E. (a) Notwithstanding the provisions of section 20, a public benefit company does not have the right to change, either directly or indirectly, the purposes set in its by-laws, including the provisions of the by-laws that deal with the disposition of assets upon liquidation, or the provisions of its by-laws that prohibit the distribution of profits, and it shall not – directly or indirectly – include in its by-laws any provision that conflicts with the provisions of section 345G; any said change of the by-laws shall be without effect, unless the change was approved according to the provisions of this section.
- (b) Notwithstanding the provisions of subsection (a), a public benefit company may – according to the provisions of section 20 – replace a public purpose set in its by-laws, including the provisions of its by-laws on the disposition of its assets upon liquidation, with another public purpose, and it may also add a public purpose to the public purposes set in its by-laws or detract



one from them; before the General Meeting adopts a decision on a said change of public purposes, the Board of Directors shall present to it particulars of the assets accumulated for the company's purposes before the requested change, and of the obligations the company assumed in this context, also toward contributors to the company.

- (c) A decision of the General Meeting said in subsection (b) requires registration by the Registrar of Endowments or approval by the Court, as specified below, as the case may be:
  - (1) if the public purpose that the company proposes to replace in, detract from or add to its by-laws is proximate to the public purpose that it replaces or to the other public purposes set in its by-laws (in this section: proximate purpose), then the said change requires registration by the Registrar of Endowments; if the Registrar of Endowments believes that the said purpose is not a proximate purpose, then he shall so inform the company and it shall act as said in paragraph (2);
  - (2) if the public purpose that the company proposes to replace in or add to its by-laws is not a proximate purpose, or if in its by-laws there is no purpose proximate to the purpose that it proposes to detract from it, then the change requires approval by the Court.
- (d) The Registrar of Endowments shall register a change of purpose said in subsection (c)(1) only if he is satisfied that it is proper and just to do so under the circumstances, having taken into consideration the company's purposes, its activity before the change and the obligations the company assumed for purposes of the change.
- (e) The Court shall decide on an application to change the purposes of a public benefit company under this section after it gave the Registrar of Endowments an opportunity to present his stand; the Court shall approve a change of purposes only if it is satisfied that it is proper and just to do so under the circumstances, having taken into consideration the company's purposes and its activity before the change, and that on the conditions and with the arrangements that it shall prescribe.
- (f) The Registrar shall register a change of purposes of a public benefit company under section 40 only after the Registrar of Endowments registered the said change or after he received from the company a copy of the Court's decision that approves the said change under this section.
- (g) The Minister may prescribe provisions on the obligation of a public benefit company to give notice of its intention to change its purposes or on a change of the purposes, on ways to give that notice and when that should be done, having taken into consideration the categories of companies, and he may authorize the Registrar of Endowments to prescribe the said provisions in respect of a certain company, having taken the company's

purposes and activity into consideration.

**Activity in digression from purposes**

345F. Notwithstanding the provisions of section 56(b), in a public benefit company the retroactive approval of an act that digressed from the purposes set in the by-laws shall be by the General Meeting, with approval by the Court; the Court shall approve a said act only if it is satisfied that it is proper and just to do so under the circumstances of the case, having taken the company's purposes into consideration.

**Prohibited distribution**

345G (a) Notwithstanding the provisions of section 301, a public benefit company must not distribute profits, whether directly or indirectly, including any profit distribution to the company's entrepreneur, and any distribution of profits made by it shall, for purposes of this Law, be deemed a prohibited distribution.

(b) The provisions of this section shall not apply to reasonable presents of little value, given as is customary under the circumstances of the case.

**Audit committee**

345H. (a) The General Meeting of a public benefit company shall appoint an Audit Committee according to provisions under subsection (h), as far as they have been made; officers of the company shall not be Audit Committee members.

(b) The provisions of Articles Two and Seven of Chapter Three in Part Five shall apply, mutatis mutandis, to the call for and conduct of meetings of the Audit Committee; for purposes of these provisions a public benefit company shall be treated like a public company.

(c) The provisions of sections 114, 115(a), 117 and 118(a) shall not apply to the Audit Committee of a public benefit company.

(d) The responsibilities, rights and obligations of Audit Committee members shall be like those of Directors of the company, subject to the provisions of section 345J.

(e) The Audit Committee's responsibilities are as follows:

(1) to examine whether the acts of the company and of its institutions are in order, including whether the company's acts are in accord with its purposes;

(2) to examine whether the company's objectives are achieved efficiently and economically;

(3) to follow up on the implementation of decisions by the General Meeting and the Board of Directors;

(4) to propose to the Board of Directors ways of correcting shortcomings in the way the company is managed;

(5) to check the company's monetary affairs, its account books and its wage payments, including the allocation of the company's money to the advancement of its purposes;

(6) to decide whether to approve acts and transactions that

- require Audit Committee approval under sections 255 and 268 to 278;
- (7) to examine any other matter connected to the company's activity;
  - (8) to bring its conclusions before the Board of Directors and the Annual Meeting, in the light of the examinations said in this subsection.
- (f) The Audit Committee shall send notices of its meetings and of the items on the agenda to the company's auditor and to the company's internal auditor, and they may participate in Audit Committee meetings.
  - (g) The Audit Committee may demand that the Board of Directors or the General Meeting be convened, in order to present its conclusions to them, and if the Board of Directors or General Meeting was not convened – to convene it and the provisions of sections 64 or 98, as the case may be, shall apply, *mutatis mutandis*.
  - (h) The Minister may prescribe provisions about –
    - (1) the minimum number of Audit Committee members who shall serve in public benefit companies with a turnover in excess of an amount he prescribed;
    - (2) the qualification required of Audit Committee members, either in general or for categories of public benefit companies.
  - (i) In this Chapter, "**turnover**" – the annual amount of intakes of a public benefit company from all sources and of all kinds, that were received on the average during the three preceding fiscal years, and if three years have not yet passed since the company was founded – the said intakes received on the average in the years that passed since it was founded.

#### **Internal auditor**

345I. The Board of Directors of a public benefit company with a turnover in excess of NS10 million, or in excess of a greater amount set by the Minister, shall appoint an internal auditor under the provisions of sections 146 to 153, *mutatis mutandis*.

#### **Pay of Directors, Audit Committee members and other officers**

345J. (a) A Director or an Audit Committee member and also a body corporate controlled by any of these, shall not directly or indirectly provide services for pay to the public benefit company otherwise than as a Director or Audit Committee member, as the case may be; the Minister may prescribe provisions in respect of categories of companies, having taken their purposes and the number of their employees into consideration, under which it will be possible to appoint an employee or a provider of services for pay to the company to be a Director, other than the chairman of the Board of Directors, on condition that the number of said Directors not exceed one fourth of all Board of Directors members; for

purposes of this subsection: "**control**" – within its meaning in section 1, including the assumption that a person controls a body corporate, if he holds 25% or more of the body corporate's issued capital or of the voting rights in the body corporate, and a person and his relative shall be treated like one person.

- (b) The Minister shall prescribe provisions in respect of the pay or remuneration payable to Directors and Audit Committee members in a public benefit company, and on the terms of their service, including restrictions in respect of the said pay, remuneration and terms of service; and the Minister may prescribe said provisions in respect of other officers in a public benefit company, including the terms of their employment; provisions under this subsection may be prescribed for categories of public benefit companies.
- (c) If an officer or member of an Audit Committee received pay in violation of provisions under this section, including for services he provided to the company, then he shall have to return to the company whatever he received, unless he proved that he did not know and did not have to know of the existence of a pay restriction when he contracted with it.

#### **Expenses for the management of a public benefit company**

345K. The Minister may prescribe the maximum proportion of expenses that a public benefit company may incur for its management, including for pay and remuneration, as a ratio of its turnover or of the money it expended for the advancement of its purposes; aforesaid provisions may be prescribed for categories of public benefit companies.

#### **Approval of certain transactions**

345L. (a) The provisions of section 255 and provisions under Chapter Five in Part Six, other than section 279, which apply to public companies, shall apply to the transactions of a public benefit company, even if it is a private company, mutatis mutandis and subject to other provisions in this Chapter, and with the following changes:

- (1) a transaction of a public benefit company with a Director, with a member of the Audit Committee or with a body corporate controlled by any of them shall require – in addition to the provisions of section 275 – also approval by the Court after it gave the Registrar of Endowments an opportunity to present his stand; the Court shall approve the transaction only after it is satisfied that, under the circumstances of the case, it is just and proper to do so; in this paragraph, "**transaction**" – other than a transaction for the provision of services that is prohibited under section 345K(a), and other than a contract under the provision of this Law for the payment of remuneration to that person in respect of his service as Director or Audit Committee member, as the case may be;
- (2) an exceptional transaction of a public benefit company with

any of the persons specified below or with a body corporate controlled by any of them, shall require – in addition to the provisions of section 275 – also approval by the Court, after it gave the Registrar of Endowments an opportunity to present his stand: a Director's relative, an Audit Committee member's relative, the shareholder of the company or his relative, or the entrepreneur of the company or his relative.

- (3) a transaction of the public benefit company with any of the persons specified in paragraph (2), which is not an exceptional transaction, requires approval by the Audit Committee and thereafter by the Board of Directors, and notice of the transaction's approval and its particulars shall be communicated to the Registrar of Endowments; if the Registrar of Endowments holds that the transaction is an exceptional transaction, then he shall so inform the company within thirty days after the company's notice was received and the transaction shall require approval as said in paragraph (2).
- (b) The provisions of subsection (a)(1) and (3) shall not apply to a transaction in a minimal amount or to transactions, the terms of which are identical with other transactions of the company with the general public.
- (c) Without derogating from the provisions of subsection (a), the provisions of section 280 shall apply to transactions that were not approved according to the provisions of this section.
- (d) In this section, "**control**" – as defined in section 345J(a).

#### **Liability of officers and Audit Committee members**

- 345M. (a) Notwithstanding the provisions of section 258(b), a public benefit company must not exempt an officer or Audit Committee member from liability for any violation of the obligation of caution toward it, or undertake to indemnify in consequence of any violation of the obligation of caution, and an undertaking to indemnify as aforesaid shall be of no effect.
- (b) If a public benefit company was not registered in the Register, then its officers shall be deemed to have violated their obligation toward the company, unless the officer proved one of the following:
    - (1) that he took all reasonable steps to register the company;
    - (2) that he depended, in good faith, on information from an authorized officer of the company that an obligation to register does not apply or that the company was registered as required;
    - (3) that, because of the special circumstances of the case he did not have to know about the violation of the obligation of registration in the Register;
    - (4) that the company acted in accordance with the other provisions of this Chapter, even though it was not registered in the Register.

### **Derivative actions and derivative defenses**

- 345N. (a) In addition to the provisions of section 194(a), the Registrar of Endowments may also – with approval by the Attorney General – bring a derivative action in the matter of a public benefit company.
- (b) In addition to the provisions of section 203(a), the Registrar of Endowments or the Attorney General may also defend in the name of a public benefit company.
- (c) Provisions under Article One in Chapter Three of Part Five shall apply to a derivative action or a derivative defense said in this section, as the case may be, *mutatis mutandis*.

### **Share transfer**

- 345O. (a) A shareholder in a public benefit company shall not transfer any of his shares for consideration, unless advance approval thereof was given by the Court, after it gave the Registrar of Endowments an opportunity to present his stand; however, a share transfer for a minimal amount shall not require the approval said in this section, on condition that the shareholder reported the said share transfer to the Registrar of Endowments in advance.
- (b) Without derogating from the provisions of subsection (a), a share in a public benefit company cannot be inherited, attached or charged and it shall not constitute part of the shareholder's assets for distribution upon its liquidation or his bankruptcy, as the case may be, and it shall not be vested in a liquidator or trustee, as the case may be; upon the shareholder's death or liquidation, the share shall be treated like a dormant share, as defined in section 308.

### **Merger**

- 345P. (a) A public benefit company may merge under the provisions of this Law only with another public benefit company, on condition that the merger was approved by the Court, in addition to all the other approvals a merger requires under the provisions of this Law.
- (b) The Court shall approve a merger said in this section only after it is satisfied that under the circumstances of the case it is just and proper to do so, having taken the merging companies' purposes and activities before the merger into consideration, and that on the conditions and with the arrangements that it shall prescribe.
- (c) The Court shall decide an application for approval of a merger said in this section after it has given the Registrar of Endowments an opportunity to present his stand.

### **Compromise or arrangement**

- 345Q. (a) The Registrar of Endowments shall be notified of every proceeding under section 350 in respect of a public benefit company and he shall be given an opportunity to present his stand.
- (b) In a proceeding under section 350 the shareholders of a public

benefit company shall not be entitled to part of the company's assets merely because they are shareholders.

- (c) The Court shall approve any compromise or arrangement under section 350 in respect of a public benefit company only after it is satisfied that under the circumstances of the case it is just and proper to do so, having taken the company's purposes and activity into consideration, on condition that the compromise or arrangement accords with the provisions that apply to a public benefit company under this Chapter, including the provisions on changing the company's purposes or its liquidation, according to the substance of the proposed compromise or arrangement.

### **Appointing an investigator**

- 345R. (a) If there are reasonable grounds for the suspicion that a public benefit company does not comply with the provisions under this Law or that it does not comply with the provisions of its by-laws, then – at the request of one or more shareholders with at least 25% of the issued capital or at least 25% of the voting rights in the company, at the request of the Audit Committee, at the request of the Attorney General or at his own initiative – the Registrar of Endowments may investigate the affairs of that company and for that purpose he shall have the powers under sections 9 to 11 and 27(b) of the Commissions of Inquiry Law 5729-1968.
- (b) The Registrar of Endowments may appoint an investigator to carry out the investigation said in subsection (a); when a said investigator has been appointed, then he shall have the investigating powers said in subsection (a), subject to the conditions of the appointment; the investigator shall give a report to the Registrar of Endowments.
  - (c) When an investigator has been appointed as said in subsection (b), the Registrar of Endowments may charge all or part of the expenses of the investigation to the public benefit company, to its officers or to the person who applied to the Registrar of Endowments that he open an investigation, and he may require surety for the expenses of the investigation from the person who applied for it.

### **Liquidation by the Court**

- 345S. (a) A public benefit company shall be liquidated by the Court under the provisions of the Companies Ordinance, subject to the provisions of this Chapter.
- (b) In addition to the grounds for liquidation prescribed in the Companies Ordinance and in this Law, the Court may liquidate a public benefit company when one of the following applies:
    - (1) the company's activities are in violation of Law, of its purposes or of its by-laws;
    - (2) the person appointed to investigate under section 345R recommended that the company be liquidated.
  - (c) An application to liquidate a public benefit company because of

one of the grounds enumerated in subsection (b) shall be submitted by the Attorney General or by the Registrar of Endowments; an application for the liquidation of a public benefit company because of one of the grounds enumerated in section 257 of the Companies Ordinance may also be submitted by the Registrar of Endowments.

- (d) An application for the liquidation of a public benefit company by the Attorney General or the Registrar of Endowments because of grounds enumerated in paragraph (1) of subsection (b), or by the Registrar of Endowments because of grounds enumerated in section 257(5) of the Companies Ordinance shall only be submitted after the Registrar of Endowments warned the company in writing that it must correct the shortcoming and the company did not do so within the period of time that he set therefor, and if he did not set a period – within a reasonable time after receipt of the warning.

### **Voluntary liquidation**

345T. (a) Notwithstanding the provisions of section 345S, a public benefit company may wind up by voluntary liquidation under the provisions of the Companies Ordinance, on condition that – in addition to the conditions required under the Companies ordinance – the following conditions are met:

- (1) before invitations were sent for the General Meeting at which voluntary liquidation was proposed, a majority of the Directors and a majority of the Audit Committee members made an affidavit that they had examined the state of the company's business and concluded that it will be able to pay its obligations in full within one year after liquidation begins, and this affidavit was submitted to the Registrar and to the Registrar of Endowments at least 21 days before the invitations were sent; the affidavit shall be drawn up, inter alia, based on financial reports within their meaning in Chapter Six of Part Four, as of December 31 of the year before the date of the affidavit's submission (in this section: the determining date), and if more than two months have passed since the determining date, also based on a financial report surveyed according to accepted accounting rules, which reflects the company's condition as close as possible to the date on which the affidavit is submitted, and which surveys – inter alia – the substantive changes since the determining date; the said reports shall be attached to the affidavit and submitted with it as aforesaid to the Registrar of Endowments.
  - (2) the company gave notice to the Registrar and to the Registrar of Endowments that it proposes to liquidate itself voluntarily.
- (b) In addition to the provisions of section 321 of the Companies Ordinance, a decision for voluntary liquidation shall be published



within seven days after its adoption in a daily newspaper that is published in the Hebrew language, and in respect of a company the business of which is mainly conducted in the Arab sector – also in a daily newspaper that is published in the Arabic language; the Registrar of Endowments may order the company to publicize the decision in other ways, if he found that necessary under the circumstances.

- (c) In addition to the provisions of sections 262 and 341 of the Companies Ordinance, when a public benefit company winds up voluntarily the Court may order – at any stage – at the request of the Registrar of Endowments that liquidation be by the Court, if it concluded that there is a public interest in the Court's supervision of the company's liquidation proceedings.
- (d) Reports that the liquidator must submit in a voluntary liquidation under the Companies Ordinance shall be approved by the Audit Committee.

### **General provisions about liquidation**

- 345U. (a) Holders of shares of a public benefit company shall not be entitled to part of its assets upon its liquidation, only because they own aforesaid shares.
- (b) When a public benefit company has been liquidated and assets remain after all its obligations were satisfied in full, then they shall be dealt with according to the provisions of the by-laws, on condition that – if the company was liquidated by the Court – the Court is satisfied that the said provisions will not result in causing the company's assets after its liquidation to be directly or indirectly distributed to its shareholders or to the company's entrepreneur, or that after the liquidation the assets will be directly or indirectly transferred to public purposes that are not public purposes proximate to the company's purposes shortly before its liquidation, and if the company was liquidated voluntarily – that the Registrar of Endowments be satisfied as aforesaid; if there are no said provisions or if it is impossible to comply with them, then those assets shall be transferred according to instructions from the Court to a public purpose that the Court finds to be proximate to the company's purposes.
  - (c) The provisions of subsection (b) shall not apply to an asset, in respect of which it was determined when it was transferred to the company, by agreement or in the company's by-laws, that after liquidation it is to be transferred to the person who transferred it to the company (in this subsection: the transferor) or to another person designated by the transferor.

### **Status of the Registrar of Endowments in liquidation proceedings**

- 345V. (a) A copy of every application submitted as part of voluntary liquidation proceedings a public benefit company or of its liquidation by the Court, and of every decision handed down in the course of said proceedings shall be delivered to the Registrar of

Endowments, and every notice or report about a said liquidation that must be delivered to the Registrar under the Companies Ordinance shall also be delivered to the Registrar of Endowments.

- (b) The Court shall decide on an application submitted as said in subsection (a) after it has given the Registrar of Endowments an opportunity to present his stand.
- (c) The Registrar of Endowments may apply to the Court that it decide on any question that stems from the liquidation.

### **Applicability of provisions of the Companies Ordinance**

345W. Provisions under the Companies Ordinance on liquidation by the Court or on voluntary liquidation, as the case may be, shall apply to the liquidation of a public benefit company, mutatis mutandis, unless a different provision is made under this Chapter; however, if in any contradiction between the said provisions and provisions under this Chapter, the provisions under this Chapter shall prevail.

### **Obligation to report and submit documents**

- 345X. (a) A public benefit company, which must submit annual reports and other reports under the provisions of sections 140 and 141, shall also submit them to the Registrar of Endowments; in notices on share transfers, appointments to the Board of Directors or changes in its composition under section 140, it shall be stated that the transferee shareholder or the appointed Director, as the case may be, knows that the company is a public benefit company.
- (b) The obligations to report and to submit documents, which apply to an Amuta under sections 36, 36A, 38, 38A and Schedule Two of the Amutot Law, shall apply to a public benefit company, but the said reports and documents shall be submitted to the Registrar of Endowments, and the powers of the Registrar of Amutot under those sections shall, for purposes of this section, be vested in the Registrar of Endowments.
  - (c) The financial report and the narrative report, within their meaning in the Amutot Law, shall be approved by the General Meeting and shall be submitted no later than June 30 of the year after the end of the report period, and the Registrar of Endowments may extend the time for their submission.
  - (d) The Minister may – in general or for categories of public benefit companies – prescribe obligations to report and to submit documents to the Registrar or to the Registrar of Endowments, which shall apply to said companies in addition to the obligations that apply to them under the provisions of this Law.
  - (e) The documents submitted to the Registrar of Endowments under this section shall be open for inspection in his office by any interested person.
  - (f) The power of the Registrar of Amutot to grant exemptions for the purposes of this section shall be vested in the Registrar of

Endowments.

### **Appeal**

- 345Y. (a) If a person deems himself injured by a decision of the Registrar of Endowments under this Chapter, then he may appeal against it before the Court; this subsection shall not apply to applications submitted by the Registrar of Endowments under this Law to the Court that it decide a matter, and which shall be heard by the Court, including matters of liquidation, not to decisions on the approval of transactions under section 345L and also not to the matter of warnings of liquidation under section 345S.
- (b) The Minister may prescribe provisions on law procedure in appeals said in subsection (a).

### **Application to the Court**

345Z. In connection with any matter under this Law that concerns a public benefit company, any person injured by an act of the company, whether by action or omission, may apply to the Court that it order the company to act according to its purposes or according to the provisions of this Law; the Attorney General also may open any proceeding under this Law, which relates to a public benefit company, and to appear and argue in a said proceeding, if he holds that the matter is of interest for the public.

### **Fees and payments**

345AA. The Minister may prescribe a fee for registration in the Register, and also other fees and payments that are to be paid for activities and services by the Registrar of Endowments under this Chapter.

### **Return to the company**

- 345BB. (a) If assets, including money, of a public benefit company were directly or indirectly transferred to another person (in this section: asset transfer) in one of the following instances:
- (1) in a digression from its purposes that was not approved by the Court under section 345F;
  - (2) in a transaction in violation of the provisions of section 345L;
  - (3) by way of a profit distribution to shareholders or to the company's entrepreneur in violation of the provisions of this Chapter;
  - (4) in the course of voluntary liquidation in violation of the provisions of this Chapter;
- then the Court may, subject to the provisions of subsection (b), at the request of a contributor to the company, of a shareholder in the company or of the Registrar of Endowments, order that the officer of the company, who knew or should have known of the asset transfer, return to the company all or part of the said transferred assets or of their value.
- (b) The Court shall not obligate an officer to return as said in subsection (a), if the officer proved one of the following:

- (1) that he took all reasonable steps to prevent the transfer of the assets;
  - (2) that he depended in good faith on information from a competent official of the company that the asset transfer is not as said in paragraphs (1) to (4) of subsection (a);
  - (3) that he acted in good faith and that because of the special circumstances of the case he was did not have to know that the asset transfer was in violation of provisions of this Chapter.
- (c) The Court may refrain from obligating any of those enumerated in subsection (a) from returning all or part of the transferred assets or of their value, if the assets or their value were returned to the company.

### **Special provisions on raising the curtain in a public benefit company**

345CC. For the purposes of section 6 of this Law –

- (1) if a public benefit company was not registered in the Register, then it is assumed that it used a separate legal personality with the intention of deceiving some person, but it shall be a good defense for the defendant, if he proves that the company acted in accordance with this Law's main provisions on public benefit companies, even though it was not registered, or that that person knew that it was not registered;
- (2) if the Court finds that the conditions exist for charging a debt as said in section 6(a), mutatis mutandis, then it may charge the debt of the public benefit company to its officer, instead of or in addition to its shareholders, all as it shall prescribe.

### **Saving of statutes**

345DD. (a) The provisions of this Chapter shall add to the other provisions of this Law and the provisions of all other statutes, but in the case of a contradiction the provisions of this Chapter shall prevail, unless explicit provision in respect of public benefit companies are prescribed under another statute; in this subsection: "other statute" – including rules, directions or approvals by a factor that, by virtue of the other statute, is competent to prescribe them for the company.

- (b) The provisions of this Law shall not derogate from additional obligations that apply to shareholders and officers of a public benefit company, which acts as trustee by virtue of the Trust Law, to the extent that aforesaid obligations apply.

### **Stipulations prohibited**

345EE. There shall be no stipulation on provisions under this Chapter.

### **Applicability to Government companies**

345FF. The Minister and the Minister of Finance may prescribe that all or part of the provisions of this Chapter not apply to a public benefit company that is a Government company or a Government subsidiary, as defined in the Government Companies Law 5735-1975 (in this section: "**Governmental public benefit company**") or that they apply to a Governmental public benefit company with changes that they shall prescribe.

### **Applicability to foreign companies**

345GG. (a) If the by-laws of a foreign company, which has a place of business in Israel, prescribe only public purposes and if its by-laws forbid the distribution of profits (in this Law: "**foreign public benefit company**"), then the provisions of this Law on a public benefit company shall apply, mutatis mutandis and with changes that the Minister may prescribe in regulations.

- (b) The Minister may prescribe by Order, after consultation with the

Registrar of Endowments, that all or some of the provisions of this Law not apply to a certain foreign public benefit company, or that they shall apply with changes that he shall prescribe, and that if he is satisfied that there are circumstances that justify this, having taken into consideration, inter alia, the Laws of the place where the company was incorporated or the provisions of the foreign Law that apply to its activity in Israel as a foreign public benefit company, the applicability in its respect of another statute in Israel, and to the source of the company's assets; the Minister may, in regulations, prescribe provisions as aforesaid for categories of foreign public benefit companies.

## **CHAPTER TWO: FOREIGN COMPANIES**

### **Foreign companies must be registered**

346. (a) A foreign company shall maintain a place of business in Israel – including a share transfer office or a share registration office – only if it was registered as a foreign company under the provisions of this section and paid the registration and publication fees prescribed by the Minister under this section.
- (b) The application for registration shall be submitted to the Registrar within one month after the place of business was set up, and the following documents shall be attached to it:
- (1) a copy and a Hebrew translation, certified as prescribed by the Minister, of the documents according to which the company was incorporated and under which it operates, as required by the Laws of the state in which it was incorporated, including its by-laws, if any;
  - (2) a list of the company's Directors;
  - (3) the name and address of a person resident in Israel, who is authorized to accept in the company's name court documents and notifications that are to be served on the company;
  - (4) a copy, certified as prescribed by the Minister, of the written authorization, which empowers a person ordinarily resident in Israel to act in the company's name.
- (c) If any change occurs in a document, in the directors, or in the name or address of one of the persons enumerated in paragraphs (3) and (4) of subsection (b), then the company shall inform the Registrar within 14 days after the change.
- (d) The Minister may prescribe additional documents, which a foreign company must attach to the application for registration, and changes in which it must report to the Registrar.

### **Service on foreign company**

347. A court document or notification that must be served on a foreign

company registered in Israel shall be deemed duly served, if they were served at the address of the authorized person, of which notice was given as said in section 346, if they were left at the address announced as aforesaid or were sent there by mail.

#### **Annual report**

348. Once a year a foreign company shall submit an annual report, as the Minister shall prescribe.

#### **Penalties**

349. If a foreign company violated the provision of section 346(a), then it and every officer or agent of it who participated in the offense shall be liable to a fine as said in section 61(a)(2) of the Penal Law 5737-1977, and – in the case of an ongoing violation – to an additional fine as said in section 61(c) of the said Law for every day on which the offense continues, beginning with the day on which the company received notification from the Companies Registrar.

### **CHAPTER THREE: COMPROMISE OR ARRANGEMENT**

#### **Authority to make compromise or arrangement**

350. (a) If a compromise or arrangement was proposed between a company and its creditors or shareholders, or between it and a certain category of them, then the Court may – on the application by the company, a creditor or a shareholder, or by the liquidator, if the company is in liquidation – order that a General Meeting be called of those creditors or those shareholders, as the case may be, in the manner which the Court shall prescribe.
- (b) The Court, to which the application for the compromise or arrangement said in subsection (a) (in this Chapter – the plan) was submitted may – if it is satisfied that it will help to concretize or approve a plan for the rehabilitation of the company – make an order, according to which – during a period of not more than nine months – it will be possible to continue or to initiate any proceeding against the company only with the Court's permission and on conditions which it shall prescribe (in this Chapter: freeze on proceedings order).
- (c) A freeze on proceedings order may be handed down in the presence of the applicant alone, if the Court is satisfied that the circumstances of the case make that necessary, on condition that notification of the issue of the freeze on proceedings order shall be made public and shall be served on every person who is liable to be harmed by it, all as the Court shall order.
- (d) If a person was harmed by an ex parte freeze on proceedings order, then he may turn to the Court that issued the order and apply that it be cancelled; the Court shall hear applications for

- cancellation, if such were submitted, at one time that it shall set, on condition that the hearing is held within 30 days after the said order was issued.
- (e) The Court may – for special reasons that shall be recorded – hear a creditor's application that a freeze on proceedings order be cancelled, even if the time set in subsection (d) has passed, if it is satisfied that there had been a substantive change of circumstances since the day on which the freeze on proceedings order was handed down, such as can cause substantive harm to the creditor's rights..
  - (f) When a freeze on proceedings order has been handed down, then the Court shall permit –
    - (1) on application by a secured creditor – to realize an asset charged in his favor;
    - (2) on application by a creditor with a floating charge – to concretize it;
    - (3) on application by a creditor with a floating charge that has been concretized – to realize one or more assets as aforesaid;
 all if it is satisfied that suitable defense of the creditor's rights in the asset has not been assured, or that the realization of the charge or the concretization of the floating charge is not likely to have an adverse effect on the possibility to concretize and to approve the plan.
  - (g) The period during which proceedings were frozen under this section shall not be taken into account for the periods prescribed by the Companies Ordinance as far as the freezing of proceedings relates to them, or for the periods prescribed by the Prescription Law 5718-1958, unless the Court ordered otherwise.
  - (h) In subsections (b) to (g), "**proceeding**" includes a proceeding under the Execution Law 5727-1967, but exclusive of proceedings, the implementation of which was completed immediately before the order was handed down, even if the money received therefor had not yet been transferred.
  - (i) If most of those participating in the vote, other than abstentions, at a meeting said in subsection (a), who jointly have three fourths of the value represented at the vote, agreed to a compromise or arrangement, and if the Court approved the compromise or arrangement, then that obligates the company and all creditors or shareholders or the category thereof, as the case may be, and in the case of a liquidation – the liquidator and each contributory.
  - (j) An order handed down under subsection (i) shall be of no effect before a certified copy of it is submitted to the Registrar; a copy of the order shall be attached to every copy of the company's by-laws issued after the order was handed down, and if the company does not have any by-laws – to every copy of a document, according to which the company incorporated and operates, which is issued as aforesaid.
  - (k) For purposes of this section –



**"company"** – any company that may be wound up under the Companies Ordinance;

**"arrangement"** – including a reorganization of the share capital, by way of the unification of shares of different categories, or by way of dividing shares into different categories, or in both ways at the same time.

- (l) The Minister may make regulations on the implementation of this section, inter alia on claims of debt and the convening of meeting, and also in respect of law procedure, the appointment of an officer, provisions on the insurance and indemnification of the officer and the determination of his powers by the Court.

### **Structural change and merger**

351. (a) If an application was submitted to the Court for approval of a compromise or arrangement as said in section 350, and if it was proved to the Court that the compromise or arrangement was proposed for purposes of a plan for the company's structural change or the merger of companies, and that under the plan the enterprise or assets of one company (in this Chapter: transferor company) are to be transferred to another company (in this Chapter: transferee company), then – in an order that approves the application or in an order handed down thereafter – the Court may order –

- (1) the transfer of some or all of the enterprise, assets or obligations of the transferor company to the transferee company;
  - (2) the allocation of shares, debentures, policies or other similar benefits in the transferee company, which it must allocate to a person in accordance with the compromise or arrangement;
  - (3) the continued conduct by the transferee company of a legal proceeding pending on behalf or against the transferor company;
  - (4) liquidation of the transferor company without winding up;
  - (5) relief for persons who object to the compromise or arrangement within a time and in a manner to be prescribed by the Court;
  - (6) any routine matter necessary to assure that the structural change or the merger be carried out completely and efficiently.
- (b) If an aforesaid order for the transfer of assets or obligations was handed down, then the assets shall be transferred by virtue of the order and vested in the transferee company, and they shall be free – if the order so provided – of any charge that lapsed by virtue of the compromise or arrangement, and the obligations shall be transferred to the transferee company and shall become its obligations.
- (c) When an order under this section has been handed down, then every company to which the order applies shall transmit a certified

copy thereof to the Registrar within seven days after the day on which it was handed down; if a company violated this provision, then it and every officer in it who approved or permitted the violation shall be liable to a fine as said in section 61(c) of the Penal Law 5737-1977 for every day on which the violation continues.

## **CHAPTER FOUR: REMEDIES AND MONETARY SANCTIONS**

### **Article One: Remedies**

#### **Remedies**

352. (a) The Laws that apply to breach of contracts shall apply, mutatis mutandis, to the violation of any right vested under this Law in a shareholder against the company or against another shareholder, or in the company against a shareholder.
- (b) The provisions of this section shall not derogate from an shareholder's rights under any enactment.

#### **Violation of obligations to keep registers and reports**

353. Without derogating from the provisions of any enactment, a violation of provisions on the keeping of Registers in the company or of giving notifications or reports to the Companies Registrar, such as a company is obligated to do under this Law or under the Companies Ordinance, constitutes the violation of a legal obligation toward any person who depended on the Registers in the company or at the Companies Registrar.

#### **Surety for costs of the trial**

- 353A. When an action is brought before a Court by a company or a foreign company, in which the shareholders' liability is limited, then the Court may – at the defendant's request – order that the company give adequate surety for payment of the defendant's costs, if he wins the case, and it may stay proceedings until the surety is provided, unless it concluded that the circumstances of the case do not justify obligating the company or the foreign company to provide surety, or if the company proved that it is capable of paying the defendant's costs, if he wins the case.

### **Article Two: Monetary Sanctions**

#### **Monetary sanctions**

354. (a) If the Registrar had reasonable grounds to assume that a private company or a foreign company did one of the following, then he may impose on it a monetary sanction in the amount of NS 6,000:
- (1) it violated an order by the Registrar under section 37(b) or (c);
  - (1a) it did not pay fees or other payments that it must pay under section 44(6);
  - (2) it violated an obligation to submit reports, under the provisions of section 140;
  - (3) it violated the obligation to submit an annual report under the provisions of sections 141 or 348;

- (4) it violated an obligation imposed on it under the provisions of sections 173(a) or 175;
  - (5) it violated an obligation imposed on it under the provisions of section 343.
- (b) If the Registrar had reasonable grounds to assume that a public company violated an obligation imposed on it under the provisions of section 343, then he may impose on it a monetary sanction as said in subsection (a).
- (b1) (1) If the Registrar had reasonable grounds to assume that a public benefit company did one of the following, then he may impose on it a monetary sanction said in subsection (a):
- (a) it violated the obligation to inform the Registrar that a decision was adopted for a change of its by-laws, the meaning of which is that the company will be a public benefit company under section 345B(c);
  - (b) it violated the obligation to state next to its name "public benefit company" or "(P.B.C.)" under the provisions of section 345D(a);
  - (c) it violated the obligation to submit reports and documents according to provisions under sections 345B, 345C and 345X;
  - (d) it did not pay fees or other payments that it is obligated to pay under section 345AA.
- (2) If the Registrar had reasonable grounds to assume that a public benefit company did one of the following, then it may impose on it double the monetary composition said in subsection (a):
- (a) it violated the obligation to declare before the Registrar with the submission of the application for registration that it is a public benefit company under section 345B(a);
  - (b) it violated an obligation to submit to the Registrar of Endowments an application to register it in the Register, under the provisions of section 345B(g), but no monetary composition shall be imposed on the same company both for not making a declaration at the time of registration and for failure to register it in the Register; however, monetary composition under this subsection may be imposed in respect of the same company, if six months passed since imposition of the monetary composition for failure to declare before the Registrar and the company is not yet registered in the Register;
  - (c) it stated next to its name the addition said in paragraph (1)(b) or presented itself in some other manner as a public benefit company, even though it is not registered in the Register within its meaning in section 345C, in violation of the provisions of section 345D(b);
  - (d) it did not appoint an Audit Committee in violation of the

- provisions of section 345H or did not appoint an internal auditor in violation of the provisions of section 345I;
- (e) it violated the obligation to inform the Registrar of Endowments of the approval of a transaction that is not an exceptional transaction, as said in section 345L(a)(3);
- (3) if the Registrar has reasonable grounds to assume that a company that is not a public benefit company stated next to its name the addition said in paragraph (1)(b) or presented itself in some other manner as a public benefit company in violation of the provisions of section 345D(b), then he may impose on it double the monetary composition said in subsection (a);
  - (4) if the Registrar has reasonable grounds to assume that a foreign public benefit company violated its obligation to be registered under section 346, then he may impose on it double the monetary composition said in subsection (a), but monetary composition shall not be imposed on the same company both for failure to register as a public benefit company and for failure to register under section 345B(a) or 345B(g); however, monetary composition may be imposed on the same company for failure to register under section 345B(a) or (g), if six months passed since imposition of the monetary composition for failure register as a foreign company and the company is not yet registered as a foreign public benefit company;
  - (5) a Magistrates Court may, on application by the holder of a share in the company, of a contributor to the company or of the Registrar of Endowments, which was submitted after written warning thereof was sent to the defendant, order that the officer of a public benefit company refund to the company the amount of monetary composition that was imposed on it under this subsection, if it concluded that that officer of the company knew or should have known of the said violation said in paragraphs (1)(a), (2)(a) or (b), or (3), unless he proves one of the following:
    - (a) that he opposed the violation and took all reasonable steps to prevent it;
    - (b) that he depended in good faith on information given him by an authorized official of the company that the provisions of Law, because of which the composition said in those paragraphs was imposed, were not violated;
    - (c) that because of other special circumstances he did not have to know of the violation of the Law provisions;
    - (d) in respect of paragraphs (1)(a) or (2)(a) or (b) – that the company acted in accordance with the other provisions of the Law on Public Benefit Companies,

- even though it was not registered.
- (c) If the Registrar had reasonable grounds to assume that a company on which a monetary sanction had been imposed violated the same provision, for the violation of which the monetary sanction had been imposed, within two years after it was imposed, then he may impose on it double the monetary sanction said in subsection (a), or double the monetary sanction said in subsection (b1)(2) to (4); he may do so also if during the said period the company committed three or more violations, even if the sanctions were imposed for different violations.

#### **Updating of monetary sanction**

355. (a) A monetary sanction shall be in its updated amount, as of the day on which its payment was demanded, and if it was appealed and the Court that heard the appeal did not order that it be paid – according to its updated amount on the day the appeal is decided.
- (b) The Registrar may update the amount of the monetary sanction on January 1 of each year, at the rate of change in the index, of the index last published before the updating as compared to the last index published immediately before this Law went into effect; the Registrar may also round off the amount of the monetary sanction to the nearest multiple of NS10.
  - (c) The Registrar shall publish the amount of the updated sanction by a notice in Reshumot.

#### **Demand for and payment of monetary sanction**

356. (a) A monetary sanction shall be imposed on a company by a demand addressed to the company by the Registrar (in this Chapter: demand); in the demand the Registrar shall state the violation as said in section 354, and he shall inform the company that – if the violation is not corrected within 45 days after the demand – it must pay the monetary sanction on the date stated in the demand.
- (b) If the company corrected the violation by the date stated in the demand, then it shall so inform the Registrar.
  - (b1) If the Registrar has reasonable grounds to assume that a company on which a monetary sanction had been imposed did not correct the violation by the date stated in the demand, then he may – if he warned thereof in advance in the demand under subsection (a) – impose on the company an additional monetary sanction in the amount of one sixtieth of the monetary sanction for each day on which the violation continued; however, the amount shall not exceed NS 250,000; the provision of this subsection shall not apply to any failure to pay fees or other payments specified in section 354, in subsections (a)(1a) or (b) or (b1).
  - (b2) Notwithstanding the provisions of subsections (a) to (b1), in the case of violations under paragraphs (1)(a), (2), (3) and (4) of section 354(b1) it is not required to give the company an opportunity to correct the violation before monetary composition is

- imposed, and the Registrar may impose the said monetary composition that it shall have to pay within the time stated in the demand, which shall not be less than thirty days from the day on which it was sent, on condition that the demand include a notice to the company that it may present its arguments within 14 days after the said demand and notice were sent to it as aforesaid.
- (c) If the Registrar decision was appealed as said in section 359, then the monetary sanction shall not be paid, unless the Court ordered otherwise.

### **Linkage differentials and interest**

357. If the monetary sanction was not paid on time, then linkage differentials and interest for the time in arrears shall be added to it under the Interest and Linkage Adjudication Law 5721-1961 (hereafter: linkage differentials and interest), until its payment.

### **Collection**

358. The Taxes (Collection) Ordinance applies to the collection of monetary sanctions.

### **Appeal**

359. (a) A decision by the Registrar may be appealed before the Magistrates Court, within 30 days after the demand was received.
- (b) If the monetary sanction was paid and the appeal was accepted, then the amount of the monetary sanction shall be refunded with the addition of linkage differentials and interest.
  - (c) The Appeal Court's decision may be appealed by permission.

### **Collection from Director**

360. (a) If a monetary sanction imposed under section 354 was not paid on time, then the Registrar may demand – subject to the provisions of subsection (e) – its payment from any person registered in the Registrar's Registers as a Director of that company, or who was so registered when the offense was committed.
- (b) The provision of sections 355 to 359 shall apply to a demand under this section.
  - (c) If one of the persons enumerated in subsection (a) paid the monetary sanction, then the company shall not have to pay it, and the person who paid it is entitled to a refund from the company.
  - (d) The Court shall not force a person, from whom payment of a monetary sanction was demanded under this section, to pay it if he proved one of the following:
    - (1) that he took all appropriate steps to prevent the violation;
    - (2) that he did not know of the violation and was not supposed to know about it.
  - (e) A company may state in its annual report that its General Manager or a certain Director is responsible for compliance with the provisions and obligations said in section 354; when the

company has stated as aforesaid, then the Registrar shall not demand payment of the monetary sanction from any other Director of the company, unless payment of the monetary sanction was first demanded of the General Manager or the Director indicated by the company and was not paid by them.

#### **Saving of criminal liability**

361. (a) The provisions of this Article do not derogate from the authority of a prosecutor to bring – for reasons that shall be recorded – an indictment for an offense under this Law for which monetary sanction may be imposed under this Article; for this purpose, "**prosecutor**" – within the meaning of the term in section 12 of the Criminal Law Procedure Law (Consolidated Version) 5742-1982.
- (b) If an indictment was brought against an offender as said in subsection (a), then he shall not be charged with the payment of the monetary sanction under this Article, and if it was paid, then the Registrar shall order its refund to the offender with the addition of linkage differentials and interest.

#### **Winding up at the Registrar's request**

362. The Registrar may apply that a company be wound up under Chapter Twelve of the Companies Ordinance, if a monetary sanction that he imposed on the company under section 354 was not paid by it, and if within three years after the monetary sanction was imposed the Registrar again imposed a monetary sanction which also was not paid on time, on condition that they were not paid until the application for winding up was submitted.

#### **Regulations**

363. The Minister may make regulations for the implementation of this Chapter.

### **CHAPTER FIVE: PUBLIC COMPANY, THE SHARES OF WHICH ARE TRADED ABROAD**

#### **Restriction of applicability**

364. (a) The Minister may prescribe – after consultation with the Securities Authority – that some or all of the provisions of this Law that apply to public companies shall not apply to public companies the shares of which were offered only to the public abroad or which are listed for trading only on stock exchanges abroad, either generally or by categories, all as he shall prescribe.
- (b) The Minister may prescribe – after consultation with the Securities Authority – that some or all of the provisions of this Law that apply to public companies shall not apply to public companies the



shares of which are listed for trading on a stock exchange in Israel and on stock exchanges abroad, also in order to prevent conflict between the Law abroad and the rules prescribed on the stock exchanges abroad, and the provisions of this Law.

#### **Obligation to report**

365. (a) If a public company's shares were offered only to the public abroad or if its shares are only traded on stock exchanges abroad, then it shall submit reports to the Companies Registrar as if it were a private company, with changes as the Minister shall prescribe.
- (b) After consultation with the Securities Authority the Minister may prescribe that subsection (a) not apply to all or to categories of public companies said in it, as he shall prescribe; if the Minister so prescribed, then the provisions of sections 142 to 145 shall apply to those companies.
- (c) The provisions of Chapter Four shall apply to a public company to which the provisions of subsection (a) apply, as if it were a private company.

## **CHAPTER SIX: REGULATIONS**

#### **Implementation and regulations**

366. (a) The Minister may make regulations for the implementation of this Law.
- (b) Regulations under this Law require approval by the Knesset Constitution, Law and Justice Committee.

## **PART TEN: REPEAL, TRANSITIONAL PROVISIONS, APPLICABILITY AND EFFECT**

#### **Repeal of Companies Ordinance**

367. (a) The Companies Ordinance is repealed, except for –
- (1) Sections 164 to 201, 244 to 367, 370 to 382, and also sections 1 and 394, as far as they relate to secured debentures, charges and winding up, and that both for companies incorporated before this Law went into effect and for companies incorporated under this Law;
  - (2) section 33, which shall remain in effect for companies that were granted exemption under section 32 before this Law went into effect;
  - (3) section 369, which shall remain in effect for companies that

- were struck off according to section 368 before this Law went into effect;
- (4) the provisions and conditions for changing the Memorandum, in respect of a company to which section 24 of this Law applies;
  - (1) section 115A, which shall apply to decisions of the General Meeting, which are required under the Companies Ordinance.
- (b) The provisions specified in subsection (a) shall be interpreted, as far as possible, in the light of the provisions of this Law.

**Transitional provisions on the applicability of the Common Articles**

368. (a) The provisions of sections 23 to 29, 51, 58 and 91 in Schedule Two of the Companies Ordinance shall be deemed to be included in the by-laws of a company that incorporated before this Law went into effect, if those provisions applied to it immediately before this Law went into effect by virtue of sections 10 or 11 of the Companies Ordinance, as it stood immediately before this Law went into effect, and that as long as the by-laws were not changed in accordance with section 20.
- (b) By-laws of a company that incorporated before this Law went into effect shall be deemed to include a provision, according to which the Chairman of the Board of Directors does not have an additional vote as said in section 107, unless provided otherwise in the by-laws, and that as long as the by-laws have not been changed under section 20.

**Transitional provision on shares of a parent company owned by a subsidiary**

369. (a) The provisions of section 309(b) shall not change voting rights by virtue of shares in a parent company which a subsidiary acquired or which some other body corporate under the control of the parent company acquired before this Law went into effect, to the extent that those voting rights were vested in them lawfully.
- (b) If shares said in subsection (a) were acquired, and if the subsidiary or the other company under the control of the parent company acquired additional shares of the same category after this Law went into effect, and if thereafter some of the shares were sold, then – for purposes of voting rights of the remaining shares – it shall be deemed that the shares acquired after this Law went into effect were the first to be sold.

**Applicability to company limited by guaranty**

370. If immediately before this Law went into effect a company was a company limited by guaranty, as defined in the Companies Ordinance as it stood immediately before this Law went into effect, and if it did not have any share capital, then the provisions of this Law shall apply to it and its members shall be deemed shareholders in the company who hold shares without nominal value.

### **Transitional provision on the Internal Auditor**

371. Whoever served as Internal Auditor of a public company immediately before this Law went into effect under an approval under section 3(b) of the Internal Audit Law 5742-1992 may continue to serve as Internal Auditor of the same company.

### **Public director**

372. A public director appointed under the provision of section 96B of the Companies Ordinance, as it stood immediately before this Law went into effect, shall – for purposes of Chapter One in Part Six – be deemed an Outside Director, but on the matter of the length of his term of office and on the matter of the renewal of his term in office the provisions of the Companies Ordinance shall apply, as it stood immediately before this Law went into effect.

### **Amendment of the Securities Law – No. 18**

373. *(We incorporated the changes of the Securities Law, legislated in this section, into our translation of that Law – Tr.)*

### **Amendment of Securities Law (Amendment No. 11) – No. 5**

374. *(We incorporated the changes of the Amendment Eleven of the Securities Law, legislated in this section, into our translation of that Law – Tr.)*

### **Amendment of the Joint Investment Trusts Law**

375. *(We incorporated the changes of the Joint Investment Trusts Law, legislated in this section, into our translation of that Law – Tr.)*

### **Amendment of National Insurance Law**

376. *(We incorporated the changes of the National Insurance Law, legislated in this section, into our translation of that Law – Tr.)*

### **Effect**

377. This Law, except for the sections specified below, shall go into effect on February 1, 2000:

- (1) sections 87 to 89 shall go into effect after regulations for their implementation are published, and on the date that will be specified in those regulations;
- (2) sections 143 and 145 shall go into effect three years after the publication of this Law, or at an earlier date that the Minister and the Minister of Finance will set, on condition that provisions on electronic reporting were made under the Securities Law; the date on which sections 143 and 145 go into effect shall be published in advance in Reshumot;
- (3) section 36(a1) of the Securities Law, as formulated in section 373 of this Law, shall go into effect on the day on which sections 143 and 145 of this Law go into effect, as said in paragraph (2).

**Publication**

378. This Law shall be published in Reshumot within 45 days after its adoption by the Knesset.

**SCHEDULE**  
(Section 345a)  
**Public Purposes**

A purpose, the subject of which is one of the following:

1. quality of the environment, protection of the environment or knowledge of nature and of the environment;
2. health or life saving;
3. religion, tradition or commemoration;
4. protection of animals and concern for their welfare;
5. human rights;
6. education, vocational training, culture and art;
7. science, research or higher education;
8. sport;
9. immigration, immigrant absorption or settlement;
10. charity or welfare;
11. community welfare or community, social or national activity
12. the rule of Law, government or public administration;
13. the establishment of funds or organizations for the encouragement or support of bodies active for one or more of the purposes enumerated in this Schedule.