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COMPANIES AND ALLIED MATTERS ACT**

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CHAPTER 59

COMPANIES AND ALLIED MATTERS ACT

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CHAPTER 59

COMPANIES AND ALLIED MATTERS ACT

An Act to establish the Corporate Affairs Commission, provide for the incorporation of companies and incidental matters, registration of business names and the incorporation of trustees of certain communities, bodies and associations.

[2nd January, 1990] Commencement.

PART A—COMPANIES

PART I.—CORPORATE AFFAIRS COMMISSION

1. (1) There is hereby established under this Act, a body to be known as the Corporate Affairs Commission (in this Act referred to as “the Commission”).
(2) The Commission shall be—
 - (a) a body corporate with perpetual succession and a common seal;
 - (b) capable of suing and being sued in its corporate name; and
 - (c) capable of acquiring, holding or disposing of any property, movable or immovable, for the purpose of carrying out its functions.
(3) The headquarters of the Commission shall be situated in the Federal Capital Territory, Abuja, and there shall be established an office of the Commission in each State of the Federation.
2. The Commission shall consist of the following members, that is—
 - (a) a chairman who shall be appointed by the President, Commander-in-Chief of the Armed Forces being a person who by reason of his ability, experience or specialised knowledge of corporate, industrial, commercial, financial or economic matters or of busi-

Establishment of the Corporate Affairs Commission.

Membership of the Commission.

ness or professional attainments would in his opinion be capable of making outstanding contributions to the work of the Commission;

-) one representative of the business community, appointed by the Minister on the recommendation of the Nigerian Association of Chambers of Commerce, Industries, Mines and Agriculture;
 -) one representative of labour, appointed by the Minister on the recommendation of the Nigerian Labour Congress;
 -) one representative of the legal profession, appointed by the Minister on the recommendation of the Nigerian Bar Association;
 -) one representative of the accountancy profession, appointed by the Minister after necessary consultation with the Institute of Chartered Accountants of Nigeria or any similar body;
 -) one representative of the Manufacturers Association of Nigeria, appointed by the Minister on the recommendation of the Association;
 -) one representative of the Nigerian Association of Small Scale Industrialists, appointed on the recommendation of the Association;
 -) one representative of the Institute of Chartered Secretaries and Administrators, appointed by the Minister on the recommendation of the Institute;
- one representative of the Securities and Exchange Commission not below the grade of Director or its equivalent;
- one representative of each of the following Federal Ministries, that is—
- (i) Trade and Tourism,
 - (ii) Finance and Economic Development,
 - (iii) Justice,
 - (iv) Industry,
 - (v) Internal Affairs; and
-) the Registrar-General of the Commission.

3. (1) A person appointed as a member of the Commission (not being an *ex-officio* member) shall hold office for five years and shall be eligible for re-appointment for one further term of five years. Tenure of office.

(2) The members of the Commission except the Registrar-General shall be part-time members of the Commission.

(3) Any member of the Commission shall cease to hold office if—

- (a) he becomes of unsound mind or is incapable of carrying out his duties;
- (b) he becomes bankrupt or has made arrangement with his creditors;
- (c) he is convicted of felony or any offence involving dishonesty;
- (d) he is guilty of serious misconduct relating to his duties; or
- (e) in the case of a person possessed of professional qualifications, he is disqualified or suspended (other than at his own request) from practising his profession in any part of Nigeria by the order of any competent authority made in respect of him personally.

4. Members of the Commission appointed under paragraphs (a), (b), (c), (d), (e), (f), (g) and (h) of section 2 of this Act shall be paid such remuneration and allowances as the President, Commander-in-Chief of the Armed Forces may, from time to time, direct. Remuneration and allowance.

5. (1) Subject to this section and section 27 of the Interpretation Act, the Commission may make standing orders regulating its proceedings. Proceedings of the Commission. Cap. 192.

(2) The Chairman shall preside at every meeting of the Commission but, in his absence, the members present shall elect one of their number present to preside at the meeting.

(3) The quorum for meetings of the Commission shall be five, excluding persons appointed under paragraph (h), (i) or (j) of section 2 of this Act.

(4) The Commission may appoint any of its officers to act as Secretary at any of its meetings.

(1) A member of the Commission who is directly or indirectly interested in any company or enterprise, the affairs of which are being deliberated upon by the Commission, or is interested in any contract made or proposed to be made by the Commission shall, as soon as possible after the relevant facts come to his knowledge, disclose the nature of his interest in a meeting of the Commission.

(2) A disclosure, under subsection (1) of this section, shall be recorded in the minutes of the Commission, and the member shall—

- (a) not take part after such disclosure in any deliberation or decision of the Commission with regard to the subject matter in respect of which his interest is thus disclosed;
- (b) be excluded for the purpose of constituting a quorum of the Commission for any such deliberation or decision.

(1) The functions of the Commission shall be to—

- (a) subject to section 541 of this Act, administer this Act including the regulation and supervision of the formation, incorporation, registration, management, and winding-up of companies under or pursuant to this Act;
 - (b) establish and maintain a companies registry and offices in all the States of the Federation suitably and adequately equipped to discharge its functions under this Act or any other law in respect of which it is charged with responsibility;
 - (c) arrange or conduct an investigation into the affairs of any company where the interests of the shareholders and the public so demand;
 - (d) perform such other functions as may be specified by any law or enactment; and
- undertake such other activities as are necessary or expedient for giving full effect to the provisions of this Act.

Nothing in this section shall affect the powers, duties or jurisdiction of the Securities and Exchange Commission under the Securities and Exchange Commission Act.

8. (1) There shall be appointed by the Commission, a Registrar-General who shall be qualified to practise as a legal practitioner in Nigeria and has been so qualified for not less than 10 years and in addition, has had experience in company law practice or administration for not less than eight years.

Appointment of Registrar-General.

(2) The Registrar-General shall be the chief executive of the Commission and shall be subject to the directives of the Commission and shall hold office on such terms and conditions as may be specified in his letter of appointment and on such other terms and conditions as may be determined, from time to time, by the Commission with the approval of the National Council of Ministers.

(3) The Registrar-General shall be the accounting officer for the purpose of controlling and disbursing amounts from the fund established pursuant to section 12 of this Act.

9. The Commission may appoint such other staff as it may deem necessary for the efficient performance of the functions of the Commission under or pursuant to this Act.

Appointment of staff.

10. Notwithstanding the provisions of any enactment to the contrary, a person appointed to the office of Registrar-General under section 8 of this Act or a person appointed under section 9 of this Act who is a legal practitioner shall, while so appointed, be entitled to represent the Commission as a legal practitioner for the purpose and in the course of his employment.

Right to appear in court.

11. Service in the Commission shall be approved service for the purpose of the Pensions Act and accordingly, officers and other persons employed in the Commission shall in respect of their service in the Commission be entitled to pensions, gratuities and other retirement benefits enjoyed by persons holding equivalent grades in the public service of the Federation, so however that nothing in this Act shall prevent the appointment of a person to any office on terms which preclude the grant of a pension and gratuity in respect of that office.

Service in the Commission to be pensionable. Cap. 346.

2. The Commission shall establish a fund which shall consist of such sums as may be allocated to it by the Federal Government and such other funds as may accrue to it in the charge of its functions.

3. The Commission may, from time to time, apply the moneys of the fund established in pursuance of section 12 of this Act—

- (a) to the cost of administration of the Commission;
- (b) for re-imbursing members of the Commission or any committee set up by the Commission for such expenses as may be authorised or approved by the Commission, in accordance with the rate approved in that behalf by the National Council of Ministers;
- (c) to the payment of salaries, fees or other remuneration or allowances, pensions and gratuities payable to the employees of the Commission;
- (d) for the maintenance of any property acquired or vested in the Commission; and
- (e) for, and in connection with, all or any of the functions of the Commission under this Act.

4. (1) The Commission shall keep proper accounts and other records in relation thereto and shall prepare in respect of each year a statement of accounts in such form as the National Council of Ministers may direct.

(2) The accounts of the Commission shall be audited not more than six months after the end of the year by auditors appointed by the Commission from the list and in accordance with the guidelines supplied by the Auditor-General of the Federation; and the fees of the auditors and the expenses of audit generally shall be paid from the funds of the Commission.

(3) The Commission shall cause to be prepared, not later than 30th September in each year, an estimate of the expenditure and income of the Commission during the next preceding year and when prepared they shall be submitted to the Minister for approval by the National Council of Ministers.

15. The Commission shall, not later than 30th June in each year, submit to the National Council of Ministers, a report on the activities of the Commission during the immediately preceding year and shall include in such report, the audited accounts of the Commission. Annual report.

16. The Minister may, with the approval of the National Council of Ministers, make regulations generally for the purpose of this Act and in particular, without prejudice to the generality of the foregoing provisions, make regulations— Regulations.

- (a) prescribing the forms and returns and other information required under this PART, that is, PART A of this Act;
- (b) prescribing the procedure for obtaining any information required under this PART, that is, PART A of this Act;
- (c) requiring returns to be made within the period specified therein by any company or enterprise to which this PART, that is, PART A of this Act applies; and
- (d) prescribing any fees payable under this PART, that is, PART A of this Act.

17. In this Part of this Act—
 “Chairman” means the Chairman of the Commission; and
 “member” means any member of the Commission, including the Chairman. Meaning of certain words used in this Part.

PART II.—INCORPORATION OF COMPANIES AND INCIDENTAL MATTERS

CHAPTER I—*Formation of Company*

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

(1) No company, association, or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any business for profit or gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other enactment in force in Nigeria.

(2) Nothing in this section shall apply to—

(a) any co-operative society registered under the provisions of any enactment in force in Nigeria; or

(b) any partnership for the purpose of carrying on any practice—

(i) as legal practitioners, by persons each of whom is a legal practitioner; or

(ii) as accountants, by persons each of whom is entitled by law to practise as an accountant.

(3) If at any time the number of members of a company, association or partnership exceeds twenty in contravention of this section and it carries on business for more than fourteen days while the contravention continues, every person who is a member of the company, association or partnership during that time shall be guilty of an offence and liable on conviction to a fine of ₦25 for every day during which the default continues.

(4) Subject to subsection (2) of this section, an individual shall not join in the formation of a company under this Act if—

(a) he is less than eighteen years of age; or

(b) he is of unsound mind and has been so found by a court of law in Nigeria or elsewhere; or

(c) he is an undischarged bankrupt; or

(d) he is disqualified under section 254 of this Act from being a director of a company.

(5) A person shall not be disqualified under paragraph (a) of subsection (4) of this section, if two other persons not disqualified under that subsection have subscribed to the memorandum.

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

(4) Subject to the provisions of any enactment regulating the rights and capacity of aliens to undertake or participate in trade or business, an alien or a foreign company may join in forming a company.

21. (1) An incorporated company may be either a company— Types of companies.

(a) having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act referred to as “a company limited by shares”); or

(b) having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act referred to as “a company limited by guarantee”) or

(c) not having any limit on the liability of its members (in this Act referred to as “an unlimited company”).

(2) A company of any of the foregoing types may either be a private company or a public company.

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

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

(3) The total number of members of a private company shall not exceed fifty, not including persons who are *bona fide* in the employment of the company, or were while in that employment and have continued after the determination of that employment to be, members of the company.

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

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

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

23. (1) Subject to subsection (2) of this section, where default is made in complying with any of the provisions of section 22 of this Act in respect of a private company, the company shall cease to be entitled to the privileges and exemptions conferred on private companies by or under this Act and this Act shall apply to the company as if it were not a private company.

(2) If a court, on the application of the company or any other person interested, is satisfied that the failure to comply with the provisions of section 22 of this Act was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, the court may, on such terms and conditions as may seem to it to be just and expedient, order that the company be relieved from the consequences mentioned in subsection (1) of this section.

24. Any company other than a private company shall be a public company and its memorandum shall state that it is a public company.

25. As from the commencement of this Act, an unlimited company shall be registered with a share capital; and where an existing unlimited company is not registered with a share capital, it shall, not later than the appointed day, alter its memorandum so that it becomes an unlimited company having a share capital not below the minimum share capital permitted under section 99 of this Act.

26. (1) Where a company is to be formed for promoting commerce, art, science, religion, sports, culture, education, research, charity or other similar objects, and the income and property of the company are to be applied solely towards the

promotion of its objects and no portion thereof is to be paid or transferred directly or indirectly to the members of the company except as permitted by this Act, the company shall not be registered as a company limited by shares, but may be registered as a company limited by guarantee.

(2) As from the commencement of this Act, a company limited by guarantee shall not be registered with a share capital; and every existing company limited by guarantee and having a share capital shall, not later than the appointed day, alter its memorandum so that it becomes a company limited by guarantee and not having a share capital.

(3) In the case of a company limited by guarantee, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member or purporting to divide the company's undertaking into shares or interests shall be void.

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

(5) If any company limited by guarantee carries on business for the purpose of distributing profits, all officers and members thereof who are cognisant of the fact that it is so carrying on business shall be jointly and severally liable for the payment and discharge of all the debts and liabilities of the company incurred in carrying on such business, and the company and every such officer and member shall be guilty of an offence and liable on conviction to a fine not exceeding ₹ 100 for every day during which it carries on such business.

(6) The total liability of the members of a company limited by guarantee to contribute to the assets of the company in the event of its being wound up shall not at any time be less than ₹ 10,000.

(7) Subject to compliance with subsection (5) of this section, the articles of association of a company limited by guarantee may provide that members can retire or be excluded from membership of the company.

(8) If, in breach of subsection (5) of this section, the total liability of the members of any company limited by guarantee shall at any time be less than ₦10,000, every director and member of the company who is cognisant of the breach shall be guilty of an offence and liable on conviction to a fine of ₦50 for every day during which the default continues.

(9) If, upon the winding-up of a company limited by guarantee, there remains after the discharge of all its debts and liabilities any property of the company, the same shall not be distributed among the members but shall be transferred to some other company limited by guarantee having objects similar to the objects of the company or applied to some charitable object and such other company or charity shall be determined by the members prior to the dissolution of the company.

Memorandum of Association

27. (1) The memorandum of every company shall state—

- (a) the name of the company;
 - (b) that the registered office of the company shall be situated in Nigeria;
 - (c) the nature of the business or businesses which the company is authorised to carry on, or, if the company is not formed for the purpose of carrying on business, the nature of the object or objects for which it is established;
 - (d) the restriction, if any, on the powers of the company;
 - (e) that the company is a private or public company, as the case may be;
 - (f) that the liability of its members is limited by shares or by guarantee or is unlimited, as the case may be.
- (2) If the company has a share capital—
- (a) the memorandum shall also state the amount of authorised share capital, not being less than ₦10,000 in the case of a private company and ₦500,000 in the case of a public company, with which the company proposes to be registered, and the division thereof into shares of a fixed amount;

- (b) the subscribers of the memorandum shall take among them a total number of shares of a value of not less than twenty-five *per cent* of the authorised share capital; and
- (c) each subscriber shall write opposite to his name the number of shares he takes.

(3) A subscriber of the memorandum who holds the whole or any part of the shares subscribed by him in trust for any other person shall disclose in the memorandum that fact and the name of the beneficiary.

(4) The memorandum of a company limited by guarantee shall also state that—

- (a) the income and property of the company shall be applied solely towards the promotion of its objects, and that no portion thereof shall be paid or transferred directly or indirectly to the members of the company except as permitted by or under this Act; and
- (b) each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company, and of the costs of winding up, such amount as may be required not exceeding a specified amount and the total of which shall not be less than ₦10,000.

(5) The memorandum shall be signed by each subscriber in the presence of at least one witness who shall attest the signature.

(6) The memorandum shall be stamped as a deed.

28. Subject to the provisions of section 27 of this Act, the form of a memorandum of association of—

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

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

Form of memorandum.

First Schedule.

Name of company

the 29. The name of a private company limited by shares shall end with the word "Limited".

(2) The name of a public company limited by shares shall end with the words "Public Limited Company".

(3) The name of a company limited by guarantee shall end with the words "(Limited by Guarantee)" in brackets.

(4) The name of an unlimited company shall end with the word "Unlimited".

(5) A company may use the abbreviations "Ltd", "PLC" "(Ltd/Gte)" and "Ult" for the words "Limited", "Public Limited Company", "(Limited by Guarantee)" and "Unlimited" respectively, in the name of the company.

ted 30. (1) No company shall be registered under this Act by a name which—

(a) is identical with that by which a company in existence is already registered, or so nearly resembles that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the Commission requires; or

(b) contains the words "Chamber of Commerce" unless it is a company limited by guarantee; or

(c) in the opinion of the Commission is capable of misleading as to the nature or extent of its activities or is undesirable, offensive or otherwise contrary to public policy; or

(d) in the opinion of the Commission would violate any existing trade mark or business name registered in Nigeria unless the consent of the owner of the trade mark or business name has been obtained.

(2) Except with the consent of the Commission, no company shall be registered by a name which—

(a) includes the word "Federal", "National", "Regional", "State", "Government", or any other word which in the opinion of the Commission suggests or is calculated

to suggest that it enjoys the patronage of the Government of the Federation or the Government of a State in Nigeria, as the case may be, or any Ministry or Department of Government; or

(b) contains the word "Municipal" or "Chartered" or in the opinion of the Commission suggests, or is calculated to suggest, connection with any municipality or other local authority; or

(c) contains the word "Co-operative" or the words "Building Society"; or

(d) contains the word "Group" or "Holding".

31. (1) If a company, through inadvertence or otherwise, on its first registration or on its registration by a new name, is registered under a name identical with that by which a company in existence is previously registered, or so nearly resembling it as to be likely to deceive, the first-mentioned company may, with the approval of the Commission, change its name; and if the Commission so directs within six months of its being registered under that name, the company concerned shall change its name within a period of six weeks from the date of the direction or such longer period as the Commission may allow.

(2) If a company makes default in complying with a direction under subsection (1) of this section, it shall be guilty of an offence and liable on conviction to a fine of ₦25 for every day during which the default continues.

(3) Any company may, by special resolution and with the approval of the Commission signified in writing, change its name:

Provided that no such approval shall be required where the only change in the name of a company is the substitution of the words "Public Limited Company" for the word "Limited" or vice versa on the conversion of a private company into a public company or a public company into a private company in accordance with the provisions of this Act.

(4) Nothing in this Act shall preclude the Commission from requiring a company to change its name if it is discovered that such a name conflicts with an existing trade

mark or business name registered in Nigeria prior to the registration of the company and the consent of the owner of the trade mark or business name was not obtained.

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

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

(7) Any alteration made in the name under this section shall be published by the Commission in the *Gazette*.

(8) A certificate or publication in the *Gazette* under this section shall be evidence of the alteration to which it relates.

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e. 32. (1) The Commission may, on written application and on payment of the prescribed fee, reserve a name pending registration of a company or a change of name by a company.

(2) Such reservation as is mentioned in subsection (1) of this section shall be for such period as the Commission shall think fit not exceeding sixty days and during the period of reservation no other company shall be registered under the reserved name or under any other name which in the opinion of the Commission bears too close a resemblance to the reserved name.

Articles of Association

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es. 33. There shall be registered with the memorandum of association articles of association signed by the subscribers to the memorandum of association, and prescribing regulations for the company.

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of 34. (1) The form and contents of the articles of association of a public company having a share capital, a private company having a share capital, a company limited by guarantee and an unlimited company shall be as in Parts I, II, III and IV

respectively, of Table A in the First Schedule to this Act with such additions, omissions or alterations as may be required in the circumstances.

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

(3) The articles of association shall—

(a) be printed;

(b) be divided into paragraphs numbered consecutively; and

(c) be signed by each subscriber of the memorandum of association in the presence of at least one witness who shall attest the signature.

(4) The articles shall bear the same stamp duty as if they were contained in a deed.

Registration of Companies

35. (1) As from the commencement of this Act, a company shall be formed in the manner set out in this section. Do
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(2) There shall be delivered to the Commission—

(a) the memorandum of association and articles of association complying with the provisions of this Part of this Act;

(b) the notice of the address of the registered office of the company and the head office if different from the registered office:

Provided that a postal box address or a private bag address shall not be accepted by the Commission as the registered office;

(c) a statement in the prescribed form containing the list and particulars together with the consent of the persons who are to be the first directors of the company;

(d) a statement of the authorised share capital signed by at least one director; and

(e) any other document required by the Commission to satisfy the requirements of any law relating to the formation of a company.

(3) A statutory declaration in the prescribed form by a legal practitioner that those requirements of this Act for the registration of a company have been complied with shall be produced to the Commission, and it may accept such a declaration as sufficient evidence of compliance:

Provided that where the Commission refuses a declaration, it shall within thirty days of the date of receipt of the declaration send to the declarant a notice of its refusal giving the grounds of such refusal.

36. (1) The Commission shall register the memorandum and articles unless in its opinion—

- (a) they do not comply with the provisions of this Act; or
- (b) the business which the company is to carry on, or the objects for which it is formed, or any of them, are illegal; or
- (c) any of the subscribers to the memorandum is incompetent or disqualified in accordance with section 20 of this Act; or
- (d) there is non-compliance with the requirement of any other law as to registration and incorporation of a company; or
- (e) the proposed name conflicts with or is likely to conflict with an existing trade mark or business name registered in Nigeria.

(2) Any person aggrieved by the decision of the Commission under subsection (1) of this section, may give notice to the Commission requiring it to apply to the court for directions and the Commission shall within twenty-one days of the receipt of such notice apply to the court for the directions.

(3) The Commission may, in order to satisfy itself as provided in subsection (1)(c) of this section, by instrument in writing require a person subscribing to the memorandum to make and lodge with the Commission, a statutory declaration

to the effect that he is not disqualified under section 20 of this Act from joining in forming a company.

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

(5) Upon registration of the memorandum and articles, the Commission shall certify under its seal—

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

(6) The certificate of incorporation shall be *prima facie* evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental to it have been complied with and that the association is a company authorised to be registered and duly registered under this Act.

37. As from the date of incorporation mentioned in the certificate of incorporation, the subscriber of the memorandum together with such other persons as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the powers and functions of an incorporated company including the power to hold land, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

Capacity and powers of companies

38. (1) Except to the extent that the company's memorandum or any enactment otherwise provides, every company shall, for the furtherance of its authorised business or objects, have all the powers of a natural person of full capacity.

(2) A company shall not have or exercise power either directly or indirectly to make a donation or gift of any of its property or funds to a political party or political association, or for any political purpose; and if any company, in breach of this subsection makes any donation or gift of its property to a political party or political association, or for any political purpose, the officers in default and any member who voted for the breach shall be jointly and severally liable to refund to the company the sum or value of the donation or gift and in addition, the company and every such officer or member shall be guilty of an offence and liable to a fine equal to the amount or value of the donation or gift.

39. (1) A company shall not carry on any business not authorised by its memorandum and shall not exceed the powers conferred upon it by its memorandum or this Act.

(2) A breach of subsection (1) of this section, may be asserted in any proceedings under sections 300 to 313 of this Act or under subsection (4) of this section.

(3) Notwithstanding the provisions of subsection (1) of this section, no act of a company and no conveyance or transfer of property to or by a company shall be invalid by reason of the fact that such act, conveyance or transfer was not done or made for the furtherance of any of the authorised business of the company or that the company was otherwise exceeding its objects or powers.

(4) On the application of—

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

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

(5) If the transactions sought to be prohibited in any proceeding under subsection (4) of this section are being, or are to be performed or made pursuant to any contract to

which the company is a party, the court may, if it deems the same to be equitable and if all the parties to the contract are parties to the proceedings, set aside and prohibit the performance of such contract, and may allow to the company or to the other parties to the contract compensation for any loss or damage sustained by them by reason of the setting aside or prohibition of the performance of such contract but no compensation shall be allowed for loss of anticipated profits to be derived from the performance of such contract.

40. (1) Where there is provision in the memorandum of association of a company restricting the powers and capacity of the company to carry on its authorised business or object, the restriction may be relied on and have effect only for the purpose of—

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- (a) proceedings against the company by a director or member of the company, or where the company has issued debentures secured by a floating charge over all or any of the company's property, by the holder of any of the debentures or the trustee for the holders of the debentures; or
- (b) proceedings by the company or a member of the company against the present or former officers of the company for failure to observe any such restriction; or
- (c) proceedings by the Commission or a member of the company to wind up the company; or
- (d) proceedings for the purpose of restraining the company or other person from acting in breach of the memorandum or directing the company or such person to comply with the same.

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

Effect of memorandum and articles

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

(2) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company and shall be of the nature of a speciality debt.

(3) Where the memorandum or articles empower any person to appoint or remove any director or other officer of the company, such power shall be enforceable by that person notwithstanding that he is not a member or officer of the company.

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

Member's right to copy of memorandum and articles

42. (1) A company shall, on being so required by any member, send to him a copy of the memorandum and of the articles, if any, and a copy of any enactment which alters the memorandum, subject to payment, in the case of a copy of the memorandum and of the articles, of ₦20 or such less sum as the company may prescribe and in the case of a copy of an enactment of such sum not exceeding the published price thereof as the company may require.

(2) If a company makes default in complying with this section, the company and every officer of the company who is

in default shall be guilty of an offence and liable on conviction for each offence to a fine not exceeding ₦25.

43. (1) Where an alteration is made in the memorandum of a company every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.

(2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum which are not in accordance with the alteration, it shall be guilty of an offence and liable on conviction to a fine not exceeding ₦25 for each copy so issued, and every officer of the company who is in default shall be liable to the like penalty.

Alteration of memorandum and articles

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

(2) Only those provisions which are required by section 27 of this Act or by any other specific provision contained in this Act, to be stated in the memorandum of the company concerned shall be deemed to be conditions contained in its memorandum.

45. (1) The name of the company shall not be altered except with the consent of the Commission in accordance with section 31 of this Act.

(2) The business which the company is authorised to carry on or, if the company is not formed for the purpose of carrying on business, the objects for which it is established may be altered or added to in accordance with the provisions of section 46 or of Part XV of this Act.

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

(4) The share capital of the company may be altered in accordance with the provisions of sections 100 to 111 of this Act but not otherwise.

(5) Subject to section 49 of this Act, any other provision of the memorandum may be altered in accordance with section 46 of this Act, or as otherwise provided in this Act.

46. (1) A company may, at a meeting of which notice in writing has been duly given to all members (whether or not otherwise entitled thereto), by special resolution, alter the provisions of its memorandum with respect to the business or objects of the company:

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

(2) An application under this section may be made to the court—

- (a) by the holders of not less in the aggregate than fifteen *per cent* in nominal value of the company's issued share capital or any class thereof or, if the company is not limited by shares, not less than fifteen *per cent* of the company's members; or
- (b) by the holders of not less than fifteen *per cent* of the company's debentures entitling the holders to object to alterations of its objects:

Provided that any such application shall not be made by any person who has consented to or voted in favour of the alteration.

(3) An application under this section shall be made not later than twenty-eight days after the date on which the resolution altering the company's business or objects was passed, and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(4) On an application under this section, the court may make an order confirming the alteration either wholly or in part and on such terms and conditions as it thinks fit, and may adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members; and the court may give such

directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement:

Provided that no part of the capital of the company shall be expended in any purchase.

(5) The debentures entitling the holders to object to alterations of a company's business or objects shall be any debentures secured by a floating charge.

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

(7) Where a company passes a resolution altering its business or objects, and—

(a) application is thereafter made to the court for its confirmation under this section, the company shall forthwith give notice to the Commission of the making of the application, and thereafter there shall be delivered to the Commission within 15 days from the date of its making—

(i) a certified true copy of the order, in the case of refusal to confirm the resolution, and

(ii) a certified true copy of the order, in the case of confirmation of the resolution together with a printed copy of the memorandum as thereby altered;

(b) no application is made with respect thereto to a court under this section, the company shall, within fifteen days from the end of the period for taking such an application, deliver to the Commission a copy of the resolution as passed.

(8) If the Commission—

(a) is satisfied with the application, a printed copy of the memorandum as altered by the resolution shall forthwith thereafter be delivered to it;

(b) is not satisfied with the application, it shall give notice in writing to the company of its decision and an appeal from its decision shall thereafter lie to the court at the

suit of any person aggrieved, if made within twenty-one days from the date of the receipt by the company of the notice of the rejection, or within such extended time as the court may allow.

(9) The court may at any time extend the time for the delivery of documents to the Commission under paragraph (a) of subsection (7) of this section for such period as the court may think proper.

(10) If a company makes default in giving notice or delivering any document to the Commission as required by subsection (6) of this section, the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine of ₦50.

(11) The validity of an alteration of the provision of a company's memorandum with respect to the business or objects of the company shall not be questioned on the ground that it was not authorised by subsection (1) of this section except in proceedings taken for the purpose (whether under this section or otherwise) before the expiration of twenty-one days after the date of the resolution in that behalf; and where any such proceedings are taken otherwise than under this section, subsections (6), (7), (8) and (9) of this section shall apply in relation thereto as if they had been taken under this section, and as if an order declaring the alteration invalid were an order cancelling it and as if any order dismissing the proceedings were an order confirming the alteration.

(12) In this section "member" includes any person financially interested in the company.

47. (1) Subject to the provisions of section 44 of this Act and of this section and of any Part of PART A of this Act (which preserves the rights of minorities in certain cases) any provision in a company's memorandum which might lawfully have been in articles of association instead of in the memorandum may be altered by the company by special resolution; but if an application is made to the court for the alteration to be cancelled, the alteration shall not have effect except in so far as it is confirmed by the court.

(2) This section shall not apply where the memorandum itself provides for or prohibits the alteration of all or any of

the said provisions, and shall not authorise any variation or abrogation of the special rights of any class of members.

(3) Subsections (2), (3), (4), (7), (8), (9) and (10) of section 46 of this Act (which relate to mode of alteration of business or objects), except paragraph (b) of subsection (2) thereof, shall apply in relation to any alteration and to any application made under this section as they apply in relation to alterations and to applications made under that section.

(4) This section shall apply to a company's memorandum whether registered before or after the commencement of this Act.

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

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

49. Save to the extent to which a member of a company agrees in writing at any time to be bound thereby, and anything to the contrary in the memorandum or articles notwithstanding, the member shall not be bound by any alteration made in the memorandum or articles of the company requiring him on or after the date of the alteration to— Limitation of liability of member if memorandum altered

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

CHAPTER 2—Conversion and re-registration of companies

50. (1) Subject to this section, a private company having a share capital may be re-registered as a public company if— Re-registration of private company as public

- (a) a special resolution that it should be so re-registered is passed; and

- (b) an application for re-registration is delivered to the Commission together with the documents prescribed in subsection (3) of this section.
- (2) The special resolution shall—
- (a) alter the company's memorandum so that it states that the company is to be a public company;
- (b) make such other alterations in the memorandum as are necessary to bring it into conformity with the requirements of this Act with respect to the memorandum of a public company in accordance with section 27 of this Act; and
- (c) make such alterations in the company's articles as are requisite in the circumstances.
- (3) The application shall be made to the Commission in the prescribed form and be signed by at least one director and the secretary of the company; and the documents to be delivered with it are the following—
- (a) a printed copy of the memorandum and articles as altered in pursuance of the resolution;
- (b) a copy of a written statement by the directors and the secretary certified on oath by them, and showing that the paid up capital of the company as at the date of the application is not less than twenty-five *per cent* of the authorised share capital as at that date;
- (c) a copy of the balance sheet of the company as at the date of the resolution or the preceeding six months, whichever is later;
- (d) a statutory declaration in the prescribed form by a director and the secretary of the company—
- (i) that the special resolution required under this section has been passed; and
- (ii) that the company's net assets are not less than the aggregate of the paid up share capital and undistributable reserves; and
- (e) a copy of any prospectus or statement in lieu of prospectus delivered within the preceding 12 months to the Securities and Exchange Commission established under the Securities and Exchange Commission Act.

- (4) If the Commission is satisfied that a company has complied with the provisions of this section and may be re-registered as a public company, it shall—
- (a) retain the application and other documents delivered to it under this section;
- (b) register the application and other documents; and
- (c) issue the company a certificate of incorporation, stating that the company is a public company.
- (5) Upon the issue to a company of the certificate of incorporation under this section—
- (a) the company shall by virtue of the issue of that certificate become a public company; and
- (b) any alterations in the memorandum and articles set out in the resolution shall take effect accordingly.
- (6) The certificate shall be *prima facie* evidence that—
- (a) the requirements of this Act in respect of re-registration and of matters precedent and incidental thereto have been complied with; and
- (b) the company is a public company.
- (7) A company shall not be re-registered under this section if it has previously been re-registered as an unlimited company.

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

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(2) A company shall be precluded from re-registering under this section if it is limited by virtue of re-registration under section 52 of this Act.

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

(4) An application under this section shall be in the prescribed form and be signed by a director and the secretary of the company, and be lodged with the Commission together with the documents specified in subsection (6) of this section.

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

(6) The documents to be lodged with the Commission are as follows—

(a) the prescribed form of assent to the company being registered as unlimited, subscribed by or on behalf of all the members of the company;

(b) a statutory declaration made by the directors of the company—

(i) that the persons by whom or on whose behalf the form of assent is subscribed constitute the whole membership of the company, and

(ii) if any of the members have not subscribed that form themselves, that the directors have taken all reasonable steps to satisfy themselves that each person who subscribed to it on behalf of a member was lawfully empowered to do so; and

(c) a printed copy of the memorandum and the articles incorporating the alterations set out in the application.

(7) If the Commission is satisfied that the company be registered under this section as an unlimited company, it shall retain the application and other documents lodged with it under this section and—

(a) register the application and other documents; and

(b) issue to the company a certificate of incorporation appropriate to the status to be assumed by virtue of this section.

(8) On the issue of the certificate—

(a) the status of the company, by virtue of the issue, shall be changed from limited to unlimited;

(b) the alterations in the memorandum set out in the application and any alteration in the articles so set out shall take effect as if duly made by resolution of the company; and

(c) the provisions of this Act shall apply accordingly to the memorandum and articles as altered.

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

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

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(2) A company shall not under this section be re-registered as a public company or company limited by guarantee; and a company shall be precluded from re-registering under it if it is unlimited by virtue of re-registration under section 51 of this Act.

(3) The special resolution shall state the proposed authorised share capital and provide for the making of such alterations in the memorandum as are necessary to bring it into conformity with the requirements of this Act with respect to the memorandum of a company so limited, and such alterations in the articles as are requisite in the circumstances.

(4) An application in the prescribed form for the company to be re-registered as limited signed by a director and the secretary of the company shall be lodged with the Commission together with the necessary documents, not earlier than the day on which the resolution was filed under section 237 of this Act.

(5) The documents to be lodged with the Commission shall be a printed copy of the—

(a) memorandum as altered in pursuance of the resolution; and

(b) articles as so altered.

(6) If the Commission is satisfied that the company be re-registered under this section as a company limited by

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

(6) The documents to be lodged with the Commission are as follows—

(a) the prescribed form of assent to the company being registered as unlimited, subscribed by or on behalf of all the members of the company;

(b) a statutory declaration made by the directors of the company—

(i) that the persons by whom or on whose behalf the form of assent is subscribed constitute the whole membership of the company, and

(ii) if any of the members have not subscribed that form themselves, that the directors have taken all reasonable steps to satisfy themselves that each person who subscribed to it on behalf of a member was lawfully empowered to do so; and

(c) a printed copy of the memorandum and the articles incorporating the alterations set out in the application.

(7) If the Commission is satisfied that the company be registered under this section as an unlimited company, it shall retain the application and other documents lodged with it under this section and—

(a) register the application and other documents; and

(b) issue to the company a certificate of incorporation appropriate to the status to be assumed by virtue of this section.

(8) On the issue of the certificate—

(a) the status of the company, by virtue of the issue, shall be changed from limited to unlimited;

(b) the alterations in the memorandum set out in the application and any alteration in the articles so set out shall take effect as if duly made by resolution of the company; and

(c) the provisions of this Act shall apply accordingly to the memorandum and articles as altered.

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

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

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(2) A company shall not under this section be re-registered as a public company or company limited by guarantee; and a company shall be precluded from re-registering under it if it is unlimited by virtue of re-registration under section 51 of this Act.

(3) The special resolution shall state the proposed authorised share capital and provide for the making of such alterations in the memorandum as are necessary to bring it into conformity with the requirements of this Act with respect to the memorandum of a company so limited, and such alterations in the articles as are requisite in the circumstances.

(4) An application in the prescribed form for the company to be re-registered as limited signed by a director and the secretary of the company shall be lodged with the Commission together with the necessary documents, not earlier than the day on which the resolution was filed under section 237 of this Act.

(5) The documents to be lodged with the Commission shall be a printed copy of the—

(a) memorandum as altered in pursuance of the resolution; and

(b) articles as so altered.

(6) If the Commission is satisfied that the company be re-registered under this section as a company limited by

shares, it shall retain the application and other documents lodged with it under this section and register them, and it shall issue to the company a certificate of incorporation appropriate to the status to be assumed by the company by virtue of this section.

(7) On the issue of the certificate—

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

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

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

53. (1) A public company may be re-registered as a private company if—

- (a) a special resolution complying with subsection (2) of this section that it should be so re-registered is passed and has not been cancelled by the court under this section;
- (b) an application for the purpose in the prescribed form and signed by a director and the secretary of the company is delivered to the Commission together with a printed copy of the memorandum and articles of the company as altered by the resolution; and
- (c) either—
 - (i) the period during which an application for the cancellation of the resolution under this section may be

made has expired without any such application having been made, or

(ii) where such an application has been made, the application has been withdrawn or an order has been made confirming the resolution and a copy of that order has been delivered to the Commission.

(2) The special resolution shall alter the company's memorandum so that it states that the company is a private company and shall make such other alterations in the company's memorandum and articles as are requisite in the circumstances.

(3) Where the special resolution is passed, an application may be made to the court for the cancellation of the resolution, and such application may be made by—

- (a) the holders of not less in the aggregate than five *per cent* in the nominal value of the company's issued share capital, or any class thereof; or
- (b) not less than five *per cent* of the company's members; but not by a person who has consented to or voted in favour of the resolution.

(4) The application shall be made within twenty-eight days after the passing of the resolution and the applicant shall forthwith give notice of the application in the prescribed form to the Commission and to the company.

(5) On the hearing of the application, the court shall make an order either cancelling or confirming the resolution and may make all such orders or give such directions as it may think expedient in the circumstances.

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

(7) If a company fails to deliver to the Commission a certified true copy of the order as required in subsection (6) of this section, the company and any officer of it who is in default, shall be guilty of an offence and liable on conviction to a fine of ₦100 and for continued contravention, to a daily default fine of ₦25.

(8) If the Commission is satisfied that a company may be re-registered under this section, it shall—

- (a) retain the application and other documents delivered to it under this section;
 - (b) register the application and other documents; and
 - (c) issue the company with a certificate of incorporation as a private company.
- (9) On the issue of the certificate—
- (a) the company shall become a private company; and
 - (b) the alteration in the memorandum and articles set out in the resolution shall take effect accordingly.
- (10) The certificate shall be *prima facie* evidence that—
- (a) the requirements of this section in respect of re-registration and of matters precedent and incidental to it have been complied with; and
 - (b) the company is a private company.

CHAPTER 3—Foreign Companies

54. (1) Subject to sections 56 to 59 of this Act, every foreign company which, before or after the commencement of this Act, was incorporated outside Nigeria, and having the intention of carrying on business in Nigeria shall take all steps necessary to obtain incorporation as a separate entity in Nigeria for that purpose, but until so incorporated, the foreign company shall not carry on business in Nigeria or exercise any of the powers of a registered company and shall not have a place of business or an address for service of documents or processes in Nigeria for any purpose other than the receipt of notices and other documents, as matters preliminary to incorporation under this Act.

- (2) Any act of the company in contravention of subsection (1) of this section shall be void.
- (3) Nothing in this section shall affect the status of—
 - (a) any foreign company which before the commencement of this Act was granted exemption from compliance with Part X of the Companies Act 1968;

(b) any foreign companies exempted under any treaty to which Nigeria is a party.

55. If any foreign company fails to comply with the requirements of section 54 of this Act in so far as they may apply to the company, the company shall be guilty of an offence and liable on conviction to a fine of not less than ₦2,500; and every officer or agent of the company who knowingly and wilfully authorises or permits the default or failure to comply with those requirements shall, whether or not the company is also convicted of any offence, be liable on conviction to a fine of not less than ₦250 and where the offence is a continuing one to a further fine of ₦25 for every day during which the default continues.

56. (1) A foreign company may apply to the National Council of Ministers for exemption from the provisions of section 54 of this Act if that foreign company belongs to one of the following categories, that is—

- (a) foreign companies (other than those specified in paragraph (d) of this subsection) invited to Nigeria by or with the approval of the Federal Government to execute any specified individual project;
- (b) foreign companies which are in Nigeria for the execution of specific individual loan project on behalf of a donor country or international organisation;
- (c) foreign government-owned companies engaged solely in export promotion activities; and
- (d) engineering consultants and technical experts engaged on any individual specialist project under contract with any of the governments in the Federation or any of their agencies or with any other body or person, where such contract has been approved by the Federal Government.

(2) An application for exemption under this section shall be in writing addressed to the Secretary to the Federal Government and shall set out—

- (a) the name and place of business of the foreign company outside Nigeria;

- (b) the name and place of business or the proposed name and place of business of the foreign company in Nigeria;
- (c) the name and address of each director, partner or other principal officer of the foreign company;
- (d) a certified copy of the charter, statutes, or memorandum and articles of association of the company, or other instrument constituting or defining the constitution of the company and if the instrument is not written in the English language, a certified translation thereof;
- (e) the names and addresses of some one or more persons resident in Nigeria authorised to accept on behalf of the foreign company services of process and any notices required to be served on the company;
- (f) the business or proposed business in Nigeria of the foreign company and the duration of such business;
- (g) particulars of any project previously carried out by the company as an exempted foreign company; and
- (h) such other particulars as may be required by the Secretary to the Federal Government.

(3) Where the National Council of Ministers, upon the receipt of an application for exemption, is of the opinion that the circumstances are such as to render it expedient that such an exemption should be granted, the National Council of Ministers may, subject to such conditions as it may prescribe, exempt the foreign company from the obligations imposed by or under this Act.

(4) Every exemption granted in pursuance of this section shall specify the period or, as the case may be, the project or series of projects, for which it is granted and shall lapse at the end of such period or upon the completion of such project or series of projects.

(5) The National Council of Ministers may at any time revoke any exemption granted to any company, if it is of the opinion that the company has contravened any provision of this Act or has failed to fulfil any condition contained in the exemption order or for any other good or sufficient reason.

(6) The National Council of Ministers shall cause to be published in the *Federal Gazette* the name of any company—

- (a) to which an exemption has been granted and the period or, as the case may be, the project or series of projects for which the exemption is granted;
- (b) whose exemption has been revoked and the effective date of such revocation.

57. Every exempted company shall deliver to the Commission, every calendar year a report in the form prescribed by the Commission.

58. Subject to this Act and save as may be stated in the instrument of exemption, a foreign company exempted pursuant to this Act shall have the status of an unregistered company and accordingly, the provisions of this Act applicable to an unregistered company shall apply in relation to such an exempted company as they apply in relation to an unregistered company under this Act.

59. (1) Any person who, for the purpose of obtaining an exemption or of complying with any of the provisions of section 56 of this Act, makes any statement or presents any instrument which is false in a material particular shall be guilty of an offence unless he proves that he has taken all reasonable steps to ascertain the truth of the statement made or contained in the instrument so presented.

(2) Any person who is guilty of an offence under this section shall be liable on conviction to a fine of ₦5,000 or imprisonment for a term of three years.

60. For the avoidance of doubt, it is hereby declared that—

- (a) save as provided in sections 55, 56, 57 and 58 of this Act, nothing in this Act shall be construed as authorising the disregard by any exempted foreign company of any enactment or rule of law; and
- (b) nothing in this Chapter shall be construed as affecting the rights or liability of a foreign company to sue or be sued in its name or in the name of its agent.

Annual report.

Exempt foreign companies have status of unregistered company.

Penalty for false information.

Application of certain sections of this Act to foreign companies.

CHAPTER 4—Promoters

61. Any person who undertakes to take part in forming a company with reference to a given project and to set it going and who takes the necessary steps to accomplish that purpose, or who, with regard to a proposed or newly formed company, undertakes a part in raising capital for it, shall *prima facie* be deemed a promoter of the company:

Provided that a person acting in a professional capacity for persons engaged in procuring the formation of the company shall not thereby be deemed to be a promoter.

62. (1) A promoter stands in a fiduciary relationship to the company and shall observe the utmost good faith towards the company in any transaction with it or on its behalf and shall compensate the company for any loss suffered by reason of his failure so to do.

(2) A promoter who acquired any property or information in circumstances in which it was his duty as a fiduciary to acquire it on behalf of the company shall account to the company for such a property and for any profit which he may have made from the use of such property or information.

(3) Any transaction between a promoter and the company may be rescinded by the company unless, after full disclosure of all material facts known to the promoter, such transaction shall have been entered into or ratified on behalf of the company—

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

(4) No period of limitation shall apply to any proceedings brought by the company to enforce any of its rights under this section but in any such proceedings the court may relieve a promoter in whole or in part and on such terms as it thinks fit from liability hereunder if in all the circumstances, including lapse of time, the court thinks it equitable to do so.

PART III.—ACTS BY OR ON BEHALF OF THE COMPANY

Exercise of Company's Powers

63. (1) A company shall act through its members in general meeting or its board of directors or through officers or agents, appointed by, or under authority derived from, the members in general meeting or the board of directors.

(2) Subject to the provisions of this Act, the respective powers of the members in general meeting and the board of directors shall be determined by the company's articles.

(3) Except as otherwise provided in the company's articles, the business of the company shall be managed by the board of directors who may exercise all such powers of the company as are not by this Act or the articles required to be exercised by the members in general meeting.

(4) Unless the articles shall otherwise provide, the board of directors, when acting within the powers conferred upon them by this Act or the articles, shall not be bound to obey the directions or instructions of the members in general meeting: Provided that the directors acted in good faith and with due diligence.

(5) Notwithstanding the provisions of subsection (3) of this section, the members in general meeting may—

- (a) act in any matter if the members of the board of directors are disqualified or are unable to act because of a deadlock on the board or otherwise;
- (b) institute legal proceedings in the name and on behalf of the company if the board of directors refuse or neglect to do so;
- (c) ratify or confirm any action taken by the board of directors;
- (d) make recommendations to the board of directors regarding action to be taken by the board.

(6) No alteration of the articles shall invalidate any prior act of the board of directors which would have been valid if that alteration had not been made.

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64. Unless otherwise provided in this Act or in the articles, the board of directors may—

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

Liability for acts of the company

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65. Any act of the members in general meeting, the board of directors, or of a managing director while carrying on in the usual way the business of the company shall be treated as the act of the company itself and the company shall be criminally and civilly liable therefor to the same extent as if it were a natural person:

Provided that—

- (a) the company shall not incur civil liability to any person if that person had actual knowledge at the time of the transaction in question that the general meeting, board of directors, or managing director, as the case may be, had no power to act in the matter or had acted in an irregular manner or if, having regard to his position with or relationship to the company, he ought to have known of the absence of such power or of the irregularity;
- (b) if in fact a business is being carried on by the company, the company shall not escape liability for acts undertaken in connection with that business merely because the business in question was not among the business authorised by the company's memorandum.

66. (1) Except as provided in section 65 of this Act, the acts of any officer or agent of a company shall not be deemed to be acts of the company, unless—

- (a) the company, acting through its members in general meeting, board of directors, or managing director, shall have expressly or impliedly authorised such officer or agent to act in the matter; or

- (b) the company, acting as mentioned in paragraph (a) of this subsection, shall have represented the officer or agent as having its authority to act in the matter, in which event the company shall be civilly liable to any person who has entered into the transaction in reliance on such representation unless such person had actual knowledge that the officer or agent had no authority or unless having regard to his position with or relationship to the company, he ought to have known of such absence of authority.

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

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

67. (1) Any provision, whether contained in the articles of the company or in any contract with a company or otherwise, for exempting any officer of the company or any person (whether an officer of the company or not) employed by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law, would otherwise attach to him in respect of any negligence, default, or breach of trust of which he may be guilty in relation to the company, shall be void.

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(2) Notwithstanding the provisions of subsection (1) of this section—

- (a) a person shall not be deprived of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision as mentioned in that subsection was in force; and
- (b) a company may, in pursuance of any such provision as mentioned in subsection (1) of this section, indemnify any such officer or auditor against any liability incurred

by him in defending any proceedings whether civil or criminal in which judgment is given in his favour or in which he is acquitted or, in connection with any application under section 641 of this Act, in which relief is granted to him by the court.

Constructive notice of registered documents

68. Except as mentioned in section 197 of this Act, regarding particulars in the register of particulars of charges, a person shall not be deemed to have knowledge of the contents of the memorandum and articles of a company or of any other particulars, documents, or the contents of documents merely because such particulars or documents are registered by the Commission or referred to in any particulars or documents so registered, or are available for inspection at an office of the company.

69. Any person having dealings with a company or with someone deriving title under the company shall be entitled to make the following assumptions and the company and those deriving title under it shall be estopped from denying their truth that—

- (a) the company's memorandum and articles have been duly complied with;
- (b) every person described in the particulars filed with the Commission pursuant to sections 35 and 292 of this Act as a director, managing director or secretary of the company, or represented by the company, acting through its members in general meeting, board of directors, or managing director, as an officer or agent of the company, has been duly appointed and has authority to exercise the powers and perform the duties customarily exercised or performed by a director, managing director, or secretary of a company carrying on business of the type carried on by the company or customarily exercised or performed by an officer or agent of the type concerned;

- (c) the secretary of the company, and every other officer or agent of the company having authority to issue documents or certified copies of documents on behalf of the company has authority to warrant the genuineness of the documents or the accuracy of the copies so issued;
- (d) a document has been duly sealed by the company if it bears what purports to be the seal of the company attested by what purports to be the signatures of two persons who, in accordance with paragraph (b) of this section, can be assumed to be a director and the secretary of the company:

Provided that—

(i) a person shall not be entitled to make such assumptions as aforesaid, if he had actual knowledge to the contrary or if, having regard to his position with or relationship to the company, he ought to have known the contrary;

(ii) a person shall not be entitled to assume that any one or more of the directors of the company have been appointed to act as a committee of the board of directors or that an officer or agent of the company has the company's authority merely because the company's articles provided that authority to act in the matter may be delegated to a committee or to an officer or agent.

70. Where, in accordance with sections 65 to 69 of this Act, a company would be liable to a third party for the acts of any officer or agent, the company shall, except where there is collusion between the officer or agent and the third party, be liable notwithstanding that the officer or agent has acted fraudulently or forged a document purporting to be sealed by or signed on behalf of the company.

Company's contracts

71. (1) Contracts on behalf of a company may be made, varied or discharged as follows—

- (a) any contract which if made between individuals would be by law required to be in writing under seal, or which could be varied, or discharged only by writing under

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seal, may be made, varied or discharged, as the case may be, in writing under the common seal of the company;

- (b) any contract which if made between individuals would be by law required to be in writing, signed by the parties to be charged therewith, or which could be varied or discharged only by writing or written evidence signed by the parties to be charged, may be made, varied or discharged, as the case may be, in writing signed in the name or on behalf of the company; and
- (c) any contract which if made between individuals would be valid although made by parol only and not reduced into writing or which could be varied or discharged by parol, may be made, varied or discharged, as the case may be, by parol on behalf of the company.

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

tion 72. (1) Any contract or other transaction purporting to be entered into by the company or by any person on behalf of the company prior to its formation may be ratified by the company after its formation and thereupon the company shall become bound by and entitled to the benefit thereof as if it has been in existence at the date of such contract or other transaction and had been a party thereto.

(2) Prior to ratification by the company, the person who purported to act in the name of or on behalf of the company shall, in the absence of express agreement to the contrary, be personally bound by the contract or other transaction and entitled to the benefit thereof.

and ry 73. (1) A bill of exchange or promissory note shall be deemed to have been made, accepted, or endorsed on behalf of a company if made, or expressed to be made, accepted, or endorsed in the name of the company, or if expressed to be

made, accepted or endorsed on behalf or on account of the company by a person acting under its authority.

(2) The company and its successors shall be bound thereby if the company is in accordance with sections 65 to 67 of this Act, liable for the acts of these who made, accepted or endorsed it in its name or on its behalf or account, and a signature by a director or the secretary on behalf of the company shall not be deemed to be a signature by procuration for the purposes of section 25 of the Bills of Exchange Act. Cap

74. A company shall have a common seal the use of which shall be regulated by the articles. Con of the com

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

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

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

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

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

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

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

Authentication and service of documents

77. A document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorised officer of the company, and need not be under its common seal unless otherwise so required in this Part of this Act.

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

PART IV.—MEMBERSHIP OF THE COMPANY

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

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

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

80. (1) As from the commencement of this Act, an individual shall not be capable of becoming a member of a company if—

- (a) he is of unsound mind and has been so found by a court in Nigeria or elsewhere; or
- (b) he is an undischarged bankrupt.

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

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

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

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

81. Every member shall, notwithstanding any provision in the articles, have a right to attend any general meeting of the company and to speak and vote on any resolution before the meeting:

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

82. If any person falsely and deceitfully personates any member of a company and thereby obtains or endeavours to obtain any benefit due to any such member, he shall be guilty of an offence and be liable on conviction to imprisonment for a term of not more than seven years or a fine of not more than ₦2,500.

Register of Members

of 83. (1) Every company shall keep a register of its members and enter in it the following particulars—

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

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the Commission, the register shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to share specified in paragraph (a) of this subsection.

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

(3) The entry required under paragraph (c) of subsection (1) of this section shall be made within twenty-eight days of the date on which the person concerned ceased to be a member, or, if he ceased to be a member otherwise than as a result of action by the company, within twenty-eight days of production to the company of evidence satisfactory to the company of the occurrence of the event whereby he ceased to be a member.

(4) Where a company makes default in complying with the provisions of this section, the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine of ₦25 and a daily default fine of ₦5.

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

84. (1) The register of members shall be kept at the registered office of the company, except that if—

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

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

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

(3) A company shall not be bound to send notice under this subsection where the register has, at all times since it came into existence or, in the case of a register in existence at the commencement of this Act, at all times since then, been kept at the registered office of the company.

(4) If a company makes default for twenty-eight days in complying with subsection (2) of this section, the company and every one of its officers who is in default shall be guilty of an offence and liable on conviction to a fine of ₦10 and, for continued contravention, to a daily default fine of ₦5.

85. (1) Every company having more than fifty members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index, of the names of the members of the company and shall, within fourteen days after the date on which any alteration is made in the register of members, make any necessary alteration in the index.

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

(3) The index shall, at all times, be kept at the same place as the register of members.

(4) If default is made in complying with the provisions of this section, the company and every officer of the company who is in default shall be liable to a fine of ₦50.

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ited. 86. No notice of any trust, express, implied or constructive shall be entered on the register of members or be receivable by the Commission.

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r and 87. (1) Except when the register of members is closed under the provisions of this Act, the register and the index of members' names shall be open during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so however, that no less than two hours in each day shall be allowed for inspection) to the inspection of any member of the company without charge, and with the permission of the company to any other person on payment of ₦1 or any less sum as the company may prescribe for each inspection.

(2) Any member or, with the permission of the company, any other person may require a copy of the register, or of any part thereof, on payment of 50 kobo, or such less sum as the company may prescribe, for every 100 words or fractional part thereof required to be copied; and the company shall cause any copy so required by any person to be sent to that person within a period of ten days commencing on the day next after the day on which the requirement is received by the company.

(3) In the case of a member, if any inspection required under this section is refused or if any copy required under this section is not sent within the prescribed period, the company and every officer of the company who is in default shall be liable in respect of each offence to a fine of ₦10.

(4) In the case of any such refusal or default in the case of a member, the court may by order compel an immediate

inspection of the register, and index or direct that the copies required shall be sent to the persons requiring them.

88. Where, by virtue of paragraph (b) of subsection (1) of section 84 of this Act, the register of members is kept at the office of some person other than the company, and by reason of any default of his, the company fails to comply with subsection (1) or (2) of section 84 of this Act, or with any requirements of this Act as to the production of the register, that other person shall be liable to the same penalties as if he were an officer of the company who was in default, and the power of the court under subsection (4) of section 87 of this Act shall extend to the making of orders against that other person and his officers and servants.

89. A company may, on giving notice by advertisement in a daily newspaper circulating in the district in which the registered office of the company is situated, close the register of members or any part of it for any time or times not exceeding on the whole thirty days in each year.

90. (1) If—

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

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

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

(3) On an application under this section, the court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members and

alleged members on the one hand and the company on the other hand, and generally may decide any question necessary or expedient to be decided for rectification of the register.

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

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nce. 91. The register of members shall be *prima facie* evidence of matters which are by this Act directed or authorised to be inserted in it.

Liability of members

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s. 92. (1) Prior to the winding-up of a company, a member of the company with shares shall be liable to contribute the balance, if any, of the amount payable in respect of the shares held by him in accordance with the terms of the agreement under which the shares were issued or in accordance with a call validly made by the company pursuant to its articles.

(2) Where any contribution has become due and payable by reason of a call validly made by the company pursuant to the articles or where, under the terms of any agreement with the company, a member has undertaken personal liability to make future payments in respect of shares issued to him, the liability of the member shall continue notwithstanding that the shares held by him are subsequently transferred or forfeited under a provision to that effect in the articles, but his liability shall cease if and when the company shall have received payment in full of all such moneys in respect of the shares.

(3) Subject to subsections (1) and (2) of this section, no member or past member shall be liable to contribute to the assets of the company, except in the event of its being wound up.

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

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

(5) For the purposes of this section, the expression “past member” includes the estate of a deceased member and where any person dies after becoming liable as a member or past member such liability shall be enforceable against his estate.

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

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

Disclosure of beneficial interest in shares

94. (1) Notwithstanding the provisions of section 95 of this Act, a public company may by notice in writing require any member of the company, within such reasonable time as is specified in the notice—

- (a) to indicate in writing the capacity in which he holds any shares in the company; and
- (b) if he holds them otherwise than as beneficial owner, to indicate in writing the particulars of the identity of persons interested in the shares in question and whether persons interested in the same shares are parties to any agreement or arrangement relating to the exercise of any rights conferred by the holding of the shares.

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

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

(3) Whenever a company receives information from a person in pursuance of a requirement imposed on him under this section with respect to shares held by a member of the

company, it shall be under an obligation to inscribe against the name of the member in the register of members—

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

(4) Subject to subsection (5) of this section, any person who—

- (a) fails to comply with a notice under this section; or
- (b) in purported compliance with such a notice, makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular,

shall be guilty of an offence and liable on conviction to imprisonment for six months or to a fine of ₦25 for every day during which the default continues.

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

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

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

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

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

(5) A person who fails to comply with the provisions of this section shall be liable to a fine of ₹ 50 for every day during which the default continues.

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

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

97. (1) A public company shall keep a register in which it shall enter—

- (a) in alphabetical order, the names of persons from whom it has received a notice under section 95 of this Act; and
- (b) against each name so entered, the information given in the notice and where it receives a notice under section 95 of this Act, the information given in that notice.

(2) The register shall be kept at the place where the register of members required to be kept under section 84 of this Act is kept and shall be subject to the same right of inspection as the register of members.

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

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

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

(6) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine of ₹ 25 and a daily fine of ₹ 5.

98. The matter relating to beneficial interests in shares required by section 94 of this Act shall be entered in a different part of the register of interests which shall be so made up that the entries inscribed in it appear in chronological order.

PART V.—SHARE CAPITAL

Minimum share capital

99. (1) Where, after the commencement of this Act, a memorandum delivered to the Commission under section 35 of this Act states that the association to be registered is to be registered with shares, the amount of the share capital stated in the memorandum to be registered shall not be less than the authorised minimum share capital and not less than twenty-five *per cent* of that capital shall be taken by the subscribers of the memorandum.

(2) No company having a share capital shall, after the commencement of this Act, be registered with an authorised share capital less than the authorised minimum share capital.

(3) Where at the commencement of this Act, the authorised share capital of an existing company is less than the authorised minimum share capital, the company shall, not later than thirty days after the appointed day, increase the share capital to an amount not less than the authorised minimum share capital of which not less than twenty-five *per cent* shall be issued.

(4) Subject to subsection (3) of this section and to section 103 of this Act, where a company is registered with shares, its issued capital shall not at any time be less than twenty-five *per cent* of the authorised share capital.

(5) Where a company to which subsection (3) or (4) of this section applies fails to comply with the applicable subsection, it shall be guilty of an offence and liable on conviction to a fine of ₹ 2,500, and every officer who is in default shall be liable to a fine of ₹ 50 for every day during which the default continues.

Alteration of share capital

100. (1) A company having a share capital may in general meeting and not otherwise alter the conditions of its memorandum to the following extent, that is to say, it may—

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

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

101. (1) If a company having share capital has—

- (a) consolidated and divided its share capital into shares of larger amount than its existing shares; or
- (b) converted any shares into stock; or
- (c) re-converted stock into shares; or
- (d) subdivided its shares or any of them; or
- (e) cancelled any shares, otherwise than in connection with a reduction of share capital under section 105 of this Act,

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

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine of ₦ 50 for every day during which the default continues.

102. (1) A company having a share capital whether or not the shares have been converted into stock may, in general meeting and not otherwise, increase its share capital by new shares of such amount as it thinks expedient.

(2) Where a company has increased its share capital it shall, within fifteen days after the passing of the resolution authorising the increase, give to the Commission, notice of the increase and the Commission shall record the increase.

(3) Where in connection with the increase of shares any approval is required to be obtained under any enactment other than this Act, the Commission may on application by a company extend the time within which to give notice of the increase to the Commission.

(4) The notice to be given under this section shall include any particulars prescribed with respect to the classes of shares affected and the condition subject to which the new shares have been or are to be issued and the notice shall be accompanied by a printed copy of the resolution authorising the increase.

(5) If default is made in complying with the provisions of this section, the company in default shall be guilty of an offence and liable on conviction to a fine of ₦ 50 for every day during which the default continues.

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

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

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

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

Reduction of share capital

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

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

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

(2) In particular, and without prejudice to subsection (1) of this section, the company may—

- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or
- (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or
- (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the company's wants,

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

(3) A special resolution under this section shall in this Act be referred to as "a resolution for reducing share capital".

107. (1) Where a company has passed a resolution for reducing share capital, it may apply to the court for an order confirming the reduction. App
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(2) If the proposed reduction of share capital involves either—

- (a) diminution of liability in respect of unpaid share capital; or
- (b) subject to subsection (6) of this section, the payment to a shareholder of any paid up share capital, and in any other case if the court so directs, subsections (3), (4) and (5) of this section shall have effect.

(3) Every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company shall be entitled to object to the reduction of capital.

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

- (a) shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims;
- (b) may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction of capital.

(5) If a creditor entered on the list whose debt or claim is not discharged or has not been determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating (as the court may direct) the following amount if—

- (a) the company admits the full amount of the debt or claim or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;

(b) the company does not admit, and is not willing to provide for, the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the court after the like enquiry and adjudication as if the company were being wound up by the court.

(6) If a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid up share capital, the court may, if having regard to any special circumstances of the case it thinks proper to do so, direct that subsections (3) to (5) of this section shall not apply as regards any class or any classes of creditors.

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108. (1) The court, if satisfied—

(a) with respect to every creditor of the company who under section 107 of this Act is entitled to object to the reduction of capital that either—

(i) his consent to the reduction has been obtained, or

(ii) his debt or claim has been discharged or has been determined, or has been secured; and

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

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

(2) Where the Court so orders, it may also—

(a) if for any special reason it thinks proper to do so, make an order directing that the company shall, during such period (commencing on or at any time after the date of the order) as is specified in the order, add to its name as its last words “and reduced”;

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

(3) Where the company is ordered to add to its name the words “and reduced”, those words shall until the expiration of the period specified in the order, deemed to be part of the company’s name.

109. (1) The Commission on production to it of the order of the court confirming the reduction of a company’s share capital, and the delivery to it of a copy of the order and of minutes of the meeting of the company (approved by the court) showing, with respect to the company’s share capital as altered by the order—

(a) the amount of the share capital;

(b) the number of shares into which it is to be divided, and the amount of each share; and

(c) the amount (if any) at the date of the registration deemed to be paid up on each share,

shall register the order and minutes.

(2) On the registration of the order and minutes, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

(3) A notice of the registration shall be published in such manner as the court may direct.

(4) The Commission shall certify the registration of the order and minutes; and the certificate—

(a) may be signed either by the Registrar-General or authenticated by its official seal;

(b) shall be *prima facie* evidence that all the requirements of this Act with respect to the reduction of share capital have been complied with, and that the company’s share capital is as stated in the minutes.

(5) The minutes when registered shall be deemed to be substituted for the corresponding part of the company’s memorandum, and valid and alterable as if it had been originally contained in it.

(6) The substitution of such minutes for part of the company’s memorandum shall be deemed an alteration of the memorandum.

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110. (1) Where a company's share capital is reduced, a member of the company (past or present) shall not be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount of the share as fixed by the minute and the amount paid on the share or the reduced amount (if any), which is deemed to have been paid on it, as the case may be.

(2) Subsections (3) and (4) of this section shall apply if—

- (a) a creditor, entitled in respect of a debt or claim to object to the reduction of share capital, by reason of his ignorance of the proceedings for reduction of share capital, or of their nature and effect with respect to his claim, is not entered on the list of creditors; and
- (b) after the reduction of capital, the company is unable (within the meaning of section 409 of this Act) to pay the amount of his debt or claim.

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

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

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

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111. If an officer of the company—

- (a) wilfully conceals the name of a creditor entitled to object to the reduction of capital; or
- (b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or

- (c) aids, abets or is privy to any such concealment or misrepresentation as is mentioned in paragraph (a) or (b) of this subsection,

he shall be guilty of an offence and liable on conviction to a fine of ₦500.

Miscellaneous matters relating to capital

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

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

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

shall be guilty of an offence and liable on conviction to a fine of ₦500.

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

113. Where any shares of a company are issued for the purposes of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a long period, the company may pay interest on so much of that share capital as is for the time being paid up for the period, subject to the conditions and restrictions mentioned in this section, and may charge the same to capital as part of the cost of construction of the work or building or the provision of plant:

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Provided that—

- (a) no such payment shall be made unless it is authorised by the articles or by special resolution;
- (b) no such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of the Commission;
- (c) before sanctioning any such payment the Commission may, at the expense of the company, appoint a person to inquire and report to it as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry;
- (d) the payment shall be made only for such period as may be determined by the Commission which shall in no case extend beyond the close of six months after the half year during which the works or buildings have been actually completed or the plant provided;
- (e) the rate of interest shall not exceed the current bank rate;
- (f) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid.

PART VI.—SHARES

Nature of shares

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

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

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115. The shares or other interests of a member in a company shall be property transferable in the manner provided in articles of association of the company.

116. (1) Unless otherwise provided by any other enactment—

- (a) any shares issued by a company after the date of commencement of this Act, shall carry the right on a poll at a general meeting of the company to one vote in respect of each share and no company may by its articles or otherwise authorise the issue of shares which carry more than one vote in respect of each share or which do not carry any right to vote; and
- (b) where, at the commencement of this Act, any share of a company carries more than one vote or does not carry any vote at a general meeting of the company, such a share shall be deemed, as from the appointed day, to carry one vote only.

(2) If a company contravenes any of the provisions of this section, the company and any officer in default shall be guilty of an offence and liable on conviction to a daily default fine of ₦50 and any resolution passed in contravention of this section shall be void.

(3) Nothing in this section shall affect any right attached to a preference share under section 143 of this Act.

Issue of shares

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

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

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

119. Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, any share in a company may be issued with such

preferred, deferred or other special rights or such restrictions, whether with regard to dividend, return of capital or otherwise, as the company may, from time to time, determine by ordinary resolution.

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

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

(3) Notwithstanding anything to the contrary in subsection (2) of this section, the share premium account may be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares, in writing off—

- (a) the preliminary expenses of the company; or
- (b) the expenses of, or the commission paid or discount allowed on, any issue of shares of the company; or in providing for the premium payable on redemption of any redeemable share of the company.

(4) Where a company has before the commencement of this Act issued any shares at a premium, this section shall apply as if the shares had been issued after the commencement of this Act:

Provided that any part of the premium which has been so applied that it does not at the commencement of this Act form an identifiable part of the company's reserves, within the meaning of the Second Schedule to this Act, shall be disregarded in determining the sum to be included in the share premium account.

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121. (1) Subject to the provisions of this section, it shall be lawful for a company to issue at a discount shares in the company of a class of shares already issued:

Provided that—

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

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

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

(4) If default is made in complying with subsection (3) of this section, the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine of ₹50 for every day during which the default continues.

122. Subject to the provisions of section 158 of this Act, a company limited by shares may, if so authorised by its articles, issue preference shares which shall, or at the option of the company be liable to, be redeemed.

123. (1) Where a company has purported to issue or allot shares and the creation, issue or allotment of those shares was invalid by reason of any provision of this Act or any other enactment or of the articles of the company or otherwise, or the terms of issue or allotment were inconsistent with or unauthorised by any such provision, the court may upon application made by the company or by a holder or mortgagee of those shares or by a creditor of the company, and upon being satisfied that in all the circumstances it is just and

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

(2) In every case where the court validates an issue or allotment of shares or confirms the terms of an issue or allotment in accordance with subsection (1) of this section, it shall make, upon payment of the prescribed fees, an order which shall be proof of the validation or confirmation; and upon the issue of the order, those shares shall be deemed to have been issued or allotted upon the relevant terms of issue or allotment.

Allotment of Shares

124. Subject to the provisions of the Securities and Exchange Commission Act, the power to allot shares shall be vested in the company which may delegate it to the directors subject to any conditions or directions that may be imposed in the articles or from time to time by the company in general meeting.

125. Without prejudice to the provisions of sections 566 to 574 of this Act, the following provisions shall apply in respect of an application for an allotment of issued shares of a company—

- (a) in the case of a private company or a public company where the issue of shares is not public, there shall be submitted to the company a written application signed by the person wishing to purchase shares and indicating the number of shares required;
- (b) in the case of a public company, subject to any conditions imposed by the Securities and Exchange Commission where the issue of shares is public, there shall be returned to the company a form of application as prescribed in the company's articles, duly completed and signed by the person wishing to purchase shares;
- (c) upon the receipt of an application, a company shall, where it wholly or partially accepts the application, make an allotment to the applicant and within forty-two days after the allotment notify the applicant of the

fact of allotment and the number of shares allotted to him;

- (d) an applicant under this section shall have the right, at any time before allotment, to withdraw his application by written notice to the company.

126. An allotment of shares made and notified to an applicant in accordance with section 125 of this Act shall be an acceptance by the company of the offer by the applicant to purchase its shares and the contract shall take effect on the date on which the allotment is made by the company.

127. Subject to the provisions of sections 135 to 138 of this Act, a company may, in its articles, make provision with respect to payments on allotment of its shares.

128. (1) An allotment made by a company to an applicant before the holding of the statutory meeting, in contravention of the provisions of this Act, shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment, and not later, and the allotment shall be so voidable notwithstanding that the company is in the course of being wound up.

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

Provided that proceedings to recover any such loss, damages, or costs shall not be commenced after the expiration of two years from the date of the allotment.

129. (1) Whenever a company limited by shares makes any allotment of its shares, the company shall within one month thereafter deliver to the Commission for registration—

(a) a return of the allotments stating the number and nominal amount of the shares comprised in the allotment, the names, addresses and description of the allottees, and the amount, if any, paid or due and payable on each share; and

(b) in the case of shares allotted as fully or partly paid up otherwise than in cash—

(i) a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped;

(ii) a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted; and

(iii) particulars of the valuation of the consideration in accordance with section 137 of this Act, if any.

(2) If default is made in complying with this section, every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine of ₦50 for every day during which the default continues:

Provided that, in the case of default in delivering to the Commission within one month after the allotment any document required to be delivered by this section, the company or any officer liable for the default, may apply to the court for relief, and the court, if satisfied that the omission to deliver the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for the delivery of the document for such period as the court may think proper.

Commissions and discounts

130. (1) Except as provided in section 131 of this Act, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for

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any shares in the company, whether the shares or capital money are so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or any such money is paid out of the nominal purchase money or contract price, or otherwise.

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

(3) A vendor, promoter, or other person who receives payment in money or shares from a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

131. (1) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company or procuring or agreeing to procure subscription, whether absolute or conditional, for any shares in the company if—

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(a) the payment of the commission is authorised by the articles;

(b) the commission paid or agreed to be paid does not exceed ten *per cent* of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is the lesser; and

(c) the amount of rate *per cent* of the commission paid or agreed to be paid is—

(i) in the case of shares offered to the public for subscription, disclosed in the prospectus, or

(ii) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus, and delivered before the payment of the commission to the Commission for registration, and where a circular or notice, not being a prospectus inviting subscription for the shares is issued, also disclosed in that circular or notice; and

(d) the number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in the manner specified in this section.

(2) If default is made in delivering to the Commission any document required to be delivered to the Commission under this section, the company and every officer in default shall be guilty of an offence and liable on conviction to a fine of ₦250.

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

(2) If default is made in complying with this section, the company and every officer of the company in default is guilty of an offence and liable on conviction to a fine of ₦50 for every day during which the default continues.

Call on and payment for shares

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

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

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

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

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

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

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

134. A company limited by shares may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up except in the event and for the purposes of the company being wound up; and thereupon that portion of its share capital shall not be capable of being called up, except in the event and for the purposes specified in this section.

135. Subject to the provisions of sections 136 and 137 of this Act, the shares of a company and any premium on them shall be paid up in cash, or where the articles so permit, by a valuable consideration other than cash or partly in cash and partly by a valuable consideration other than cash.

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136. Shares shall not be deemed to have been paid for in cash except to the extent that the company shall actually have received cash for them at the time of, or subsequently to, the agreement to issue the shares, and where shares are issued to a person who has sold or agreed to sell property or rendered or agreed to render services to the company or to persons nominated by him, the amount of any payment made for the property or services shall be deducted from the amount of any cash payment made for the shares and only the balance (if any) shall be treated as having been paid in cash for such shares notwithstanding any exchange of cheques or other securities for money.

in 137. (1) Where a company agrees to accept payment for its shares otherwise than wholly in cash, it shall appoint an independent valuer who shall determine the true value of the consideration other than cash and prepare and submit to the company a report on the value of the consideration.

(2) The valuer shall be entitled to require from the officers of the company such information and explanation as he thinks necessary to enable him carry out the valuation or make the report under subsection (3) of this section.

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

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

(5) A valuer who, in his report or otherwise, knowingly or recklessly makes a statement which is misleading, false or deceptive in a material particular shall be guilty of an offence and liable on conviction to imprisonment for a term of twelve months or to a fine of ₹ 1,000 or both such imprisonment and fine.

(6) For the purposes of this section "valuer" means an auditor, a valuer, a surveyor or an accountant not being a

person in the employment of the company nor an agent or associate of the company or any of its directors or officers.

138. A company may, to the extent to which it is so authorised by its articles—

- (a) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;
- (b) accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up;
- (c) pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

Lien and forfeiture of shares

139. (1) A company shall have a first and paramount lien on every share, (not being a fully paid share for all moneys (whether currently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a first and paramount lien on all shares (other than fully paid shares) standing registered in the name of a single person for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this subsection.

(2) A company's lien, if any, on a share shall extend to all dividends payable on it.

(3) A company may sell, in such manner as the directors thinks fit, any shares on which the company has a lien, but no sale shall be made unless a sum in respect of which the lien exists is currently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is currently payable, has been given to the registered holder for the time being of the shares, or the person entitled to them by reason of his death or bankruptcy.

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

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

of 140. (1) If a member fails to pay any call or instalment of a call on the day appointed for payment, the directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

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

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

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

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

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

(7) The company may receive the consideration, if any, given for the share on any sale or disposition of it and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of, and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

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

Classes of shares

141. (1) If at any time the share capital of a company is divided into different classes of shares under section 118 of this Act, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the company is being wound up, be varied with the consent, in writing, of the holders of three-quarters of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class.

(2) To every such separate general meeting as is mentioned in subsection (1) of this section, the provisions of this Act relating to general meetings shall apply, so however that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

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

142. (1) Where in pursuance of section 141 of this Act, the rights attached to any class of shares are at any time varied, the holders of not less in the aggregate than fifteen *per cent* of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the court to have the variation cancelled, and, where any such application is made, the variation shall not have effect, unless and until it is confirmed by the court.

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

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

(4) The decision of the court on any such application shall be final.

(5) The company shall, within fifteen days after the making of an order by the court on an application to it under this section, forward a copy of the order to the Commission and if default is made in complying with the provisions of this subsection, the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine of ₦50 for every day during which the default continues.

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

143. (1) Notwithstanding the provisions of section 116 of this Act, the articles may provide that preference shares issued after the commencement of this Act shall carry the rights to attend general meetings and, on a poll at the meetings, to more than one vote per share in the following circumstances, but not otherwise, that is to say—

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

(2) Notwithstanding the provisions of section 116 of this Act, any special resolution of a company increasing the number of shares of any class may validly resolve that any existing class of preference shares shall carry the right to such votes additional to one vote per share as shall be necessary in order to preserve the existing ratio which the votes exercisable by the holders of such preference shares at a general meeting of the company bear to the total votes exercisable at the meeting.

(3) For the purposes of subsection (2) of this section, a dividend shall be deemed to be due on the date appointed in the articles for the payment of the dividend for any year or other period, or if no such date is appointed, upon the day immediately following the expiration of the year or other period, and whether or not such dividend shall have been earned or declared.

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

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- (a) unless the contrary intention appears, no dividend shall be payable on any shares unless the company shall resolve to declare such dividend;
- (b) unless the contrary intention appears, a fixed preferential dividend payable on any class of shares is cumulative, that is to say, no dividend shall be payable on any shares ranking subsequent to them until all the arrears of the fixed dividend have been paid;
- (c) unless the contrary intention appears, in a winding up arrears of any cumulative preferential dividend, whether earned or declared or not are payable up to the date of actual payment in the winding-up;
- (d) if any class of shares is expressed to have a right to a preferential dividend, then, unless the contrary intention appears, such class has no further right to participate in dividends;
- (e) if any class of shares is expressed to have preferential rights to payment out of the assets of the company in the event of winding up, then unless the contrary intention appears, such class has no further right to participate in the distribution of assets in the winding up;
- (f) in determining the rights of the various classes to share in the distribution of the company's property on a winding up, no regard shall be paid, unless the contrary intention appears, to whether or not such property represents accumulated profits or surplus which would have been available for dividend while the company remained a going concern;
- (g) subject to this section, all shares rank equally in all respects, unless the contrary intention appears in the company's articles.

Numbering of shares

145. Each share in a company having a share capital shall be distinguished by its appropriate number:

Provided that, if at any time all the issued shares in a company, or all of its issued shares of a particular class, are fully paid up and rank *pari passu* for all purposes, none of

those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up.

Share certificates

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

(2) Every person whose name is entered as a member in the register of members shall be entitled without payment to receive within three months of allotment or lodgement of transfer or within such other period as the conditions of issue shall provide one certificate for all his shares; or several certificates each for one or more of his shares upon payment of a fee as the directors shall, from time to time, determine.

(3) Every certificate issued by a company shall be under the company's seal and shall specify the shares to which it relates and the amount paid up on them:

Provided that in respect of shares held jointly by several persons, the company shall not be bound to issue more than one certificate, and delivery of a certificate for shares to one of several joint holders shall be sufficient delivery to all such holders.

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

(5) If any company on which a notice has been served requiring it to make good any default in complying with the provisions of subsection (1) of this section fails to make good the default within ten days after the service of the notice, the court may, on the application of the person entitled to have the certificate delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order, and

any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default.

(6) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine of ₦ 50 for every day during which the default continues.

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

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

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

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

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

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149. (1) As from the date of commencement of this Act, no company shall have the power to issue share warrants.

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

date and enter in its register of members the names and relevant particulars of the bearers of the share warrants.

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

Conversion of shares into stock

150. (1) The provisions of this section shall apply with respect to the conversion of all or any of the shares of a company into stock and the reconversion of such stock into shares under the provisions of section 100 of this Act. Cont
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(2) The conversion of any paid-up shares into stock and the reconversion of any stock into paid-up shares shall be by ordinary resolution of the company at a general meeting.

(3) The holders of stock may transfer the same, or any part of it in the same manner, and subject to the same conditions, as and subject to which the shares from which the stock arose might, previous to the conversion, have been transferred, or as near to it as circumstances admit; and the directors may, from time to time, fix the minimum amount of stock transferable, so however that such minimum amount shall not exceed the nominal amount of the shares from which the stock arose.

(4) The holders of stock shall, according to the amount of stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meeting of the company and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profit of the company and in the assets on winding-up) shall be conferred by an amount of stock which would not, if existing in shares, have conferred that privilege or advantage.

(5) Such of the articles of the company as are applicable to paid-up shares shall apply to stock, and the words "shares" and "shareholder" in those articles shall include "stock" and "stockholder".

Transfer and transmission

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

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

Provided that nothing in this section shall prejudice any power of the company to register, as shareholder, any person to whom the right to any shares in the company has been transmitted by operation of law.

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

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

152. (1) On the application of the transferor of any share or interest in a company, the company shall enter in its register of members, the name of the transferee in the same conditions as if the application for the entry were made by the transferee.

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

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

(4) The company may refuse to recognise any instrument of transfer unless—

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

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

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine of ₦200.

154. A transfer of the share or other interest of a deceased member of a company made by this personal representative shall, although the personal representative is not himself a member of the company, be as valid as if he had been such a member at the time of the execution of the instrument of transfer.

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

(2) Any person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such evidence being produced as may, from time to time, properly be required by the directors and subject as hereafter provided in this section, elect either to be registered himself as holder of the share, or to have some person nominated by him registered as the transferee of the share; but the company shall, in

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

(3) If the person so becoming entitled elects to be registered himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects and if he elects to have another person registered, he shall testify his election by executing to that person a transfer of the share.

(4) All the limitations, restrictions and provisions of this Act and the company's articles relating to the rights to transfer and the registration of transfers of share, shall be applicable to any such notice or transfer as mentioned in subsection (3) of this section as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.

(5) A person becoming entitled to a share by reason of the death or bankruptcy of the holder, shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, unless the articles otherwise provide, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company:

Provided that the directors may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share, and if the notice is not complied with within ninety days the directors may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with.

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ries. 156. (1) Any person claiming to be interested in any shares or the dividends or interest on them may protect his interest by serving on the company concerned a notice and affidavit of interest.

(2) Notwithstanding the provisions of section 86 of this Act, the company shall enter on the register of members, the fact that such notice has been served and shall not register any

transfer or make any payment or return in respect of the shares contrary to the terms of the notice until the expiration of forty-two days notice to the claimant of the proposed transfer or payment.

(3) In the event of any default by the company in complying with this section, the company shall compensate any person, injured by the default.

157. (1) When the holder of any shares of a company wishes to transfer to any person only a part of the shares represented by one or more certificates, the instrument of transfer together with the relevant certificates shall be delivered to the company with a request that the instrument of transfer be recognised and registered. Certificate
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(2) A company, to which a request is made under subsection (1) of this section, may recognise the instrument of transfer by endorsing on it the words "certificate lodged" or words to the like effect.

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

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

(5) For the purposes of this section—

(a) an instrument of transfer shall be deemed to be recognised if it bears the words "certificate lodged" or words to the like effect;

(b) the recognition of an instrument of transfer shall be deemed to be made by a company if—

(i) the person issuing the instrument is a person authorised to issue certificated instruments of transfer on the company's behalf, and

- (ii) the recognition is signed by a person authorised to recognise transfers of shares on the company's behalf or by any officer or servant either of the company or of a body corporate so authorised;
- (c) a recognition shall be deemed to be signed by any person if—
- (i) it purports to be authenticated by his signature or initials (whether handwritten or not), and
 - (ii) it is not shown that the signature or initials was or were placed there by any person other than him or a person authorised to use the signature or initials for the purpose of transfers on the company's behalf.

Transactions by company in respect of its own shares

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es.
- 158.** (1) The provisions of this section shall apply with respect to the redemption by a company of any redeemable preference shares issued by it under section 122 of this Act.
- (2) The shares shall not be redeemed unless they are fully paid, and redemption shall be made only out of—
- (a) profits of the company which would otherwise be available for dividend; or
 - (b) the proceeds of a fresh issue of shares made for the purposes of the redemption.
- (3) Before the shares are redeemed, the premium, if any, payable on redemption, shall be provided for out of the profits of the company or out of the company's share premium account.
- (4) Where shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall, out of profits which would otherwise have been available for dividend, be transferred to a reserve fund, to be called "the capital redemption reserve fund", a sum equal to the nominal amount of the shares redeemed, and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company.

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

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

(7) Where, in pursuance of this section, a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly, the share capital of the company shall not, for the purposes of any enactments relating to stamp duty, be deemed to be increased by the issue of shares in pursuance of this subsection:

Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this subsection, unless the old shares are redeemed within one month after the issue of the new shares.

(8) The capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

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

(2) Subject to the provisions of this section—

- (a) where a person is acquiring or is proposing to acquire shares in a company, it shall not be lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of that acquisition before or at the same time as the acquisition takes place; and

- (b) where a person has acquired shares in a company and any liability has been incurred (by that or any other person), for the purpose of this acquisition, it shall not be lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of reducing or discharging the liability so incurred.
- (3) Nothing in subsection (1) of this section shall be taken to prohibit—
- (a) the lending of money by the company in the ordinary course of its business, where the lending of money is part of the ordinary business of a company;
- (b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of, or subscription for, fully-paid shares in the company or its holding company, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of the company, including any director holding a salaried employment of office in the company;
- (c) the making by a company of loans to persons, other than directors, *bona fide* in the employment of the company with a view to enabling those persons to purchase or subscribe for fully-paid shares in the company or its holding company, to be held by themselves by way of beneficial ownership;
- (d) any act or transaction otherwise authorised by law.
- (4) If a company acts in contravention of this section, the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine not exceeding ₦500.

160. (1) Subject to the provisions of subsection (2) of this section and its articles, a company may not purchase or otherwise acquire shares issued by it.

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

- (a) settling or compromising a debt or claim asserted by or against the company; or

- (b) eliminating fractional shares; or
- (c) fulfilling the terms of a non-assignable agreement under which the company has an option or is obliged to purchase shares owned by an officer or an employee of the company; or
- (d) satisfying the claim of a dissenting shareholder; or
- (e) complying with a court order.
- (3) A company may accept, from any shareholder, a share in the company surrendered to it as a gift, but may not extinguish or reduce a liability in respect of an amount unpaid on any such share, except in accordance with section 106 of this Act.

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

- (a) shares shall only be purchased out of profits of the company which would otherwise be available for dividend or the proceeds of a fresh issue of shares made for the purpose of the purchase;
- (b) redeemable shares shall not be purchased at a price greater than the lowest price at which they are redeemable or shall be redeemable at the next date thereafter at which they are due or liable to be redeemed;
- (c) no purchase shall be made in breach of section 162 of this Act.

162. No transaction shall be entered into by or on behalf of a company whereby the total number of its shares, or of its shares of any one class, held by persons other than the company or its nominees becomes less than eighty-five *per cent* of the total number of shares, or of shares of that class, which have been issued:

Provided that—

- (a) redeemable shares shall be disregarded for the purposes of this section; and

(b) where, after shares of any class have been issued, the number of such shares has been reduced, this section shall apply as if the number originally issued (including shares of that class cancelled before the reduction took effect) has been the number as so reduced.

163. (1) A contract with a company providing for the acquisition by the company of shares in the company is specifically enforceable against the company, except to the extent that the company cannot perform the contract without thereby being a breach of the provisions of section 160 of this Act.

(2) In any action brought on a contract referred to in subsection (1) of this section, the company shall have the burden of proving that performance of the contract is prevented by the provisions of section 160 of this Act.

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

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

(2) A subsidiary which, at the commencement of this Act, is a holder of shares of its holding company, or a subsidiary which acquired shares in its holding company before it became a subsidiary of that holding company, may continue to hold such shares but, subject to subsection (1) of this section, shall have no right to vote at meetings of the holding company or any class of shareholders of the holding company and shall not acquire any future shares in it except on a capitalisation issue.

PART VII.—DEBENTURES

Creation of debenture and debenture stock

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

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

(2) If a debenture or debenture stock certificate is defaced, lost or destroyed, the company, at the request of the registered holder of the debenture, shall issue a certified copy of the debenture or renew the debenture stock certificate on payment of a fee not exceeding ₦5 and on such terms as to evidence and indemnity and the payment of the company's out-of-pocket expenses of investigating evidence as the company may reasonably require.

(3) If default is made in complying with this section, the company and any officer of the company who is in default shall be liable to a fine not exceeding ₦25; and on application by any person entitled to have the debentures or debenture stock certificate delivered to him, the court may order the company to deliver the debenture or debenture stock certificate and may require the company and any such officer to bear all the costs of and incidental to the application.

168. Every debenture shall include a statement on the following matters, that is—

- (a) the principal amount borrowed;
- (b) the maximum discount which may be allowed on the issue or re-issue of the debentures, and the maximum premium at which the debentures may be made redeemable;

- (c) the rate of and the dates on which interest on the debentures issued shall be paid and the manner in which payment shall be made;
- (d) the date on which the principal amount shall be repaid or the manner in which redemption shall be effected, whether by the payment of instalments of principal or otherwise;
- (e) in the case of convertible debentures, the date and terms on which the debentures may be converted into shares and the amounts which may be credited as paid up on those shares, and the dates and terms on which the holders may exercise any right to subscribe for shares in respect of the debentures held by them;
- (f) the charges securing the debenture and the conditions subject to which the debenture shall take effect.

its in res. **169.** (1) Statements made in debenture or debenture stock certificates shall be *prima facie* evidence of the title to the debentures of the person named therein as the registered holder and of the amounts secured thereby.

(2) If any person shall change his position to his detriment in reliance in good faith on the continued accuracy of any statements made in the debenture or debenture stock certificate, the company shall be estopped in favour of such person from denying the continued accuracy of such statements and shall compensate such person for any loss suffered by him in reliance thereon and which he would not have suffered had the statement been or continued to be accurate:

Provided that nothing in this subsection shall derogate from any right the company may have to be indemnified by any other person.

ement racts ; to ares. **170.** A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

Types of Debentures

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

172. Debentures may be issued upon the terms that in lieu of redemption or repayment, they may, at the option of the holder or the company, be converted into shares in the company upon such terms as may be stated in the debentures.

173. (1) Debentures may either be secured by a charge over the company's property or may be unsecured by any charge.

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

(3) A charge securing debentures shall become enforceable on the occurrence of the events specified in the debentures or the deed securing the same.

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

(5) Where debentures are secured by a charge, the provisions of section 197 of this Act relating to registration of particulars of charges shall apply.

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

re- 175. (1) Where either before or after the commencement of
s in this Act, a company has redeemed any debentures previously
ses. issued, then unless—

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

the company shall have, and shall be deemed always to have had, power to re-issue the debentures, either by re-issuing the same debentures or by issuing other debentures in their place.

(2) On a re-issue of redeemed debentures, the person entitled to the debentures, shall have, and shall be deemed always to have had, the same priorities as if the debentures had never been redeemed.

(3) Where a company has, either before or after the commencement of this Act, deposited any of its debentures to secure advances, from time to time, on current account or otherwise, the debenture shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit, whilst the debentures remained so deposited.

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

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped, may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the

company shall be liable to pay the proper stamp duty and penalty.

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

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

(2) A debenture holder may sue—

- (a) the company which issued the debentures he holds for payment of any amount payable to him in respect of the debentures; or
- (b) the trustee of the debenture trust deed covering the debentures he holds for compensation for any breach of the duties which the trustee owes him,

and in any such action, it shall not be necessary for any other debenture holders of the same class, or if the action is brought against the company, the trustee of the covering trust deed, to be joined as a party.

(3) This section shall apply notwithstanding anything contained in a debenture trust deed or other instrument but a provision in a debenture or trust deed shall be valid and binding on all the debenture holders of the class concerned in so far as it enables a meeting of the debenture holders by a resolution supported by the votes of the holders of at least three-quarters in value of the debentures of that class in respect of which votes are cast on the resolution to—

- (a) release any trustee from liability for any breach of his duties to the debenture holders which he has already committed, or generally from liability for all such

breaches (without necessarily specifying them) upon his ceasing to be a trustee; or

- (b) consent to the alteration or abrogation of any of the rights, powers or remedies of the debenture holders and the trustee of the debenture trust deed covering their debentures (except the powers and remedies under section 215 of this Act); or
- (c) consent to the substitution for the debentures of a different class issued by the company or any other company or corporation, or the cancellation of the debentures in consideration of the issue to the debenture holders of shares credited as fully paid in the company or any other company.

of 177. (1) The terms of any debentures or trust deed may provide for the convening of general meetings of the debentures holders and for the passing, at such meetings, of a resolution binding on all the holders of the debentures of the same class.

(2) Whether or not the debentures or trust deed contain such provisions as are referred to in subsection (1) of this section, the Commission may at any time direct a meeting of the debenture holders of any class to be held and conducted in such manner as the Commission thinks fit to consider ancillary or consequential direction as it shall think fit.

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

Fixed and floating charges

of 178. (1) "A floating charge" means an equitable charge over the whole or a specified part of the company's undertakings and "assets", including cash and uncalled capital of the company both present and future, but so that

the charge shall not preclude the company from dealing with such assets until—

- (a) the security becomes enforceable and the holder thereof, pursuant to a power in that behalf in the debenture or the deed securing the same, appoints a receiver or manager or enters into possession of such assets; or
- (b) the court appoints a receiver or manager of such assets on the application of the holder; or
- (c) the company goes into liquidation.

(2) On the happening of any of the events mentioned in subsection (1) of this section, the charge shall be deemed to crystallise and to become a fixed equitable charge on such of the company's assets as are subject to the charge, and if a receiver or manager is withdrawn with the consent of the chargee, or the chargee withdraws from possession, before the charge has been fully discharged, the charge shall thereupon be deemed to cease to be a fixed charge and again to become a floating charge.

179. A fixed charge on any property shall have priority over a floating charge affecting that property, unless the terms on which the floating charge was granted prohibited the company from granting any later charge having priority over the floating charge and the person in whose favour such later charge was granted had actual notice of that prohibition at the time when the charge was granted to him.

180. (1) Whenever a fixed or floating charge has become enforceable, the court shall have power to appoint a receiver and in the case of a floating charge, a receiver and manager of the assets subject to the charge.

(2) In the case of a floating charge, the court may, notwithstanding that the charge has not become enforceable, appoint a receiver or manager if satisfied that the security of the debenture holder is in jeopardy; and the security of the debenture holder shall be deemed to be in jeopardy if the court is satisfied that events have occurred or are about to occur which render it unreasonable in the interests of the debenture holder that the company should retain power to dispose of its assets.

(3) A receiver or manager shall not be appointed as a means of enforcing debentures not secured by any charge.

181. Where a receiver or a receiver and manager is appointed by the court, advertisement to this effect shall be made by the receiver or the receiver and manager in the *Gazette* and in two daily newspapers.

182. (1) Where a receiver is appointed on behalf of the holders of any debentures of a registered company secured by a floating charge, or possession is taken by, or on behalf of those debenture holders of any property comprising or subject to the charge, then if the company is not at the time in course of being wound up, the debts which in every winding up are under the provisions relating to preferential payments in Part XV of this Act to be paid in priority to all other debts, shall be paid out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(2) In the application of the provisions relating to preferential payments—

- (a) section 494 of this Act shall be construed as if, the provision for payment of accrued holiday remuneration becoming payable on the termination of employment before or by the effect of the winding-up order or resolution, were a provision for payment of such remuneration becoming payable on the termination of employment before or by the effect of appointment of the receiver or possession being taken as aforesaid; and
- (b) the periods of time mentioned therein shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be, and if such date occurred before the commencement of this Act, the provisions relating to preferential payments which would have applied but for this Act, shall be deemed to remain in full force.

(3) Any payments made under this section, shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

Debenture trust deed

183. (1) Every company which offers debentures to the public for subscription or purchase shall, before issuing any of the debentures, execute debenture trust deed in respect of them and procure the execution of the deed by the trustee for the debenture holders appointed by the deed.

(2) No debenture trust deed shall cover more than one class of debentures, whether or not the trust deed is required by this section to be executed.

(3) Where a trust deed is required to be executed by this section but has not been executed, the court, on the application of a debenture holder concerned, may—

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

(4) For the purposes of this Act, debentures shall belong to different classes if different rights attach to them in respect of—

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

(5) Debentures further belong to different classes, if they do not rank equally for payment when any security invested in the debenture holders under any trust deed is realised or when

the company is wound up, that is to say, if, in the circumstances mentioned in subsection (4) of this subsection the subject matter of any such security or the proceeds thereof, or any assets available to satisfy the debentures, is or are not to be applied in satisfying the debentures strictly in proportion to the amount of principal, premiums and arrears of interest to which the holders of them are respectively entitled.

(6) A debenture is covered by a trust deed if—

- (a) the holder of the debenture is entitled to participate in any money payable by the company under the deed; or
- (b) is entitled to the benefit of any mortgage, charge or security created by the deed, whether alone or together with other persons.

(7) If a company issues debentures in circumstances in which this section requires a debenture trust deed to be executed without such a deed, having been executed in compliance with this section, or if the company issues debentures under a trust deed which covers two or more classes of debentures, the directors of the company who are in default are guilty of an offence and liable on conviction to a fine of ₦5,000 jointly or severally.

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d. **184.** (1) Every debenture trust deed, whether required by section 183 of this Act or not, shall state—

- (a) the maximum sum which the company may raise by issuing debentures of the same class;
- (b) the maximum discount which may be allowed on the issue or re-issue of the debentures, and the maximum premium at which the debentures may be made redeemable;
- (c) the nature of any assets over which a mortgage, charge or security is created by the trust deed in favour of the trustee for the benefit of the debenture holders equally, and except where such a charge is a floating charge or a general floating charge, the identity of the assets subject to it;
- (d) the nature of any assets over which a mortgage, charge or security has been or will be created in favour of any

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

- (e) whether the company has created or will create any mortgage, charge or security for the benefit of some, but not all, of the holders of debentures issued under the trust deed;
- (f) any prohibition or restriction on the power of the company to issue debentures or to create mortgages, charges or any security on any of its assets ranking in priority to, or equally with the debentures issued under the trust deed;
- (g) whether the company shall have power to acquire debentures issued under the trust deed before the date of their redemption and to re-issue the debentures;
- (h) the rate of and the dates on which interest on the debentures issued under the trust deed shall be paid and the manner in which payment may be made;
- (i) the date or dates on which the principal or the debentures issued under the trust deed shall be repaid, and unless the whole principal is to be repaid to all the debenture holders at the same time, the manner in which redemption shall be effected, whether by the payment of equal instalments of principal in respect of each debenture, or by the selection of debentures for redemption by the company, or by drawing, ballot, or otherwise;
- (j) in the case of convertible debentures, the dates and terms on which the debentures may be converted into shares and the amounts which may be credited as paid up on those shares in right of the debentures held by them;
- (k) the circumstances in which the debenture holders shall be entitled to realise any mortgage, charge or security invested in the trustee or any other person for their benefit (other than the circumstances in which they are entitled to do so by this Act);

- (l) the powers of the company and the trustee to call meetings of the debenture holders and the rights of debenture holders to require the company or the trustee to call such meetings;
- (m) whether the rights of debenture holders may be altered or abrogated and if so, the conditions which must be fulfilled, and the procedure which must be followed, to effect such an alteration or abrogation; and
- (n) the amount or rate of remuneration to be paid to the trustee and the period for which it shall be paid, and whether it shall be paid in priority to the principal, interest and costs in respect of debentures issued under the trust deed.

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

(3) Subsection (2) of this section shall not apply if the debenture is the only debenture of the class to which it belongs which has been or may be issued, and the rights of the debenture holder shall not be altered or abrogated without his consent.

(4) Any director who issues debenture in violation of the provisions of this section shall be guilty of an offence.

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185. (1) Every debenture covered by a debenture trust deed shall state, either in the body thereof or in a note forming part of the same document or endorsed thereon—

- (a) the matters required to be stated in a debenture trust deed by paragraphs (a), (b), (f), (h), (i), (j), (l) and (m) of subsection (1) of section 184 of this Act;
- (b) whether the trustee of the covering debenture trust deed holds the mortgages, charges and securities vested in him by the trust deed in trust for the debenture holders equally, or in trust for some only of the

debenture holders, and if so, which debenture holders; and

- (c) whether the debenture is secured by a general floating charge vested in the trustee of the covering debenture trust deed or in the debenture holders.

(2) A debenture issued by a company shall state on its face in clearly legible print, that it is unsecured if no mortgage, charge or security is vested in the holder of the debenture or in any other person for his benefit as security for payment of principal or interest.

(3) Any director of a company who issues a debenture in violation of the provisions of subsections (1) and (2) of this section shall be guilty of an offence.

186. (1) Whether or not a debenture is secured by a charge over the company's property it may be secured by a trust deed appointing trustees for the debenture holders. Trust
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(2) It shall be the duty of such trustees to safeguard the right of the debenture holders and, on behalf of and for the benefit of the debenture holders, to exercise the rights, powers and discretions conferred upon them by the trust deed.

(3) Charges securing the debentures may be created in favour of the debenture holders by vesting them in the trustees.

(4) Any provision contained in a trust deed or in any contract with debenture holders secured by trust deed shall be void in so far as it would have the effect of exempting a trustee thereof from, or indemnifying him against, liability for any breach of trust or failure to show the degree of care and diligence required of him as trustee having regard to the powers, authorities or discretions conferred on him by the trust deed:

Provided that nothing herein contained shall be deemed to invalidate any release otherwise validly given in respect of anything done or omitted to be done by a trustee on the agreement to such release of a majority of not less than three-quarters in value of the debenture holders present in person, or where proxies are permitted, by proxy at a meeting summoned for the purpose.

(5) Notwithstanding any provisions contained in the debentures or trust deed, the court may, on the application of any debenture holder or of the commission remove any trustee and appoint another in his place if satisfied that such trustee has interests which conflict or may conflict with those of the debenture holders or that for any reason it is undesirable that such trustee should continue to act:

Provided that where any such application is made by a debenture holder, the court if it thinks fit, may order the applicant to give security for the payment of the costs of the trustee and may direct that the application shall be heard in Chambers.

187. (1) A person is not qualified for appointment as a trustee of a debenture trust deed if he is—

- (a) an officer or an employee of the company which issues debentures covered by the trust deed or of a company in the same group of companies as the company so issuing debentures;
- (b) less than eighteen years of age;
- (c) of unsound mind and has been so found by a court in Nigeria or elsewhere;
- (d) an undischarged bankrupt;
- (e) disqualified under section 257 of this Act from being appointed as a director of a company;
- (f) a substantial shareholder (as defined in section 95 of this Act) of the company.

(2) If a trustee becomes subject to any of the disqualifications mentioned in subsection (1) of this section after he has been appointed, he shall immediately cease to be qualified to act as a trustee of the debenture trust deed.

(3) Any person who acts as a trustee of a debenture trust deed shall be guilty of an offence, if his appointment is invalid under subsection (1) of this section or if he is disqualified from acting under subsection (2) of this section.

188. (1) Subject to the provisions of this section, anything contained in a trust deed for securing an issue of debentures, or in any contract with the holders of debentures secured by

a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from or indemnifying him against liability for breach of trust, where he fails to show the degree of care and diligence required of him as trustee, having regard to the provisions of the trust deed conferring on him any powers, authorities or discretions.

- (2) Subsection (1) of this section shall not invalidate—
 - (a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or
 - (b) any provision enabling such a release to be given—
 - (i) on the agreement thereto of a majority of not less than three-quarters in value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose; and
 - (ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act.
- (3) Subsection (1) of this section shall not operate to—
 - (a) invalidate any provision in force at the commencement of this Act in any such trust deed or contract, so long as any person entitled to the benefit of that provision, or afterwards given the benefit thereof under subsection (4) of this section, remains a trustee of the trust deed in question; or
 - (b) deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him, while any such provision was in force.

(4) While any trustee of a trust deed remains entitled to the benefit of a provision saved by subsection (3) of this section, the benefit of that provision may be given—

- (a) to all trustees of the deed, present and future; and
 - (b) to any named trustee or proposed trustee thereof,
- by a resolution, passed by a majority of not less than three-quarters in value of the debenture holders present in person or, where proxies are permitted by proxy at a meeting summoned for the purpose in accordance with the provisions of the trust deed or, if the trust deed makes no provision for

summoning meetings, a meeting summoned for the purpose in any manner approved by the court.

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189. (1) Except as expressly provided in the terms of any debentures, debentures shall be transferable without restriction by a written transfer in common form and so that the transferee shall be entitled to the debenture and to the moneys secured thereby without regard to any equities, set-off, or cross claim between the company and the original or any intermediate holder.

(2) The terms of any debenture may impose restrictions of any nature whatsoever on the transferability of debentures, including power for the company to refuse to register and transfer and provisions for compulsory acquisition or rights of first refusal in favour of other debenture holders, or members or officers of the company:

Provided that if any restriction is imposed on the right to transfer any debenture, notice of the restriction shall be endorsed on the face of the debenture or debenture stock certificate and in the absence of such endorsement, the restriction shall be ineffective as regards any transferee for value, whether or not he has notice of the restriction.

Provisions as to company's register of charges, debenture holders and as to copies of instruments creating charges

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190. Every company shall cause a copy of every instrument creating any charge requiring registration under this Part of this Act to be kept at the registered office of the company:

Provided that, in the case of a series of uniform debentures, a copy of one debenture of the series shall be sufficient.

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191. (1) Every limited company shall keep at the registered office of the company, a register of charges and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company, giving in each case a short description of the property charged, the amount of the charge, and, except in the case of securities to bearer, the names of the persons entitled thereto.

(2) If any officer of the company knowingly and wilfully authorises or permits the omission of any entry required to be made in pursuance of this section, he shall be guilty of an offence and liable on conviction to a fine not exceeding ₦250.

192. (1) The copies of instruments creating any charge requiring registration under this Part of this Act with the Commission and the register of charges kept in pursuance of section 191 of this Act, shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day shall be allowed for inspection) to inspection by any creditor or member of the company without fee and the register of charges shall also be open to inspection by any other person on payment of such fee, not exceeding ₦5 for each inspection as the company may prescribe.

(2) If inspection of copies of instruments creating charges or of the register is refused, every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding ₦10 for every day during which the refusal continues.

(3) If any such refusal occurs in relation to a company registered in Nigeria or, in so far as a foreign company has an established place of business within Nigeria and an instrument creates a charge over any of its property in Nigeria and the refusal relates to that charge, the court may by order compel an immediate inspection of the copies of instruments or register.

193. (1) A company which issues or has issued debentures shall maintain a register of the holders thereof.

(2) The register shall contain the following information, that is—

- (a) the names and addresses of the debenture holders;
- (b) the principal of the debentures held by each of them;
- (c) the amount or the highest amount of any premium payable on redemption of the debentures;
- (d) the issue price of the debenture and the amount paid up on the issue price;

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- (e) the date on which the name of each person was entered on the register as a debenture holder; and
- (f) the date on which each person ceased to be a debenture holder.

(3) The entry required under this section shall be made within thirty days of the conclusion of the agreement with the company to become a debenture holder or within thirty days of the date at which he ceases to be one.

of **194.** (1) Every register of debenture holders of a company shall, except when duly closed (but subject to such reasonable restrictions as the company may in general meeting impose, so that not less than two hours in each day shall be allowed for inspection), be open to the inspection of any registered debenture holder or any shareholder in the company without fee, and of any other person on payment of a fee of ₦1 or such less sum as may be prescribed by the company.

(2) Any such registered debenture holder as aforesaid or any other person may require a copy of the register of the debenture holders of the company or any part thereof on payment of 50 kobo for every 100 words required to be copied.

(3) A copy of any trust deed for securing any issue of debentures shall be forwarded to every debenture holder at his request on payment in the case of a printed trust deed, of the sum of ₦1 or such less sum as may be prescribed by the company, or, where the trust deed has not been printed, on payment of 50 kobo for every 100 words required to be copied.

(4) If inspection is refused, or a copy is refused or not forwarded, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding ₦50 and in case of a continuing default, to a further fine of ₦10 for every day during which the default continues.

(5) Where a company is in default as aforesaid, the court convicting may by order compel an immediate inspection of

the register or direct that the copies required shall be sent to the person requiring them.

(6) For the purposes of this section, a register shall be deemed to be duly closed in accordance with provisions contained in the articles or in the debentures or, in the case of debenture stock, in the stock certificates, or in the trust deed or other document securing the debentures or debenture stock, during such periods, not exceeding in the whole thirty days in any year, as may be therein specified.

195. On the application of the transferor of any debenture in a company, the company shall enter in its register of debenture holders the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

196. (1) If a company refuses to register a transfer of any debentures, the company shall, within two months after the date on which the transfer was lodged with the company, send to the transferee notice of the refusal.

(2) If any default is made in complying with the provisions of this section, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine of ₦500.

Registration of Charges with Commission

197. (1) Subject to the provisions of this Part of this Act, every charge created by a company, being a charge to which this section applies, shall so far as any security on the company's property or undertaking is conferred be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge together with the instrument, if any, by which the charge is created or evidenced, have been or are delivered to or received by the Commission for registration in the manner required by this Act or by any enactment repealed by this Act within ninety days after the date of its creation but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a charge becomes void under this section, the money thereby secured shall immediately become payable.

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(2) The provisions of this section shall apply to the following charges, that is—

- (a) a charge for the purpose of securing any issue of debentures;
- (b) a charge on uncalled share capital of the company;
- (c) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale;
- (d) a charge on land, wherever situate, or any interest therein, but not including a charge for rent or other periodical sum issuing out of land;
- (e) a charge on book debts of the company;
- (f) a floating charge on the undertaking or property of the company;
- (g) a charge on calls made but not paid;
- (h) a charge on a ship or aircraft or any share in a ship; and
- (i) a charge on goodwill, on a patent or a licence under a patent, on trademark or on a copyright or a licence under a copyright.

(3) Where a charge affects or relates to property situated in Nigeria and in addition to registration under subsection (1) of this section, registration elsewhere in Nigeria is necessary to make the charge valid or effectual, it shall, subject to this subsection, be sufficient evidence of compliance with the requirements of subsection (1) of this section, if, instead of delivery of the original instrument creating or evidencing the charge, there is delivered to and received by the Commission within the prescribed period of ninety days, or such extended time as the court may allow, a true copy of it duly certified as such by the secretary to the company.

(4) A reference in any enactment to the date of execution of an instrument for the purposes of computation of time within which registration is to be effected with or without penalty, shall be construed as a reference to the date of presentation of copy of the instrument to the Commission under this Act, and time shall be computed accordingly; and if a certified copy is delivered to the Commission under this subsection, the original of it shall be produced to it for inspection and comparison, if the Commission so requires.

(5) In the case of a charge created out of Nigeria, affecting or in relation to property situate outside Nigeria, the delivery to and the receipt by the Commission of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and ninety days after the date on which the instrument or copy could, in due course of post, and if despatched with diligence, have been received in Nigeria shall be substituted for ninety days after the date of the creation of the charges as the time within the particulars and instrument or copy are to be delivered to the Commission.

(6) Where a charge is created in Nigeria but affects or relates to property outside Nigeria, the instrument creating or purporting to create the charge may be sent for registration under this section notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate.

(7) Where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not, for the purposes of this section, be treated as a charge on those book debts.

(8) The holding of debentures which entitles the debenture holder to a charge on land shall not, for the purposes of this section, be deemed to be an interest in land.

(9) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall, for the purposes of this section, be sufficient if there are delivered to or received by the Commission within ninety days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars—

- (a) the total amount secured by the whole series;

- (b) the dates of the resolutions authorising the issues of the series and the date of the covering deed, if any, by which the security is created or defined;
- (c) a general description of the property charged; and
- (d) the names of the trustees, if any, for the debenture holders; together with the deed containing the charge, or, if there is no such deed, one of the debentures of the series:

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the Commission for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

(10) Where any commission, allowance or discount has been paid or made either directly or indirectly by a company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount or rate *per cent* of commission, discount or allowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued:

Provided that the deposit of any debentures as security for any debt of the company shall not, for the purposes of this subsection, be treated as the issue of the debentures at a discount.

(11) In this Part of this Act, "charge" includes mortgage.

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198. (1) The Commission shall keep, with respect to each company, a register in the prescribed form of all the charges requiring registration under this Part of this Act, and shall, on payment of such fee as may be specified by regulations made by the Commission, enter in the register with respect to such charges the following particulars—

- (a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are specified in section 197(9) of this Act;

(b) in the case of any other charge—

- (i) if the charge is a charge created by the company, the date of its creation, and if the charge was a charge existing on property acquired by the company, the date of its creation, and the date of the acquisition of the property;

- (ii) the amount secured by the charge,

- (iii) short particulars of the property, and

- (iv) the persons entitled to the charge.

(2) Where a charge is registered under this Part of this Act, the Commission shall issue a registration certificate setting out the parties to the charge, the amount thereby secured, with such other particulars as the Commission may consider necessary; and the certificate shall be *prima facie* evidence of due compliance with the requirements as to registration under this Part of this Act.

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of such fee, not exceeding ₹1 for each inspection as may be specified by regulations made by the Commission.

199. (1) It shall be the duty of a company to send to the Commission for registration, the particulars of every charge created by the company and of the issues of debentures of a series requiring registration under section 197 of this Act, but registration of any such charge may be effected on the application of any person interested therein.

(2) Where registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the Commission on the registration.

(3) If any company makes default in sending to the Commission for registration, the particulars of any charge created by the company or of the issues of debentures of a series requiring registration as aforesaid, then, unless the registration has been effected on the application of some other person, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine of ₹500.

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200. (1) Where a company acquires any property which is subject to a charge of any such kind as would have been required, if it has been created by the company after the acquisition of the property, to be registered under this Part of this Act, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the Commission for registration in the manner required by this Act within ninety days after the date on which acquisition is completed:

Provided that, if the property is situated and the charge was created outside Nigeria, "ninety days after the date on which the copy of the instrument could in due course of post, and if despatched with due diligence, have been received in Nigeria" shall be substituted for "ninety days after the date on which acquisition is completed", as the time within which the particulars and the copy of the instrument are to be delivered to the Commission.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine of ₦250.

(3) It shall be sufficient compliance with this section in any case affecting land registered under any enactment in a State, where the charge is registered thereunder before the land is acquired by the company, if a true copy of the charge duly certified by the Registrar of Land is delivered to the Commission within the time prescribed by this section.

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201. (1) Where, at the date of commencement of this Act, a company has property on which there is a charge particulars of which would require registration if it had been created by the company after the date of such commencement then, unless the charge has been discharged or the property has ceased to be held by the company prior to the expiration of six months from the date of such commencement, the company shall, within that time, cause particulars of the charge as prescribed by section 197 of this Act to be delivered to the Commission for registration together with the document, if any, by which the charge was created or a copy thereof, certified as required by that section.

(2) Every existing company shall, prior to the expiration of six months from the commencement of this Act, deliver to the Commission for registration a statutory declaration made by a director and the secretary of the company stating whether or not there are any charges on the company's property of which particulars required to be registered under this section and confirming that particulars of any such charges have been duly delivered to the Commission for registration.

(3) In the event of default in complying with subsection (2) of this section, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding ₦50 for every day during which the default continues.

(4) Failure to comply with the provisions of this section shall not affect the validity of the charge.

202. Where a charge, particulars of which require registration under section 197 of this Act, is expressed to secure all sums due or to become due or some other uncertain or fluctuating amount, the particulars required under paragraph (a) of subsection (9) of section 197 of this Act shall state the maximum sum deemed to be secured by such charge (being the maximum sum covered by the stamp duty paid thereon) and such charge shall be void, so far as any security on the company's property is thereby conferred, as respects any excess over the stated maximum:

Provided that, if—

(a) additional stamp duty is subsequently paid on such charge; and

(b) at any time thereafter prior to the commencement of the winding up of the company, amended particulars of the said charge stating the increased maximum sum deemed to be secured thereby (together with the original instrument by which the charge was created or evidenced) are delivered to the Commission for registration, then, as from the date of such delivery the charge, if otherwise valid, shall be effective to the extent of such increased maximum sum except as regards any person who, prior to the date of such delivery, has

acquired any proprietary rights in, or a fixed or floating charge on, the property subject to the charge.

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res. **203.** (1) The company shall cause a copy of every certificate of registration given under section 198 of this Act to be endorsed on every debenture or certificate of debenture stock which is issued by the company and the payment of which is secured by the charge so registered:

Provided that nothing in this subsection shall be construed as requiring a company to cause a certificate of registration of any charge so given to be enforced on any debenture or certificate of debenture stock issued by the company before the charge was created.

(2) If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock which under the provisions of this section is required to have endorsed on it a copy of a certificate of registration without the copy being so endorsed upon it, he shall, without prejudice to any other liability, be guilty of an offence and liable to a fine not exceeding ₦500.

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s. **204.** If the Commission is satisfied with respect to any registered charge that—

- (a) the debt for which the charge was given has been paid or satisfied in whole or in part; or
- (b) part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking,

it may enter on the register a memorandum of satisfaction to the extent necessary to give effect thereto and, where it enters a memorandum of satisfaction it shall, if required, furnish the company with a copy of the entry, and any such entry shall have effect, subject to the requirement of any other enactment as to registration.

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er. **205.** The court, on being satisfied that the omission to register a charge within the time required by this Act or that the omission or mis-statement of any particular with respect to any such charge or in a memorandum of satisfaction was accidental, or due to inadvertence or to some other sufficient

cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested and on such terms and conditions as seems to the court just and expedient, order that the time for registration shall be extended or, as the case may be, that the omission or mis-statement shall be rectified.

206. (1) If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven days from the date of the order or the appointment under the said powers, give notice of the fact to the Commission and the Commission shall, on payment of such fee as may be specified by regulations made under this Act, enter the fact in the register of charges.

(2) Where any person appointed receiver or manager of the property of a company under the powers contained in any instrument, ceases to act as such receiver or manager, he shall, on so ceasing, give the Commission notice to that effect, and the Commission shall enter, the notice in the register of charges.

(3) If any person makes default in complying with the requirements of this section, he shall be guilty of an offence and liable to a fine not exceeding ₦50 for every day during which the default continues.

207. (1) The copies of instruments creating any charge requiring registration under this Part of this Act with the Commission and the register of charges kept in pursuance of section 198 of this Act, shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day shall be allowed for inspection) to inspection by any creditor or member of the company without fee, and the register of charges shall also be open to inspection by any other person on payment of such fee, not exceeding ₦1 for each inspection, as the company may prescribe.

(2) If inspection of copies of instruments creating charges or of the register is refused, every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding ₦50 for every day during which the refusal continues.

(3) If any such refusal occurs in relation to a company registered in Nigeria or, in so far as a foreign company has an established place of business within Nigeria and an instrument creates a charge over any of its property in Nigeria and the refusal relates to that charge, the court may by order compel an immediate inspection of the copies or register.

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^{ire} 208. (1) A debenture holder shall be entitled to realise any security vested in him or in any other person for his benefit if—

- (a) the company fails to pay any instalment of interest, or the whole or part of the principal or any premium, owing under the debenture or the debenture trust deed covering the debenture within one month after it becomes due; or
- (b) the company fails to fulfil any of the obligations imposed on it by the debentures or the debenture trust deed; or
- (c) any circumstances occur which by the terms of the debentures or debenture trust deed entitled the holder of the debenture to realise his security; or
- (d) the company is wound up.

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

- (a) any creditor of the company issues a process of execution against any of its assets or commences proceedings for winding up of the company by order of any court of competent jurisdiction; or
- (b) the company ceases to pay its debts as they fall due; or
- (c) the company ceases to carry on business; or
- (d) the company suffers, after the issue of debenture of the class concerned, losses or diminutions in the value of its

assets which in the aggregate amount to more than one-half of the total amount owing in respect of debentures of the class held by the debenture holder who seeks to enforce his security and debentures whose holder ranks before him for payment of principal or interest; or

- (e) any circumstances occur which entitles a debenture holder who ranks for payment of principal or interest in priority to the debentures secured by the general floating charges to realise his security.

209. (1) At any time after a debenture holder or a class of debenture holders becomes entitled to realise his or their security, a receiver of any assets subject to a mortgage, charge or security in favour of the class of debenture holders or the trustee of the covering debenture trust deed or any other person may be appointed by—

- (a) that trustee;
- (b) the debentures holders of the same class containing power to appoint; or
- (c) debenture holders having more than one-half of the total amount owing in respect of all the debentures of the same class; or
- (d) the court on the application of the trustee.

(2) Subject to any conditions imposed in the debenture or debenture trust deed, a debenture holder or a trustee, in the case of a trust, deed may—

- (a) bring an action in a representative capacity against the company for payment and enforcement of the security; or
- (b) realise his security by—
 - (i) bringing a foreclosure action, or
 - (ii) commencing a winding up proceeding.

(3) A receiver appointed under this section shall, subject to any order made by the court, have power to take possession of the assets subject to the mortgage, charge or security and to sell those assets and, if the mortgage, charge

or security extends to such assets, to collect debts owed to the company, to enforce claims vested in the company, to compromise, settle and enter into arrangements in respect of claims by or against the company, on the company's business with a view to selling it on the most favourable terms, to grant, or accept leases of land and licences in respect of patents, designs, copyright or trademarks, and to recover any instalment unpaid on the company's issued shares.

(4) Where a representative action is being brought under paragraph (a) of subsection (2) of this section, the approval of the court shall be obtained where the company is being wound up.

(5) The remedies given by this section shall be in addition to, and not in substitution for, any other powers and remedies conferred on the trustee or the debenture trust deed or on the debenture holders by the debentures or debenture trust deed, and any power or remedy which is expressed in any instrument to be exercisable if the debenture holders become entitled to realise their security shall be exercisable on the occurrence of any of the events specified in subsection (1) of section 208 of this Act or in the case of a general charge in subsections (1) and (2) of section 208 of this Act; but a manager of the business or of any of the assets of a company may not be appointed for the benefit of debenture holders unless a receiver has also been appointed and has not ceased to act.

(6) The provisions of sections 387 to 400 of this Act shall apply to receivers and managers under this Part of this Act.

(7) No provision in any instrument which purports to exclude or restrict the remedies given by this section shall be valid.

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210. Subject to the provisions of this Part of this Act and unless the context otherwise admits, the provisions of sections 146, 147, 151, 153, 156 and 157 of this Act relating to share certificates and transfer of shares shall apply in respect of shares as if "debentures" were substituted for "shares" and "debentures holders" for "shareholders".

PART VIII.—MEETINGS AND PROCEEDINGS
OF COMPANIES

Statutory Meeting

211. (1) Every public company shall, within a period of six months from the date of its incorporation, hold a general meeting of the members of the company (in this Act referred to as "the statutory meeting").

(2) The directors shall, at least twenty one days before the day on which the statutory meeting is held, forward to every member of the company a copy of the statutory report.

(3) The statutory report shall be certified by not less than two directors or by a director and the secretary of the company and shall state—

- (a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case, the consideration for which they have been allotted;
- (b) the total amount of cash received by the company in respect of all the shares allotted and distinguished as aforesaid;
- (c) the names, addresses and descriptions of the directors, auditors, managers, if any, and secretary of the company;
- (d) the particulars of any pre-incorporation contract together with the particulars of any modification or proposed modification thereon;
- (e) any underwriting contract that has not been carried out and the reasons therefore;
- (f) the arrears, if any, due on calls from every director; and
- (g) the particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares or debentures to any director or to the manager.

(4) The report shall also contain an abstract of the receipts of the company and of the payments made from them up to a date within seven days of the date of the report, exhibiting

under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made from such receipts and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company.

(5) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors of the company.

(6) The directors shall cause a copy of the statutory report, certified as required by this section, to be delivered to the Commission for registration forthwith after the sending of copies to the members of the company.

(7) The directors shall cause a list showing the names, descriptions and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting and to remain open and accessible to any member of the company during the continuance of the statutory meeting.

(8) The members of the company present at the statutory meeting shall be at liberty to discuss any matter relating to the formation of the company, and its commencement of business or arising out of the statutory report.

(9) Any member who wishes a resolution to be passed on any matter arising out of the statutory report shall give further twenty-one days notice from the date on which the statutory report was received to the company of his intention to propose such a resolution.

(10) The statutory meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

212. Without prejudice to the provisions of section 408 of this Act, if a company fails to comply with the requirements of section 211 of this Act, the company and any officer in

default shall be guilty of an offence and liable to a fine of ₦ 50 for every day during which the default continues.

General meeting

213. (1) Every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

Provided that—

- (a) if a company holds its first annual general meeting within eighteen months of its incorporation it need not hold it in that year or in the following year;
- (b) except for the first annual general meeting, the Commission shall have the power to extend the time within which any annual general meeting shall be held, by a period not exceeding three months.

(2) If default is made in holding a meeting of a company in accordance with subsection (1) of this section, the Commission may, on the application of any member of the company call, or direct the calling of, a general meeting of the company and give such ancillary or consequential directions as the Commission thinks expedient, including directions modifying or supplementing, in relation to the calling, holding and conducting of the meeting, the operation of the company's articles; and it is hereby declared that the directions that may be given under this subsection shall include a direction that one member of the company present in person or by proxy may apply to the court for an order to take a decision which shall bind all the members.

(3) A general meeting held in pursuance of subsection (2) of this section shall, subject to any directions of the Commission, be deemed to be an annual general meeting of the company; but, where a meeting so held is not held in the year in which the default in holding the company's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held unless at that meeting the company resolves that it shall be so treated.

(4) Where a company resolves that a meeting shall be treated as its annual general meeting, a copy of the resolution shall, within fifteen days after the passing thereof, be filed with the Commission.

(5) If default is made in holding a meeting of the company in accordance with subsection (1) of this section, or in complying with any directions of the Commission under subsection (2) thereof, the company and every officer of the company who is in default shall be guilty of an offence and be liable to a fine of ₦500 and if default is made in complying with subsection (4) of this section, the company and every officer of the company who is in default shall be liable to a fine of ₦25.

at **214.** All businesses transacted at annual general meetings shall be deemed special business, except declaring a dividend, the presentation of the financial statements and the reports of the directors and auditors, the election of directors in the place of those retiring, the appointment, and the fixing of the remuneration of the auditors and the appointment of the members of the audit committee under section 359 of this Act which shall be ordinary business.

Extraordinary General Meeting

215. (1) The Board of directors may convene an extraordinary general meeting whenever they deem fit, and if at any time there are not within Nigeria sufficient directors capable of acting to form a quorum, any director may convene an extraordinary general meeting.

(2) An extraordinary general meeting of a company may be requisitioned by any member or members of the company holding at the date of the requisition not less than one-tenth of the paid-up capital of the company as at the date of the deposit carrying the right of voting, or in the case of a company not having a share capital, members of the company representing not less than one-tenth of the total voting rights of all the members having at the said date a right to vote at general meetings of the company, and the directors shall on receipt of the requisition forthwith proceed duly to convene an

extraordinary general meeting of the company, notwithstanding anything in its articles.

(3) The requisition shall state the objects of the meeting, and be signed by the requisitionists and deposited at the registered office of the company, and the requisition may consist of several documents in like form each signed by one or more requisitionists.

(4) If the directors do not within twenty-one days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists, or any one or more of them representing more than one-half of the total voting rights of all of them, may themselves convene a meeting:

Provided that any meeting so convened shall not be held after the expiration of three months from that date.

(5) A meeting convened under this section by a requisitionist or requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(6) Any reasonable expenses incurred by the requisitionist or requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

(7) For the purpose of this section the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice as is required by section 217 of this Act.

(8) All businesses transacted at an extraordinary general meeting shall be deemed special.

216. All statutory and annual general meetings shall be held in Nigeria. Place meeti

Notice of meetings

217. (1) The notice required for all types of general meetings from the commencement of this Act shall be twenty-one days from the date on which the notice was sent out.

(2) A general meeting of a company shall, notwithstanding that it is called by a shorter notice than that specified in subsection (1) of this section, be deemed to have been duly called if it is so agreed in the case of—

- (a) a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and
- (b) any other general meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than ninety-five *per cent* in nominal value of the shares giving a right to attend and vote at the meeting or, in the case of a company not having a share capital, together representing not less than ninety-five *per cent* of the total voting rights at that meeting of all the members.

218. (1) The notice of a meeting shall specify the place, date and time of the meeting, and the general nature of the business to be transacted thereat in sufficient detail to enable those to whom it is given to decide whether to attend or not, and where the meeting is to consider a special resolution shall set out the terms of the resolution.

(2) In the case of notice of an annual general meeting a statement that the purpose is to transact the ordinary business of an annual general meeting shall be deemed to be a sufficient specification that the business is for the declaration of dividends, presentation of the financial statements, reports of the directors and auditors, the election of directors in the place of those retiring, the fixing of the remuneration of the auditors and, if the requirements of sections 362 and 363 of this Act are duly complied with, the removal and election of auditors and directors.

(3) No business may be transacted at any general meeting unless notice of it has been duly given.

(4) In every case in which a member is entitled, pursuant to section 230 of this Act, to appoint a proxy to attend and vote instead of him, the notice shall contain with reasonable prominence, a statement that the member has the right to appoint a proxy to attend and vote instead of him and that the proxy need not be a member of the company, and if default is made in complying with this subsection as respects any meeting, every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding ₦ 500.

(5) An error or omission in a notice with respect to the place, date, time or general nature of the business of a meeting shall not invalidate the meeting, unless the officer of the company responsible for the error or omission acted in bad faith and failed to exercise due care and diligence:

Provided that in the case of accidental error or omission, the officer responsible shall effect the necessary correction either before or during the meeting.

219. (1) The following persons shall be entitled to receive notice of a general meeting—

- (a) every member;
- (b) every person upon whom the ownership of a share devolves by reason of his being a legal representative, receiver or a trustee in bankruptcy of a member;
- (c) every director of the company;
- (d) every auditor for the time being of the company; and
- (e) the secretary of the company.

(2) No person other than those mentioned in subsection (1) of this section shall be entitled to receive notices of general meetings.

220. (1) A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within Nigeria) to the address, if any, supplied by him to the company for the giving of notice to him.

(2) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre-paying, and posting a letter containing the notice, and to have been

effected in the case of a notice of a meeting at the expiration of seven days after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

(3) A notice may be given by the company to the joint holders of shares by giving the notice to the joint holder first named in the register of members in respect of the share.

(4) A notice may be given by the company to the persons entitled to shares in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any within Nigeria supplied for the purpose by the person claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

(5) "Registered address" means, in the case of a member, any address supplied by him to the company for the giving of notice to him.

221. (1) Failure to give notice of any meeting to a person entitled to receive it shall invalidate the meeting unless such failure is an accidental omission on the part of the person or persons giving the notice.

(2) Failure to give notice to a person entitled to it due to a misrepresentation or misinterpretation of the provisions of this Act, or of the articles shall not amount to an accidental omission for the purposes of the foregoing subsection.

222. In addition to the notice required to be given to those entitled to receive it in accordance with the provisions of this Act, every public company shall, at least twenty-one days before any general meeting, advertise a notice of such meeting in at least two daily newspapers.

223. (1) If for any reason it is impracticable to call a meeting of a company or of the board of directors in any manner in which meetings of that company or board may be called, or to conduct the meeting of the company or board in

the manner prescribed by the articles or this Act, the court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, in the case of the meeting of the company, and of any director of the company, in case of the meeting of the board, order a meeting of the company or board, as the case may be, to be called, held and conducted in such manner as the court thinks fit, and where any such order is made may give such ancillary or consequential directions as it thinks expedient.

(2) It is hereby declared that the directions that may be given under subsection (1) of this section shall include a direction that one member of the company present in person or by proxy, in the case of a meeting of the company, and one director, in the case of the Board may apply to the court for an order to take a decision which shall bind all the members.

(3) Any meeting called, held and conducted in accordance with an order under subsection (1) of this section, shall for all purposes be deemed to be a meeting of the company or of the board of directors duly called, held and conducted.

Voting

224. (1) At any general meeting, a resolution put to the vote shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by—

- (a) the chairman, where he is a shareholder or a proxy;
- (b) at least three members present in person or by proxy;
- (c) any member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or
- (d) a member or members holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

(2) Unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, the resolution.

225. (1) Any provision contained in a company's articles shall be void in so far as it would have the effect either of—

- (a) excluding the right to demand a poll at a general meeting on any question other than the election of the chairman of the meeting or the adjournment of the meeting; or
- (b) making ineffective a demand for a poll on any such question which is made by any of the persons mentioned in section 224 of this Act.

(2) The instrument appointing a proxy to vote at a meeting of a company shall be deemed also to confer authority to demand or join in demanding a poll, and for the purposes of subsection (1) of this section, a demand by a person as proxy for a member shall be the same as a demand by the member.

(3) Notwithstanding section 224 of this Act and subsection (1) and (2) of this section, there shall be no right to demand a poll on the election of members of the Audit Committee under section 359 of this Act.

226. (1) On a poll taken at a meeting of a company, or a meeting of any class of members of a company, a member entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

(2) Except as provided in subsection (4) of this section, if a poll is duly demanded, it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

(3) In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which

the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

(4) A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith, and on any other question, shall be taken at such time as the chairman of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

227. (1) Subject to section 228 of this Act, every member shall have a right to attend any general meeting of the company in accordance with the provisions of section 81 of this Act.

(2) In the case of joint holders of shares, the vote of the senior joint holder who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

(3) A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, receiver, *curator bonis*, or other person in the nature of a committee, receiver or *curator bonis* appointed by that court, and any such committee, receiver, *curator bonis* or other person may vote by proxy.

228. Every person who is entitled to receive notice of a general meeting of the company as provided by section 227 of this Act shall be entitled to attend such a meeting.

229. No objections shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes and any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

230. (1) Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of him, and a proxy appointment to attend and vote instead of a member shall also have the same right as the member to speak at the meeting:

Provided that, unless the articles otherwise provide, this section shall not apply in the case of a company not having a share capital.

(2) In every notice calling a meeting of a company having a share capital, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy or, where that is allowed, two or more proxies, to attend and vote instead of him, and that a proxy need not be a member and if default is made in complying with this subsection as respects any meeting, every officer of the company who in default shall be guilty of an offence and liable to a fine of ₦250.

(3) Any provision contained in a company's articles shall be void in so far as it would have the effect of requiring the instrument appointing a proxy or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy, to be received by the company or any other person more than forty-eight hours before a meeting or adjourned meeting in order that the appointment may be effective at the meeting.

(4) If, for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to some only of the members entitled to be sent notice of the meeting and to vote by proxy at the meeting, every officer of the company who knowingly and wilfully authorises or permits their issue as aforesaid shall be guilty of an offence and liable to a fine of ₦500:

Provided that an officer shall not be liable under this subsection by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy or of a list of persons willing to act as proxy if the form or list

is available on request in writing to every member entitled to vote at the meeting by proxy.

(5) A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the share in respect of which the proxy is given:

Provided that no intimation in writing of such death, insanity, revocation or transfer as aforesaid has been received by the company before the commencement of the meeting or adjourned meeting at which the proxy is used.

(6) The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing or, if the appointer is a corporation, either under seal, or under the hand of an officer or attorney duly authorised.

(7) The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a certified copy of that power or authority shall be deposited at the registered office or head office of the company or at such other place within Nigeria as is specified for that purpose in the notice convening the meeting, not less than forty-eight hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than twenty-four hours before the time appointed for the taking of the poll; and in default, the instrument of proxy shall not be treated as valid.

(8) This section shall apply to meetings of any class of members of a company as it applies to general meetings of the company.

231. (1) A corporation, whether a company within the meaning of this Act or not, may if it is—

(a) a member of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any

Corporation
representation at
meetings of
companies
etc.

meeting of the company or at any meeting of any class of members of the company;

(b) a creditor (including a debenture holder) of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person, authorised as provided in subsection (1) of this section, shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation might exercise if it were an individual shareholder, creditor or holder of debentures of that other company.

232. (1) Unless otherwise provided in the articles, no business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business and throughout the meeting.

(2) Unless otherwise provided in the articles, the quorum for the meeting of a company shall be one-third of the total number of members of the company or twenty-five members (whichever is less) present in person or by proxy:

Provided that where the number of members is not a multiple of three, then the number nearest to one-third, and where the number of members is six or less, the quorum shall be two members.

(3) For the purpose of determining a quorum, all members or their proxies shall be counted.

(4) Where a member or members withdraw from the meeting for what appears to the chairman to be insufficient reasons and for the purpose of reducing the quorum, and in fact the quorum is no longer present, the meeting may continue with the number present, and their decision shall bind all the shareholders and where there is only one member, he may seek direction of the Court to take a decision.

(5) Where there is a quorum at the beginning, but no quorum later due to some shareholders leaving for what appears to the chairman to be sufficient reasons, the meeting shall be adjourned to the same place, and time, in a week's time, and if there is no quorum still at the adjourned meeting, the members present shall then be the quorum and their decision shall bind all shareholders and where only one member is present, he may seek direction of the Court to take a decision.

Resolutions

233. (1) A resolution shall be an ordinary resolution when it has been passed by a simple majority of votes cast by such members of the company as, being entitled to do so, vote in person or by proxy at a general meeting. Resol

(2) A resolution shall be a special resolution when it has been passed by not less than three-fourths of the votes cast by such members of the company as, being entitled to do so, vote in person or by proxy at a general meeting of which twenty-one days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given:

Provided that, if it is so agreed by majority in number of the members having the right to attend and vote at any such meeting, being a majority together holding not less than ninety-five *per cent* in nominal value of the shares giving that right or, in the case of a company not having a share capital, together representing not less than ninety-five *per cent* of the total voting rights at that meeting of all the members, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.

(3) At any meeting at which a special resolution is submitted to be passed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number of proportion of the votes recorded in favour of or against the resolution.

(4) In computing the majority of a poll demanded on the question that a special resolution be passed, reference shall be had to the number of votes cast for and against the resolution.

(5) For the purposes of this section, notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in the manner provided by this Act or the articles.

(6) A company may, by its articles provide that any matter not required by the articles or by this Act to be passed by a special resolution shall be passed by an ordinary resolution.

234. All resolutions shall be passed at general meetings and shall not be effective unless so passed:

Provided that in the case of a private company a written resolution signed by all the members entitled to attend and vote shall be as valid and effective as if passed in a general meeting.

235. (1) Subject to the following provisions of this section, it shall be the duty of a company, on the requisition in writing of such number of members as is hereinafter specified and (unless the company otherwise resolves) at the expense of the company to—

- (a) give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution submitted by a member which may properly be moved and is intended to be moved at that meeting;
- (b) circulate to members entitled to have notice of any general meeting sent to them, any statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting, and where the statements has more than 1,000 words to circulate a summary of it.

(2) The number of members necessary for a requisition under subsection (1) of this section shall be—

- (a) any one or more members representing not less than one-twentieth of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or
- (b) not less than one hundred members holding shares in the company on which there has been paid up an average sum, per member, of not less than ₦500.

(3) Notice of any such resolution shall be given, and any such statement shall be circulated, to members of the company entitled to have notice of the meeting sent to them by serving a copy of the resolution or statement on each such member in any manner permitted for service of notice of the meeting, and notice of any such resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving notice of meetings of the company:

Provided that the copy shall be served, or notice of the effect of the resolution shall be given, as the case may be, in the same manner and so far as practicable, at the same time as notice of the meeting and, where it is not practicable for it to be served or given at that time, it shall be served or given as soon as practicable thereafter.

(4) A company shall not be bound under this section to give notice of any resolution or to circulate any statement unless—

(a) a copy of the requisition signed by the requisitionists (or two or more copies which between them contain the signatures of all the requisitionists) is deposited at the registered office of the company—

(i) in the case of a requisition requiring notice of a resolution, not less than six weeks before the meeting, and

(ii) in the case of any other requisition, not less than one week before the meeting; and

(b) there is deposited or tendered with the requisition, a sum reasonably sufficient to meet the company's expenses in giving effect thereto:

Provided that if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date six weeks or less after the copy has been deposited, the copy though not deposited within the time required by this subsection shall be deemed to have been properly deposited for the purposes thereof.

(5) The company shall also not be bound under this section to circulate any statement if, on the application either of the company or of any other person who claims to be aggrieved,

the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on an application under this section to be paid in whole or in part by the requisitioner, notwithstanding that the requisitioner is not party to the application.

(6) Notwithstanding anything in the company's articles, the business which may be dealt with at an annual general meeting shall include any resolution of which notice if given in accordance with this section and for the purposes of this subsection, notice shall be deemed to have been so given, notwithstanding the accidental omission in giving it to one or more members.

(7) In the event of any default in complying with the provisions of this section, every officer of the company who is in default shall be guilty of an offence and liable to a fine of ₦ 500.

236. Where by any provision contained in this Act, special notice is required of a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the company not less than twenty-eight days before the meeting at which it is to be moved, and the company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice thereof, either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the articles, not less than twenty-one days before the meeting:

Provided that if, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date twenty-eight days or less after the notice has been given, the notice though not given within the time required by this section shall be deemed to have been properly given for purposes thereof.

237. (1) Subject to subsection (7)(b) of section 46 of this Act, a printed copy of every resolution or agreement to which this section applies shall, within fifteen days after the passing or making of the resolution or agreement, as the case may be, be forwarded to the Commission.

(2) Where, pursuant to the provisions of sections 44 to 47 of this Act, a company by special resolution alters the provisions of its memorandum and the Commission is satisfied that the alteration is not in compliance with the applicable provisions of those sections, it may refuse to file a copy of the resolution in its records and shall notify the company accordingly and any person aggrieved by the refusal may appeal to the court within twenty-one days from the receipt of the notification.

(3) A copy of every resolution or agreement as is mentioned in subsection (1) of this section for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.

(4) This section shall apply to—

- (a) special resolutions;
- (b) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose, unless, as the case may be, they had been passed as special resolution; or
- (c) resolutions or agreements which have been agreed to by all the members of any class of shareholders but which, if not so agreed to, would not have been effective for their purpose, unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members; and
- (d) resolutions requiring a company to be wound up voluntarily, passed under paragraph (a) of section 457 of this Act.

(5) If a company fails to comply with subsection (1) of this section, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine of ₦ 50.

(6) If a company fails to comply with subsection (3) of this section, the company and every officer of the company who is

in default shall be guilty of an offence and liable to a fine of ₦5 for each copy in respect of which default is made.

(7) For the purposes of subsections (5) and (6) of this section, a liquidator of the company shall be deemed to be an officer of the company.

238. Where a resolution is passed at an adjourned meeting of—

- (a) a company;
- (b) the holders of any class of shares in a company; or
- (c) the directors of a company,

the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

Miscellaneous matters relating to meetings and proceedings

239. (1) The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(2) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting; but otherwise it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

(3) If within one hour from the time appointed for the meeting a quorum is not present, the meeting if convened upon the requisition of members shall be dissolved, but in any other case, it shall stand adjourned to the same day in the next week, at the same time and place or to such other day and at such other time and place as the chairman and in his absence, the directors may direct.

(4) If a meeting stands adjourned under subsection (3) of this section, any two or more members present at the place and time to which it so stands adjourned shall form a quorum and their decision shall bind all shareholders, and where only

one member is present, he may seek the direction of the court to take a decision.

240. (1) The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he is not present within one hour after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be chairman of the meeting.

(2) If at any meeting no director is willing to act as chairman or if no director is present within one hour after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

(3) The duties and powers of the chairman shall include the duty to—

- (a) preserve order and the power to take such measures as are reasonably necessary to do so;
- (b) ensure that proceedings are conducted in a regular manner;
- (c) ensure that the true intention of the meeting is carried out in resolving any issue that arises before it;
- (d) ensure that all questions that arise are promptly decided; and
- (e) act *bona fide* in the interest of the company.

(4) The chairman shall cast his vote *bona fide* in the interest of the company as a whole, provided that if he is also a shareholder, he may cast it in his own interest.

(5) The chairman shall have power to adjourn a meeting in accordance with section 239(1) of this Act.

241. (1) Every company shall—

- (a) cause minutes of all proceedings of general meetings;
- (b) all proceedings at meetings of its directors; and
- (c) where there are managers, all proceedings at meetings of its managers, to be entered in books kept for that purpose.

(2) Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings were held, or by the chairman of the next succeeding meeting, shall be *prima facie* evidence of the proceedings.

(3) Where minutes have been made, in accordance with the provisions of this section, of the proceedings at any general meeting of the company or meeting of directors or managers, then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings had at the meeting to have been duly had, and all appointments of directors, managers or liquidators shall be deemed to be valid.

(4) If a company fails to comply with the provisions of subsection (1) of this section, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine of ₦500.

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242. (1) The books containing the minutes of proceedings of any general meeting of a company held on or after the commencement of this Act, shall be kept at the registered office of the company, and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, but so that no less than six hours in each day be allowed for inspection) be open to inspection by members without charge.

(2) Any member shall be entitled to be furnished within seven days after receipt of his request in that behalf to the company, with a copy of any such minutes certified by the secretary at a charge not exceeding ten kobo for every hundred words.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper time, the company and every officer of the company who is in default shall be guilty of an offence and liable in respect of each offence to a fine of ₦25.

(4) In the case of any such refusal or default, the court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings, or direct that the copies required shall be sent to the persons requiring them.

243. The provisions of the foregoing sections shall apply to any class meetings except where expressly excluded by this Act.

PART IX.—DIRECTORS AND SECRETARIES OF THE COMPANY

CHAPTER 1—*Directors*

Meaning of Directors

244. (1) Directors of a company registered under this Act are persons duly appointed by the company to direct and manage the business of the company.

(2) In favour of any person dealing with the company there shall be a rebuttable presumption that all persons who are described by the company as directors, whether as executive or otherwise, have been duly appointed.

(3) Where a person not duly appointed acts or holds himself out as a director, he shall be guilty of an offence, and on conviction shall be liable to imprisonment for two years or to a fine of ₦100 for each day he so acts or holds out himself as a director, or to both such imprisonment or fine and shall be restrained by the company.

(4) If it is the company that holds him out as a director, it shall be liable to a fine of ₦1,000 each day it holds him out, and he and the company may be restrained by any member from so acting unless or until he is duly appointed.

245. (1) Without prejudice to the provisions of sections 244 and 250, and for the purposes of sections 253, 275 and 281 of this Act, “director” shall include any person on whose instructions and directions the directors are accustomed to act.

(2) Subject to sections 275, 280 and 281 of this Act, nothing contained in section 250 of this Act shall be deemed to derogate from the duties or liabilities of the duly appointed directors.

(3) For the avoidance of doubt, the fact that a person in his professional capacity gives advice and a director acts on it shall not be construed to make such a person under this Act a person in accordance with whose directions or instructions the director of a company is accustomed to act.

Appointment of Directors

246. (1) Every company registered on or after the commencement of this Act shall have at least two directors and every company registered before that date shall before the expiration of six months from the commencement of this Act have at least two directors.

(2) Any company whose number of directors falls below two, shall within one month of its so falling appoint new directors and shall not carry on business after the expiration of one month, unless such new directors are appointed.

(3) A director or member of a company who knows that a company carries on business after the number of directors has fallen below two for more than sixty days shall be liable for all liabilities and debts incurred by the company during that period when the company so carried on business.

ent **247.** Subject to section 246 of this Act, the number of directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum of association or a majority of them or the directors may be named in the articles.

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rs. **248.** (1) The members at the annual general meeting shall have power to re-elect or reject directors and appoint new ones.

(2) In the event of all the directors and shareholders dying, any of the personal representatives shall be able to apply to the court for an order to convene a meeting of all the personal representatives of the shareholders entitled to attend and vote at a general meeting to appoint new directors to manage the company, and if they fail to convene a meeting, the creditors, if any, shall be able to do so.

249. (1) The board of directors shall have power to appoint new directors to fill any casual vacancy arising out of death, resignation, retirement or removal.

(2) Where a casual vacancy is filled by the directors, the person may be approved by the general meeting at the next annual general meeting, and if not so approved, he shall forthwith cease to be a director.

(3) The directors may increase the number of directors so long as it does not exceed the maximum allowed by the articles, but the general meeting shall have power to increase or reduce the number of directors generally and may determine in what rotation the directors shall retire:

Provided that such reduction shall not invalidate any prior act of the removed director.

250. Where a person not duly appointed as a director acts as such on behalf of the company, his act shall not bind the company and he shall be personally liable for such action:

Provided that where it is the company which holds him out as director, the company shall be bound by his acts.

251. (1) The shareholding qualification for directors may be fixed by the articles of association of the company and unless and until so fixed no shareholding qualification shall be required.

(2) It shall be the duty of every director who is by the articles of the company required to hold a specified share qualification, and who is not already so qualified to obtain his qualification within two months after his appointment.

(3) The office of director of a company shall be vacated if the director does not within two months from the date of his appointment, obtain his qualification or after the expiration of the said period, he ceases at any time to hold his shareholding qualification.

(4) A person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his shareholding qualification.

(5) If after the expiration of the said period, any unqualified person acts as a director of the company, he shall

be liable to a fine of ₦ 50 for every day between the expiration of the said period or the day on which he ceased to be qualified, as the case may be, and the last day on which it is proved that he acted as a director.

252. (1) Any person who is appointed or to his knowledge proposed to be appointed director of a public company and who is seventy or more years old shall disclose this fact to the members at the general meeting.

(2) Any person who fails to disclose his age as required under this section shall be guilty of an offence and liable to a fine of ₦ 500.

253. (1) If any person, being an insolvent person acts as director of or directly or indirectly takes part in or is concerned in the management of any company, he shall be guilty of an offence and liable on conviction to a fine of ₦ 500, or to imprisonment for a term not less than six months or more than two years, or to both such fine and imprisonment.

(2) In this section, "company" includes an unregistered company.

254. (1) Where—

(a) a person is convicted by a High Court of any offence in connection with the promotion, formation or management of a company; or

(b) in the course of winding-up a company it appears that a person—

(i) has been guilty of any offence for which he is liable (whether he has been convicted or not) under section 513 of this Act, or

(ii) has otherwise been guilty, while an officer of the company, or any fraud in relation to the company or of any breach of his duty to the company,

the Court shall make an order that that person shall not be a director of or in any way, whether directly or indirectly, be concerned or take part in the management of a company for a specified period not exceeding ten years.

(2) In the foregoing subsection, the High Court and the court where used in relation to the making of an order against any person by virtue of paragraph (a) of subsection (1) of this section, include the court before which he is convicted, as well as any court having jurisdiction to wind-up the company, and in relation to the granting of leave, means any court having jurisdiction to wind-up the company as respects which leave is sought.

(3) A person intending to apply for the making of an order under this section by the Court having jurisdiction to wind-up a company shall give not less than ten days notice of his intention to the person against whom the order is sought, and on the hearing of the application, the last mentioned person may appear and himself give evidence or call witnesses.

(4) An application, for the making of an order under this section by the court having jurisdiction to wind-up a company, may be made by the official receiver, or by the liquidator of the company or by any person who is or has been a member or creditor of the company; and on the hearing of any application for an order under this section by the official receiver or the liquidator, or of any application for leave under this section by a person against whom an order has been made on the application of the official receiver or liquidator, the official receiver or liquidator shall appear and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.

(5) An order may be made by virtue of paragraph (b)(ii) of subsection (1) of this section, notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made and for the purposes of the said paragraph (b)(ii) "officer" includes any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

(6) If any person acts in contravention of an order made under this section, he shall be guilty of an offence and in respect of each offence, be liable on conviction to a fine of ₦ 500 or to imprisonment for a term of not less than six months or more than two years, or both.

ent 255. A person may be appointed a director for life provided that he shall be removable under section 262 of this Act.

256. Subject to the provisions of this Act, a person may be appointed a director of a public company notwithstanding that he is seventy years or more of age but special notice shall be required of any resolution appointing or approving the appointment of such a director for the purposes of this section, and the notice given to the company and by the company to its members shall state the age of the person to whom it relates.

ca- 257. The following persons shall be disqualified from being ip. directors—

- (a) an infant, that is, a person under the age of eighteen years;
- (b) a lunatic or person of unsound mind;
- (c) a person disqualified under sections 253, 254 and 258 of this Act;
- (d) a corporation other than its representative appointed to the board for a given term.

of 258. (1) The office of director shall be vacated if the director—

- (a) ceases to be a director by virtue of section 251 of this Act; or
- (b) becomes bankrupt or makes any arrangement or composition with his creditors generally; or
- (c) becomes prohibited from being a director by reason of any order made under section 254 of this Act; or
- (d) becomes of unsound mind; or
- (e) resigns his office by notice in writing to the company.

(2) Where a director presents himself for a re-election, a record of his attendance at the meetings of the board of directors during the preceding one year shall be made available to members at the general meeting where he is to be re-elected.

Ro 259. (1) Unless the articles otherwise provide, at the first dim annual general meeting of the company, all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being, or if their number is not three or a multiple of three, then the number nearest one-third shall retire from office.

(2) The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

(3) The company at the meeting at which a director retires in the manner mentioned in subsections (1) and (2) of this section, may fill the vacated office by electing a person to that office and in default the retiring director shall, if offering himself for re-election, be deemed to have been re-elected, unless at such meeting it is expressly resolved not to fill such vacated office or unless a resolution for the re-election of such director shall have been put to the meeting and lost.

(4) No person other than a director retiring at the meeting shall unless recommended by the directors, be eligible for election to the office of director at any general meeting unless not less than three nor more than twenty-one days before the date appointed for the meeting there shall have been left at the registered office or head office of the company notice in writing, signed by a member duly qualified to attend and vote at the meeting for which such notice is given, of his intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected.

260. The acts of a director, manager, or secretary shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

261. (1) At a general meeting of a company other than a Mo private company, a motion for the appointment of two, or vo ap of more persons as directors of the company by a single resolution shall not be made, unless resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

(2) A resolution moved in contravention of this section shall be void, whether or not its being so moved was objected to at the time.

Provided that—

- (a) this subsection shall not be taken as excluding the operation of section 260 of this Act; and
 - (b) where a resolution so moved is passed, no provision for automatic re-appointment of retiring directors in default of another appointment shall apply.
- (3) For the purposes of this section, a motion for approving a person's appointment or for nominating a person for appointment shall be treated as motion for his appointment.
- (4) Nothing in this section shall apply to a resolution altering the company's articles.

Removal of Directors

262. (1) A company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in its articles or in any agreement between it and him.

(2) A special notice shall be required of any resolution to remove a director under this section, or to appoint some other person instead of a director so removed, at the meeting at which he is removed, and on receipt of notice of an intended resolution to remove a director under this section, the company shall forthwith send a copy of it to the director concerned, and the director (whether or not he is a member of the company) shall be entitled to be heard on the resolution at the meeting.

(3) Where notice is given of an intended resolution to remove a director under this section and the director concerned makes with respect to it representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so—

(a) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and

(b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company),

and if a copy of the representations is not sent as required in this section because it is received too late or because of the company's default, the director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting:

Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter and the court may order the company's costs on an application under this section to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.

(4) A vacancy created by the removal of a director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.

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

(6) Nothing in this section shall be taken as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as a director or of any appointment terminating with that as director, or as derogating from any power to remove a director which may exist apart from this section.

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263. (1) The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit:

Provided that the first meeting of the directors shall be held not later than six months after the incorporation of the company.

(2) Any question arising at any meeting shall be decided by a majority of votes, and in case of an equality of votes, the chairman shall have a second or casting vote.

(3) A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors:

(4) The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

(5) The directors may delegate any of their powers to a managing director or to committees consisting of such member or members of their body as they think fit and the managing director or any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be made by the directors.

(6) A committee may elect a chairman of its meeting; and if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

(7) A committee may meet and adjourn as it thinks proper, and any questions arising shall be determined by a majority of votes of the members present, and in the case of equality of votes the chairman shall have a second or casting vote.

(8) A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the

directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

(9) In all the directors' meetings, each director shall be entitled to one vote.

264. (1) Unless the articles otherwise provide, the quorum necessary for the transaction of the business of directors shall be two where there are not more than six directors, but where there are more than six directors, the quorum shall be one third of the number of directors, and where the number of directors is not a multiple of three, then the quorum shall be one-third to the nearest number.

(2) Where a committee of directors is appointed by the board of directors, the board shall fix its quorum, but where no quorum is fixed, the whole committee shall meet and act by a majority.

265. Where the board of directors is unable to act because a quorum cannot be formed, the general meeting may act in place of the board and where a committee is unable to act because a quorum cannot be formed, the board may act in place of the committee.

266. (1) Every director shall be entitled to receive notice of the directors' meetings, unless he is disqualified by any reason under the Act from continuing with the office of director.

(2) There shall be given fourteen days notice in writing to all directors entitled to receive notice unless otherwise provided in the articles.

(3) Failure to give notice in accordance with subsection (2) of this section shall invalidate the meeting.

(4) Unless the articles otherwise provide, it shall not be necessary to give notice of a meeting of directors to any director for the time being absent from Nigeria; provided that if he has given an address in Nigeria, the notice shall be sent to such an address.

Remuneration and other payme

267. (1) The remuneration of the directors to time, be determined by the company in general meeting, such remuneration shall be deemed to accrue

(2) The directors may also be paid all travelling and other expenses properly incurred by them in returning from meetings of the directors or of the directors or general meetings of the company in connection with the business of the company.

(3) Where remuneration has been fixed, it shall be alterable only by a special resolution.

(4) A company shall not be bound to pay remuneration to its directors, but where the company agrees to pay, the directors shall be paid such remuneration out of the fund of the company.

(5) The amount of remuneration shall be a debt from the company so that if directors take office on the basis of the articles, they shall be able to sue the company on account of the debt or prove it in the liquidation.

(6) A director who receives more money than he is entitled to, shall be guilty of misfeasance and shall be accountable to the company for such money.

(7) The remunerations of directors shall be apportionable.

268. (1) A managing director shall receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the directors may determine.

(2) Where a managing director is removed for any reason whatsoever under section 262 of this Act, he shall have a claim for breach of contract if there is any or where a contract could be inferred from the terms of the articles.

(3) Where he performs some services without a contract, he shall be entitled to payment on a *quantum meruit*.

1) It shall not be lawful for a company to pay a remuneration (whether as director or otherwise) free of income tax, or otherwise calculated by reference to or with the amount of his income tax, or at or with the standard rate of income tax, except under a contract in force at the commencement of this Act, and which expressly, and not by reference to the articles, for the payment of remuneration as aforesaid.

any such provision contained in a company's articles or contract other than such a contract as mentioned in subsection (1) of this section or in any resolution of a company or resolution of a company's directors for payment to a director of remuneration as mentioned in subsection (1) of this section, shall have effect as if it provided for payment, as a gross sum subject to income tax, of the net sum for which it actually provides.

(3) This section shall not apply to remuneration due before this Act comes into force or in respect of a period before it comes into force.

270. (1) It shall not be lawful for a company to make a loan to any person who is its director or a director of its holding company, or to enter into any guarantee or provide any security in connection with a loan made to such a person as earlier mentioned by any other person:

Provided that nothing in this section shall apply—

(a) subject to subsection (2) of this section, to anything done to provide any such person as mentioned in this subsection with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company; or

(b) in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, to anything done by the company in the ordinary course of that business.

(2) Proviso (a) to subsection (1) of this section shall not authorise the making of any loan, or the entering into any guarantee, or the provision of any security, except—

- (a) with the prior approval of the company given at a general meeting at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed; or
- (b) on condition that, if the approval of the company is not given as in subsection (1) of this section at or before the next following annual general meeting, the loan shall be repaid or the liability under the guarantee or security shall be discharged, as the case may be, within six months from the conclusion of that meeting.

(3) Where the approval of the company is not given as required by any such condition, the directors authorising the making of the loan, or the entering into the guarantee, or the provision of the security, shall be jointly and severally liable to indemnify the company against any loss arising therefrom.

271. It shall not be lawful for a company to make to any director of the company, any payment by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, unless particulars with respect to the proposed payment and the amount have been disclosed to members of the company and the proposal is approved by the company.

272. (1) If in connection with the transfer of the whole or any part of the undertaking or property of a company, it is proposed to make any payment to a director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, the payment shall be unlawful unless particulars with respect to the proposal and the amount, have been disclosed to members of the company and the proposal is approved by the company.

(2) Where a payment declared by this section to be illegal is made to a director of a company, the amount received shall be deemed to have been received by him in trust for the company.

273. (1) Where, in connection with the transfer to any persons of all or any of the shares in a company, being a transfer resulting from—

- (a) an offer made to the general body of shareholders;
- (b) an offer made by or on behalf of some other body corporate with a view to the company becoming its subsidiary or a subsidiary of its holding company;
- (c) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise or control the exercise of not less than one third of the voting power at any general meeting of the company; or
- (d) any other offer which is conditional on acceptance to a given extent that payment is to be made to a director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office,

it shall be the duty of that director to do all things reasonably necessary to secure that particulars with respect to the proposed payment and the amount, are included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(2) If—

- (a) any such director fails to do all things reasonably necessary as mentioned in this section; or
- (b) any person who has been properly required by any such director to include the said particulars in or send them with any such notice as aforesaid fails so to do;

he shall be guilty of an offence and liable to a fine of ₦20.

(3) If—

- (a) the requirements of subsection (1) of this section are not complied with in relation to any such payments as are mentioned there; or
- (b) the making of the proposed payment is not, before the transfer of any shares in pursuance of the offer, approved by a meeting summoned for the purpose of the holders of the shares to which the offer relates and of other holders of shares of the same class as any of the said shares;

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any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any person who has sold his shares as a result of the offer made, and the expenses incurred by him in distributing that sum amongst those persons shall be borne by him and not retained out of that sum.

(4) Where the shareholders referred to in subsection (3)(b) of this section are not all the members of the company and no provision is made by the articles for summoning or regulating such a meeting as is mentioned in that paragraph, the provisions of this Act and of the company's articles relating to general meetings of the company shall, for that purpose, apply to the meeting either without modification or with such modifications as the Commission on the application of any person concerned may direct for the purpose of adapting them to the circumstances of the meeting.

(5) If at a meeting summoned for the purpose of approving any payment as required by paragraph (b) of subsection (3) of this section, a quorum is not present and, after the meeting has been adjourned to a later date, a quorum is again not present, the payment shall, for the purposes of that subsection be deemed to have been approved.

274. (1) Where in proceedings for the recovery of any payment which has been received by any person in trust by virtue of subsections (1) and (2) of subsection 272 or subsections (1) and (3) of section 273 of this Act, it is shown that—

(a) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question, or within one year but before two years after that agreement or the offer leading thereto; and

(b) the company or any person to whom the transfer was made was privy to that arrangement;

the payment shall be deemed, except in so far as the contrary is shown, to be one to which the subsections apply.

(2) If in connection with any such transfer as is mentioned in sections 272 and 273 of this Act—

(a) the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him is in excess of the price obtainable at the time by other holders of the like shares; or

(b) any valuable consideration is given to any such director;

the excess or the money value of the consideration, as the case may be, shall, for the purposes of that section, be deemed to have been a payment made to him by way of compensation for loss of office, or as consideration for or in connection with his retirement from office.

(3) It is hereby declared that references in sections 271 to 273 of this Act to payments made to any director of a company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office shall not include any *bona fide* payment by way of damages for breach of contract or by way of pension in respect of past services, and for the purposes of this subsection, "pension" includes any superannuation allowance, superannuation gratuity or similar payment.

(4) Nothing in section 272 or 273 of this Act shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are mentioned there, or with respect to any other like payments made, or to be made, to the directors of a company.

Disclosure of directors' interests

275. (1) Every company shall keep a register showing as respects each director of the company (not being its holding company) the number, description and amount of any shares in or debentures of the company or any other body corporate, being the company's subsidiary or holding company, or a subsidiary of the company's holding company, which are held by or in trust for him or of which he has any right to become the holder (whether on payment or not):

Provided that the register need not include shares in any body corporate which is the wholly-owned subsidiary of another body corporate, and for this purpose, a body

corporate shall be deemed to be the wholly-owned subsidiary of another if it has no members but that other and that other's wholly-owned subsidiaries and its or their nominees.

(2) Where any shares or debentures fall to be or cease to be recorded in the said register in relation to any director by reason of a transaction entered into after the commencement of this Act and while he is a director, the register shall also show the date of, and price or other consideration for the transaction:

Provided that where there is an interval between the agreement for any such transaction and the completion thereof, the date shall be that of the agreement.

(3) The nature and extent of a director's interest or right in or over any shares or debentures recorded in relation to him in the said register shall, if he so requires, be indicated in the register.

(4) The company shall not by virtue of anything done for the purposes of this section, be affected with notice of, or put upon inquiry as to the rights of any person in relation to any shares or debentures.

(5) The said register shall, subject to the provisions of this section, be kept at the company's registered or head office and shall be open to inspection during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) as follows—

(a) during the period beginning fourteen days before the date of the company's annual general meeting and ending three days after the date of its conclusion, it shall be open to the inspection of any member or holder of debentures of the company; and

(b) during that or any other period, it shall be open to the inspection of any person acting on behalf of the Commission.

(6) In computing the fourteen days and the three days mentioned in subsection (5) of this section, any day which is a Saturday or Sunday or a public holiday shall be disregarded.

(7) Without prejudice to the rights conferred by subsection (5) of this section, the Commission may, at any time, request for the production to it of a copy of the register, or any part thereof.

(8) The register shall also be produced at the commencement of the company's annual general meeting and remain open and accessible during the continuance of the meeting to any person attending the meeting.

(9) If default is made in complying with subsection (1) or (2) of this section, or if any inspection required under this section is refused, or any copy required thereunder is not sent within a reasonable time, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine of ₦500, and if default is made in complying with subsection (8) of this section, the company and every officer of the company who is in default shall be liable to a fine of ₦50.

(10) If any inspection required under this section is refused, the court may, by order, compel an immediate inspection of the register.

(11) For the purposes of this section—

(a) any person in accordance with whose directions or instructions, the directors of a company are accustomed to act shall be deemed to be a director of the company; and

(b) a director of a company shall be deemed to hold or to have any interest or right in or over, any shares or debentures if a permanent representative of the body corporate other than the company holds them or has that interest or right in or over them, and either—

(i) that permanent representative is accustomed to act in accordance with his directions or instructions; or

(ii) he is entitled to exercise or control the exercise of one-third or more of the voting power at any general meeting of that body corporate.

276. (1) It shall be the duty of any director of a company to give notice to the company of such matters relating to himself as may be necessary for the purposes of sections 275

and 277 of this Act except so far as it relates to loans made by the company or by any other person under a guarantee from or on a security provided by the company, to an officer thereof.

(2) Any such notice given for the purposes of section 275 of this Act, shall be in writing and if it is not given at a meeting of the directors, the director giving it shall do all things reasonably necessary to secure that it is brought up and read at the next meeting of directors after it is given.

(3) Subsection (1) of this section shall, to the extent to which it applies in relation to directors, apply to the like extent for—

- (a) the purposes of section 277 of this Act in relation to officers other than directors;
- (b) the purposes of sections 276 and 277 of this Act in relation to persons who are or have at any time during the preceding five years been officers of the company.

(4) Any person who makes default in complying with the foregoing provisions of this section shall be guilty of an offence and liable to a fine of ₦50.

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ⁱⁿ 277. (1) Subject to the provisions of this section, it shall be the duty of a director of a company who is in any way whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature of his interest at a meeting of the directors of the company.

(2) In the case of a proposed contract, the declaration required by this section to be made by a director shall be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration or if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested, and in a case where the director becomes interested in a contract after it is made, the said declaration shall be made at the first meeting of the directors held after he becomes so interested.

(3) For the purpose of this section, a general notice given to the directors of a company by a director to the effect that he is a member of a specified company or firm and is to be

regarded as interested in any contract which may, after the date of the notice, be made with that company or firm, shall be deemed to be a sufficient declaration of interest in relation to any contract so made:

Provided that any such notice shall not have effect, unless it is given at a meeting of the directors or the director does all things reasonably necessary to secure that it is brought up and read at the next meeting of the directors after it is given.

(4) Any director who fails to comply with the provisions of this section shall be guilty of an offence and liable to a fine of ₦100.

(5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of a company from having any interest in contracts with the company.

278. (1) Every company to which this section applies shall, in all trade catalogues, trade circulars, showcards and business letters on or in which the company's name appears and which are issued or sent by the company to any person in Nigeria state in legible characters with respect to every director the following particulars—

- (a) his present forename, or the initials thereof, and present surname;
- (b) any former forenames and surnames;
- (c) his nationality, if not a Nigerian:

Provided that, if special circumstances exist which the Commission is of opinion render it expedient that such an exemption should be granted, the Commission may, subject to such conditions as it may prescribe by notice published in the *Gazette*, exempt a company from the obligations imposed by this subsection.

(2) This section shall apply to every company incorporated under this Act, or any enactment repealed by it.

(3) If a company makes default in complying with this section every officer of the company who is in default shall be guilty of an offence and liable on conviction for each offence to a fine of ₦50:

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Provided that no proceedings shall be instituted under this section except by, or with the consent of, the Attorney-General of the Federation.

- (4) For the purposes of this section—
- (a) "initials" includes a recognised abbreviation of a forename;
 - (b) references to a former forename or surname in the case of a married woman do not include the name or surname by which she was known previous to the marriage; and
 - (c) "showcards" means cards containing or exhibiting articles dealt with, or samples or representations thereof.

Duties of Directors

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279. (1) A director of a company stands in a fiduciary relationship towards the company and shall observe the utmost good faith towards the company in any transaction with it or on its behalf.

(2) A director shall also owe fiduciary relationship with the company in the following circumstances—

- (a) where a director is acting as agent of a particular shareholder;
- (b) where even though he is not an agent of any shareholder, such a shareholder or other person is dealing with the company's securities.

(3) A director shall act at all times in what he believes to be the best interests of the company as a whole so as to preserve its assets, further its business, and promote the purposes for which it was formed, and in such manner as a faithful, diligent, careful and ordinarily skilful director would act in the circumstances.

(4) The matters to which the director of a company is to have regard in the performance of his functions include the interest of the company's employees in general, as well as the interests of its members.

(5) A director shall exercise his powers for the purpose for which he is specified and shall not do so for a collateral purpose, and the power, if exercised for the right purpose does not constitute a breach of duty, if it, incidentally, affects a member adversely.

(6) A director shall not fetter his discretion to vote in a particular way.

(7) Where a director is allowed to delegate his powers under any provision of this Act such a director shall not delegate the power in such a way and manner as may amount to an abdication of duty.

(8) No provision, whether contained in the articles or resolutions of a company, or in any contract shall relieve any director from the duty to act in accordance with this section or relieve him from any liability incurred as a result of any breach of the duties conferred upon him under this section.

(9) Any duty imposed on a director under this section shall be enforceable against the director by the company.

280. (1) The personal interest of a director shall not conflict with any of his duties as a director under this Act. Co
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(2) A director shall not—

- (a) in the course of management of affairs of the company; or
- (b) in the utilisation of the company's property, make any secret profit or achieve other unnecessary benefits.

(3) A director shall be accountable to the company for any secret profit made by him or any unnecessary benefit derived by him contrary to the provisions of subsection (2) of this section.

(4) The inability or unwillingness of the company to perform any functions or duties under its articles and memorandum shall not constitute a defence to any breach of duty of a director under this Act.

(5) The duty not to misuse corporate information shall not cease by a director or an officer having resigned from the company, and he shall still be accountable and can be

restrained by an injunction from misusing the information received by virtue of his previous position.

(6) Where a director discloses his interests before the transaction and before the secret profits are made before the general meeting, which may or may not authorise any resulting profits, he may escape liability, but he shall not escape liability if he discloses only after he has made the secret profits, and in this case, he shall account for the profits.

hips. 281. The fact that a person holds more than one directorship shall not derogate from his fiduciary duties to each company including a duty not to use the property, opportunity or information obtained in the course of the management of one company for the benefit of the other company, or to his own or other person's advantage.

care 282. (1) Every director of a company shall exercise the powers and discharge the duties of his office honestly, in good faith and in the best interests of the company, and shall exercise that degree of care, diligence and skill which a reasonably prudent director would exercise in comparable circumstances.

(2) Failure to take reasonable care in accordance with the provisions of section 282 of this Act shall ground an action for negligence and breach of duty.

(3) Each director shall be individually responsible for the actions of the board in which he participated, and the absence from the board's deliberations, unless justified, shall not relieve a director of such responsibility.

(4) The same standard of care in relation to the director's duties to the company shall be required for both executive and non-executive directors:

Provided that additional liability and benefit may arise under the master and servant law in the case of an executive director if there is an express or implied contract to that effect.

of s. 283. (1) Directors are trustees of the company's moneys, properties and their powers and as such must account for all the moneys over which they exercise control and shall refund

any moneys improperly paid away, and shall exercise their powers honestly in the interest of the company and all the shareholders, and not in their own or sectional interests.

(2) A director may when acting within his authority and the powers of the company be regarded as agents of the company under Part III of this Act.

Property transaction by directors

284. (1) Subject to the exceptions provided by section 285 of this Act, a company shall not enter into an arrangement—

(a) whereby a director of the company or its holding company, or a person connected with such a director, acquires or is to acquire one or more non-cash assets of the requisite value from the company; or

(b) whereby the company acquires or is to acquire one or more non-cash assets of the requisite value from such a director or a person so connected;

unless the arrangement is first approved by a resolution of the company in general meeting and if the director or connected person is a director of its holding company or a person connected with such a director, by a resolution in general meeting of the holding company.

(2) For the purpose of subsection (1) of this section, a non-cash asset is of the requisite value if, at the time the arrangement in question is entered into, its value is not less than ₦2,000 but (subject to that) exceeds ₦100,000 or twenty per cent of the company's asset value, that is—

(a) except in a case falling within paragraph (b) of this subsection the value of the company's net assets determined by reference to the accounts prepared and laid under Part XI in respect of the last preceding year in respect of which such accounts were so laid; and

(b) where no accounts have been so prepared and laid before that time, the amount of the company's called-up share capital.

(3) For purposes of this section and section 285 and 286 of this Act a shadow director shall be treated as a director.

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^{on} 285. (1) No approval shall be required to be given under section 284 of this Act by any body corporate unless it is a company within the meaning of this Act, or if it is a wholly-owned subsidiary of any body corporate.

(2) Section 283 of this Act shall not apply to an arrangement for the acquisition of a non-cash asset if—

- (a) the asset is to be acquired by a holding company from any of its wholly-owned subsidiaries or from a holding company by any of its wholly-owned subsidiary of a holding company from another wholly-owned subsidiary of that same holding company; or
- (b) the arrangement is entered into by a company which is being wound-up, unless the winding-up is a member's voluntary winding-up.

(3) Subsection (1)(a) of section 284 of this Act shall not apply to an arrangement whereby a person is to acquire an asset from a company of which he is a member, if the arrangement is made with that person in his character as a member.

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^{tion} 286. (1) An arrangement entered into by a company in contravention of section 284 of this Act and any transaction entered into in pursuance of the arrangement (whether by the company or any other person), shall be voidable at the instance of the company unless one or more of the conditions specified in subsection (2) of this section is satisfied.

- (2) The conditions are that—
 - (a) restitution of any money or other asset which is the subject-matter of the arrangement or transaction is no longer possible or the company has been indemnified in pursuance of this section by any other person for the loss or damage suffered by it; or
 - (b) any rights acquired *bona fide* for value and without actual notice of the contravention by any person who is a party to the arrangement or transaction would be affected by its avoidance; or
 - (c) the arrangement is, within a reasonable period, affirmed by the company in general meeting and, if it is an arrangement for the transfer of an asset to or by a

director of its holding company or a person who is connected with such a director, is so affirmed with the approval of the holding company given by a resolution in general meeting.

(3) If an arrangement is entered into with a company by a director of the company or its holding company or a person connected with him in contravention of section 284 of this Act, that director and the person so connected, and any other director of the company who authorises the arrangement or any transaction entered into in pursuance of such an arrangement, shall be guilty of an offence and liable—

- (a) to account to the company for any gain which he has made directly or indirectly by the arrangement or transaction; and
- (b) (jointly and severally with any other person liable under this sub-section) to indemnify the company for any loss or damage resulting from the arrangement or transaction.

(4) Subsection (3) of this section shall be without prejudice to any liability imposed otherwise than by that subsection, and is subject to the following two subsections; and the liability under subsection (3) of the section arises whether or not the arrangement or transaction entered into has been avoided in pursuance of subsection (1) of this section.

(5) If an arrangement is entered into by a company and a person connected with a director of the company or its holding company in contravention of section 284 of this Act, that director shall not be liable under subsection (3) of this section if he shows that he took all reasonable steps to secure the company's compliance with that section.

(6) In any case, a person so connected and any such other director as is mentioned in subsection (3) of this Act, shall not be so liable if he shows that at the time the arrangement was entered into, he did not know the relevant circumstances constituting the contravention.

(7) This section shall have effect with respect to references in sections 284, 285 and 286 of this Act to a person being "connected" with a director of a company, and to a director being "associated with" or "controlling" a body corporate.

(8) A person is connected with a director of a company if he (not being himself a director of it) is—

- (a) that director's spouse, child or step-child including illegitimate child;
- (b) except where the context otherwise requires, a body corporate with which the director is associated; or
- (c) a person acting in his capacity as trustee of any trust the beneficiaries of which include—
 - (i) the director, his spouse, any children or step-children, or
 - (ii) a body corporate with which he is associated, or of a trust whose terms confer a power on the trustees that may be exercised for the benefit of the director, his spouse or any children or step-children of his, or any such body corporate, or
- (d) a person acting in his capacity as partner of that director or of any person who, by virtue of paragraphs (a), (b) or (c) of this subsection, is connected with that director.

287. (1) A director shall not accept a bribe, a gift, or commission either in cash or kind from any person or a share in the profit of that person in respect of any transaction involving his company in order to introduce his company to deal with such a person.

(2) If a director contravenes the provisions of section 287(1) of this Act, he commits a breach of duty and the company shall recover from the director the actual gift and then sue him and the other person jointly and severally for damages sustained without any deduction in respect of what the director has returned.

(3) Where the gift is made after the transaction has been completed in a form of unsolicited gift as a sign of gratitude, the director may be allowed to keep the gift, provided he declares it before the board and that fact shall also appear in the minutes book of the directors.

(4) In all cases concerning secret benefits, the plea that the company benefited or that the gift was accepted in good faith shall be no defence.

Miscellaneous matters relating to directors

288. (1) In a limited company the liability of the directors or managers or of the managing director, may, if so provided by the memorandum, be unlimited.

(2) In a limited company in which the liability of a director or manager is unlimited, the directors and any managers of the company and the member who proposes a person for election or appointment to the office of director or manager, shall add to that proposal a statement that the liability of the person holding that office shall be unlimited, and before the person accepts the office or acts therein, notice in writing that his liability shall be unlimited shall be given to him by the following or one of the following persons, namely, the promoters of the company, the directors of the company, any managers of the company and the secretary of the company.

(3) If any director, manager, or promoter makes default in adding such a statement, or if any promoter, director, manager or secretary makes default in giving such a notice, he shall be guilty of an offence and liable to a fine of ₦100 and shall also be liable for any damage which the person so elected or appointed may sustain from the default.

289. (1) A limited company, if so authorised by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors or managers, or of any managing director.

(2) Upon the passing of any such special resolution the provisions of it shall be as valid as if they had been originally contained in the memorandum.

290. Where a company—

- (a) receives money by way of loan for specific purpose; or
- (b) receives money or other property by way of advance payment for the execution of a contract or project; and
- (c) with intent to defraud, fails to apply the money or other property for the purpose for which it was received, every director or other officer of the company who is in default shall be personally liable to the party from whom the money or property was received for a refund

of the money or property so received and not applied for the purpose for which it was received:

Provided that nothing in this section shall affect the liability of the company itself.

291. (1) The provisions of this section shall apply in respect of any term of an agreement whereby a director's employment with the company of which he is a director or, where he is the director of a holding company his employment within the group is to continue or may be continued, otherwise than at the instance of the company (whether under the original agreement entered into in pursuance of it or not), for a period of more than five years during which the employment—

- (a) cannot be terminated by the company by notice; or
- (b) can be so terminated only in specified circumstances.

(2) In any such case where—

- (a) a person is or is to be employed with a company under an agreement which cannot be terminated by the company by notice or can be so terminated only in specified circumstances; and
- (b) more than six months before the expiration of the period for which he is or to be so employed, the company enters into a further agreement otherwise than in pursuance of a right conferred by or under the original agreement on the other party to it under which he is to be employed with the company or, where he is a director of a holding company, within the group;

this section shall apply as if to the period for which he is to be employed under that further agreement there were added a further period equal to the unexpired period of the original agreement.

(3) A company shall not incorporate in an agreement such a term as is mentioned in subsection (1) of this section unless the term is first approved by a resolution of the company in general meeting and in the case of a director of a holding company, by a resolution of that company in general meeting.

(4) No approval shall be required to be given under this section by any body corporate unless it is a company within

the meaning of this Act, or if it is a wholly-owned subsidiary of any body corporate.

(5) A resolution of a company approving such a term as is mentioned in subsection (1) of this section, shall not be passed at a general meeting of the company unless a written memorandum setting out the proposed agreement incorporating the term is available for inspection by members of the company both—

- (a) at the company's registered office for not less than fifteen days ending with the date of the meeting; and
- (b) at the meeting itself.

(6) A term incorporated in an agreement in contravention of this section shall to the extent that it contravenes the section, be void; and that agreement and in a case where subsection (2) of this section applies, the original agreements shall be deemed each to contain a term entitling the company to terminate it at any time by the giving of reasonable notice.

(7) In this section—

- (a) "employment" includes employment under a contract for services; and
- (b) "group" in relation to a director of a holding company, means the group which consists of that company and its subsidiaries and for purposes of this section, a shadow director shall be treated as a director.

292. (1) Every company shall keep at its registered office, register of its directors and secretaries.

(2) The register shall contain the following particulars with respect to each director, that is to say his present forename and surname, any former forename and surname, his usual residential address, his nationality, his business occupation, if any, particulars of any other directorships held by him and the date of his birth:

Provided that it shall not be necessary for the register to contain particulars of directorships held by a director in companies of which the whole company is the wholly-owned subsidiary, or which are the wholly-owned subsidiaries either of the company or of another company of which the company

is the wholly-owned subsidiary, and for the purposes of this proviso—

- (i) “company” includes any body corporate incorporated in Nigeria, and
- (ii) a body corporate shall be deemed to be the wholly-owned subsidiary of another if it has no members except that other and that other’s wholly-owned subsidiaries and its or their nominees.

(3) The register shall contain the following particulars with respect to the secretary in the case of an individual, his present forename and surname, any former forenames and surname and his usual residential address; and in the case of a corporation its registered name and registered or head office.

(4) The company shall within the periods respectively mentioned in subsection (5) of this section, send to the Commission a return in the prescribed form containing the particulars specified in the register and notification in the prescribed form of any change among its directors or in its secretary or in any of the particulars contained in the register, specifying the date of the change.

(5) The periods referred to in subsection (4) of this section shall be the period within which—

- (a) the return is to be sent which shall be a period of fourteen days from the date of incorporation of the company; and
- (b) the notification of a change is to be sent which shall be fourteen days from the happening thereof:

Provided that, in the case of a return containing particulars with respect to any person who is the company’s secretary at the commencement of this Act, the period shall be fourteen days from the commencement of this Act.

(6) The register to be kept under this section shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that no less than two hours in each day be allowed for inspection) be open to inspection by any member of the company without charge and by any other person on payment of 50 k or such less sum as the company may prescribe, for each inspection.

(7) If any inspection required under this section is refused, or if default is made in complying with the provisions of subsections (1), (2), (3) and (4) of this section, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine of ₦50.

(8) In case of any such refusal or default as mentioned in subsection (7) of this section, the court may by order compel an inspection of the register or that the copies required be sent as provided in this section.

(9) For the purpose of this section—

- (a) a person in accordance with whose directions of instruction the directors of a company are accustomed to act shall be deemed to be a director and officer of the company;
- (b) references to a former forename or surname in the case of a married woman shall not include the name or surname by which she was known previous to the marriage.

CHAPTER 2—Secretaries

293. (1) Every company shall have a secretary.

(2) Anything required or authorised to be done by or of the secretary may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by or of any assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or of any officer of the company authorised generally or specially in that behalf by the directors.

294. A provision requiring or authorising a thing to be done by or of a director and the secretary shall not be satisfied by its being done by or of the same person acting both as director and as, or in place of the secretary.

295. It shall be the duty of a director of a company to take all reasonable steps to ensure that the secretary of the company is a person who appears to him to have the requisite knowledge and experience to discharge the functions of a

secretary of a company, and in the case of a public company, he shall be—

- (a) a member of the Institute of Chartered Secretaries and Administrators; or
- (b) a legal practitioner within the meaning of the Legal Practitioners Act; or
- (c) a member of the Institute of Chartered Accountants of Nigeria or such other bodies of accountants as are established from time to time by an Act; or
- (d) any person who has held the office of the secretary of a public company for at least three years of the five years immediately preceding his appointment in a public company; or
- (e) a body corporate or firm consisting of members each of whom is qualified under paragraphs (a), (b), (c), or (d) of this section.

296. (1) A secretary shall be appointed by the directors and, subject to the provisions of this section, may be removed by them.

(2) Where it is intended to remove the secretary of a public company, the board of directors shall give him notice—

- (a) stating that it is intended to remove him;
- (b) setting out the grounds on which it is intended to remove him;
- (c) giving him a period not less than seven working days within which to make his defence and;
- (d) giving him an option to resign his office within a period of seven working days.

(3) Where, following the notice prescribed in subsection (2) of this section the secretary does not within the given period resign his office or make a defence, the board may remove him from office and shall make a report to the next general meeting; but where the secretary, without resigning his office makes a defence and the board does not consider it sufficient if the ground—

- (a) on which it is intended to remove him is that of fraud or serious misconduct, the board may remove him from office and shall report to the next general meeting; and
- (b) is other than of fraud or serious misconduct, the board shall not remove him without the approval of the general meeting, but may suspend him and shall report to the next general meeting.

(4) Notwithstanding any rule of law, where a secretary suspended under the paragraph (b) of subsection (3) of this section is removed with the approval of the general meeting, the removal may take effect from such time as the general meeting may determine.

297. A secretary shall not owe fiduciary duties to the company, but where he is acting as its agent he shall owe fiduciary duties to it, and as such shall be liable to the company where he makes secret profits or lets his duties conflict with his personal interests, or uses confidential information he obtained from the company for his own benefit.

298. (1) The duties of a secretary shall include the following—

- (a) attending the meeting of the company, the board of directors and its committees, rendering all necessary secretarial services in respect of the meeting and advising on compliance by the meetings with the applicable rules and regulations;
- (b) maintaining the registers and other records required to be maintained by the company under this Act;
- (c) rendering proper returns and giving notification to the Commission required under this Act; and
- (d) carrying out such administrative and other secretarial duties as directed by the director, or the Company.

(2) The secretary shall not without the authority of the board exercise any powers vested in the directors.

PART X.—PROTECTION OF MINORITY AGAINST
ILLEGAL AND OPPRESSIVE CONDUCT

Action by or against the company

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299. Subject to the provisions of this Act, where an irregularity has been committed in the course of a company's affairs or any wrong has been done to the company, only the company can sue to remedy that wrong and only the company can ratify the irregular conduct.

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300. Without prejudice to the rights of members under sections 303 to 308 and sections 310 to 312 of this Act or any other provisions of this Act, the court on the application of any member, may by injunction or declaration restrain the company from the following—

- (a) entering into any transaction which is illegal or *ultra vires*;
- (b) purporting to do by ordinary resolution any act which by its constitution or the Act requires to be done by special resolution;
- (c) any act or omission affecting the applicant's individual rights as a member;
- (d) committing fraud on either the company or the minority shareholders where the directors fail to take appropriate action to redress the wrong done;
- (e) where a company meeting cannot be called in time to be of practical use in redressing a wrong done to the company or to minority shareholders; and
- (f) where the directors are likely to derive a profit or benefit, or have profited or benefited from their negligence or from their breach of duty.

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301. (1) Where a member institutes a personal action to enforce a right due to him personally, he shall not be entitled to any damages but to a declaration or injunction to restrain the company or the directors from doing a particular act.

(2) Where a member institutes a representative action on behalf of himself and other affected members to enforce any rights due to them, he shall not be entitled to any damages but

to a declaration or injunction to restrain the company and/or directors from doing a particular act.

(3) Where any member institutes an action under this section, the court may award costs to him personally whether or not his action succeeds.

(4) In any proceedings by a member under section 300 of this Act, the court may, if it thinks fit order that the member shall give security for costs.

302. For the purpose of sections 300 and 301 of this Act, "member" includes—

- (a) the personal representative of a deceased member; and
- (b) any person to whom shares have been transferred or transmitted by operation of law.

303. (1) Subject to the provisions of subsection (2) of this section, an applicant may apply to the court for leave to bring an action in the name or on behalf of a company, or to intervene in an action to which the company is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the company.

(2) No action may be brought and no intervention may be made under subsection (1) of this section, unless the court is satisfied that—

- (a) the wrongdoers are the directors who are in control, and will not take necessary action;
- (b) the applicant has given reasonable notice to the directors of the company of his intention to apply to the court under subsection (1) of this section if the directors of the company do not bring, diligently prosecute or defend or discontinue the action;
- (c) the applicant is acting in good faith; and
- (d) it appears to be in the best interest of the company that the action be brought, prosecuted, defended or discontinued.

304. (1) In connection with an action brought or intervened under section 303 of this section, the court may, at any time, make any such order or orders as it thinks fit.

(2) Without prejudice to the generality of subsection (1) of this section, the court may make one or more of the following orders, that is an order—

- (a) authorising the applicant or any other person to control the conduct of the action;
- (b) giving directions for the conduct of the action;
- (c) directing that any amount adjudged payable by a defendant in the action shall be paid, in whole or in part, directly to former and present security holders of the company instead of to the company;
- (d) requiring the company to pay reasonable legal fees incurred by the applicant in connection with the proceedings.

305. An application made or an action brought or intervened in under section 303 of this Act shall not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or a duty owed to the company has been or may be approved by the shareholders of such company, but evidence of approval by the shareholders may be taken into account by the court in making an order under section 304 of this Act.

306. An application made or an action brought or intervened in under section 303 of this Act shall not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the court given upon such terms as the court thinks fit and, if the court determines that the rights of any applicant may be substantially affected by such stay, discontinuance, settlement or dismissal, the court may order any party to the application or action to give notice to the applicant.

307. An applicant shall not be required to give security for costs in any application made or action brought or intervened in under section 303 of this Act.

308. In an application made or an action brought or intervened in under section 303 of this Act, the court may, at any time, order the company to pay to the applicant interim costs before the final disposition of the application or action.

309. In sections 303 to 308 of this Act, "applicant" means—

- (a) a registered holder or a beneficial owner and a former registered holder or beneficial owner, of a security of a company;
- (b) a director or an officer or a former director or officer of a company;
- (c) the Commission; or
- (d) any other person who in the discretion of the court, is a proper person to make an application under section 303 of this Act.

Relief on the grounds of unfairly prejudicial and oppressive conduct

310. (1) An application to the court by petition for an order under section 311 of this Act in relation to a company may be made by any of the following persons—

- (a) a member of the company;
- (b) a director or officer or former director or officer of the company;
- (c) a creditor;
- (d) the Commission; or
- (e) any other person who, in the discretion of the court, is the proper person to make an application under section 311 of this Act.

(2) In sections 311 to 313 of this Act, "member" includes—

- (a) the personal representative of a deceased member; and
- (b) any person to whom shares have been transferred or transmitted by operation of law.

311. (1) An application for relief on the ground that the affairs of a company are being conducted in an illegal or oppressive manner may be made to the court by petition.

(2) An application to the court by petition for an order under this section in relation to a company may be made—

- (a) by a member of the company who alleges—
- (i) that the affairs of the company are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members, or in a manner that is in disregard of the interests of a member or the members as a whole, or
 - (ii) that an act or omission or a proposed act or omission, by or on behalf of the company or a resolution, or a proposed resolution, of a class of members, was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members or was or would be in a manner which is in disregard of the interests of a member or the members as a whole; or
- (b) by any of the persons mentioned under paragraphs (b), (c) and (e) of subsection (1) of section 310 of this Act who alleges—
- (i) that the affairs of the company are being conducted in a manner oppressive or unfairly prejudicial to or discriminatory against or in a manner in disregard of the interests of that person,
 - (ii) that an act or omission, or a proposed act or omission was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, or which is in a manner in disregard of the interests of that person; or
- (c) by the Commission in a case where it appears to it in the exercise of its powers under the provisions of this Act or any other enactment that—
- (i) the affairs of the company are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against a member or members or in a manner which is in disregard of the public interest, or
 - (ii) any actual or proposed act or omission of the company (including an act or omission on its behalf) which was or would be oppressive, or unfairly prejudicial to, or unfairly discriminatory against a

member or members in a manner which is in disregard of the public interest.

312. (1) If the court is satisfied that a petition under sections 310 and 311 of this Act is well founded, it may make such order or orders as it thinks fit for giving relief in respect of the matter complained of.

(2) Without prejudice to the generality of subsection (1) of this section, the court may make one or more of the following orders that is, an order—

- (a) that the company be wound up;
- (b) for regulating the conduct of the affairs of the company in future;
- (c) for the purchase of the shares of any member by other members of the company;
- (d) for the purchase of the shares of any member by the company and for the reduction accordingly of the company's capital;
- (e) directing the company to institute, prosecute, defend or discontinue specific proceedings, or authorising a member or members or the company to institute, prosecute, defend or discontinue specific proceedings in the name or on behalf of the company;
- (f) varying or setting aside a transaction or contract to which the company is a party and compensating the company or any other party to the transaction or contract;
- (g) directing an investigation to be made by the Commission;
- (h) appointing a receiver or a receiver and manager of the property of the company;
- (i) restraining a person from engaging in specific conduct or from doing a specific act or thing;
- (j) requiring a person to do a specific act or thing.

(3) Where an order that a company be wound up is made under this section, the provisions of this Act relating to winding-up of companies shall apply, with such adaptations

as are necessary, as if the order had been made upon an application duly filed in the court by the company.

(4) Where an order under this section makes any alteration in addition to the memorandum or articles of a company, then, notwithstanding anything in any other provision of this Act but subject to the provisions of the order, the company shall not have power, without the leave of the court, to make any further alteration or addition to the memorandum and articles inconsistent with the provisions of the order but, subject to the foregoing provisions of this subsection, the alteration or addition shall have effect as if it had been duly made by a resolution of the company.

(5) A certified true copy of an order made under this section altering or giving leave to alter, a company's memorandum or articles shall, within fourteen days from the making of the order or such longer period as the court may allow, be delivered by the company to the Commission for registration; and if the company makes default in complying with the provisions of this subsection, the company and every officer of it who is in default shall be guilty of an offence and liable to a fine of ₦50 and, for continued contravention, to a daily default fine of ₦25.

313. Any person who contravenes or fails to comply with an order made under section 312 of this Act that is applicable to him shall be guilty of an offence and be liable to a fine of ₦500 or imprisonment for one year or to both such fine and imprisonment.

Investigation of companies and their affairs

314. (1) The Commission may appoint one or more competent inspectors to investigate the affairs of a company and to report on them in such manner as it may direct.

(2) The appointment may be made—

(a) in the case of a company having a share capital on the application of members holding not less than one-quarter of the class of shares issued;

(b) in the case of a company not having a share capital, on the application of not less than one-quarter in number of the persons on the company's register of members; and

(c) in any other case, on application of the company.

(3) The application shall be supported by such evidence as the Commission may require for the purpose of showing that the applicant or applicants have good reason for requiring the investigation.

315. (1) The Commission shall appoint one or more competent inspectors to investigate the affairs of a company and report on them in such manner as it directs, if the court by order declares that its affairs ought be so investigated.

(2) The Commission may make such an appointment if it appears to it that there are circumstances suggesting that—

(a) the company's affairs are being or have been conducted with intent to defraud its creditors or the creditors of any other person, or in a manner which is unfairly prejudicial to some part of its members; or

(b) any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial, or that the company was formed for any fraudulent or unlawful purpose; or

(c) persons concerned with the company's formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members; or

(d) the company's members have not been given all the information with respect to its affairs which they might reasonably expect.

(3) Subsections (1) and (2) of this section shall be without prejudice to the powers of the Commission under section 322 of this Act and the power conferred by subsection (2) of this section, shall be exercisable with respect to a body corporate notwithstanding that it is in course of being voluntarily wound up.

(4) Reference in subsection (2) of this section to a company's members includes any of the following persons—

- (a) the personal representatives of a deceased member; and
- (b) any person to whom shares have been transferred or transmitted by operation of law.

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316. (1) If an inspector appointed under section 314 or 315 of this Act to investigate the affairs of a company thinks it necessary for the purposes of his investigation to investigate also the affairs of another body corporate which is or at any relevant time has been the company's subsidiary or holding company or a subsidiary of its holding company or a holding company of its subsidiary, he shall report on the affairs of the other body corporate so far as he thinks that the results of his investigation of its affairs are relevant to the investigation of the affairs of the company first mentioned above.

(2) An inspector appointed under either section 314 or 315 of this Act may at any time in the course of his investigation, without the necessity of making an interim report, inform the Commission of matters coming to his knowledge as a result of the investigation tending to show that an offence has been committed.

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317. (1) When an inspector is appointed under section 314 or 315 of this Act, it shall be the duty of all officers and agents of the company, and of all officers and agents of any other body corporate whose affairs are investigated under section 316 of this Act—

- (a) to produce to the inspector all books and documents of or relating to the company or, as the case may be, the other body corporate which are in their custody or power;
- (b) to attend before the inspector when required to do so; and
- (c) otherwise to give the inspector all assistance in connection with the investigation which he is reasonably able to give.

(2) If the inspector considers that a person other than an officer or agent of the company or other body corporate is or may be in possession of information concerning its affairs, he may require that person to produce to him any books or documents in his custody or power relating to the company or other body corporate, to attend before him and otherwise to give him all assistance in connection with the investigation which he is reasonably able to give; and it is that person's duty to comply with the requirement.

(3) An inspector may examine on oath the officers and agents of the company or other body corporate, and any such person as is mentioned in subsection (2) of this section in relation to the affairs of the company or other body, and administer an oath accordingly.

(4) In this section, a reference to officers or to agents includes past, as well as present, officers or agents (as the case may be); and "agents" in relation to a company or other body corporate, includes its bankers and solicitors and persons employed by it as auditors, whether these persons are or are not officers of the company or other body corporate.

(5) An answer given by a person to a question put to him in exercise of powers conferred by this section (whether as it has effect in relation to an investigation under any of sections 314 to 316 of this Act as applied by any other section in this Act) may be used in evidence against him.

318. (1) If an inspector has reasonable grounds for believing that a director, or past director, of the company or other body corporate whose affairs he is investigating maintains or has maintained a bank account of any description (whether alone or jointly with another person and whether in Nigeria or elsewhere), into or out of which there has been paid—

- (a) the emoluments or part of the emoluments of his office as such director particulars of which have not been disclosed in the financial statements of the company or other body corporate for any financial year, contrary to the provisions of Part V of the Fourth Schedule to this Act (in relation to particular in accounts of directors);

- (b) any money which has resulted from or been used in the financing of an undisclosed transaction, arrangement or agreement; or
- (c) any money which has been in any way connected with an act or omission or series of acts or omissions, which on the part of that director constituted misconduct (whether fraudulent or not) towards the company or body corporate or its members,

the inspector may require the director to produce to him all documents in the director's possession, or under his control, relating to that bank account.

(2) For purposes of subsection (1)(b), of this section, an "undisclosed" transaction, arrangement or agreement is one the particulars of which have not been disclosed in the financial statement of any company or in a statement annexed thereto for any financial year, including the disclosure of contracts between companies and their directors.

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319. (1) When an inspector is appointed under section 314 or 315 of this Act to investigate the affairs of a company, the following applies in the case of—

- (a) any officer or agent of the company;
- (b) any officer or agent of another body corporate whose affairs are investigated under section 316 of this Act; and
- (c) any such person as is mentioned in section 317(2) of this Act.

(2) Subsection (4) of section 317 of this Act, shall apply with regards to references in subsection (1) of this section to an officer or agent.

(3) If that person—

- (a) refuses to produce any book or document which it is his duty under section 317 or 318 of this Act to produce; or
- (b) refuses to attend before the inspector when required to do so; or

(c) refuses to answer any question put to him by the inspector with respect to the affairs of the company or other body corporate (as the case may be);
the inspector may certify the refusal in writing to the court.

(4) The court may thereupon enquire into the case; and after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, the court may punish the offender in like manner as if he had been guilty of contempt of the court.

320. (1) The inspector may, and if so directed by the Commission shall, make interim reports to the Commission, and on the conclusion of his investigation shall make a final report to it and any such report shall be written or printed, as the Commission may direct.

(2) The Commission may direct that a copy of the inspector's report be forwarded to the company at its registered or head office.

(3) Where an inspector is appointed under section 314 of this Act in pursuance of an order of the court, the Commission shall furnish a copy of any of its reports to the court.

(4) In any other case, the Commission may, if it thinks fit—
(a) furnish a copy on request and on payment of the prescribed fee to—

(i) any member of the company or other body corporate which is the subject of the report,

(ii) any person whose conduct is referred to in the report,

(iii) the auditors of that company or body corporate,

(iv) the applicants for the investigation,

(v) any other person whose financial interests appear to the Commission to be affected by the matters dealt with in the report, whether as creditors of the company or body corporate, or otherwise; and

(b) cause any such report to be printed and published.

321. (1) If, from any report made under section 320 of this Act; it appears to the Commission, that any civil proceedings ought in the public interest to be brought by the company or any body corporate; the Commission may itself bring such proceedings in the name and on behalf of the company or the body corporate.

(2) The Commission shall indemnify the body corporate against any costs or expenses incurred by it in or in connection with proceedings brought under this section; and any costs or expenses so incurred shall be, if not otherwise recoverable be defrayed out of the Consolidated Revenue Fund.

322. (1) If, from any report made under section 320 of this Act it appears that any person has, in relation to the company or any body corporate whose affairs have been investigated by virtue of section 316 of this Act, been guilty of any offence for which he is criminally liable, the report shall be referred to the Attorney-General of the Federation.

(2) If the Attorney-General of the Federation considers that the case referred to him is one in which a prosecution ought to be instituted, he shall direct action accordingly, and it shall be the duty of all officers and agents of the company or other body corporate, as the case may be (other than the defendant in the proceedings), to give all assistance in connection with the prosecution which they are reasonably able to give.

(3) If, from any report made under section 320 of this Act, it appears to the Commission that proceedings ought in the public interest to be brought by the body corporate dealt with by the report for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation of that body corporate or the management of its affairs, or for the recovery of any property of the body corporate which has been misapplied or wrongfully retained, it may refer the case to the Attorney-General of the Federation for his opinion as to the bringing of proceedings for that purpose in the name of the body corporate and if proceedings are brought, it shall be the duty of all officers and agents of the company or other body corporate as the case may be (other than the defendant in the proceedings),

to give him all assistance in connection with the proceedings which they are reasonably able to give.

(4) Costs and expenses incurred by a body corporate in or in connection with any proceedings brought by it under subsection (3) of this section shall, if not otherwise recoverable, be defrayed out of the Consolidated Revenue Fund.

323. If, in the case of any body corporate liable to be wound up under this Act it appears to the Commission from a report made, by an inspector under section 320 of this Act that it is expedient in the public interest that the body should be wound up, the Commission may (unless the body is already wound up by the court) present a petition for it to be so wound up if the court thinks it just and equitable to do so.

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324. (1) The expenses of an incidental to an investigation by an inspector appointed by the Commission under the foregoing provisions of this Act, shall be defrayed in the first instance out of the Consolidated Revenue Fund, but the following persons shall, to the extent mentioned, be liable to make repayment, that is to say—

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- (a) any person who is convicted on a prosecution instituted, as a result of the investigation by the Attorney-General of the Federation, or who is ordered to pay damages or restore any property in proceedings brought by virtue of subsection (3) of section 322 of this Act, may in the same proceedings be ordered to pay the said expenses to such extent as are specified in the order;
- (b) any body corporate in whose name proceedings are brought as aforesaid shall be liable to the extent of the amount or value of any sums or property recovered by it as a result of those proceedings;
- (c) unless as the result of the investigation a prosecution is instituted by the Attorney-General of the Federation, the applicants for the investigation, where the inspector was appointed under section 314 of this Act shall be liable to such extent (if any), as the Commission may direct;

and any amount for which a body corporate is liable by virtue of paragraph (b) of this subsection, shall be a first charge on the sums or property mentioned in that paragraph.

(2) For the purposes of this section, any cost or expenses incurred by the Commission in or in connection with proceedings brought by virtue of subsection (2) of section 321 of this Act, shall be treated as expenses of the investigation giving rise to the proceedings.

(3) Expenses to be defrayed by the Commission under this section shall, so far as not recovered thereunder be paid out of the appropriate Consolidated Revenue Fund.

325. (1) A copy of any report of an inspector appointed under sections 314 and 315 of this Act, certified by the Commission to be a true copy, shall be admissible in any legal proceedings as evidence of the opinion of the inspector in relation to any matter contained in the report.

(2) A document purporting to be such a certificate as is mentioned above shall be received in evidence and be deemed to be such a certificate, unless the contrary is proved.

326. (1) Where it appears to the Commission, that there is good reason so to do, it may appoint one or more competent inspectors to investigate and report on the membership of any company and otherwise with respect to the company for the purpose of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the company or able to control or materially to influence the policy of the company.

(2) The appointment of an inspector under this section may define the scope of his investigation, whether as respects the matter or the period to which it is to extend or otherwise and in particular may limit investigation to matters connected with particular shares or debentures.

(3) Where an application for an investigation under this section with respect to particular shares or debentures of a company is made to the Commission by members of the company and the number of applicants or the amount of the shares held by them is not less than that required for an

application for the appointment of an inspector under paragraphs (a) and (b) of subsection (2) of section 314 of this Act—

(a) the Commission shall appoint an inspector to conduct the investigation unless it is satisfied that the application is vexatious; and

(b) the inspector's appointment shall not exclude from the scope of his investigation any matter which the application seeks to include except insofar as the Commission is satisfied that it is reasonable for the matter to be investigated.

(4) Subject to the terms of an inspector's appointment, his powers shall extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of his investigation.

327. (1) For the purposes of any investigation under section 326 of this Act, the provisions of sections 316 to 320 of this Act shall apply with the necessary modifications to references to the affairs of the company or to those of any body corporate, so however, that—

(a) the said sections shall apply in relation to all persons who are or have been, or whom the inspector has reasonable cause to believe to be or have been, financially interested in the success or failure or the apparent success or failure of the company or any other body corporate whose membership is investigated with that of the company, or able to control or materially to influence the policy thereof, including persons concerned only on behalf of others, as they apply in relation to officers and agents of the company or of the other body corporate, as the case may be; and

(b) the Commission shall not be bound to furnish the company or any other person with a copy of any report by an inspector appointed under this section or with a complete copy thereof if he is of the opinion that there is good reason for not divulging the contents of the

reports or of part thereof, but shall keep a copy of any such report, or, as the case may be, the parts of any report, as regards which he is not of that opinion.

(2) The expenses of any investigation under section 326 of this Act shall be defrayed out of the Consolidated Revenue Fund.

328. (1) Where it is made to appear to the Commission, that there is good reason to investigate the ownership of any shares in or debentures of a company and that it is unnecessary to appoint an inspector for the purpose, the Commission may require any person who it has reasonable cause to believe—

- (a) to be or to have been interested in those shares or debentures; or
- (b) to act or to have acted in relation to those shares or debentures as a legal practitioner or an agent of some one interested therein,

to give to the Commission any information which the person has or might reasonably be expected to obtain as to the present and past interest in those shares or debentures and the names and addresses of the persons interested, and of any persons who act or have acted on their behalf in relation to the shares or debentures.

(2) For the purposes of this section, a person shall be deemed to have an interest in a share or debenture if he has any right to acquire or dispose of the share or debenture or any interest therein or to vote in respect thereof, or if his consent is necessary for the exercise of any of the rights of other persons interested therein, or if other persons interested therein can be required or are accustomed to exercise their rights in accordance with his instructions.

(3) Any person, who fails to give any information required of him under this section, or who in giving any such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular shall be guilty of an offence and liable to a fine of ₹ 500 or to imprisonment for a term of six months or to both.

329. (1) Where in connection with an investigation under section 326 or 328 of this Act, it appears to the Commission that there is difficulty in finding out the relevant facts about any share (whether issued or to be issued), and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned or any of them to assist the investigation as required by this Act, the Commission may in writing direct that the shares shall until further notice be subject to the restrictions imposed by this section.

(2) So long as any shares are directed to be subject to the restrictions imposed by this section—

- (a) any transfer of those shares, or in case of unissued shares any transfer of the right to be issued therewith and any issue thereof, shall be void;
- (b) no voting rights shall be exercisable in respect of those shares;
- (c) no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder thereof;
- (d) except in a liquidation, no payment shall be made of any sums due from the company on those shares, whether in respect of capital or otherwise.

(3) Where the Commission directs shares to be subject to restrictions under this section, or refuses to direct that shares shall cease to be subject thereto, any person aggrieved thereby may appeal to the court, and the court may, if it sees fit, direct that the shares shall cease to be subject to the said restrictions.

(4) Any direction or order of the court that shares shall cease to be subject to restrictions under this section, expressed to be made with a view to permitting a transfer of those shares may continue the restrictions mentioned in paragraphs (c) and (d) of subsection (2) of this section, either in whole or in part, so far as they relate to any right acquired or offer made before the transfer.

(5) Any person who—

- (a) exercises or purports to exercise any right to dispose of any shares which, to his knowledge, are for the time being subject to restrictions under this section; or

(b) votes in respect of any such shares, whether as holder or proxy, or appoints a proxy to vote in respect thereof; or

(c) being the holder of any such shares, fails to notify that they are subject to the said restrictions,

shall be guilty of an offence and liable to a fine of ₦ 500 or imprisonment for a term of six months, or to both.

(6) Where shares in any company are issued in contravention of the said restrictions, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine of ₦ 500.

(7) A prosecution shall not be instituted under this section except by or with the consent of the Attorney-General of the Federation.

(8) This section shall apply in relation to debentures as it applies in relation to shares.

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cers. **330.** Nothing in the foregoing provisions of this Part of this Act shall require disclosure to the Commission or to an inspector appointed by it by—

(a) a legal practitioner of any privileged communication made to him in that capacity, except as regards the name and address of his client; or

(b) a company's bankers as such, of any information as to the affairs of any of their customers other than the company.

PART XI—FINANCIAL STATEMENTS AND AUDIT

CHAPTER I—*Financial Statements*

Accounting records

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ng **331.** (1) Every company shall cause accounting records to be kept in accordance with this section.

(2) The accounting records shall be sufficient to show and explain the transactions of the company and shall be such as to—

(a) disclose with reasonable accuracy, at any time, the financial position of the company; and

(b) enable the directors to ensure that any financial statements prepared under this Part comply with the requirements of this Act as to the form and content of the company's statements.

(3) The accounting records shall, in particular, contain—

(a) entries from day to day of all sums of money received and expended by the company, and the matters in respect of which the receipt and expenditure took place; and

(b) a record of the assets and liabilities of the company;

(4) If the business of the company involves dealing in goods, the accounting records shall contain—

(a) statements of stocks held by the company at the end of each year of the company;

(b) all statements of stocktakings from which any such statement of stock as is mentioned in paragraph (a) of this subsection has been or is to be prepared; and

(c) except in the case of goods sold by way of ordinary retail trade, statements of all goods sold and purchased, showing the goods and the buyers and sellers in sufficient detail to enable all these to be identified.

332. (1) The accounting records of a company shall be kept at its registered office or such other place in Nigeria as the directors think fit, and shall at all times be open to inspection by the officers of the company. Pla
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(2) Subject to any direction with respect to the disposal of records given under winding-up rules made under section 635 of this Act, accounting records which a company is required by section 331 of this Act to keep shall be preserved by it for a period of six years from the date on which they were made.

333. (1) If a company fails to comply with any provision of section 331 or 332(1) of this Act, every officer of the company who is in default shall be guilty of an offence unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on, the default was excusable.

(2) An officer of a company shall be guilty of an offence if he fails to take all reasonable steps, for securing compliance by the company with section 332 of this Act, or has intentionally caused any default by the company under it.

(3) A person guilty of an offence under this section, shall be liable to imprisonment for a term not exceeding six months or to a fine of ₦500.

334. (1) In the case of every company, the directors shall in respect of each year of the company, prepare financial statements for the year.

(2) Subject to subsection (3) of this section, the financial statements required under subsection (1) of this section shall include—

- (a) statement of the accounting policies;
- (b) the balance sheet as at the last day of the year;
- (c) a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the year;
- (d) notes on the accounts;
- (e) the auditors' reports;
- (f) the directors' report;
- (g) a statement of the source and application of fund;
- (h) a value added statement for the year;
- (i) a five-year financial summary; and
- (j) in the case of a holding company, the group financial statements.

(3) The financial statements of a private company need not include the matters stated in paragraphs (a), (g), (h) and (i) of subsection (2) of this section.

(4) The directors shall at their first meeting after the incorporation of the company, determine to what date in each year financial statements shall be made up, and they shall give notice of the date to the Commission within fourteen days of the determination.

(5) In the case of a holding company, the directors shall ensure that, except where in their opinion there are good reasons against it, the year of each of its subsidiaries shall coincide with the year of the company.

Form and content of company individual and group financial statements

335. (1) The financial statements of a company prepared under section 334 of this Act, shall comply with the requirements of the Second Schedule to this Act (so far as applicable) with respect to their form and content, and with the accounting standards laid down in the Statements of Accounting Standards issued from time to time by the Nigerian Accounting Standards Board to be constituted by the Minister after due consultation with such accounting bodies as he may deem fit in circumstances for this purpose:

Provided that such accounting standards do not conflict with the provisions of this Act or the Second Schedule to this Act.

(2) The balance sheet shall give a true and fair view of the state of affairs of the company as at the end of the year; and the profit and loss account shall give a true and fair view of the profit or loss of the company for the year.

(3) The statement of the source and application of funds shall provide information on the generation and utilisation of funds by the company during the year.

(4) The value added statement shall report the wealth created by the company during the year and its distribution among various interest groups such as the employees, the government, creditors, proprietors and the company.

(5) The five-year financial summary shall provide a report for a comparison over a period of five years or more of vital financial information.

(6) Subsection (2) of this section shall override—

(a) the requirements of the Second Schedule to this Act; and

(b) all other requirements of this Act as to the matters to be included in the accounts of a company or in notes to those accounts;

and accordingly the provisions of subsections (7) and (8) of this section shall have effect.

(7) If the balance sheet or profit and loss account drawn up in accordance with those requirements would not provide sufficient information to comply with subsection (2) of this section, any necessary additional information shall be provided in that balance sheet or profit and loss account, or in a note to the accounts.

(8) If, owing to special circumstances in the case of any company compliance with any such requirement in relation to the balance sheet or profit and loss account would prevent compliance with subsection (2) of this section, (even if additional information were provided in accordance with subsection (4) of this section, the directors shall depart from that requirement in preparing the balance sheet or profit and loss account (so far as necessary) in order to comply with subsection (2) of this section.

(9) If the directors depart from any such requirements, particulars of the departure, the reasons for it and its effects shall be given in a note to the accounts.

(10) Subsections (1) to (9) of this section, shall not apply to group accounts prepared under section 336 of this Act and subsections (1) and (2) of this section shall not apply to a

company's profit and loss account (or require the notes otherwise required in relation to that account) if—

(a) the company has subsidiaries; and

(b) the profit and loss account is framed as a consolidated account dealing with all or any of the subsidiaries of the company as well as the company;

(i) complies with the requirements of this Act relating to consolidated profit and loss account, and

(ii) shows how much of the consolidated profit and loss for the year is dealt with in the individual financial statements of the company.

(11) If group financial statements are prepared and advantage is taken of subsection (7) of this section, that fact shall be disclosed in a note to the group financial statements.

336. (1) If, at the end of a year a company has subsidiaries, the directors shall, as well as preparing individual accounts for that year, also prepare group financial statements being accounts or statements which deal with the state of affairs and profit or loss of the company and the subsidiaries.

(2) The provisions of subsection (1) of this section shall not apply if the company is a wholly owned subsidiary of another body corporate incorporated in Nigeria.

(3) A group financial statement may not deal with a subsidiary, if the directors of the company are of the opinion that—

(a) it is impracticable, or would be of no real value to the members, in view of the insignificant amounts involved; or

(b) it would involve expense or delay out of proportion to its value to members of the company; or

(c) the result would be misleading, or harmful to the business of the company or any of its subsidiaries; or

- (d) the business of the holding company and that of the subsidiary are so different that they cannot reasonably be treated as a single undertaking.
- (4) The group financial statements of a company shall consist of a consolidated—
- (a) balance sheet dealing with the state of affairs of the company and all the subsidiaries of the company; and
 - (b) profit and loss account of the company and its subsidiaries.
- (5) If the directors are of the opinion that it is better for the purpose of presenting the same or equivalent information about the state of affairs and profit or loss of the company and its subsidiaries, and that to so present it may be readily appreciated by the members of the company, the group financial statements may be prepared in a form not consistent with subsection (1) of this section and in particular the group financial statement may consist of—
- (a) more than one set of consolidated financial statements dealing respectively with the company and one group of subsidiaries and with other groups of subsidiaries; or
 - (b) separate financial statements dealing with each of the subsidiaries; or
 - (c) statements expanding the information about the subsidiaries in individual financial statements of the company, or in any other form.
- (6) The group financial statements may be wholly or partly incorporated in the individual balance sheet and profit and loss account of the holding company.

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337. (1) The group financial statements of a holding company shall comply with the requirements of the Second Schedule to this Act, so far as applicable to group financial statements in the form in which those accounts are prepared with respect to the form and content of those statements and

any additional information to be provided by way of notes to those accounts.

(2) Group financial statements together with any notes thereon shall give a true and fair view of the state of affairs and profit or loss of the company and the subsidiaries dealt with by those statements as a whole.

(3) Subsection (2) of this section shall override—

- (a) the requirements of the Second Schedule to this Act; and
- (b) all other requirements of this Act as to the matters to be included in group financial statements or in notes to those statements, and accordingly subsections (4) and (5) of this section shall have effect.

(4) If group financial statements are not in accordance with the requirements of this Act by not providing sufficient information in compliance with subsection (2) of this section, any necessary additional information shall be provided in, or in a note to, the group financial statements.

(5) If, owing to special circumstances in the case of any company, compliance with any requirements of the Second Schedule to this Act in relation to its group financial statements would prevent the statements from complying with subsection (2) of this section, (even if additional information were provided in accordance with subsection (4) of this section) the directors may depart from that requirement in preparing the group financial statements.

338. (1) Subject to subsection (4) of this section, a company shall for the purposes of this Act be deemed to be a subsidiary of another company if—

- (a) the company—
 - (i) is a member of it and controls the composition of its board of directors, or
 - (ii) holds more than half in nominal value of its equity share capital; or
- (b) the first-mentioned company is a subsidiary of any company which is that other's subsidiary.

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(2) For the purposes of subsection (1) of this section, the composition of the board of directors of a company shall be deemed to be controlled by another company if that other company by the exercise of some power, without the consent or concurrence of any other person, can appoint or remove the holders of all or majority of the directors.

(3) For purposes of subsection (2) of this section, the other company shall be deemed to have power to appoint a director with respect to which any of the following conditions is satisfied that—

- (a) a person cannot be appointed to it without the exercise in his favour by the other company of such power as is mentioned in this section; or
- (b) the appointment of a person to the directorship follows necessarily from his appointment as director of the other company; or
- (c) the directorship is held by the other company itself or by a subsidiary of it.

(4) In determining whether one company is a subsidiary of another—

- (a) any shares held or power exercisable by the other in a fiduciary capacity shall be treated as not held or exercisable by it;
- (b) subject to paragraphs (c) and (d) of this subsection, any shares held or power exercisable—
 - (i) by any person as nominee for the other (except where the other is concerned only in a fiduciary capacity); or
 - (ii) by, or by a nominee for, a subsidiary or the other (not being a subsidiary which is concerned only in a fiduciary capacity), shall be treated as held or exercisable by the other;
- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded;

(d) any shares held or power exercisable by, or by a nominee for, the other or its subsidiary (not being held or exercisable as mentioned in paragraph (c) of this subsection shall be treated as not held or exercisable by the other, if the ordinary business of the other or its subsidiary (as the case may be) includes the lending of money and the shares are held or the power is exercisable as above mentioned by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(5) For the purposes of this Act—

- (a) a company shall be deemed to be the holding company of another, if the other is its subsidiary; and
 - (b) a body corporate shall be deemed to be the wholly-owned subsidiary of another, if it has no member except that other and that other's wholly owned subsidiaries are its or their nominees.
- (6) In this section, "company" includes any body corporate.

339. (1) The additional matters contained in the Third Schedule to this Act shall be disclosed in the company's financial statements for the year; and in that Schedule, where a thing is required to be stated or shown or information is required to be given, it shall be construed to mean that the thing shall be stated or shown, or the information is to be given in a note or those statements.

(2) In the Third Schedule to this Act—

- (a) Parts I and II deal respectively with the disclosure of particulars of the subsidiaries of the company and its shareholders;
- (b) Part III deals with the disclosure of financial information relating to subsidiaries;
- (c) Part IV requires a subsidiary company to disclose its ultimate holding company;
- (d) Part V deals with the emoluments of directors, including emoluments waived, pensions of directors and compensation for loss of office to directors and past directors; and

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(e) Part VI deals with disclosure of the number of the employees of the company who are remunerated at higher rates.

(3) Whenever it is stated in the Third Schedule to this Act that this subsection shall apply to certain particulars or information, the particulars or information shall be annexed to the annual return first made by the company after copies of its financial statements have been laid before its share holders in a general meeting and if a company fails to satisfy an obligation thus imposed, the company and every officer of it who is in default shall be guilty of an offence and liable to a fine of ₹ 50 and for continued contravention, to a daily default fine of ₹ 10.

(4) It shall be the duty of any director of a company to give notice to the company of such matters relating to himself as may be necessary for the purposes of Part V of the Third Schedule to this Act and this applies to persons who are or have at any time in the preceding three years been officers as it applies to directors.

(5) A person who makes default in complying with the provisions of subsection (4) of this section shall be guilty of an offence and liable to a fine of ₹ 10 for every day during which the default continues.

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340. (1) The group financial statements of a holding company for a year shall comply with Part 1 of the Fourth Schedule to this Act (so far as applicable) as regards the disclosure of transactions, arrangements and agreements mentioned therein, including loans, quasi loans and other dealings in favour of directors.

(2) In the case of a company other than a holding company, its individual accounts shall comply with Part I of the Fourth Schedule to this Act (so far as applicable) as regards disclosure matters contained therein.

(3) Particulars which are required to be contained in Part I of the Fourth Schedule to this Act in any financial statements shall be required in respect of shadow directors as well as a director given by way of notes.

(4) Where by virtue of subsection (2) or (3) of section 336 of this Act, a company does not prepare group financial statements for a year, it shall disclose such matters in its individual statements as would have been disclosed in group financial statements.

(5) The requirements of this section shall apply with such modifications as are necessary to bring them in line with Part 1 of the Fourth Schedule to this Act (including with particulars of exceptions in respect of recognised banks) it shall disclose.

341. (1) The group financial statements of a holding company for a year shall comply with Part II of the Fourth Schedule to this Act (so far as applicable as regards transactions, arrangements and agreements made by the company of a subsidiary of it for persons who at any time during that year were officers of the company but not directors.

(2) In the case of a company other than a holding company, its individual accounts shall comply with Part II of the Fourth Schedule to this Act (so far as applicable) as regards matters contained therein.

(3) Subsections (1) and (2) of this section shall not apply in relation to any transaction or agreement made by a recognised bank for any of its officers or for any of the officers of its holding company.

(4) Particulars required by Part II of the Fourth Schedule to this Act to be in any accounts shall be given by way of notes to the accounts.

(5) Where by virtue of subsection (2) or (3) of section 336 of this Act, a company does not prepare group financial statements for year, it shall disclose this fact in its individual financial statements as required by subsection (1) of this section.

Directors' Reports

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ile. 342. (1) In the case of every company, there shall be prepared in respect, of each year a report by the directors—

(a) containing a fair view of the development of the business of the company and its subsidiaries during the year and of their position at the end of it; and

(b) stating the amount (if any) which they recommend should be paid as dividend and the amount (if any) which they propose to carry to reserves.

(2) The directors' report shall state the names of the persons who, at any time during the year, were directors of the company, and the principal activities of the company and its subsidiaries in the course of the year and any significant change in those activities in the year.

(3) The report shall also state the matters, and give the particulars, required by Part I of the Fifth Schedule to this Act.

(4) Part II of the Fifth Schedule to this Act shall apply as regards the matters to be stated in the report of the directors in the circumstances specified therein.

(5) Part III of the Fifth Schedule to this Act shall apply as regards the matters to be stated in the directors' report relative to the employment, training and advancement of disabled persons, the health, safety and welfare at work of the employees of the company and the involvement of employees in the affairs, policy and performance of the company.

(6) In respect of any failure to comply with the requirements of this Act as to the matters to be stated, and the particulars to be given, in the directors' report, every person who was a director of the company immediately before the end of the period prescribed for laying and delivering financial statements shall be guilty of an offence and liable on conviction to a term of imprisonment for not more than six months or to a fine of ₦500.

(7) In proceedings for an offence under subsection (6) of this section, it shall be a defence for the person to prove that he took all reasonable steps for securing compliance with the requirements in question.

Procedure on completion of financial statements

343. (1) A company's balance sheet and every copy of it which is laid before the company in general meeting or delivered to the Commission shall be signed on behalf of the board by two of the directors of the company.

(2) If a copy of the balance sheet—

(a) is laid before the company or delivered to the Commission without being signed as required by this section; or

(b) not being a copy so laid or delivered, is issued, circulated or published in a case where the balance sheet has not been signed as so required or where (the balance sheet having been so signed) the copy does not include a copy of the signatures or signature as the case may be,

the company and every officer of it who is in default shall be guilty of an offence and liable on conviction to a fine of ₦300.

(3) A company's profit and loss account and so far as not incorporated in its individual balance sheet or profit and loss account, any group accounts of a holding company shall be annexed to the balance sheet, and the auditors' report and the directors' report shall also be attached to the balance sheet.

(4) The balance sheet and the profit and loss account annexed to it shall be approved by the board of directors and signed on their behalf by two directors authorised to do so.

344. (1) In the case of every company, a copy of the company's financial statements for the year shall, not less than twenty-one days before the date of the meeting at which they are to be laid in accordance with section 345 of this Act, be sent to each of the following persons—

(a) every member of the company (whether or not entitled to receive notice of general meetings);

(b) every holder of the company's debentures, (whether or not so entitled); and

(c) all persons other than members and debenture holders, being persons so entitled.

(2) In the case of a company not having a share capital, subsection (1) of this section shall not require a copy of the

financial statements to be sent to a member of the company who is not entitled to receive notices of general meeting of the company, or to a holder of the company's debenture who is not so entitled.

(3) Subsection (1) of this section shall not require copies of the financial statements to be sent to—

- (a) a member of the company or a debenture holder, being in either case a person who is not entitled to receive notices of general meetings, and of whose address the company is unaware; or
- (b) more than one of the joint holders of any shares or debentures none of whom are entitled to receive such notices; or
- (c) those who are not so entitled in the case of joint holders of shares or debentures some of whom are not entitled to receive such notices.

(4) If copies of the financial statements are sent less than twenty-one days before the date of the meeting, it shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by all the members entitled to attend and vote at the meeting.

(5) If default is made in complying with subsection (1) of this section, the company and every officer of it who is in default shall be guilty of an offence and is liable to a fine of ₦250.

345. (1) In respect of each year, the directors shall at a date not later than eighteen months after incorporation of the company and subsequently once at least in every year, lay before the company in general meeting copies of the financial statements of the company made up to a date not exceeding nine months previous to the date of the meeting.

(2) The auditors' report shall be read before the company in general meeting, and be open to the inspection of any member of the company.

(3) In respect of each year, the directors shall deliver with the annual return of the Commission a copy of the balance sheet, the profit and loss account and the notes on the

statements which were laid before the general meeting as required by this section.

(4) In the case of an unlimited company, the directors shall not be required by subsection (3) of this section to deliver a copy of the accounts if—

- (a) at no time during the accounting reference period has the company been, to its knowledge, the subsidiary of a company that was then limited and at no such time, to its knowledge have there been held or been exercisable, by or on behalf of two or more companies that were then limited, shares or powers which, if they had been held or been exercisable by one of them, would have made the company its subsidiary; and
- (b) at no such time has the company been the holding company of a company which was then limited.

(5) References in this section to a company that was limited at a particular time are to a body corporate (under whatever law incorporated) the liability of whose members was at that time limited.

346. (1) If in a year any of the requirements of section 345(1) or (3) of this Act is not complied with by any company every person who immediately before the end of that period was a director of the company shall in respect of each of those subsections which is not so complied with, be guilty of an offence and liable to a daily default fine of ₦50 in the case of a small company, a company limited by guarantee or an unlimited company, and ₦500, in the case of any other company.

(2) If a person is charged with an offence in respect of any of the requirements of subsection (1) or (3) of section 345 of this Act, it shall be a defence for him to prove that he took all reasonable steps for securing that those requirements be complied with before the end of the period allowed for laying and delivering accounts.

(3) In proceedings under this section with respect to a requirement to lay a copy of a document before a company in general meeting, or to deliver a copy of a document to the Commission, it shall not be a defence to prove that the

document in question was not in fact prepared as required by this Part of this Act.

order 347. (1) If—

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- (a) in respect of a year, any of the requirements of subsections (1) and (3) of section 345 of this Act has not been complied with by a company before the end of the period allowed for laying and delivering financial statements; and
 - (b) the directors of the company fail to make good the default within fourteen days after the service of a notice on them requiring compliance, the court may on application by any member or creditor of the company or by the Commission make an order directing the directors (or any of them) to make good the default within such time as may be specified in the order.

(2) The court's order may provide that all costs of and incidental to the application shall be borne by the directors.

(3) Nothing in this section shall affect the provisions of section 346 of this Act.

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348. (1) If any financial statements of a company (other than its group financial statement) of which a copy is laid before the shareholders in general meeting or delivered to the Commission do not comply with the requirement of this Act as to the matters to be included in, or in a note to, those financial statements, every person who at the time when the copy is so laid or delivered is a director of the company shall be guilty of an offence and in respect of each offence, liable to a fine of ₹ 100.

(2) If any group financial statements of which a copy is laid before a company in a general meeting or delivered to the Commission do not comply with section 345(4) and (5) or section 346 of this Act and with the other requirements of this Act as to the matters to be included in or in a note to those financial statements, every person who at the time when the copy was so laid or delivered was a director of the company shall be guilty of an offence and liable to a fine of ₹ 250.

(3) In proceedings against a person for an offence under this section, it shall be a defence for him to prove that he took all reasonable steps for securing compliance with the requirements in question.

349. (1) Any member of a company, whether or not he is entitled to have sent to him copies of the company's financial statements, and any holder of the company's debentures (whether or not so entitled) shall be entitled to be furnished (on demand and without charge) with a copy of the company's last financial statements.

(2) If, when a person makes a demand for a document with which he is entitled by this section to be furnished, default is made in complying with the demand within seven days after its making, the company and every officer of it who is in default shall be guilty of an offence and liable to a daily default fine of ₹ 100, unless it is proved that the person has already made a demand for, and been furnished with, a copy of the document.

Modified financial statements

350. (1) In certain cases a company's directors may, in accordance with Part I of the Sixth Schedule to this Act, deliver modified financial statements in respect of a year as a small company.

(2) For the purposes of sections 351 to 353 and the Sixth Schedule to this Act, "deliver" means deliver to the Commission.

351. (1) A company qualifies as a small company in a year if for that year the following conditions are satisfied—

- (a) it is a private company having a share capital;
- (b) the amount of its turnover for that year is not more than ₹ 2 million or such amount as may be fixed by the Commission;
- (c) its net assets value is not more than ₹ 1 million or such amount as may be fixed by the Commission;

- (d) none of its members is an alien;
 - (e) none of its members is a Government or a Government corporation or agency or its nominee; and
 - (f) the directors between them hold not less than fifty-one *per cent* of its equity share capital.
- (2) In applying subsection (1) of this section, to a period which is a company's year but not in fact a year, the maximum figures for turnover in paragraph (b) of that subsection shall be proportionately adjusted.

352. (1) The directors of a company may (subject to section 353 of this Act where the company has subsidiaries) deliver individual financial statements modified as for a small company in the cases specified in subsections (2) and (3) of this section; and Part I of the Sixth Schedule 6 shall apply with respect to the delivery of financial statements so modified.

(2) In respect of the company's first year the directors may deliver financial statements modified as for a small company, if in that year it qualifies as small.

(3) The directors may in respect of a company's year subsequent to the first—

- (a) deliver financial statements modified as for a small company if the company qualifies as small and it also so qualified in the preceding year;
- (b) deliver financial statements modified as for a small company (although not qualifying in that year as small), if in the preceding year it so qualified and the directors were entitled to deliver financial statements so modified in respect of that year;
- (c) deliver financial statements modified as for small company if, in that year the company qualifies as small and the directors were entitled under paragraph (b) of this subsection to deliver financial statements so modified for the preceding year (although the company did not in that year qualify as small).

353. (1) This section shall apply to a holding company where in respect of a year section 336 of this Act requires the preparation of group financial statements for the company and its subsidiaries.

(2) The directors of the holding company may not under section 352 of this Act deliver financial statements modified as for a small company, unless the group (that is to say, the holding company and its subsidiaries together) is in that year a small group and the group is small if it would so qualify under section 351 of this Act (applying that section as directed by subsections (3) and (4) of this section, if it were all one company.

(3) The figures to be taken into account in determining whether the group is small shall be the group account figures, that is—

- (a) where the group financial statements are prepared as consolidated financial statements the figures for turnover and balance sheet total; and
- (b) where the group financial statements are not prepared as consolidated financial statements, the corresponding figures given in the group financial statements, with such adjustment as would have been made if the statements had been prepared in consolidated form,

aggregated in either case with the relevant figures for the subsidiaries (if any) omitted from the group accounts (excepting those for any subsidiary omitted under section 336(3)(a) of this Act on the ground of impracticability).

(4) In the case of each subsidiary omitted from the group financial statements, the figures relevant as regards turnover, and balance sheet total shall be those which are included in the financial statements of that subsidiary prepared in respect of its relevant year (with such adjustment as would have been made if those figures had been included in group financial statements prepared in consolidated form).

(5) For the purposes of subsection (4) of this section, the relevant year of the subsidiary shall be—

- (a) if its year ends with that of the holding company to which the group financial statements relate, that year; and

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(b) if not, the subsidiary's year ending last before the end of the year of the holding company.

(6) If the directors are entitled to deliver modified financial statements, they may also deliver modified group financial statements, and such group financial statements—

(a) if consolidated, may be in accordance with Part II of the Seventh Schedule (while otherwise comprising or corresponding with group financial statements prepared under section 336 of this Act); and

(b) if not consolidated, may be such as (together with any notes) give the same or equivalent information as required by paragraph (a) of this subsection,

and Part III to the Seventh Schedule to this Act shall apply to modified group financial statements whether consolidated or not.

Publication of Financial Statements

354. (1) This section shall apply to the publication by a company of full individual or group financial statements, that is to say, the statements required by section 345 of this Act to be laid before the company in general and delivered to the Commission including the directors' report, unless dispensed with under paragraph 3 of the Sixth Schedule to this Act, but does not apply to interim financial statements.

(2) If a company publishes individual financial statements (modified or other) for a year, it shall publish with them the relevant auditors' report.

(3) If a company required by section 336 of this Act to prepare group financial statements for a year, publishes individual financial statements for that year, it shall also publish with them its group financial statements (which may be modified financial statements but only if the individual financial statements are modified).

(4) If a company publishes group financial statements (modified or not) otherwise than together with its individual financial statements, it shall publish with them the relevant auditors' report.

(5) References in this section to the relevant auditors' report are to the auditors' report under section 359 of this Act

or, in the case of modified financial statements (individual or group), the auditors' special report under paragraph 10 of the Sixth Schedule to this Act.

(6) A company which contravenes any provision of this section and any officer of it who is in default, shall be guilty of an offence and liable to a daily default fine of ₦100.

355. (1) This section shall apply to the publication by a company of abridged financial statements, that is to say, any balance sheet or profit and loss account relating to a year of the company or purporting to deal with any such year, otherwise than as part of full financial statements (individual or group) to which section 354 of this Act applies.

(2) The reference in subsection (1) of this section to a balance sheet or profit and loss account, in relation to financial statements published by a holding company, includes an account in any form purporting to be a balance sheet of profit and loss account for the group consisting of the holding company and its subsidiaries.

(3) If the company publishes abridged financial statements, it shall publish with those statements, a statement indicating—

- (a) that the statements are not full financial statements;
- (b) whether full individual or full group financial statements according as the abridged statements deal solely with the company's own affairs or with the affairs of the company and any subsidiaries have been delivered to the Commission or, in the case of an unlimited company exempted under subsection (4) of section 345 of this Act from the requirement to deliver financial statements, that the company is so exempted;
- (c) whether the company's auditors have made a report under section 359 of this Act on the company's financial statements for any year with which the abridged financial statements purport to deal; and
- (d) whether any report so made was unqualified (meaning that it was a report, without qualification, to the effect that in the opinion of the person making it, the

company's financial statements had been properly prepared).

(4) Where a company publishes abridged financial statements, it shall not publish with those statements any such report of the auditors as is mentioned in subsection (3)(c) of this section.

(5) A company which contravenes any provision of this section, and any officer of it who is in default, shall be guilty of an offence and liable to a daily default fine of ₦100.

Supplementary

356. The Minister may, after consultation with the Nigerian Accounting Standards Board, by regulations in a statutory instrument—

(a) add to the classes of documents—

(i) to be comprised in a company's financial statements for a year to be laid before the company in general meeting as required by section 345 of this Act, or

(ii) to be delivered to the Commission under that section, and make provision as to the matters to be included in any document to be added to either class;

(b) modify the requirements of this Act as to the matters to be stated in a document of any such class; or

(c) reduce the classes of documents to be delivered to the Commission under section 343 of this Act.

CHAPTER 2—Audit

357. (1) Every company shall at each annual general meeting appoint an auditor or auditors to audit the financial statements of the company, and to hold office from the conclusion of that, until the conclusion of the next, annual general meeting.

(2) At any annual general meeting a retiring auditor, however appointed, shall be re-appointed without any resolution being passed unless—

- (a) he is not qualified for re-appointment; or
- (b) a resolution has been passed at that meeting appointing some other person instead of him or providing expressly that he shall not be re-appointed; or
- (c) he has given the company notice in writing of his unwillingness to be re-appointed:

Provided that where notice is given of an intended resolution to appoint some person or persons in place of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or of all those persons, as the case may be, the resolution cannot be proceeded with, the retiring auditor shall not be automatically re-appointed by virtue of this subsection.

(3) Where at an annual general meeting, no auditors are appointed or re-appointed, the directors may appoint a person to fill the vacancy.

(4) The company shall, within one week of the power of the directors under subsection (3) of this section becoming exercisable, give notice of that fact to the Commission; and if a company fails to give notice as required by this subsection, the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine of ₦100 for every day during which the default continues.

(5) Subject as hereinafter provided, the first auditors of a company may be appointed by the directors at any time before the company is entitled to commence business and auditors so appointed shall hold office until the conclusion of the next annual general meeting:

Provided that—

- (a) the company may at a general meeting remove any such auditors and appoint in their place any other person who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than fourteen days before the date of the meeting; and
- (b) if the directors fail to exercise their powers under this subsection; the company may, in a general meeting convened for that purpose appoint the first auditors

and thereupon the said powers of the directors shall cease.

(6) The directors may fill any casual vacancy in the office of auditor but while any such vacancy continues, the surviving or continuing auditor or auditors, if any, may act.

358. (1) A person shall not be qualified for appointment as an auditor of a company for the purpose of this Act, unless he is a member of a body of accountants in Nigeria established from time to time by an Act or Decree.

(2) None of the following persons shall be qualified for appointment as auditor of a company—

- (a) an officer or servant of the company;
- (b) a person who is a partner of or in the employment of an officer or servant of the company;
- (c) a person or firm who or which offers to the company professional advice in a consultancy capacity in respect of secretarial, taxation or financial management;
- (d) a body corporate,

and for this purpose an auditor of a company shall not be regarded as either an officer or a servant of it.

(3) A person shall also not qualify for appointment as an auditor of a company if he is, under subsection (6) of this section, disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company.

(4) Notwithstanding subsections (1), (2) and (3), of this section, a firm is qualified for appointment as auditor of a company if, but only if, all the partners are qualified for appointment as auditors of it.

(5) No person shall act as auditor of a company at a time when he knows that he is disqualified for appointment to that office and if an auditor of a company to his knowledge becomes so disqualified during his term of office, he shall thereupon vacate his office and give notice in writing to the

company that he has vacated it by reason of that disqualification.

(6) A person who acts as auditor in contravention of subsection (5), of this section or fails without reasonable excuse to give notice of vacating his office as required by that subsection, shall be guilty of an offence and liable to a fine of ₦ 500 and, for continued contravention, to a daily default fine of ₦ 50.

359. (1) The auditors of a company shall make a report to its members on the accounts examined by them, and on every balance sheet and profit and loss account, and on all group financial statements copies of which are to be laid before the company in a general meeting during the auditors' tenure of office.

(2) The auditors' report which shall be countersigned by a legal practitioner shall state the matters set out in the Sixth Schedule to this Act.

(3) In addition to the report made under subsection (1) of this section, the auditor shall in the case of a public company also make a report to an audit committee which shall be established by the public company.

(4) The audit committee referred to in subsection (3) of this section, shall consist of an equal number of directors and representatives of the shareholders of the company (subject to a maximum number of six members) and shall examine the auditors report and make recommendations thereon to the annual general meeting as it may think fit:

Provided, however, that such member of the audit committee shall not be entitled to remuneration and shall be subject to re-election annually.

(5) Any member may nominate a shareholder as a member of the audit committee by giving notice in writing of such nomination to the secretary of the company at least twenty-one days before the annual general meeting.

(6) Subject to such other additional functions and powers that the company's articles of association may stipulate, the objectives and functions of the audit committee shall be to—

- (a) ascertain whether the accounting and reporting policies of the company are in accordance with legal requirements and agreed ethical practices;
- (b) review the scope and planning of audit requirements;
- (c) review the findings on management matters in conjunction with the external auditor and departmental responses thereon;
- (d) keep under review the effectiveness of the company's system of accounting and internal control;
- (e) make recommendations to the board in regard to the appointment, removal and remuneration of the external auditors of the company; and
- (f) authorise the internal auditor to carry out investigations into any activities of the company which may be of interest or concern to the committee.

360. (1) It shall be the duty of the company's auditors, in preparing their report to carry out such investigations as may enable them to form an opinion as to the following matters whether—

- (a) proper accounting records have been kept by the company and proper returns adequate for their audit have been received from branches not visited by them;
- (b) the company's balance sheet and (if not consolidated) its profits and loss account are in agreement with the accounting records and returns.

(2) If the auditors are of opinion that proper accounting records have not been received from branches not visited by them, or if the balance sheet and (if not consolidated) the profit and loss account are not in agreement with the accounting records and returns, the auditors shall state that fact in their report.

(3) Every auditor of a company shall have a right of access at all time to the company's books, accounts and vouchers, and entitled to require from the company's office such information and explanations as he thinks necessary for the performance of the auditor's duties.

(4) If the requirements of Part V and VI of the Third Schedule and Part I to III of the Fourth Schedule to this Act are not complied with in the accounts, it shall be the auditors' duty to include in their report, so far as they are reasonably able to do so, a statement giving the required particulars.

(5) It shall be the auditors' duty to consider whether the information given in the directors' report for the year for which the accounts are prepared is consistent with those accounts; and if they are of opinion that it is not, they shall state that fact in their report.

361. (1) The remuneration of the auditors of a company—

- (a) in the case of an auditor appointed by the directors may be fixed by the directors; or
- (b) shall subject to the foregoing paragraph, be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

(2) For the purposes of subsection (7) of this section, "remuneration" include sums paid by the company in respect of the auditors expenses.

362. (1) A company may by ordinary resolution remove an auditor before the expiration of his term of office, notwithstanding anything in any agreement between it and him.

(2) Where a resolution removing an auditor is passed at a general meeting of a company, the company shall within fourteen days give notice of that fact in the prescribed form to the Commission and if a company fails to give the notice required by this subsection, the company and every officer of it who is in default shall be guilty of an offence and liable to a daily default fine of ₦100.

(3) Nothing in this section shall be taken as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as auditor or of any appointment terminating with that as auditor.

363. (1) A company's auditors shall be entitled to attend any general meeting of the company and to receive all notices of and other communications relating to any general meeting which a member of the company is entitled to receive and to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditor.

(2) An auditor of a company who has been removed shall be entitled to attend—

- (a) the general meeting at which his term of office would otherwise have expired; and
- (b) any general meeting at which it is proposed to fill the vacancy caused by his removal,

and to receive all notices of, and other communications relating to, any such meeting which any member of the company is entitled to receive, and to be heard at any such meeting which he attends on any part of the business of the meeting which concerns him as former auditor of the company.

364. (1) A special notice shall be required for a resolution at a general meeting of a company—

- (a) appointing as auditor a person other than a retiring auditor; or
- (b) filling a casual vacancy in the office of auditor; or
- (c) reappointing as auditor a retiring auditor who was appointed by the directors to fill a casual vacancy; or
- (d) removing an auditor before the expiration of his term of office.

(2) On receipt of notice of such an intended resolution as is mentioned in subsection (1) the company shall forthwith send a copy of it—

- (a) to the person proposed to be appointed or removed, as the case may be;
- (b) in a case within subsection (1)(a), of this section to the retiring auditors; and
- (c) where, in a case within subsection (1)(b) or (c), of this section the casual vacancy was caused by the resignation of an auditor, to the auditor who resigned.

(3) Where notice is given of such a resolution as is mentioned in subsection (1)(a) or (d) of this section and the retiring auditor or (as the case may be the auditor proposed to be removed makes with respect to the intended resolution representations in writing to the company not exceeding a reasonable length) and requests their notification to members of the company, the company shall (unless the representations are received by it too late for it to do so)—

- (a) in any notice of the resolution given to members of the company state the fact of the representations having been made; and
- (b) send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent.

(4) If a copy of any such representations is not sent out as required by subsection (3) of this section because they were received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting.

(5) Copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person claiming to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

365. (1) An auditor of a company may resign his office by depositing a notice in writing to that effect at the company's registered office; and any such notice shall operate to bring his term of office to an end on the date of which the notice is deposited, or on such later date as may be specified in it.

(2) An auditor's notice of resignation shall not be effective unless it contains either—

- (a) a statement of any circumstances connected with his resignation which he considers should be brought to the notice of the members or creditors of the company; or

(b) a statement to the effect that there are no such circumstances as are mentioned in paragraph (a) of this section.

(3) Where a notice under this section is deposited at a company's registered office, the company shall within fourteen days send a copy of the notice—

(a) to the Commission; and

(b) if the notice contained a statement under subsection (2)(b) of this section, to every person who under section 344 of this Act is entitled to be sent copies of the financial statements.

(4) The company or any person claiming to be aggrieved may, within fourteen days of the receipt by the company of a notice containing a statement under subsection (2)(b) of this section, apply to the court for an order under subsection (5) of this section.

(5) If on such an application the court is satisfied that the auditor is using the notice to secure needless publicity for defamatory matter, it may, by order, direct that copies of the notice need not be sent out; and the court may further order the company's costs on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(6) The company shall, within fourteen days of the court's decision, send to the persons mentioned in subsection (3) of this section—

(a) if the court makes an order under subsection (5) of this section, a statement setting out the effect of the order;

(b) if not, a copy of the notice containing the statement under subsection (2)(b) of this section.

(7) If default is made in complying with the provisions of subsection (3) or (6) of this section, the company and every officer of it who is in default shall be guilty of an offence and liable to a daily default fine of ₦100.

366. (1) Where an auditor's notice of resignation contains a statement under section 365(2)(b) of this Act, there may be deposited with the notice a requisition signed by the auditor calling on the directors of the company forthwith duly to convene an extra-ordinary general meeting of the company for the purpose of receiving and considering such explanation of the circumstances connected with his resignation as he may wish to place before the meeting.

(2) Where an auditor's notice of resignation contains such a statement, the auditor may request the company to circulate to its members before—

(a) the general meeting at which his term of office would otherwise have expired; or

(b) any general meeting at which it is proposed to fill the vacancy caused by his resignation or convened on his requisition,

a statement in writing (not exceeding a reasonable length) of the circumstances connected with his resignation.

(3) If a resigning auditor requests the circulation of a statement by virtue of subsection (2) of this section, the company shall (unless the statement is received by it too late for it to comply)—

(a) in any notice of the meeting given to members of the company state the fact of the statement having been made; and

(b) send a copy of the statement to every member of the company to whom notice of the meeting is or has been sent.

(4) If the directors do not within twenty-one days from the date of the deposit of a requisition under this section proceed duly to convene a meeting for a day not more than twenty-eight days after the date on which the notice convening the meeting is given, every director who fails to take all reasonable steps to secure that a meeting is convened as mentioned above shall be guilty of an offence and liable to a fine of ₦500.

(5) If a copy of the statement mentioned in subsection (2) of this section is not sent out as required by subsection (3) of this section because it was received too late or because of the

company's default, the auditor may (without prejudice to his right to be heard orally) require that the statement shall be read out at the meeting.

(6) Copies of a statement need not be sent out and the statement need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on such an application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(7) An auditor who has resigned his office shall be entitled to attend any such meeting as is mentioned in subsection (2)(a) or (b) of this section and to receive all notices of and other communications relating to any such meeting which any member of the company is entitled to receive, and to be heard at any such meeting which concerns him as former auditor of the company.

367. (1) Where a company has a subsidiary, then—

- (a) if the subsidiary is a body corporate incorporated in Nigeria it shall be the duty of the subsidiaries and its auditors to give the auditors of the holding company such information and explanation as those auditors may reasonably require for the purposes of their duties as auditors of the holding company;
- (b) in any other case, it shall be the duty of the holding company, if required by its auditors to do so, to take all such steps as are reasonably open to it to obtain from the subsidiary such information and explanation as are mentioned above.

(2) If a subsidiary or holding company fails to comply with the provisions of subsection (1) of this section, the subsidiary or holding company and every officer of it who is in default shall be guilty of an offence and liable to a fine; and if an auditor fails without reasonable excuse to comply with paragraph (a) of the subsection, he shall be guilty of an offence and so liable.

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368. (1) A company's auditor shall in the performance of his duties, exercise all such care, diligence and skill as is reasonably necessary in each particular circumstance.

(2) Where a company suffers loss or damage as a result of the failure of its auditor to discharge the fiduciary duty imposed on him by subsection (1) of this section, the auditor shall be liable for negligence and the directors may institute an action for negligence against him in the court.

(3) If the directors fail to institute an action against the auditor under subsection (2) of this section, any member may do so after the expiration of thirty days notice to the company of his intention to institute such action.

369. (1) An officer of a company commits an offence if he knowingly or recklessly makes to a company's auditors a statement (whether written or oral) which—

- (a) conveys or purports to convey any information or explanation which the auditors require, or are entitled to require, as auditors of the company; and
- (b) is misleading, false or deceptive in a material particular.

(2) A person guilty of an offence under this section shall be liable to imprisonment for one year or to a fine of ₦500 or to both such imprisonment and fine.

PART XII—ANNUAL RETURNS

370. Every company shall, once at least in every year, make and deliver to the Commission an annual return in the form, and containing the matters specified in sections 371, 372 or 373 of this Act as may be applicable:

Provided that a company need not make a return under this section either in the year of its incorporation or, if it is not required by section 213 of this Act to hold an annual general meeting during the following year, in that year.

annual
return by
company
having shares
other than
small
company.
Eighth
Schedule.

371. (1) The annual return by a company having shares other than a small company shall contain with respect to the registered office of the company, registers of members and debenture holders, shares and debentures, indebtedness, past and present members and directors and secretary, the matters specified in Part I of the Eighth Schedule of this Act, and the said return shall be in the form set out in Part II of that Schedule or as near to it as circumstances admit.

(2) Where the company has converted any of its shares into stock and given notice of the conversion to the Commission, the list referred to in paragraph 5 of Part I of the Eighth Schedule to this Act shall state the amount of stock held by each of the existing members instead of the amount of shares and the particulars relating to shares required by that paragraph.

(3) The return may, in any year, if the return for either of the two immediately preceding years has given as at the date of that return the full particulars required by the said paragraph 5 of the Eighth Schedule to this Act, give only such of the particulars required by that paragraph as relate to persons ceasing to be or becoming members since the date of the last return and to shares transferred since that date in the amount of stock held by a member.

annual
return by
small
company.
Eighth
Schedule.

372. The annual return by a small company shall contain the matters specified in Part I of the Ninth Schedule to this Act and the return shall be in the form set out in Part II of that Schedule or as near to it as circumstances admit.

annual
return by
company
limited by
guarantee.
Tenth
Schedule.

373. (1) The annual return by a company limited by guarantee shall be in the form prescribed in the Tenth Schedule to this Act or as near to it as circumstances admit.

(2) There shall be annexed to the return a statement containing particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Commission under this Act.

374. The annual return shall be completed within forty-two days after the annual general meeting for the year, whether or not that meeting is the first or only ordinary general meeting of the company in that year, and the company shall forthwith forward to the Commission a copy signed both by a director and by the secretary of the company.

375. (1) Subject to the provisions of section 377 of this Act, there shall be annexed to the annual return—

- (a) a written copy, certified both by a director and by the secretary of the company to be a true copy, of every balance sheet and profit and loss account laid before the company in general meeting held in the year to which the return relates (including every document required by law to be annexed to the balance sheet); and
- (b) a copy certified as aforesaid, of the report of the auditors on, and of the report of the directors accompanying, each such balance sheets.

(2) If any such balance sheet as is mentioned in subsection (1) of the section or document required by law to be annexed does not comply with the requirement of the law as in force at the date of the audit with respect to the form of balance sheets or documents aforesaid, as the case may be, there shall be made such additions to and corrections in the copy as would have been required to be made in the balance sheet or document in order to comply with the requirements, and the fact that the copy has been so amended shall be stated on it.

376. (1) A private company shall send with the annual return required by section 371, 372 or 373 of this Act a certificate signed both by a director and by the secretary of the company that the company has not, since the date of the last return, or, in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company, and, where the annual return discloses the fact that the number of members of the company exceeds fifty, also a certificate so signed that the excess consists wholly of persons who under subsection (3) of section 22 of this Act are not included in reckoning the number of fifty.

(2) A small company shall in addition to the certificate required under subsection (1) of this section, send with the annual return a certificate signed by a director and the secretary that—

- (a) it is a private company limited by shares;
- (b) the amount of its turn-over for that year is not more than ₦2 million or such amount as may be fixed by the Commission;
- (c) its net assets value is not more than ₦1 million or such amount as may be fixed by the Commission;
- (d) none of its members is an alien;
- (e) none of its members is a Government, a Government agent or nominee; and
- (f) the directors among them hold not less than fifty one per cent of the equity share capital of the company.

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377. (1) An unlimited company shall be exempted from the requirements imposed by section 375 of this Act as to documents to be annexed of this Act to the annual return if, but only if—

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- (a) at no time during the period to which the return relates has it been to its knowledge, the subsidiary of a company that was then limited and at no such time to its knowledge, have there been held or exercisable by or on behalf of two or more companies that were limited, shares or powers which had they been held or exercisable by one of them, would have made the company its subsidiary;
- (b) at no such time has it been the holding company of a company that was then limited.

(2) A small company shall also be exempted from the requirements imposed by section 375 of this Act provided that it complies with the provision of section 351 of this Act.

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378. (1) If a company required to comply with any of the provisions of sections 370 to 376 of this Act fails to do so, the company and every director or officer of the company who is in default shall be guilty of an offence and liable to a fine of

₦1,000 in the case of a public company and ₦100 in the case of a private company.

(2) For the purposes of subsection (1) of this section, "officer" includes any person in accordance with those directions or instructions the directors of the company are accustomed to act.

PART XIII—DIVIDENDS AND PROFITS

379. (1) A company may, in general meeting, declare dividends in respect of any year or other period only on the recommendation of the directors.

(2) The company may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

(3) The general meeting shall have power to decrease the amount of dividend recommended by the directors, but shall have no power to increase the recommended amount.

(4) Where the recommendation of the directors of a company with respect to the declaration of a dividend is varied in accordance with subsection (3) of this section by the company in general meeting, a statement to that effect shall be included in the relevant annual return.

(5) Subject to the provisions of this Act, dividends shall be payable to the shareholders only out of the distributable profits of the company.

380. Subject to the company being able to pay its debts as they fall due, the company may pay dividends out of the following profits—

- (a) profits arising from the use of the company's property although it is a wasting assets;
- (b) revenue reserves;
- (c) realised profit on a fixed asset sold, but where more than one asset is sold, the net realised profit on the assets sold.

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aration
payment
dividends.

381. A company shall not declare or pay dividend if there are reasonable grounds for believing that the company is or would be, after the payment, unable to pay its liabilities as they become due.

Unclaimed
dividends.

382. (1) Where dividends are returned to the company unclaimed, the company shall send a list of the names of the persons entitled with the notice of the next annual general meeting to the members.

(2) After the expiration of three months of the notice mentioned in subsection (1) of this section, the company may invest the unclaimed of this section dividend for its own benefit in an investment outside the company and no interest shall accrue on the dividends against the company.

(3) Where dividends have been sent to members and there is an omission to send to some members due to the fault of the company, the dividends shall earn interest at the current bank rate from three months after the date on which they ought to have been posted.

(4) For the purpose of liability, the date of posting the dividend warrant shall be deemed to be the date of payment and proof of whether it has been sent is a question of fact.

Reserve and
capitalisation.

383. (1) The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit; and the directors may also without placing the same to reserve, carry forward any profits which they may think prudent not to distribute.

(2) The company in general meeting may upon the recommendation of the directors resolve that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the company's reserve accounts or to

the credit of the profit and loss account or otherwise available for distribution.

(3) Such sum may be set free for distribution among the members who would have been entitled to dividends in the same proportions on condition that the same be not paid in cash but be applied either in or towards paying up any amounts for the time being unpaid on any shares held by such members respectively or paying up in full unissued shares or debentures of the company to be allotted and distributed to creditors as fully paid up.

(4) The company may decide by a resolution what part is to be distributed in cash or in shares and the directors shall give effect to such resolution.

(5) Share premium account and a capital redemption reserve fund may, for the purposes of this subsection, only be applied in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares.

(6) Where a resolution is under subsections (2) to (5) of this section passed, the directors shall make all appropriations and applications of the undivided profits resolved to be capitalised thereby, and all allotments and issues of fully-paid shares or debentures, if any, and generally do all acts and things required to give effect to it.

(7) The directors shall have power to make such provisions by the issue of fractional certificates or by payment in cash or otherwise as they think fit in the case of shares or debentures becoming distributable in fractions.

(8) Any person may be authorised by the directors to enter on behalf of all the members entitled under this section into an agreement with the company to provide for the allotment to them respectively, credited as fully paid up, of any further shares or debentures to which they may be entitled upon such capitalisation, or (as the case may require) for the payment up by the company on their behalf, of the amounts or any part of the amounts remaining unpaid on their existing shares, and any agreement made under such authority shall be effective and binding on all such members.

employees' shares and profit sharing.

384. If, under his contract of service, an employee is entitled to share in the profits of the company as an incentive, he shall be entitled to share in the profits of the company, whether or not dividends have been declared.

right of the shareholders to sue for dividends.

385. Dividends shall be special debts due to, and recoverable by, shareholders within twelve years, and actionable only when declared.

liability for paying dividend out of capital.

386. (1) All directors who knowingly pay, or are party to the payment of dividend out of capital or otherwise in contravention of this Part of this Act shall be personally liable jointly and severally to refund to the company any amount so paid.

(2) Such directors shall have the right to recover the dividend from shareholders who receive it with knowledge that the company had no power to pay it.

PART XIV—RECEIVERS AND MANAGERS

Appointment of Receivers and Managers

qualification for appointment of receiver or manager.

387. (1) The following persons shall not be appointed or act as receivers or managers of any property or undertaking of any company—

- (a) an infant;
- (b) any person found by a competent court to be of unsound mind;
- (c) a body corporate;
- (d) an undischarged bankrupt, unless he shall have been given leave to act as a receiver or manager of the property or undertaking of the company by the court by which he was adjudged bankrupt;
- (e) a director or auditor of the company;
- (f) any person convicted of any offence involving fraud, dishonesty, official corruption or moral turpitude and who is disqualified under section 254 of this Act.

(2) Any appointment made in contravention of the provisions of subsection (1) of this section shall be void and if any of the persons named in paragraphs (c), (d), (e) and (f) of that

subsection shall act as a receiver or manager, he shall be guilty of an offence and liable to a fine not exceeding ₦2,000 in the case of body corporate or, in the case of an individual to imprisonment for a term not exceeding six months or to a fine not exceeding ₦500.

(3) Where any of the persons mentioned in subsection (1) of this section is at the commencement of this Act acting as a receiver or manager, he may be removed by the court on an application by a person interested.

388. Where an application is made to the court to appoint a receiver on behalf of the debenture holder or other creditors of a company which is being wound up by the court, an official receiver may be appointed.

389. (1) Notwithstanding the provisions of paragraph (d) of subsection (1) of section 209 of this Act, the court may, on the application of a person interested, appoint a receiver or a receiver and manager of the property or undertaking of a company if—

- (a) the principal money borrowed by the company or the interest is in arrears; or
- (b) the security or property of the company is in jeopardy.

(2) A receiver or manager of any property or undertaking of a company appointed by the court shall be deemed to be an officer of the court and not of the company and shall act in accordance with the directions and instructions of the court.

390. (1) A receiver or manager of any property or undertaking of a company appointed out of court under a power contained in any instrument shall, subject to section 393 of this Act, be deemed to be an agent of the person or persons on whose behalf he is appointed and, if appointed manager of the whole or any part of the undertaking of a company he shall be deemed to stand in a fiduciary relationship to the company and observe the utmost good faith towards it in any transaction with it or on its behalf.

(2) A manager as is mentioned in subsection (1) of this section shall—

- (a) act at all times in what he believes to be the best interests of the company as a whole so as to preserve its assets, further its business, and promote the purposes for which it was formed, and in such manner as a faithful, diligent, careful and ordinarily skilful manager would act in the circumstances;
 - (b) in considering whether a particular transaction or course of action is in the best interest of the company as a whole may have regard to the interests of the employees, as well as the members of the company, and, when appointed by, or as a representative of, a special class of members or creditors may give special, but not exclusive, consideration to the interests of that class.
- (3) Nothing contained in the articles of a company, or in any contract, or in any resolution of a company shall relieve any manager from the duty to act in accordance with subsection (2) of this section or relieve him from any liability incurred as a result of any breach of such duty.

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391. A receiver or manager of the property of a company appointed in accordance with the provisions of subsection (1) of section 390 of this Act may apply to the court for direction in relation to any particular matter arising in connection with the performance of his functions, and on any such application, the court may give such directions or make such order declaring the rights of persons before the court or otherwise, as it thinks just.

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392. (1) Where a receiver or manager of the property of a company has been appointed, notice shall be given to the Commission within fourteen days, indicating the terms of and remuneration for the appointment, and every invoice, order for goods or business letter issued by or on behalf of the company, or the receiver or manager or the liquidator of the company being a document on or in which the company's name appears, shall contain a statement that a receiver or manager has been appointed.

(2) If default is made in complying with this section, the company and any of the following persons, who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be guilty of an offence and liable to a fine not exceeding ₹25 for every day during which the default continues.

Duties, powers and liabilities of receivers and managers

393. (1) A person appointed a receiver of any property of a company shall subject to the rights of prior incumbrancers, take possession of and protect the property, receive the rents and profits and discharge all out-goings in respect thereof and realise the security for the benefit of those on whose behalf he is appointed, but unless appointed manager he shall not have power to carry on any business or undertaking.

(2) A person appointed manager of the whole or any part of the undertaking of a company shall manage the same with a view to the beneficial realisation of the security of those on whose behalf he is appointed.

(3) Without prejudice to subsection (1) or (2) of this section, where a receiver or manager is appointed for the whole or substantially the whole of a company's property, the powers conferred on him by the debentures by virtue of which he was appointed shall be deemed to include (except in so far as they are inconsistent with any of the provisions of those debentures) the powers specified in the Eleventh Schedule to this Act.

(4) As from the date of appointment of a receiver or manager, the powers of the directors or liquidators in a members' voluntary winding-up to deal with the property or undertaking over which he is appointed shall cease unless and until the receiver or manager is discharged.

(5) If, on the appointment of a receiver or manager, the company is being wound up under the provision relating to creditors' voluntary winding-up, or the property concerned is in the hands of some other officer of the court, the liquidator or officer shall not be bound to relinquish control of such

property to the receiver or manager except under the order of the court.

liabilities of receivers and managers on contracts.

394. (1) A receiver or manager of any property or undertaking of a company shall be personally liable on any contract entered into by him except insofar as the contract otherwise expressly provides.

(2) As regards contracts entered into by a receiver or manager in the proper performance of his functions, such receiver or manager shall, subject to the rights of any prior incumbrancers, be entitled to an indemnity in respect of liability thereon out of the property over which he has been appointed to act as receiver or manager.

(3) A receiver or manager appointed out of court under a power contained in any instrument shall also be entitled, as regards contracts entered into by him with the express or implied authority of those appointing him, to an indemnity in respect of liability thereon from those appointing him to the extent to which he is unable to recover in accordance with subsection (2) of this section.

power of the court to fix remuneration of receiver or liquidator.

395. (1) The court may, on the application of the company or the liquidator of a company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company.

(2) The powers of the court under subsection (1) of this section shall, where no previous order has been made with respect thereto under that subsection—

- (a) extend to fixing the remuneration for any period before the making of the order or the application therefor;
- (b) be exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application therefor; and
- (c) extend where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that so fixed for that period, to requiring him or his personal representatives to account for the excess or such part thereof as may be specified in the order:

Provided that the power conferred by paragraph (c) of this subsection shall not be exercised as respects any period before the making of the application for the order unless in the opinion of the court there are special circumstances making it proper for the power to be so exercised.

(3) The court may, from time to time, on an application made either by the company or the liquidator or by the receiver or manager, vary or amend an order made under subsection (1) of this section.

(4) This section shall apply whether the receiver or manager has been appointed before or after the commencement of this Act, and to periods before, as well as to periods after, the commencement of this Act.

Procedure after appointment

396. (1) Where a receiver or manager of the whole or substantially the whole of the property of a company (hereafter in this section and in section 397 of this Act referred to as "the receiver") has been appointed on behalf of the holders of any debentures of the company secured by a floating charge, then subject to the provisions of this section and of section 397 of this Act—

- (a) the receiver shall forthwith send notice to the company of his appointment and the terms;
- (b) there shall, within fourteen days after receipt of the notice, or such longer period as may be allowed by the court or by the receiver, be made out and submitted to the receiver in accordance with section 397 of this Act, a statement in the prescribed form as to the affairs of the company; and
- (c) the receiver shall within two months after receipt of the said statement send—
 - (i) to the Commission or to the court a copy of the statement and of any comments he sees fit to make thereon and in the case of the Commission also a summary of the statement and of his comments if any thereon,

(ii) to the company a copy of any such comments as aforesaid or if he does not see fit to make any comment, a notice to that effect, and

(iii) to any trustees for the debenture holders on whose behalf he has been appointed and, so far as he is aware of their addresses, to all such debenture holders a copy of the said summary.

(2) The receiver shall within two months, or such longer period as the court may allow after the expiration of the period of twelve months from the date of his appointment and of every subsequent period of twelve months, and within two months or such longer period as the court may allow after he ceases to act as receiver or manager of the property of the company, send to the Commission, to any trustees for the debenture holders of the company on whose behalf he was appointed, to the company and (so far as he is aware of their addresses) to all such debenture holders an abstract in the prescribed form showing his receipts and payments during that period of twelve months, or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract relate up to the date of his so ceasing, and the aggregate amounts of his receipts and of his payments during all preceding periods since his appointments.

(3) Where the receiver is appointed under the powers contained in any instrument, this section shall have effect—

(a) with the omission of the references to the court in subsection (1) of this section; and

(b) with the substitution for the references to the court in subsection (2) of this section, of references to the Commission; and in any other case references to the court shall be taken as referring to the court by which the receiver was appointed.

(4) Subsection (1) of this section shall not apply in relation to the appointment of a receiver or manager to act with an existing receiver or manager or in place of a receiver or manager dying or ceasing to act, except that, where that subsection applies to a receiver or manager who dies or ceases to act before it has been fully complied with, the references in

paragraphs (b) and (c) thereof to the receiver shall subject to subsection (5) of this section, include references to his successor and to any continuing receiver or manager and nothing in this subsection shall be taken as limiting the meaning of the expression "the receiver" where used in, or in relation to, subsection (2) of this section.

(5) This section and section 397 of this Act, where the company is being wound up, shall apply notwithstanding that the receiver or manager and the liquidator are the same person.

(6) Nothing in subsection (2) of this section shall be taken to prejudice the duty of the receiver to render proper accounts of his receipts and payments to the persons to whom, and at the times at which he may be required to do so apart from that subsection.

(7) If the receiver makes default in complying with the requirements of this section, he shall be guilty of an offence and liable to a fine of ₹25 for every day during which the default continues.

397. (1) The statements as to the affairs of a company required by section 396 of this Act, to be submitted to the receiver (or his successor) shall show as at the date of the receiver's appointment, the particulars or the company's assets, debts and liabilities, the names, residences and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be prescribed.

(2) The statement shall be submitted by, and be verified by affidavit of one or more of the persons who are at the date of the receiver's appointment, the directors and by the person who is at that date the secretary of the company, or by such of the persons hereafter in this subsection mentioned as the receiver (or his successor), subject to the direction of the court, may require to submit and verify the statement, that is to say, persons—

- (a) who are or have been officers of the company;
- (b) who have taken part in the formation of the company at any time within one year before the date of the receiver's appointment;
- (c) who are in the employment of the company, or have been in the employment of the company within the year, and are in the opinion of the receiver capable of giving the information required;
- (d) who are or have been within the said year officers of or in the employment of a company which is, or within the said year was, an officer of the company to which the statement relates.

(3) Any person making the statement and affidavit shall be allowed, and shall be paid by the receiver (or his successor) out of his receipts, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the receiver (or his successor) may consider reasonable, subject to an appeal to the court.

(4) Where the receiver is appointed under the powers contained in any instrument, this section shall have effect with the substitution for references to the court of references to the commission and references to an affidavit, of references to a statutory declaration; and in any other case references to the court shall be taken as referring to the court by which the receiver was appointed.

(5) If any person without reasonable excuse makes default in complying with the requirements of this section, he shall be guilty of an offence and liable to a fine of ₦50 for every day during which the default continues.

(6) References in this section to the receiver's successor shall include a continuing receiver or manager.

Accounts by receiver or manager

398. (1) Except where section 396(2) of this Act applies, every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument shall, within one month or such longer periods as the Commission may allow, after the expiration of the period

of six months from the date of his appointment, and of every subsequent period of six months, and within one month after he ceases to act as receiver or manager, deliver to the Commission for registration an abstract in the prescribed form showing his receipts and his payments during that period of six months, or where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract relate up to the date of his ceasing, and the aggregate amount of his receipts and of his payments during all preceding periods since his appointment.

(2) Every receiver or manager who makes default in complying with the provisions of this section shall be guilty of an offence and liable to a fine of ₦25 for every day during which the default continues.

Duty as to returns

399. (1) If any receiver or manager of the property of a company having—

- (a) made default in filing, delivering or making any returns, account or other document, or in giving any notice, which a receiver or manager is by law required to file, delivers, makes or gives or fails to make good the default within fourteen days after the service on him of a notice requiring him to do so; or
- (b) been appointed under the powers contained in any instrument has, after being required at any time by the liquidator of the company so to do, fails to render proper accounts of his receipts and payment and to vouch the same and to pay over to the liquidator the amount properly payable to him, the court may, on an application made for the purpose, make an order directing the receiver or manager, as the case may be; to make good the default within such time as may be specified in the order.

(2) In the case of any such default as is mentioned in paragraph (a) of subsection (1) of this section, an application for the purposes of this section may be made by any member or by the Commission, and in the case of any such default as is mentioned in paragraph (b) of that subsection, the appli-

cation shall be made by the liquidator, and in either case the order may provide that all costs shall be borne by the receiver or manager, as the case may be.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on receivers in respect of any such default as is mentioned in subsection (1) of this section.

Construction of references

400. It is hereby declared that, except where the context otherwise requires—

- (a) any reference in this Act to a receiver or manager of the property of a company, or to a receiver thereof, includes a reference to a receiver or manager, or as the case may be to a receiver of part only of that property and to a receiver only of the income arising from that property or from part thereof; and
- (b) any reference in this Act to the appointment of a receiver or manager under powers contained in any instrument, includes a reference to an appointment made under powers which, by virtue of any enactment, are implied in and have effect as if contained in an instrument.

PART XV.—WINDING-UP OF COMPANIES

CHAPTER 1—Preliminary

Modes of Winding-Up

401. (1) The winding-up of a company may be effected—

- (a) by the court; or
- (b) voluntarily; or
- (c) subject to the supervision of the court.

(2) The provisions of this Act with respect to winding-up shall apply, unless the contrary appears, to the winding-up of a company in any of those modes.

Contributories

402. In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company as provided in section 92 of this Act.

403. The term “contributory” means every person liable to contribute to the assets of a company in the event of its being wound up and for the purposes of all proceedings for determining and all proceedings prior to the final determination of the persons who are to be deemed contributories, the expression shall include any person alleged to be a contributory.

404. The liability of a contributory shall create a debt of the nature of a speciality accruing and due from him the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

405. (1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives and his heirs and devisees, shall be liable in due course of administration to contribute to the assets of the company in discharge of his liability and they shall be contributories accordingly.

(2) Where the personal representatives are placed on the list of contributories, the heirs or devisees need not be added; but they may be added as and when the court thinks fit.

(3) If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the whole or any part of the estate of the deceased contributory, and for compelling payment out of it of the money due.

406. (1) If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories, then—

- (a) his trustee in bankruptcy shall represent him for all the purposes of the winding-up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any

money due from the bankrupt in respect of his liability to contribute to the assets of the company; and

- (b) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

(2) The provisions of this section shall extend and apply with all necessary changes to the case of an insolvent person.

CHAPTER 2—WINDING-UP BY THE COURT

Jurisdiction

407. (1) The court having jurisdiction to wind-up a company shall be the Federal High Court within whose area of jurisdiction the registered office or head office of the company is situate.

(2) For the purpose of this section, "registered office or head office" means the place which has longest been the registered office or head office of the company during the six months immediately preceding the presentation of the petition for winding-up.

Cases in which company may be wound up by Court

408. A company may be wound up by the court if—

- (a) the company has by special resolution resolved that the company be wound up by the court;
- (b) default is made in delivering the statutory report to the Commission or in holding the statutory meeting;
- (c) the number of members is reduced below two;
- (d) the company is unable to pay its debts;
- (e) the court is of opinion that it is just and equitable that the company should be wound up.

409. A company shall be deemed to be unable to pay its debts if—

- (a) a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding ₦2,000 then due has served on the company, by leaving it at its registered office or head office, a demand under his

hand requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; or

- (b) execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
- (c) the court, after taking into account any contingent or prospective liability of the company is satisfied that the company is unable to pay its debts.

Petitions for winding-up and effects thereof

410. (1) An application to the court for the winding-up of a company shall be by petition presented subject to the provisions of this section, either by—

- (a) the company;
- (b) a creditor, including a contingent or prospective creditor of the company;
- (c) the official receiver;
- (d) a contributory;
- (e) a trustee in bankruptcy to, or a personal representative of a creditor or contributory;
- (f) the Commission under section 323 of this Act;
- (g) a receiver if authorised by the instrument under which he was appointed; or
- (h) by all or any of those parties, together or separately.

(2) Notwithstanding anything in subsection (1) of this section—

- (a) a contributory shall not be entitled to present a petition for winding-up a company unless—

- (i) the number of members is reduced below two; or
- (ii) the shares in respect of which he is contributory or some of them, were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding-up, or have devolved on him through the death of a former holder;

- (b) a winding-up petition shall not, if the ground of the petition is default in delivering the statutory report to the Commission or in holding the statutory meeting, be presented by any person except a shareholder, or before the expiration of fourteen days after the last day on which the meeting should have been held;
- (c) the court shall not hear a winding-up petition presented by a contingent or prospective creditor until sufficient security for costs has been given, and a *prima facie* case for winding-up has been established to its satisfaction;
- (d) in any case falling within section 320 or 321 of this Act (proceedings on inspector's reports) or paragraph (e) of section 408 of this Act, a winding-up petition may be presented by the Commission with the approval of the Attorney-General of the Federation.

(3) Where a company is being wound up voluntarily or subject to supervision, a winding-up petition may be presented by the official receiver attached to the court, as well as by any other person authorised in that behalf under the other provisions of this section; but the court shall not make a winding-up order on any such petition unless it is satisfied that the voluntary winding-up or winding-up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

(4) A contributory shall be entitled to present a winding-up petition notwithstanding that there may not be assets available on the winding-up for distribution to contributories.

411. (1) On hearing a winding-up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it thinks fit; but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) Unless it appears to the court that some other remedy is available and that the petitioners are acting unreasonably in seeking a winding-up order instead of pursuing that remedy, the court, on hearing a petition by contributory members of

a company for relief by winding-up on the ground that it would be just and equitable so to do, shall make the order as prayed if of opinion that the petitioners are entitled to the relief sought.

(3) Where a petition is presented on the ground of default in delivering the statutory report to the Commission or in holding the statutory meeting, the court instead of making a winding-up order, may direct the delivery of the statutory report or the holding of a meeting as the case may require, and order the costs to be paid by the persons who, in the opinion of the court, are responsible for the default.

412. Where a winding-up petition has been presented and an action or other proceeding against a company is instituted or pending in any court (in this section referred to as "the court concerned"), the company or any creditor or contributory may, before the making of the winding-up order, apply to the court concerned for an order staying proceedings; and the court concerned may, with or without imposing terms, stay or restrain proceedings, or if it thinks fit, refer the case to the court hearing the winding-up petition.

413. In a winding-up by the court, any disposition of the property of the company, including things in action and any transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding-up shall, unless the court otherwise orders, be void.

414. Where a company is being wound up by the court, any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding-up shall be void.

Commencement of Winding-up

415. (1) Where, before the presentation of a petition for the winding-up of a company by the court, a resolution has been passed by the company for voluntary winding-up, the winding-up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the court, on proof of fraud or mistake, thinks fit

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otherwise to direct, all proceedings taken in the voluntary winding-up shall be deemed to have been validly taken.

(2) In any other case, the winding-up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding-up.

Consequences of Winding-up order

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^{n.} **416.** On the making of a winding-up order, a copy of the order shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Commission which shall make a minute thereof in its books relating to the company.

^p **417.** If a winding-up order is made or a provisional liquidator is appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court given on such terms as the court may impose.

^p **418.** An order for winding-up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

Official Receiver

^{of} **419.** (1) For the purpose of this Act and so far as it relates to the winding-up of companies by the court, "official receiver" means the Deputy Chief Registrar of the Federal High Court or an officer designated for the purpose by the Chief Judge of that Court.

(2) Any such officer shall, for the purpose of his duties under this Act, be styled "the official receiver".

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^{to} **420.** (1) Where the court has made a winding-up order or appointed a provisional liquidator there shall, unless the court thinks fit to order otherwise and so orders, be made out and submitted to the official receiver statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts and liabilities, the names, residences and occupations of its creditors the

securities held by them respectively, the dates when the securities were respectively given the list of members and the list of charges and such further or other information as may be prescribed or as the official receiver may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and the person who as at that date the secretary of the company, or by such of the persons mentioned in this subsection as the official receiver, subject to the direction of the court, may require to submit and verify the statement, that is to say persons who—

- (a) are or have been officers of the company;
- (b) have taken part in the formation of the company at any time within one year before the relevant date;
- (c) have been or are in the employment of the company within the said year, and are in the opinion of the official receiver capable of giving the information required;
- (d) are or have been within the said year officers of or in the employment of a company which is, or within the said year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within fourteen days from the relevant date or within such extended time as the official receiver or the court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official receiver or provisional liquidator, as the case may be, out of the assets of the company such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the court.

(5) If any person without reasonable excuse, makes default in complying with the requirements of this section, he shall be guilty of an offence and liable to a fine of ₦25 for every day during which the default continues.

(6) Any person stating himself in writing to be a creditor contributory of the company shall be entitled by himself or by his agent at all reasonable times, on a payment of the prescribed fee to inspect the statement submitted in pursuance of this section, and to a copy of or extract from it.

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of contempt of court and shall, on the application of the liquidator or of the official receiver, be punishable accordingly.

(8) In this section, the expression "the relevant date" means, in a case where a provisional liquidator is appointed, the date of his appointment and in a case where no such appointment is made, the date of the winding-up order.

421. (1) If a winding-up order is made, the official receiver shall as soon as practicable after receipt of the statement to be submitted under section 420 of this Act or where the court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the court—

- (a) as to the amount of capital issued, subscribed and paid up, and the estimated amount of assets and liabilities; and
- (b) if the company has failed, as to the causes of the failure; and
- (c) whether, in his opinion, further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company.

(2) The official receiver may if he thinks fit, make further reports, stating the manner in which the company was formed and whether in his opinion fraud has been committed by any person in its promotion or formation, or by any officer of the company in relation to the company since its formation and the reports may include any other matters which, in his opinion, it is desirable to bring to the notice of the court.

(3) If any further report under this section indicates the commission of fraud, the court shall have the further powers provided in section 450 of this Act (which confers authority to order public examination of certain officials).

Liquidators

422. (1) The court may appoint a liquidator or liquidators for the purpose of conducting the proceedings in winding-up a company and performing such duties in reference thereto as the court may impose and where there is a vacancy, the official receiver shall by virtue of his office, act as liquidator until such time as the vacancy is filled.

(2) At any time after the presentation of a petition and before the making of a winding-up order, the appointment shall be provisional and the court making the appointment may limit and restrict the powers of the liquidator by the order appointing him.

(3) In the application of the foregoing provisions of this section—

- (a) if a provisional liquidator is to be appointed before the making of a winding-up order, the official receiver or any other fit person may be so appointed;
- (b) on the making of a winding-up order, if no liquidator is appointed, the official receiver shall by virtue of his office become the liquidator;
- (c) the official receiver in his capacity as provisional liquidator shall, and in any other case may, summon meetings of creditors and contributories of the company to be held separately for the purpose of determining whether or not an application is to be made to the court for appointing a liquidator in place of the official receiver;
- (d) if a person other than the official receiver is appointed liquidator he shall not be capable of acting in that capacity until he has notified his appointment to the Commission and given security in the prescribed manner to the satisfaction of the court.

(4) If more than one liquidator of a company is appointed by the court, the court shall declare whether anything by this Act required or authorised to be done by a liquidator is to be done by all or any one or more of them.

(5) A liquidator appointed by the court may resign, or, on cause shown be removed by the court; and any vacancy in the office of a liquidator so appointed shall be filled by the court.

(6) Where a person other than the official receiver is appointed a liquidator, he shall receive salary in an amount, or remuneration by way of percentage or otherwise, as the court may direct; and, if more such persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the court directs.

(7) Where a liquidator of a company is appointed, he shall, after his individual name—

- (a) if he is the official receiver be described as “official receiver and liquidator of (*add here name of the company*)”; and
- (b) in any other case be described as “liquidator of (*add here name of the company*)”.

(8) The acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

(9) If a liquidator is appointed under this section, all the powers of the directors shall cease, except so far as the court may by order sanction the continuance thereof.

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423. In a winding-up by the court, the liquidator shall take into his custody, or under his control, all the property and choses in action to which the company is or appears to be entitled.

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424. Where a company is being wound up by the court, the court may on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name, and thereupon, but subject to the requirements or registration under any particular enactment, the property to which the order relates shall vest accordingly; and the liquidator may, after giving such indemnity if any, as the court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or

defend for the purpose of effectually winding-up the company and recovering its property.

425. (1) The liquidator in a winding-up by the court shall have power, with the sanction either of the court or of the committee of inspection, to— Pow
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- (a) bring or defend any action or other legal proceeding in the name and on behalf of the company;
- (b) carry on the business of the company so far as may be necessary for its beneficial winding-up;
- (c) appoint a legal practitioner or any other relevant professional to assist him in the performance of his duties;
- (d) pay any classes of creditors in full;
- (e) make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;
- (f) compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding-up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect thereof.

(2) The liquidator in winding-up by the court shall have power to—

- (a) sell the property of the company of whatever nature by public auction or private contract, with power to transfer the whole thereof to any person or company or to sell the same in parcels;

- (b) do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the company's seal;
- (c) prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors;
- (d) draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business;
- (e) raise on the security of the assets of the company any money requisite;
- (f) take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself;
- (g) appoint an agent to do any business which the liquidator is unable to do himself; and
- (h) do all such other things as may be necessary for winding-up the affairs of the company and distributing its assets.

(3) The exercise by the liquidator in a winding-up by the court of the powers conferred by this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

426. If during the winding-up of a company by the court a person other than the official receiver is appointed liquidator, he shall give the official receiver such information and access to and facilities for inspecting the books and documents of the company, and generally any aid requisite or necessary for enabling that officer to perform his duties under this Act.

427. (1) Subject to the provisions of this Act, the liquidator of a company being wound up by the court shall, in the administration and distribution of the assets of the company among its creditors, have regard to directions given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection; so however that directions given by the creditors or contributories at any general meeting shall, in case of conflict, override directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories by resolution either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one tenth in value of the creditors or contributories as the case may be.

(3) The liquidator may apply to the court in the manner prescribed for directions in relation to any particular matter arising under the winding-up.

(4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) Any persons aggrieved by any act or decision of the liquidator may apply to the court for such order in the premises as it thinks just; and the court may confirm, reverse, or modify the act or decision.

428. (1) Every liquidator of a company being wound up by the court shall, in such manner and at such times as the Commission directs, pay moneys received by him into the public fund of the Federation kept by the Commission under

and for the purposes of this Act and known as "the Companies Liquidation Account", and the Accountant-General of the Federation shall furnish him with a certificate of receipt for the money so paid:

Provided that, if the committee of inspection satisfies the Commission that for the purpose of carrying on the business of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any bank, the Commission shall, on the application of the committee of inspection, authorise the liquidator to make his payments into and out of such bank, in Nigeria as the committee may select, and thereupon those payments shall be made in the prescribed manner.

(2) If the liquidator of a company being wound up as aforesaid, at any time retains for more than ten days an amount in excess of either ₦500 or, in any particular case, such other amount as the Commission may approve, and fails to satisfy the Commission as to the need for the retention beyond that time, the liquidator shall pay interest on the amount so retained in excess, at the rate of twenty *per cent* per annum, and shall be liable to—

- (a) disallowance of the whole or such part of his remuneration as the Commission thinks fit; and
- (b) removal from office,

and in addition, he shall be liable to pay any expenses occasioned by the retention.

(3) A liquidator of a company which is being wound up by the court shall not pay any sums received by him as liquidator into his private banking account.

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429. (1) Every liquidator of a company being wound up by the court shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the Commission an account of his receipts and payments as liquidator.

(2) The account shall be in duplicate in the prescribed form, and shall be verified by a statutory declaration in the prescribed form.

(3) The Commission shall cause the account to be audited, and for the purpose of the audit, the liquidator shall furnish the Commission with such vouchers and information as the Commission may require, and the Commission may at any time require the production of, and may inspect, any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy shall be filed and kept by the Commission, and the other copy shall be filed with the court and each copy shall be open to inspection by any creditor or other person interested, on payment of the prescribed fee.

(5) The Commission shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and contributory.

430. Every liquidator of a company which is being wound up by the court shall, in the manner prescribed, keep proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may subject to the control of the court, personally or by his agent inspect any such books.

431. (1) Where the liquidator of a company being wound up by the court has realised all the property of the company, or so much of it as may, in his opinion, be realised without needlessly protracting the liquidation and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Commission shall, on the application of the liquidator, cause a report on the accounts of the liquidator to be prepared.

(2) The Commission shall consider the report referred to in subsection (1) of this section together with any objection that may be raised by any creditor, or contributory, or person interested against the release of the liquidator, and may grant

or withhold the release as it deems fit subject nevertheless to an appeal to the court.

(3) If the release of a liquidator is withheld, the court may, on the application of any creditor, or contributory, or person interested make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(4) An order of the Commission releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator; but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(5) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

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432. (1) The Commission shall take cognisance of the conduct of liquidators of companies which are being wound up by the court and if a liquidator does not faithfully perform his duties and duly observe all the requirement imposed on him by any enactment, or otherwise with respect to the performance of his duties, or if any complaint is made to the Commission by any creditor or contributory in regard thereto, the Commission shall inquire into the matter, and may take such action thereon as it thinks fit, including the direction of a local investigation of the books and vouchers of the liquidator.

(2) The Commission may at any time require the liquidator of a company being wound up by the court to answer any inquiry in relation to any winding-up in which he is engaged and if the Commission thinks fit, it may apply to the court to examine the liquidator or any other person on oath concerning the winding-up.

Committee of inspection, special manager, etc.

433. (1) Where a winding-up order is made by the court, it shall be the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not to apply to the court for an order appointing a liquidator in place of the official receiver, to determine whether or not application should be made to the court for the appointment of a committee of inspection to act with the liquidator, and who are to be members of the committee, if the appointment is made.

(2) The court may make any appointment and order required to give effect to any determination under this section and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matters aforesaid, the court shall decide the difference and make any order it thinks necessary.

434. (1) A committee of inspection appointed under this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories or as, in case of difference, may be determined by the court.

(2) A committee of inspection shall meet at the time or times appointed, so however that there shall be a meeting at least once in every month during its existence; but the liquidator or any member of the committee may convene a meeting as and when necessary.

(3) A meeting of a committee of inspection shall be deemed convened if a majority of members are present; but at any such meeting the committee may act by a majority of the members present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt or compounds or arranges with his creditors or is absent from five consecutive meetings of the committee without leave of those members who together with himself represent the

creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories, of which seven days notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the committee, the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy:

Provided that if the liquidator, having regard to the position in the winding-up, is of the opinion that it is unnecessary for the vacancy to be filled he may apply to the court and the court may make an order that the vacancy shall not be filled, or shall not be filled except in such circumstances as may be specified in the order.

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

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435. Where in the case of winding-up there is no committee of inspection, the Commission may, on the application of the liquidator, if he thinks fit, do any act or thing or give any direction or permission which is by this Act authorised or required to be done or given by the committee.

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436. (1) Where the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court for an order appointing a special manager to act during such time as the court may direct, with such powers, including those of a receiver or manager, as may be entrusted to him by the court, and the court may make any order necessary.

(2) A special manager appointed under this section shall receive remuneration as fixed by the court, and shall give security and account in such manner as the Commission directs.

437. It is hereby declared that where application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company being wound up by the court, the official receiver may be so appointed.

General powers of court in case of winding-up by court

438. (1) The court may at any time after an order for winding-up, on the application either of a liquidator or the official receiver or any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding-up ought to be stayed, make an order staying the proceedings either altogether or for a limited time, on such terms and conditions as the court thinks fit.

(2) The court may, at any time after an order for winding-up, on the application either of the liquidator or a creditor, and after having regard to the wishes of the creditors and contributories, make an order directing that the winding-up, ordered by the court, shall be conducted as a creditors voluntary winding-up and if the court does so the winding-up shall be so conducted.

(3) On any application under this section, the court may, before making an order, require the official receiver to furnish to the court a report with respect to any facts or matters which are in his opinion relevant to the application.

(4) A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Commission, which shall make a minute of the order in its books relating to the company.

(5) If default is made in lodging a copy of an order made under this section with the Commission as required by subsection (4) of this section, every officer of the company or other person who knowingly authorises or permits the default shall be guilty of an offence punishable by a daily default fine of ₦25.

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439. (1) As soon as may be after making a winding-up order, the court shall settle a list of contributories, and may rectify the register of members in all cases where rectification is required in pursuance of this Act, and the court shall cause the assets of the company to be collected, and applied in discharge of its liabilities:

Provided that where it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.

(2) In settling the list of contributories, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

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440. The court may, at any time after making a winding-up order, require any contributory for the time being on the list of contributories and any trustee, receiver, banker, agent, or officer of the company to pay, deliver, convey, surrender or transfer forthwith, or within such time as the court directs, to the liquidator any money, property, or books and papers in his hands, to which the company is *prima facie* entitled.

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441. (1) The court may, at any time after making a winding-up order make an order on any contributory for the time being on the list of contributories to pay, in the manner directed by the order; and money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) The court making an order under this section—

(a) in the case of an unlimited company, may allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company of any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit;

(b) in the case of a limited company, may make to any director or manager whose liability is unlimited or to

his estate, the like allowance as in paragraph (a) of this subsection.

(3) In the case of any company, limited or unlimited, when all the creditors are paid in full, the money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

442. (1) The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding-up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

(2) In making a call under this section, the court shall take into consideration the probability that some of the contributories may fail, wholly or partially, to pay the call.

443. (1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay it into the company's liquidation account referred to in section 428 of this Act to the account of the liquidator instead of direct to the liquidator and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) Moneys and securities paid or delivered into the company's liquidation account in the event of a winding-up by the court shall be subject in all respects to any relevant order of the court.

444. (1) Any order made by the court on a contributory shall, subject to any right of appeal, be conclusive evidence that money, if any thereby appearing to be due or ordered to be paid, is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings, except proceedings against the land of a deceased

contributory, when the order shall be only *prima facie* evidence for the purpose of charging his land, unless his heirs or devisees were on the list of contributories at the time the order was made.

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445. The court may fix a time or times within which creditors are to prove their debts or claims, or be excluded from the benefit of any distribution made before those debts are proved.

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446. The court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

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447. (1) The court may, at any time after making a winding-up order, make such order for inspection of the books and papers of the company by creditors and contributories as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

(2) Nothing in this section shall be taken as excluding or restricting any statutory rights of a government department or person acting under the authority of a government department.

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448. The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding-up in such order of priority as the court thinks just.

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449. (1) The court may, at any time after the appointment of a provisional liquidator or the making of a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person who the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company.

(2) The court may examine on oath any person so summoned concerning the matters aforesaid either by word of

mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The court may require any person summoned under subsection (1) of this section, to produce books and papers in his custody or power relating to the company, but, where any such person claims a lien on books or papers produced by him, the production shall be without prejudice to the lien, and the court shall have jurisdiction in the winding-up to determine all questions relating to that lien.

(4) If any person so summoned as aforesaid after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having lawful impediment (made known to the court at the time of its sitting and allowed by it), the court may cause him to be apprehended and brought before the court for examination.

450. (1) Where an order is made for winding-up a company by the court and the official receiver makes a further report under this Act stating that in his opinion a fraud has been committed by any person in the promotion or formation, of the company, or by any director or other officer of the company in relation to the company since its formation, the court may, after consideration of the report, direct that any person who has taken any part in the promotion or formation of the company, or has been a director or officer of the company, shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealing as director or officer thereof.

(2) The official receiver shall take part in the examination, and for that purpose may, if specially authorised by the Commission in that behalf, employ a legal practitioner.

(3) The liquidator, where the official receiver is not the liquidator and any creditor or contributory, may also take part in the examination either personally or by a legal practitioner.

(4) The court may put such questions to the person examined as the court thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the court may put or allow to be put to him.

(6) A person ordered to be examined under this section shall at his own cost, before his examination be furnished with a copy of the official receiver's report, and may at his own cost employ a legal practitioner who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him:

Provided that if any such person applies to the court to be exculpated from any charges made or suggested against him, it shall be the duty of the official receiver to appear on the hearing of the application and call the attention of the court to any matters which appear to the official receiver to be relevant, and if the court after hearing any evidence given or witnesses called by the official receiver, grants the application, the court may allow the applicant such costs as in its discretion it may think fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The court may, if it thinks fit, adjourn the examination from time to time.

(9) An examination under this section may, if the court so directs, and subject to general rules made under section 453 of this Act, be held before any magistrate, and the powers of the court under this section as to the conduct of the examination but not as to costs, may be exercised by the magistrate before whom the examination is held.

451. The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit Nigeria or otherwise to abscond, or to remove or conceal any of his property for the purpose of evading payment of calls, or of avoiding examination respecting the affairs of the company, may cause

the contributory to be arrested, and his books and papers and movable personal property, to be seized, and him and them to be safely kept until such time as the court may order.

452. Any powers by this Act conferred on the court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

453. (1) Provision may be made by rules for enabling or requiring all or any of the powers and duties conferred and imposed on the court by this Act, in respect of the matters following, to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court, that is to say, the powers and duties of the court in respect of—

- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
- (b) the settling of lists of contributories and the rectifying of the register of members where required, and the collecting and applying of the assets;
- (c) requiring delivery of property or documents to the liquidator;
- (d) the making of calls;
- (e) the fixing of a time within which debts and claims shall be proved.

(2) Nothing in this section shall authorise the liquidator, without the special leave of the court, to rectify the register of members, or, without either the special leave of the court or the sanction of the committee of inspection, to make any call.

454. (1) If the affairs of a company have been fully wound up and the liquidator makes an application in that behalf, the court shall order the dissolution of the company and the company shall be dissolved accordingly from the date of the order.

(2) A copy of the order shall, within fourteen days from the date when made, be forwarded by the liquidator to the

Commission who shall make in its books a minute of the dissolution of the company.

(3) If the liquidator makes default in complying with the requirements of this section, he shall be guilty of an offence and liable to a fine of ₹25 for every day during which he is in default.

Enforcement of and appeals from orders

455. An order made by a court under this Act may be enforced in the same manner as orders made in any action pending therein.

456. Subject to rules of court, an appeal from any order or decision made or given in the winding-up of a company by the court under this Act shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the court in cases within its ordinary jurisdiction.

CHAPTER 3—*Voluntary Winding-up*

Resolutions for and commencement of voluntary winding-up

457. A company may be wound up voluntarily—

(a) when the period, if any, fixed for the duration of the company by the articles expires, or the event, if any, occurs, on occurrence of which the articles provided that the company is to be dissolved and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily,

(b) if the company resolves by special resolution that the company be wound up voluntarily,

and references in this Act to a “resolution for voluntary winding-up” means a resolution passed under any of the paragraphs of this section.

458. (1) If a company passes a resolution for voluntary winding-up it shall, within fourteen days after the passing of the resolution give notice of the resolution by advertisement in the *Gazette* or two daily newspapers and to the Commission.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine of ₹500 and for the purposes of this subsection the liquidator of the company shall be deemed to be an officer of the company.

459. A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution for voluntary winding-up.

Consequences of voluntary winding-up

460. In the case of a voluntary winding-up, the company shall, from the commencement of the winding-up, cease to carry on its business, except so far as may be required for the beneficial winding-up thereof:

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

461. Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding-up shall be void.

Declaration of solvency

462. (1) Where on or after the commencement of this Act, it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors, may at a meeting of the directors make a statutory declaration, to the effect that they have made a full inquiry into the affairs of the company and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within such period, not exceeding twelve months from the commencement of the winding-up, as is specified in the declaration.

(2) A declaration made as aforesaid shall have no effect for the purposes of this Act unless—

(a) it is made within the five weeks immediately preceding the date of the passing of the resolution for winding-up

the company and is delivered to the Commission for registration before that date; and

(b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.

(3) Any director of a company making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration, shall be guilty of an offence and liable on conviction to a fine of ₦1,500 or to imprisonment for a term of three months, or to both; and if the company is wound up in pursuance of a resolution passed within the period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion.

(4) A winding-up in any case where a declaration has been made and delivered in accordance with this section, shall in this Act be referred to as "a members' voluntary winding-up" and a winding-up in any case where a declaration has not been made and delivered as aforesaid shall in this Act be referred to as "a creditors' voluntary winding-up".

(5) Subsections (1) to (3) of this section shall not apply to a winding-up commenced before the commencement of this Act.

Provisions applicable to a members' voluntary winding-up

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P- 463. The provisions following, that is to say, sections 464 to 470 of this Act shall, subject to the alternative provision in section 469 of this Act, apply in relation to a members' voluntary winding-up.

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s. 464. (1) The company in general meeting shall appoint one or more liquidators for the purpose of winding-up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

(2) If a liquidator is appointed under this section, all the powers of the directors shall cease, except so far as the

company in general meeting or the liquidator sanctions the continuance thereof.

465. (1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy; and for that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(2) The general meeting shall be held in the manner provided by this Act or by the articles; or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

466. (1) If, in the case of a winding-up commenced after the commencement of this Act, the liquidator is at any time of opinion that the company will not be able to pay its debts in full within the period stated in the declaration under section 462 of this Act, he shall forthwith summon a meeting of the creditors, and lay before the meeting a statement of the assets and liabilities of the company.

(2) If the liquidator fails to comply with this section, he shall be guilty of an offence and liable to a fine of ₦500.

467. (1) Subject to the provisions of section 469 of this Act, in the event of the winding-up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding-up, and of each succeeding year, or at the first convenient date within three months from the end of the year or such longer period as the Commission may allow, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding-up during the preceding year.

(2) If the liquidator fails to comply with this section, he shall be guilty of an offence and liable to a fine of ₦50.

468. (1) Subject to the provisions of section 469 of this Act, as soon as the affairs of the company are fully wound up, the liquidator shall prepare an account of the winding-up,

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showing how the winding-up has been conducted and the property of the company has been disposed of; and when the account is prepared, he shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by notice published in the *Gazette* and in some newspaper printed in Nigeria and circulating in the locality where the meeting is being called, specifying the time, place and object thereof, and published one month at least before the meeting.

(3) Within seven days after the meeting, the liquidator shall send to the Commission a copy of the account, and shall make a return to it of the holding of the meeting and of its date and if the copy is not sent or the return is not made in accordance with this subsection, the liquidator shall be guilty of an offence and liable to fine of ₦15 for every day during which the default continues:

Provided that, if a quorum is not present at the meeting, the liquidator shall in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made, the provisions of this subsection as to the making of the return shall be deemed to have been complied with.

(4) The Commission on receiving the account and the appropriate return shall forthwith register them, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved:

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the Commission an office copy of the order for registration, and if that person fails so to do shall be liable to a fine of ₦20 for every day during which the default continues.

(6) If the liquidator fails to call a general meeting of the company as required by this section, he shall be guilty of an offence liable to a fine of ₦50.

469. Where section 466 of this Act has effect, sections 477 and 479 thereof shall apply to the winding-up to the exclusion of the two last foregoing sections, as if the winding-up were a creditors' voluntary winding-up and not a members' voluntary winding-up:

Provided that the liquidator shall not be required to summon a meeting of creditors under section 477 of this Act at the end of the first year from the commencement of the winding-up, unless the meeting held under section 466 of this Act is held more than three months before the end of that year.

470. (1) The liquidator in a members' voluntary winding-up shall keep proper records and books of account with respect to his acts and dealings and of the conduct of the winding-up and of all receipts and payments by him and so long as he carries on the business of the company, shall keep a distinct account of the trading.

(2) In the event of the winding-up continuing for more than a year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding-up and of each succeeding year, or at the first convenient date within three months of the end of the year or such longer period as the Commission may allow, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding-up during the preceding year and of the trading during such time as the business of the company has been carried on, and within twenty-eight days thereafter shall send a copy of such accounts to the Commission for registration.

(3) So soon as the affairs of the company are fully wound up, the liquidator shall prepare and send to every member of the company final accounts of the winding-up showing how the winding-up has been conducted, the result of the trading during such time as the business of the company has been varied on, and how the property of the company has been

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disposed of, and thereupon shall convene a general meeting of the company for the purpose of laying before it such accounts and of giving an explanation thereof.

(4) Within twenty-eight days after the meeting referred to in the immediately preceding subsection, the liquidator shall send to the Commission for registration copies of the accounts laid before the meeting and a statement of the holding of the meeting and of its date:

Provided that if a quorum was not present at the meeting the liquidator, in lieu of the statement herein before mentioned, shall send a statement that the meeting was duly convened and that no quorum was present thereat.

(5) The records, books and accounts referred to in this section shall be in such form if any, as the Commission may from time to time prescribe and shall give a true and fair view of the matters therein recorded and of the administration of the company's affairs and of the winding-up.

(6) The accounts referred to in subsections (2) and (3) of this section, shall be audited by the auditor of the company prior to being laid before the company in general meeting in accordance with such subsections and the auditors shall state in a report annexed thereto whether, in their opinion and to the best of their information—

- (a) they have obtained all the information and explanations necessary for the purpose of their audit;
- (b) proper books and records have been maintained by the liquidator in accordance with this Act, and such accounts are in accordance with the books and records and give all the information required by this Act in the manner therein required and give a true and fair view of the matters stated in such accounts:

Provided that such audit and auditors' report shall not be required if—

- (i) the liquidator, or one of the liquidators if more than one, is duly qualified under the provisions of this Act for appointment as auditor of a public company, and

(ii) on or after his appointment as liquidator, the company resolved by special resolution that the accounts shall not be audited in accordance with this subsection.

(7) Meetings required to be convened under this section or the immediately foregoing section shall be convened and held, so far as may be, in accordance with the provisions of this Act and the regulations of the company relating to general meetings.

(8) The liquidator shall preserve the books and papers of the company and of the liquidator for a period of five years from the dissolution of the company but thereafter may destroy such books and papers unless the Commission shall otherwise direct in which event he shall not destroy the same until the Commission consent in writing.

(9) If a liquidator should fail to comply with any of the provisions of this section, he shall be guilty of an offence and liable to a fine not exceeding ₦230 for each default.

Provisions applicable to a creditors' voluntary winding-up

471. The provisions following, that is to say sections 472 to 478 of this Act shall apply in relation to a creditors' voluntary winding-up.

472. (1) The Company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding-up is to be proposed, and shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meetings of the company.

(2) The company shall cause notice of the meeting of the creditors to be published once in the *Gazette* and once at least in two newspapers printed in Nigeria and circulating in the district where the registered office or principal place of business of the company is situate.

(3) The directors of the company shall—

- (a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of the creditors to be held as aforesaid; and
- (b) appoint one of their number to preside at the said meeting.

(4) It shall be the duty of the director so appointed to attend the meeting and preside thereat.

(5) If the meeting of the company at which the resolution for voluntary winding-up is to be proposed is adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) of this section shall have effect as if it has been passed immediately after the passing of the resolution for winding-up the company.

(6) If default is made by—

- (a) the company in complying with subsection (1) or (2) of this section;
- (b) the directors of the company in complying with subsection (3) of this section;
- (c) any director of the company appointed to preside, in complying with subsection (4) of this section,

the company, director or directors, as the case may be, shall be guilty of an offence and liable to a fine of ₦250 and in the case of default by the company, every officer of the company who is in default shall be liable to the like penalty.

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473. (1) The creditors and the company at their respective meetings mentioned in section 472 of this Act may nominate a person to be liquidator for the purpose of winding-up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person if any, nominated by the company shall be liquidator:

Provided that in the case of different persons being nominated, any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order directing that the persons nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors.

(2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is in such committee, the creditors, sanction the continuance thereof.

474. (1) The creditors at the meeting to be held in pursuance of section 472 of this Act or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding-up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number:

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company shall not be members of the committee of inspection, and if the creditors so resolve, the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on any application to the court under this provision the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(2) Subject to the provisions of this section and to general rules made under this Act, the provisions of section 434 of this Act (except subsection (1) of this section) shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding-up by the court.

475. The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

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476. If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by, or by the direction of the court, the creditors may fill the vacancy.

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477. (1) In the event of the winding-up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of the creditors at the end of the first year from the commencement of the winding-up, and of each succeeding year, or at the first convenient date within three months, from the end of the year or such longer period as the Commission may allow, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding-up during the proceeding year.

(2) If the liquidator fails to comply with the provisions of this section, he shall be guilty of an offence and liable to a fine of ₦50.

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478. (1) As soon as the affairs of the company are fully wound up, the liquidator shall prepare an account of the winding-up, showing how the winding-up has been conducted and the property of the company has been disposed of, and thereupon he shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving any explanation thereof.

(2) Each such meeting shall be called by notice published in the *Gazette* and in some newspapers printed in Nigeria and circulating in the locality where the meeting is being called, specifying the time, place and object thereof, and published one month at least before the meeting.

(3) Within seven days after the date of the meeting, or if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the Commission a copy of the account, and shall make a return to it of the holding of the meetings and of their dates, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator shall be guilty of an offence and liable to a fine of ₦25 for every day during which default continues:

Provided that, if a quorum is not present at either such meetings the liquidator shall, in lieu of the return hereinbefore mentioned make a return that the meeting was duly summoned and that no quorum was present; and upon such a return being made the provisions of this subsection as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

(4) The Commission on receiving the account and in respect of each such meeting, either of the returns mentioned above, shall forthwith register them, and on the expiration of three months from the registration thereof the company shall be deemed to be dissolved:

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to deliver to the Commission an office copy of the order for registration, and if that person fails so to do he shall be guilty of an offence and liable to a fine of ₦25 for every day during which the default continues.

(6) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section, he shall be guilty of an offence and liable to a fine of ₦250.

Provisions applicable to every voluntary winding-up

479. The provisions following, that is to say, sections 480 to 485 of this Act, shall apply to every voluntary winding-up, whether a members' or a creditors' winding-up. Provis applic every volunt windin

480. Subject to the provisions of this Act as to preferential payments, the property of a company shall on its winding-up, be applied in satisfaction of its liabilities *pari passu*, and, subject to such application shall, unless the articles otherwise Distri of pro of cor

provide, be distributed among the members according to their rights and interests in the company.

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481. (1) The liquidator may—

- (a) in the case of a members' voluntary winding-up, with the sanction of special resolution of the company, and, in the case of a creditors' voluntary winding-up, with the sanction of the court or (the committee of inspection or if there is no such committee) a meeting of the creditors, exercise any of the powers given by paragraphs (d), (e) and (f) of section 425(1) of this Act to a liquidator in a winding-up by the court;
- (b) without sanction, exercise any of the other powers given by this Act to the liquidator in a winding-up by the court;
- (c) exercise the power of the court under this Act of settling a list of contributors, and the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories;
- (d) exercise the court's power of making calls;
- (e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or for any other purpose he may think fit.

(2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(3) Where several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined by any number not less than two.

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482. If in any voluntary winding-up there is no liquidator acting, the court may appoint a liquidator and in any case the court may, on cause shown, remove a liquidator and appoint another liquidator.

483. (1) The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding-up of a company, to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.

(2) If the court is satisfied that the determination of the question or the required exercise of power will be just and beneficial, it may give effect wholly or partially to the application on such terms and conditions as it thinks fit, or make such other order as the case may require.

(3) A copy of an order made under this section staying the proceedings in the winding-up shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Commission which shall make a minute of the order in its books relating to the company.

484. All costs, charges and expenses properly incurred in the winding-up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

485. The winding-up of a company shall not bar the right of any creditor or contributory to have it wound up by the court; but where the applicant for winding-up is a contributory, an order shall not be made unless the court is satisfied that the rights of contributories shall be prejudiced by the members' or creditors' voluntary winding-up, as the case may be.

CHAPTER 4—Winding-up Subject to Supervision of Court

486. If a company passes a resolution for voluntary winding-up, the court may on petition order that the voluntary winding-up shall continue but subject to such supervision of the court, and with such liberty for creditors, contributories, or others to apply to the court, and generally on such terms and conditions, as the court thinks just.

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487. A petition for the continuance of a voluntary winding-up subject to the supervision of the court shall, for the purpose of giving jurisdiction to the court over actions, be deemed to be a petition for winding-up by the court.

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488. A winding-up subject to the supervision of the court shall, for the purposes of sections 413 and 414 of this Act, be deemed to be a winding-up by the court.

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489. (1) Where an order is made for a winding-up subject to supervision, the court may by the same or any subsequent order appoint an additional liquidator.

(2) A liquidator appointed by the court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position, as if he had been duly appointed in accordance with the provisions of this Act with respect to the appointment of liquidators in a voluntary winding-up.

(3) The court may remove any liquidator so appointed by the court or any liquidator continued under the supervision order, and may fill any vacancy occasioned by the removal, or by death or resignation.

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490. (1) Where an order is made for a winding-up subject to supervision, the liquidator may, subject to any restrictions imposed by the court, exercise all his powers, without the sanction or intervention of the court, in the same manner as if the company were being wound up voluntarily:

Provided that the powers specified in paragraphs (d), (e) and (f) of section 425(1) of this Act shall not be exercised by the liquidator except with the sanction of the court or, in a case where before the order the winding-up was a creditors' voluntary winding-up, with the sanction of the court or the committee of inspection, or (if there is no such committee) a meeting of the creditors.

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(2) A winding-up subject to the supervision of the court shall not amount to a winding-up by the court for the purpose of the provisions of this Act as specified in the Twelfth Schedule to this Act (dealing with provisions which do not apply in the case of winding-up subject to the supervision of

the court) but, subject to this, an order for a winding-up subject to supervision of the court shall for all purposes be an order for a winding-up by the court:

Provided that where the order for winding-up subject to supervision of the committee of inspection was made in relation to a creditors' voluntary winding-up in which a committee of inspection had been appointed, the order shall be deemed to be an order for winding-up by the court for the purposes of section 434 of this Act (except subsection (1) thereof) save insofar as the operation of that section is excluded in a voluntary winding-up by general rules made under this Act.

CHAPTER 5—Provisions Applicable to every
Mode of Winding-Up

491. (1) The liquidator shall, within fourteen days after his appointment publish in the *Gazette* and in two daily newspapers and deliver to the Commission for registration a notice of his appointment in such form as the Commission may from time to time approve.

(2) If the liquidator fails to comply with the requirements of this section he shall be guilty of an offence and liable to a fine of ₦25 for every day during which default continues.

Proof and Ranking of Claims

492. In every winding-up (subject, in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of bankruptcy), all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claim as may be subject to any contingency or sound only in damages, or for some other reasons do not bear a certain value.

493. In the winding-up of an insolvent company registered in Nigeria the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force

for the time being under the law of bankruptcy in Nigeria with respect to the estates of persons adjudged bankrupt, and all persons, who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding-up and make such claims against the company as they respectively are entitled to by virtue of this section.

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494. (1) In a winding-up there shall be paid in priority to all other debts—

(a) all local rates and charges due from the company at the relevant date, and having become due and payable within twelve months next before that date, and all Pay-As-You-Earn tax deductions, assessed taxes, land tax, property or income tax assessed on or due from the company up to the annual day of assessment next before the relevant date, and in the case of Pay-As-You-Earn tax deductions, not exceeding deductions made in respect of one year of assessment and, in any other case, not exceeding in the whole one year's assessment;

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(b) deductions under the National Provident Fund Act;

(c) all wages or salary of any clerk or servant in respect of services rendered to the company;

(d) all wages of any workman or labourer whether payable for time or for piece work, in respect of services rendered to the company;

(e) all accrued holiday remuneration becoming payable to any clerk, servant, workman or labourer (or in the case of his death to any other person in his rights) on the termination of his employment before or by the effect of the winding-up order or resolution;

(f) unless the company is being wound up voluntarily merely for the purpose of reconstruction or of amalgamation with another company or unless the company has at the commencement of the winding-up under such a contract with insurers as is mentioned in section 26 of the Workmen's Compensation Act, rights capable of being transferred to and vested in the workman, all

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amounts due in respect of any compensation or liability for compensation under the act aforesaid, accrued before the relevant date.

(2) Where any compensation under the Workmen's Compensation Act is a weekly payment, the amount due in respect thereof shall, for the purpose of paragraph (e) of subsection (1) of this section, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the aforesaid Act.

(3) Where any payment on account of wages or salary has been made to any clerk, servant, workman or labourer in the employment of a company out of the money advanced by some persons for that purpose, that person shall in a winding-up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which that clerk, servant, workman or labourer would have been entitled to priority in the winding-up has been diminished by reason of the payment having been made.

(4) The foregoing debts shall—

(a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and

(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of debenture holders under any floating charge created by the company and be paid accordingly out of any property comprised in or subject to that charge.

(5) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding-up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

(6) In this section "the relevant date" means—

(a) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding-up order; and

(b) in the other case, the date of commencement of the winding-up.

Effect of Winding-up on Antecedent and other Transactions

495. (1) Any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property which would, if made or done by or against individual, be deemed in his bankruptcy a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly.

(2) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

(3) For the purposes of this section, the presentation of a petition for winding-up in the case of a winding-up by or subject to the supervision of the court, and a resolution for winding-up in the case of a voluntary winding-up, shall be deemed to correspond with the act of bankruptcy in the case of an individual.

496. (1) Where anything made or done after the commencement of this Act is void under section 495 of this Act as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, the person preferred shall, without prejudice to any liabilities or rights arising apart from this provision, be subject to the same liabilities, and have the same rights, as if he had undertaken to be personally liable as surety for the debt, to the extent of the charge on the property or have value of his interest, which ever is the less and the value of the said person's interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all incumbrances other than those to which the charge for the company's debt was the subject.

(2) Where for the purposes of this section, application is made to the court with respect to any payment on the ground that the payment was fraudulent preference of a surety or guarantor, the court shall have jurisdiction to determine any questions with respect to the payment arising between the

person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding-up, and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of an action for the recovery of the sum paid.

(3) Subsection (2) of this section shall apply, with the necessary modifications, in relation to transactions other than the payment of money, as it applies in relation to payments.

497. Where a company is being wound up subject to the supervision of the court, any attachment, sequestration or execution put in force against the estate or effects of the company after the commencement of the winding-up shall be void.

498. Where a company is being wound up, a floating charge on the undertaking or property of the company created within three months of the commencement of the winding-up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the current bank rate.

499. (1) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the liquidator of the company notwithstanding that he had endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, may with the leave of the court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding-up or such extended period as may be allowed by the court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding-up, the power under this section of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the court.

(2) A disclaimer, under this section shall operate to determine, as from the date of disclaimer, the rights, interest and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities or any other person.

(3) The court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the court thinks just.

(4) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any persons interested in the property requiring him to decide whether or not he will disclaim and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such further period as may be allowed by the court, given notice to the applicant that he intends to apply to the court for leave to disclaim, and, in the case of a contract, if the liquidator, after such an application does not within that period of further period disclaim the contract, the company shall be deemed to have adopted it.

(5) The court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party, of damages for the non-performance of the contract, or otherwise as the court thinks just and any damages payable under the order to any such person may be proved by him as a debt in the winding-up.

(6) The court may, on an application by any person who claims any interest in any property disclaimed under this

section, or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the court thinks just and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose.

(7) Where the property disclaimed is of a leasehold nature the court shall not make vesting order in favour of any person claiming under the company, whether as an under-leasee or as a mortgagee by demise, a mortgage by way of legal charge or mortgage, as the case may be, except upon the terms of making that person—

- (a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding-up; or
- (b) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and in either event if the case so requires, as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-leasee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and if there is no person claiming under the company who is willing to accept an order upon such terms, the court shall have power to vest the estate and interest of the company in the property in any person liable either personally or in a representative character, and either alone or jointly with the company, to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.

(8) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the

company to the amount of the injury, and may accordingly prove the amount as a debt in the winding-up.

500. (1) Where a creditor issues execution against any goods or land of a company or attaches any debt due to the company, and the company is subsequently wound up, the creditor shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding-up of the company, unless he has completed the execution or attachment before the commencement of the winding-up:

Provided that—

- (a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding-up is to be proposed, the date on which the creditor so had notice shall, for the purposes of the foregoing provision, be substituted for the date of the commencement of the winding-up;
- (b) if a person purchases in good faith under a sale by the sheriff any goods of a company on which an execution has been levied, he shall acquire a good title to them against the liquidator;
- (c) the rights conferred by this subsection on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit.

(2) For the purposes of this section, an execution against goods shall be taken to be completed by seizure and sale, and an attachment of a debt shall be deemed to be completed by receipt of the debt, and an execution against land shall be deemed to be completed by seizure and, in the case of an equitable interest, by the appointment of a receiver.

501. (1) Subject to the provisions of subsection (3) of this section, where any goods of a company are taken in execution and before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that a provisional liquidator has been appointed or that a winding-up order has been made or that a resolution for voluntary winding-up has been passed, the

sheriff shall, on being so required deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.

(2) Subject to the provisions of subsection (3) of this section, where under an execution in respect of a judgment for a sum exceeding ₹100 the goods of a company are sold or money is paid in order to avoid sale, the sheriff shall deduct the costs of the execution from the proceeds of the sale or the money paid, and retain the balance for fourteen days; and if within that time notice is served on him of a petition for the winding-up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding-up of the company and an order is made or a resolution is passed, as the case may be, for the winding-up of the company, the sheriff shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.

(3) The rights conferred by this section on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit.

(4) In this section and section 500 of this Act—

- (a) “goods” includes chattels personal; and
- (b) “sheriff” includes any officer charged with the execution of a writ or other process.

Offences antecedent to or in course of winding-up

502. (1) If any person, being a past or present officer of a company which at the time of the commission of an alleged offence is being wound up, whether by or under the supervision of the court or voluntarily, or is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding-up—

- (a) does not to the best of his knowledge and belief fully and truly discover or deliver to the liquidator all the property, landed and personal, of the company, and how and to whom for what consideration and when the

company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company; or

- (b) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up; or
- (c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up; or
- (d) within twelve months next before the commencement of the winding-up or at any time thereafter conceals any part of the property of the company to the value of ₹ 100 or upwards, or conceals any debt due to or from the company; or
- (e) within twelve months next before the commencement of the winding-up or at any time thereafter fraudulently removes any part of the property of the company to the value of ₹ 100 or upwards; or
- (f) makes any material omission in any statement relating to the affairs of the company; or
- (g) knowing or believing that a false debt has been proved by any person under the winding-up, fails for the period of one month to inform the liquidator thereof; or
- (h) after the commencement of the winding-up, prevents the production of any book or paper affecting or relating to the property or affairs of the company; or
- (i) within twelve months next before the commencement of the winding-up or at any time thereafter—
 - (i) conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of any book or paper affecting or relating to the property or affairs of the company, or
 - (ii) makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company, or
 - (iii) fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with,

altering or making any omission in any document affecting or relating to the property or affairs of the company, or

(iv) at any meeting of the creditors of the company, attempts to account for any part of the property of the company by fictitious losses or expenses, or

(v) made false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for, or

(vi) under the false pretence that the company is carrying on its business; obtains on credit, for or on behalf of the company any property which the company does not subsequently pay for, or

(vii) pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging, or disposing is in the ordinary way of the business of the company; or

(j) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding-up,

he shall be guilty of an offence and shall, in the case of the offences mentioned respectively in paragraphs (m), (n) and (o) of this subsection, be liable on conviction, to imprisonment for a term of twelve months, and in the case of any other offence under this subsection, shall be liable on conviction to imprisonment for a term of two years:

Provided that it shall be a good defence to a charge under any of paragraphs (a), (b), (c), (d), (f), (n) and (o) of this subsection, if the accused proves that he had no intent to defraud, and to a charge under any of paragraphs (h), (i) and (j), if he proves that he had no intention to conceal the state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under paragraph (o) of subsection (1) of this section, every person

who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid shall be guilty of an offence, and on conviction thereof liable to be punished in the same way as if he had received the property knowing it to have been obtained in circumstances amounting to an offence.

(3) For the purposes of this section, "officer" includes any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

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503. If any officer or contributory of any company being wound up destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the company with intent to defraud or deceive any person, he shall be guilty of an offence and liable on conviction to imprisonment for a term of two years or a fine of ₹2,500.

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504. If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding-up—

- (a) has by false pretences or by means of any other fraud induced any person to give credit to the company; or
- (b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company; or
- (c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against the company,

he shall be guilty of an offence and liable on conviction to imprisonment for a term of two years.

505. (1) If where a company is wound up it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding-up or the period between the incorporation of this company and the commencement of the winding-up whichever is the shorter, every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on the default was excusable, be guilty of an offence and be liable on conviction in the court to a fine of ₹250.

(2) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any company if there have not been kept such books of accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company including books containing entries from day to day in sufficient detail of all cash received and cash paid; and, where the trade or business has involved dealing in goods, statements of the annual stock takings and (except in case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient details to enable those goods and those buyers and sellers to be identified.

506. (1) If, in the course of the winding-up of a company, it appears that any business of the company has been carried on in a reckless manner or with intent to defraud creditors of the company or creditors of any other person for any fraudulent purpose, the court, on the application of the official receiver, or the liquidator or any creditor or contributory of the company, may, if it thinks proper so to do, declare that any persons who were knowingly parties to the carrying on of the business in manner aforesaid shall be personally responsible, without any limitation of liability for all or any of the debts or other liabilities of the company as the court may direct.

(2) Where the court makes a declaration as to responsibility for debts or liabilities under subsection (1) of this section, it may give any direction it thinks proper for the purpose of giving effect to that declaration, and in particular

the court may make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge or any assets of the company held by or vested in him, or any company or person on his behalf, or any person claiming as assignee from or through the person liable or any company or person acting on his behalf, and may from time to time make any further order necessary for enforcing any charge imposed under this subsection.

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in subsection (1) of this section (other than recklessly), every person who was knowingly a party to the carrying on of the business in manner aforesaid, shall be guilty of an offence, and liable on conviction to a fine of ₦2,500 or to imprisonment for a term of two years, or to both.

(4) In its operation, this section shall have effect, so however that—

- (a) a declaration may be made notwithstanding that the person concerned may be criminally liable in respect of matters which are grounds for the declaration and a declaration, if made, shall be deemed to be a final judgment of the court;
- (b) the official receiver or the liquidator, as the case may be, on the hearing of an application to the court, may himself give evidence or call witnesses;
- (c) there shall be included in the expression "assignee" any person to whom or in whose favour by the direction of the person liable the debt, obligation, mortgage, or charge was created, issued or transferred, or the interest created, other than any person being an assignee for valuable consideration given in good faith and without notice of any of the matters on the ground of which the declaration is made;
- (d) "valuable consideration" shall not include consideration by way of marriage.

507. (1) If, in the course of winding-up a company, it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of duty in relation to the company, which would involve civil liability at the suit of the company, the court may, on the application of the official receiver, or of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, liquidator or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rates as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the court thinks just.

(2) The provisions of this section shall extend to any receiver of the property of a company, and shall in any case have effect notwithstanding that the offence is one for which the offender may be criminally liable.

(3) Where an order for payment of money is made under this section, the order shall be deemed to be a final judgment of the court.

508. (1) If it appears to the court, in the course of a winding-up by, or subject to the supervision of, the court that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the court may, either on the application of any person interested in the winding-up or of its own motion direct the liquidator to refer the matter to the Attorney-General of the Federation.

(2) If it appears to the liquidator in the course of a voluntary winding-up that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the Attorney-General of the Federation and shall furnish him such information and give to him such access to and facilities for inspecting and

taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as he may require.

(3) Where any report is made under subsection (2) of this section to the Attorney-General of the Federation he may, if he thinks fit, apply to the court for an order conferring on him or any person designated by him for the purpose with respect to the company concerned, all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding-up by the court.

(4) If it appears to the court, in the course of voluntary winding-up, that any past or present officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Attorney-General of the Federation under subsection (2) of this section, the court may on the application of any person interested in the winding-up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly, the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of subsection (2) of this section.

(5) If, where any matter is reported or referred to the Attorney-General of the Federation under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall institute proceedings accordingly, and it shall be the duty of the liquidator and of every other officer and agent of the company past and present (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which he is reasonably able to give and it is hereby declared for the purposes of this subsection, that the expression "agent" in relation to a company includes any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(6) If any person fails or neglects to give assistance in the manner required by subsection (5) of this section, the court may, on the application of the Attorney-General of the Federation direct that person to comply with the requirements of the said subsection, and where any such application is made with respect to a liquidator, the court, may, unless it appears

that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

Supplementary Provisions as to Winding-Up

509. (1) The following persons shall not be competent to be appointed or to act as liquidator of a company, whether in a winding-up by, or under the supervision of the court, or in a voluntary winding-up—

- (a) an infant;
- (b) any one found by the court to be of unsound mind;
- (c) a body corporate;
- (d) an undischarged bankrupt;
- (e) any director of the company under liquidation;
- (f) any person convicted of any offence involving fraud, dishonesty, official corruption or moral turpitude and in respect of whom there is a subsisting order under section 254 of this Act.

(2) Any appointment made in contravention of the provisions of subsection (1) of this section shall be void and if any of the persons named in paragraphs (c), (d), (e), and (f) of that subsection shall act as a liquidator of the company he shall be guilty of an offence and liable to a fine not exceeding ₦2,500 in the case of a body corporate or, in the case of an individual, to imprisonment for a term not exceeding six months or to a fine not exceeding ₦500 or to both such imprisonment and fine.

510. Any persons who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator, shall be guilty of an offence liable to a fine of ₦250.

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511. (1) If a liquidator makes default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, and fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the court may, on an application made to the court by any contributory or creditor of the company or by the Commission, make an order directing the liquidator to make good the default within such time as is specified in the order.

(2) Any order under this section may provide that the costs of any expenses incidental to the application shall be borne by the liquidator and nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a liquidator in respect of any such default.

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512. (1) Where a company is being wound up, whether by or under the supervision of the court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company being a document on or in which the name of the company appears shall contain a statement that the company is being wound up.

(2) If default is made in complying with the provisions of this section, the company and any of the following persons who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be guilty of an offence and liable to a fine of ₹ 100.

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513. (1) In the case of a winding-up by the court, or a creditors voluntary winding-up—

(a) every assurance relating to any property of the company, or to any mortgage, charge or other encumbrance thereon or any right or interest in any property, in any event forming part of the assets of the company and which, after the execution of the assurance, either at law or in equity is, or remains part of the assets of the company; and

(b) every power of attorney, proxy paper, writ, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of any company which is being so wound up, or to any proceeding under any such winding-up, shall be exempted from duties chargeable under any law, enactment relating to stamp duties.

(2) In this section, "assurance" includes any deed, conveyance, instrument, discharge, assignment or surrender.

514. Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

515. (1) Where a company is being wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows, that is to say—

(a) in the case of a winding-up by or subject to the supervision of the court, in such way as the court directs;

(b) in the case of a members' voluntary winding-up, in such way as the company by special resolution directs and, in the case of a creditors' voluntary winding-up, in such way as the committee of inspection or, if there is no such committee, as the creditors of the company, may direct.

(2) After five years from the dissolution of the company no responsibility shall rest on the company, the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(3) Provisions may be made by general rules for enabling the Commission to prevent, for such period (not exceeding five years from the dissolution of the company) as it may think proper, the destruction of the books and papers of a company which has been wound up, and for enabling any creditor or contributory of the company to make representations to it

and to appeal to the court from any direction which may be given by it in the matter.

(4) If any person acts in contravention of any general rules made for the purposes of this section or of any direction of the Commission thereunder, he shall be guilty of an offence and liable to a fine of ₦1,000.

516. (1) If, where a company is being wound up, the winding-up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding-up is concluded, send to the Commission a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom; but any person untruthfully so stating himself to be creditor or contributory shall be guilty of contempt of court, and shall be punishable accordingly on the application of the liquidator or of the official receiver.

(3) If a liquidator fails to comply with the requirements of this section, he shall be guilty of an offence and liable to a fine of ₦50 for each day during which the default continues.

(4) If it appears from any such statement or otherwise that a liquidator has in his custody or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt, the liquidator shall forthwith pay the same to the companies liquidation account mentioned in section 527 of this Act and shall be entitled to a certificate of receipt in the prescribed form for the money so paid, which shall be an effectual discharge to him.

(5) For the purposes of ascertaining and getting in any money payable into the companies liquidation account in pursuance of this section, the following powers may be exercised by the authorities named, that is to say—

(a) the Commission may at any time order any such liquidator to submit to it an account verified by affidavit of the sums received and paid by him under or in pursuance of the liquidation, and may direct and enforce an audit of the account and if the liquidator fails to submit the account within such reasonable time as the Commission directs, he shall be guilty of contempt of court and may, on the application of the Commission to the court made for the purpose, be punished accordingly; and

(b) the court may, if default is made in submitting the account referred to in paragraph (a) of this section—

(i) by warrant addressed to any police officer, cause the liquidator to be arrested, and all books, papers and money or goods, relating to the liquidation in his possession to be seized and him and them to be safely kept until such time as the court may order,

(ii) at any time by order addressed to the Postmaster-General of the Nigerian Postal Service Department require that, for a period of not more than three months, letters addressed to the liquidator and sent through the post, be in course of post, redirected, sent or delivered to or at any place or places mentioned in the order,

(iii) summon the liquidator or his wife, or any person known or suspected to have in his possession any books, or papers relating to the liquidation, and any money or goods belonging to the liquidator or representing any unclaimed or undistributed assets of the company as aforesaid, or summon any person whom the court deems capable of giving information respecting any such books, papers, money, goods or other assets, and require any person summoned under this paragraph to produce documents in his custody or under his control relating to the liquidator's dealings with the property of the company,

(iv) where any person on examination before it admits that he is indebted to the company, by order made on the application of the official receiver or liquidator direct payment to the official receiver or

liquidator as the case may be, of the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not at such time and in such manner as the court thinks fit, with or without costs of the examination,

(v) examine on oath, either by word of mouth or written interrogatories any person so brought before it concerning the liquidator and his dealings with the property of the company,

(vi) if any person on examination before the court admits that he has in his possession any money properly payable into the company's liquidation account in pursuance of this section, order him to pay any such money forthwith into that account.

(6) Any person claiming to be entitled to money paid into the company's liquidation account in pursuance of this section may apply to the Commission for payment, and the Commission, if the liquidator certifies the claim may make an order for payment accordingly.

(7) An appeal shall lie to the court by any person claiming to be dissatisfied with the decision of the Commission in respect of any claim made under this section.

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517. Where a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

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518. (1) On the winding-up of a company (whether by the court or voluntarily), the liquidator may, subject to the following provisions of this section, make any payment which the company has, before the commencement of the winding-up, decided to make under section 649 of this Act.

(2) The power which a company may exercise by virtue only of section 649 of this Act may be exercised by the liquidator after the winding-up has commenced if, after the company's liabilities have been fully satisfied and provision has been made for the costs of the winding-up, the exercise of that power has been sanctioned by such resolution of the

company as would be required of the company itself by subsection (3) of section 649 of this Act before that commencement, as if paragraph (b) of that subsection were omitted and any other requirement applicable to its exercise by the company had been met.

(3) Any payment which may be made by a company under this section may be made out of the company's assets which are available to the members on the winding-up.

(4) On a winding-up by the court, the exercise by the liquidator of his powers under this section shall be subject to the court's control and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of the power.

(5) Subsections (1) and (2) of this section shall have effect notwithstanding any rule or law or section 480 of this Act.

Supplementary Powers of Court

519. (1) The court may, as to all matters relating to the winding-up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence, and may, if it thinks fit, for the purposes of ascertaining those wishes direct meetings of the creditors or contributories to be called, held and conducted in such manner as the court directs and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.

(2) In the case of creditors, regard shall be had to the value of each creditors' debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the articles.

520. In all proceedings under this Part of this Act, all court, Judges, and persons judicially acting, and all officers, judicial or ministerial, of any court or employed in enforcing the process of any court, shall take judicial notice, of the signature of any officer of court and also of the official seal or stamp of

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a court appended to or impressed on any document made, issued or signed under the provisions of this Part of this Act, or on any official copy of any such document.

521. (1) Documents purporting to be orders or certificates made or issued by the Attorney-General of the Federation, the Accountant-General of the Federation or the Commission for the purposes of this Act and to be signed by the Attorney-General of the Federation or the Accountant-General of the Federation, or under the seal of the Commission or signed by any person authorised in that behalf by them or, it, and in proper case to be sealed where necessary, shall be received in evidence and deemed to be such orders, or certificates without further proof unless the contrary is shown.

(2) A certificate signed by the Attorney-General of the Federation or the Accountant-General of the Federation or under the seal of the Commission that any order made, certificate issued, or act done, is the order, certificate or act of the Attorney-General of the Federation, Accountant-General of the Federation or the Commission as the case may be, shall be conclusive of the fact so certified.

522. (1) Where a company is in course of being wound up, all magistrates shall be commissioners for the purpose of taking evidence under this Act and the court may refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed commissioner.

(2) Every commissioner shall, in addition to any powers which he might lawfully exercise as a magistrate, have in the matter so referred to him all the same powers as the court of summoning and examining witnesses, of requiring the production or delivery of documents, of punishing defaults by witnesses and of allowing costs and expenses to witnesses.

(3) The examination so taken shall be returned or reported to the court in such manner as that court directs.

523. An affidavit required to be sworn under the provisions or for the purposes of this Part of this Act may be sworn in Nigeria or elsewhere in accordance with the provisions of the Oaths Act or under any other enactment or law providing for

the administration of oaths and all courts, Judges, commissioners, and person acting judicially shall take judicial notice of the seal or stamp or signatures (as the case may be) of any court, Judge, person, consul, or vice-consul, attached, appended, or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part of this Act.

Provisions as to Dissolution

524. (1) Where a company has been dissolved, the court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court may think fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within seven days after the making of the order, or such further time as the court may allow, to deliver to the Commission for registration an office copy of the order, and if that person fails so to do he shall be liable to a fine of ₦25 for every day during which the default continues.

525. (1) Where the Commission has reasonable cause to believe that a company is not carrying on business or in operation, it may send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the Commission does not within one month of sending the letter receive any answer thereto, it shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, notice shall be published in the *Gazette* with a view to striking the name of the company off the register.

(3) If the Commission receives an answer to the effect that the company is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, it may publish in the *Gazette*, and send to the company by post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein shall, unless cause is shown to the contrary, be struck off the register and the company shall be dissolved.

(4) If, in any case where a company is being wound up, the Commission has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months, the Commission shall publish in the *Gazette* and send to the company or the liquidator, if any, a like notice as is provided in subsection (3) of this section.

(5) At the expiration of the time mentioned in the notice the Commission may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish a notice thereof in the *Gazette* and on the publication in the *Gazette* of the notice as aforesaid the company shall be dissolved:

Provided that—

- (a) the liability, if any, of every director, managing officer and member of the company shall continue and may be enforced as if the company had not been dissolved; and
- (b) nothing in this subsection shall affect the power of the court to wind up a company the name of which has been struck off the register.

(6) Any company or member or creditor aggrieved by the striking off the register of the company under this section may apply to the court at any time before the expiration of twenty years from the publication of the notice under subsection (5) of this section, for an order restoring the company to the register; and if the court is satisfied that, at the time of the striking off, the company was carrying on business or in operation, or that otherwise it is just to restore it to the register, the court may order the name of the company to be restored to the register; and an order under this subsection

may include any directions the court thinks fit, and provision may be made therein for placing the company and all other persons in the same position, as nearly as may be, as if the name of the company had not been struck off the register; and upon delivery of an office copy to the Commission for registration, the order shall have effect according to its tenor, and may be registered accordingly.

(7) Any notice to a liquidator to be sent under this section may be addressed to the liquidator at his last known place of business, and any letter or notice to be sent under this section to a company may be addressed to the company at its registered or head office.

526. Where a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution including leasehold property (but not including property held by the company on trust for any other person) shall, subject and without prejudice to any order which may at any time be made by the court under section 524 or 525 of this Act, be deemed to be vested in the State without further assurance, as *bona vacantia*.

Central Accounts

527. (1) There shall continue to be an account called the Companies Liquidation Account, kept on behalf of the Commission by the Accountant-General of the Federation, into which shall be paid all moneys received by the Commission in respect of proceedings under this Act in connection with the winding-up of companies.

(2) All payments out of money standing to the credit of the Commission in the companies liquidation account shall be made by the Accountant-General of the Federation in the prescribed manner.

528. (1) If the cash balance standing to the credit of the companies liquidation account is in excess of the amount which in the opinion of the Commission is required for the time being to answer demands in respect of companies' estates, the Commission shall notify the excess to the

Accountant-General of the Federation and the Accountant-General of the Federation may invest the excess or any part thereof, in Government securities, to be placed to the credit of such account as he may deem fit in the circumstances.

(2) If any part of the money so invested is, in the opinion of the Commission, required to answer any demands in respect of companies' estates, the Commission shall notify to the Accountant-General of the Federation the amount so required, and the Accountant-General of the Federation shall thereupon repay to the Commission such sum as may be required to the credit of the companies liquidation account, and for that purpose may direct the sale of such part of the securities as may be necessary.

(3) The dividends on investments under this section shall be paid to such accounts as the Accountant-General of the Federation may direct, and regard shall be had to the amount thus derived in fixing the fees payable in respect of proceedings in the winding-up of companies.

529. (1) An account shall be kept by the Commission of the receipts and payments in the winding-up of each company, and, when the cash balance standing to the credit of the account of any company is in excess of the amount which, in the opinion of the committee of inspection, is required for the time being to answer demands in respect of that company's estate, the Commission shall, on the request of the committee, invest the amount not so required in Government securities, to be placed to the credit of the said account for the benefit of the company.

(2) If any part of the money so invested is, in the opinion of the committee of inspection, required to answer any demands in respect of the estate of the company, the Commission shall, on the request of that committee raise such sum as may be required by the sale of such part of the said securities as may be necessary.

(3) The dividends on investments under this section shall be paid to the credit of the company.

(4) Where the balance at the credit of any company's account in the hands of the Commission exceeds ₦10,000 and

the liquidator gives notice to the Commission that the excess is not required for the purposes of the liquidation, the company shall be entitled to interest on the excess at the current bank rate.

Returns by Officers of Courts

530. The officers of the courts acting in the winding-up of companies shall make to the Commission such returns of the business of their respective courts and offices, at such times, and in such manner and form as may be prescribed, and from those returns the Commission shall cause books to be prepared which shall be opened for public information and searches.

Accounts to be prepared annually

531. (1) The Commission and every officer by whom fees are taken under this Act in relation to the winding-up of companies shall make returns and give information to the Accountant-General of the Federation in such form as he may require; and the accounts of the Commission relating to the winding-up of companies shall be audited as soon as may be after the end of each year in the manner prescribed by the Constitution of the Federal Republic of Nigeria.

(2) The Accountant-General of the Federation shall, before the end of each year in which the audit is made, prepare for submission to the National Council of Ministers an account of the winding-up of companies as audited by the Director of Audit of the Federation, showing in respect of such winding-up, the receipts and expenditure during the previous year, and any other matters which the National Council of Ministers or the Minister, as the case may be, may require.

CHAPTER 6—Winding-up of Unregistered Companies

532. Subject to the provisions of this Part of this Act, an unregistered company may be wound up under this Act and all the provisions of this Act, with respect to winding-up shall apply to an unregistered company, with the following exceptions—

- (a) the principal place of business of an unregistered company shall for all the purposes of the winding-up be deemed to be the registered office of the company;
- (b) an unregistered company shall not be wound up under this Act voluntarily or subject to supervision;
- (c) an unregistered company may be wound up if—
 - (i) the company is dissolved, or has ceased to carry on business or is carrying on business only for the purpose of winding-up its affairs,
 - (ii) the company is unable to pay its debts,
 - (iii) the court is of opinion that it is just and equitable that the company should be wound up;
- (d) an unregistered company shall, for purposes of this Act be deemed to be unable to pay its debts if—
 - (i) a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding ₦ 100 then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager, or principal officer of the company, or by otherwise serving in such manner as the court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for twenty-one days after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor;
 - (ii) any action or other proceedings has been instituted against any member for any debt or demand due from the company, or from him in his capacity as a member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving it at its principal place of business, or by delivering it to the secretary, or some director, manager, or principal officer of the company, or by otherwise serving the notice in such manner as the court may approve or direct, the company has not within twenty-eight days after service of the notice secured, or compounded for the debt or demand or procured the action or proceeding to be stayed, or within that period has not indemnified the defendant to his reasonable

satisfaction against the action or proceeding, and against all costs, damages, and expenses to be incurred by him by reason of the same,

(iii) execution or other process issued on a judgment, decree, or order obtained in any court in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied,

(iv) it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts.

533. (1) In the event of an unregistered company being wound up every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding-up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid.

(2) In the event of the death, bankruptcy, or insolvency of any contributory, the provisions of this Act with respect to the personal representatives, heirs, and devisees of deceased contributories, and the trustees of bankrupt or insolvent contributories as the case may be shall apply.

534. The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding-up and before the making of a winding-up order shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

535. Where an order has been made for winding-up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the

company in respect of any debt of the company except by leave of the court, and subject to such terms as the court may impose.

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ve. 536. The provisions of this Part of this Act with respect to unregistered companies shall be in addition to and not in restriction of any provisions herein before in this Act contained with respect to winding-up companies by the court, and the court or liquidator may exercise any powers to do any act in the case of unregistered companies which might be exercised or done by it or him in winding-up companies formed and registered under this Act; but an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part of this Act.

PART XVI—ARRANGEMENTS AND COMPROMISE

of 537. In this Part of this Act, the expression “arrangement” means any change in the rights or liabilities of members, debenture holders or creditors of a company or any class of them or in the regulation of a company, other than a change effected under any other provision of this Act or by the unanimous agreement of all parties affected thereby.

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up. 538. (1) With a view to effecting any arrangement, a company may by special resolution resolve that the company be put into members' voluntary winding-up and that the liquidator be authorised to sell the whole or part of its undertaking or assets to another body corporate, whether a company within the meaning of this Act or not (in this section called “the transferee company”) in consideration or part consideration of fully paid shares, debentures, policies, cash or other like interests in the transferee company and to distribute the same in specie among the members of the company in accordance with their rights in the liquidation.

(2) Any sale or distribution in pursuance of a special resolution under this section shall be binding on the company and all members thereof and each member shall be deemed to have agreed with the transferee company to accept the fully

paid shares, debentures, policies, cash or other like interests to which he is entitled under such distribution:

Provided that if—

- (a) within one year from the date of the passing of any special resolution as is referred to in subsection (1) of this section, an order is made under sections 310 to 312 of this Act dealing with relief on the grounds of unfairly prejudicial and oppressive conduct or for the winding-up of the company under a creditors' voluntary winding-up, the arrangement for the sale and distribution shall not be valid unless sanctioned by the court;
- (b) any member of the company, by writing addressed to the liquidator and left at the registered office or head office of the company, within thirty days after the passing of the resolution, dissents therefrom in respect of any of the shares held by him, the liquidator shall either abstain from carrying the resolution into effect or shall purchase such shares at a price to be determined in the manner provided by subsection (4) of this section.

(3) Any member who fails to signify his dissent in accordance with subsection (2) of this section shall be deemed to have accepted the resolution;

(4) If the liquidator elects to purchase the shares of any member who has expressed his dissent in accordance with subsection (2) of this section, the price payable therefor shall be determined by agreement in the case of a private company in which aliens do not participate, and in the case of a public company or a private company in which aliens participate, by the Securities and Exchange Commission:

Provided that in the case of a private company in which no aliens participate—

- (a) such price shall be determined by estimating what the member concerned would have received had the whole of the undertaking of the company been sold as a going concern for cash to a willing buyer and the proceeds, less the cost of winding-up, been divided amongst the members in accordance with their rights;

(b) the purchase money shall be paid by the company before the company is dissolved and be raised by the liquidator in such manner as may be determined by a special resolution or, in default of any direction in the special resolution, in such manner as he may think fit as part of the expenses of the winding-up.

(5) Nothing contained in this section shall authorise any variation or abrogation of the rights of any creditor of the company.

(6) If any company, otherwise than under the foregoing provisions of this section, sells or resolves to sell, the whole or part of its undertaking or assets to another body corporate in consideration or part consideration of any shares, debentures, policies or other like interest in that body corporate and resolves to distribute the same in specie among members of the company (whether in liquidation or by way of dividend), any member of the company may by notice in writing addressed to the company and left at the registered office or head office of the company within thirty days after the passing of the resolution authorising such distribution, require the company either to abstain from carrying the resolution into effect or to purchase any of his shares at a price to be determined in the manner provided by subsection (4) of this section.

(7) Nothing contained in subsection (6) of this section shall authorise any company to purchase its own shares or make any distributions to its shareholders except in accordance with the provisions of this Act.

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539. (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the court may, on the application, in a summary way, of the company or any of its creditors or members or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company, or class of members, as the case may be, to be summoned in such a manner as the court directs.

(2) If a majority representing not less than three-quarters in value of the shares of members or class of members, or of the

interest of creditors or class of creditors, as the case may be, being present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement may be referred by the court to the Securities and Exchange Commission which shall appoint one or more inspectors to investigate the fairness of the said compromise or arrangement and to make a written report thereon to the court within a time specified by the court.

(3) If the court is satisfied as to the fairness of the compromise or arrangement, it shall sanction the same and the compromise or arrangement shall be binding on all the creditors or the class of creditors or on the members or the class of members as the case may be, and also the company or in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(4) An order made under subsection (3) of this section shall have no effect until a certified true copy of the order has been delivered by the company to the Commission for registration and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made.

(5) If a company makes default in complying with subsection (4) of this section, the company and every officer of the company who is in default shall be liable to a fine of ₹ 5 for each copy in respect of which default is made.

(6) In this section and section 540 of this Act, "company" means any company liable to be wound up under this Act.

540. (1) Where a meeting of creditors or any class of creditors or of members or any class of members is summoned under section 539 of this Act, there shall—

(a) with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors of the company, whether as directors or as members or as creditors of the company or otherwise and the effect thereon of the compromise or arrange-

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ment in so far as it is different from the effect on the like interest of other persons; and

- (b) in every notice summoning the meeting which is given by advertisement, be included such a statement as aforesaid, or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement as aforesaid.

(2) Where the compromise or arrangement affects the rights of debenture holders of the company, the statement shall give the like explanation as respects the trustees of any deed for securing the issue of the debenture as it is required to give as respects the company's directors.

(3) Where a notice given by advertisement includes a notification that copies of a statement explaining the effects of the compromise or arrangement proposed can be obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making application in the manner indicated by the notice, be furnished by the company free of charge with a copy of the statement.

(4) Where a company makes default in complying with any requirement of this section, the company and every officer of the company who is in default shall be liable to a fine of ₦ 1,500 and for the purpose of this subsection any liquidator of the company and any trustee of a deed for securing the issue of debentures of the company shall be deemed to be an officer of the company:

Provided that a person shall not be liable under this subsection, if that person shows that the default was due to refusal of any other person, being a director or trustee for debenture holders, to supply the necessary particulars as to his interests.

(5) It shall be the duty of any director of the company and of any trustee for debenture holders of the company to give notice to the company of such matters relating to himself as may be necessary for the purposes of this section, and any person who makes default in complying with this subsection shall be liable to a fine of ₦ 100.

PART XVII—DEALINGS IN COMPANIES SECURITIES

CHAPTER 1—Preliminary

541. The provisions of this Part of this Act shall be administered by the Securities and Exchange Commission established under the Securities and Exchange Commission Act, and any reference in this Part of this Act to "the Commission" shall be a reference to the Securities and Exchange Commission.

542. (1) The Commission may, from time to time, with the approval of the Minister of Finance and Economic Development, make regulations generally for the purpose of giving effect to the provisions of this Part of this Act and may, in particular, and without prejudice to the generality of the foregoing provisions, make regulations—

- (a) prescribing the forms for returns and other information required under this Part of this Act;
- (b) prescribing the procedure for obtaining any information required under this Act;
- (c) requiring returns to be made, within a specified time, if any, by any company or enterprise to which this Part of this Act applies;
- (d) prescribing the procedure and criteria for approval of mergers, acquisitions, unit trust schemes, take-over, amalgamations and business combinations under this Act;
- (e) prescribing any fees payable under this Part of this Act;
- (f) prescribing the formula for the calculation of the price at which securities may be bought or sold; or
- (g) prescribing the information to be contained in any prospectus or trust deed filed under this Part of this Act.

(2) The Commission may with the approval of the Minister of Finance and Economic Development, amend or rescind any of the regulations made under subsection (1) of this section.

(3) Any regulations made pursuant to subsection (1) or (2) of this section may, where appropriate prescribe penalties not exceeding a fine of ₦ 100 for each day during which a default

continues, or imprisonment for a term of six months or both such fine and imprisonment for any contravention of any of the regulations.

CHAPTER 2—*Public Offer and Sale of Securities*

Invitations to the public

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543. (1) It shall not be lawful for any person to make any invitation to the public—

- (a) to acquire or dispose of any securities of a company; or
- (b) to deposit money with any company for a fixed period or payable at call, whether bearing or not bearing interest unless the company concerned is a public company and the provisions of sections 548 to 560 of this Act are duly complied with; or a company licensed under the Banking Act to carry on banking business:

Provided that nothing in this subsection shall render unlawful the sale of any shares by or under the supervision of the court.

(2) If any invitation to the public is made in breach of subsection (1) of this section, all persons making the invitation and every officer who is in default or any body corporate making the invitation shall be guilty of an offence and liable on conviction in the case of a body corporate to a fine not exceeding ₦5,000 and in any other case to imprisonment for a term not exceeding two years or to a fine not exceeding ₦500 or to both such imprisonment and fine.

(3) If, as a result of any invitation to the public in breach of subsection (1) of this section, any person acquires or disposes of any securities or deposits money with any company, he shall be entitled to rescind such transactions and either in addition to or instead of rescinding, to recover compensation for any loss sustained by him from any person who is liable whether convicted or not, in respect of the breach.

(4) Where, in accordance with subsection (3) of this section, any person claims to rescind any transaction, he must do so with reasonable promptitude and shall not be entitled

to rescind any transaction with the company or to recover compensation from it unless he takes steps to rescind before the commencement of the winding-up of the company, but the fact that it is too late to rescind shall not prejudice his right to recover compensation from any person other than the company.

544. (1) Notwithstanding section 543 of this Act, it shall be lawful to make an invitation to the public to deposit money with a public company, if prior to the making of the invitation the written consent of the Commission has been obtained and the invitation is made in accordance with such conditions and restrictions as may have been imposed by the Commission.

(2) The Commission may in its absolute discretion grant or withhold such consent as is referred to in subsection (1) of this section, and without prejudice to the generality of the foregoing, may require the registration with and approval by it of any advertisement or circular to be used in connection with the invitation.

(3) If any advertisement or circular used in connection with the invitation contains any untrue statement then, subject to subsection (4) of this section, any person who made the invitation and every person who was a director of a company making the invitation at the time when the advertisement or circular was published shall be guilty of an offence and liable to pay compensation to any person who deposited money with the public company on the faith of the advertisement or circular for any loss they may have sustained by reason of such untrue statement.

(4) No person shall be liable under subsection (4) of this section, if he proves that—

- (a) he had reasonable ground to believe and did believe up to the time of publication of the advertisement or circular that the statement was true; or
- (b) the advertisement or circular was published without his knowledge and that on becoming aware of its publication he forthwith gave reasonable public notice that it was published without his knowledge.

(5) If any person deposits any money with a public company as a result of an untrue statement of a material fact made whether innocently or fraudulently in any advertisement or circular published in connection with any invitation to the public made by or on behalf of that company, such person shall be entitled to require the company immediately to repay such money with interest at the current bank rate *per annum* or such higher rate as may have been agreed to be paid on the deposit.

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545. (1) For the purposes of this Act, an invitation shall be deemed to be made to the public, if an offer or invitation to make an offer is—

- (a) published, advertised or disseminated by newspaper, broadcasting, cinematograph or any other means whatsoever;
- (b) made to or circulated among any persons whether selected as members or as debenture holders of the company concerned or as clients of the persons making or circulating the invitation or in any other manner;
- (c) made to any one or more persons upon the terms that the person or persons to whom it is made may renounce or assign the benefit of the offer or invitation or of any securities to be obtained under it in favour of any other person or persons;
- (d) made to any one or more persons to acquire any securities dealt in upon any stock exchange or in respect of which the invitation states that application has been or shall be made for permission to deal in those securities upon any stock exchange:

Provided that—

(i) nothing contained in this section shall be taken as requiring any invitation to be treated as made to the public if it can properly be regarded in all circumstances as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or otherwise as being a domestic concern of the persons making and receiving it,

(ii) an invitation made by or on behalf of a private company exclusively to its existing shareholders (not being greater in number than is prescribed by subsection (3) of section 22 of this Act) and its existing employees shall not be deemed to be an invitation to the public unless the invitation is of the type referred to in paragraph (c) or (d) of this subsection.

(2) For the purpose of subsection (1) of this section, the issue of any form of application for securities or of any form to be completed on the deposit of money with a company shall be deemed to be an invitation to acquire those shares or to deposit money.

546. Where any company allots or agrees to allot any of its securities to any person with a view to the public being invited to acquire any of those securities then, for all the purposes of this Act, any invitation so made shall be deemed to be an invitation to the public made by the company as well as by the person actually making the invitation, and any person who acquires any such securities in response to the invitation shall be deemed to be an allottee from the company of those securities:

Provided that where—

- (a) an invitation to the public is made in respect of any such securities within six months after the allotment or agreement to allot; or
- (b) at the date when the invitation to the public was made, the whole consideration to be received by the company in respect of securities had not been so received,

it shall be assumed, unless the contrary is shown, that the allotment or agreement to allot was made by the company with a view to an invitation to the public being made in respect of those securities.

Registration of securities

547. All securities proposed to be offered for sale to or for subscription by the public or to be offered privately with the intention that the securities shall be held ultimately other than by those to whom the offers were made shall be registered with

106. the Commission in accordance with the provisions of the Securities and Exchange Commission Act.

Forms of Prospectus

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548. (1) Subject to the provisions of section 553 of this Act, it shall not be lawful to issue any form of application for securities in a public company unless the form is issued with a prospectus which complies with the requirements of section 550 of this Act:

Provided that this section shall not apply if it is shown that the form of application was issued either—

- (a) in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares; or
- (b) in relation to shares which were not offered to the public.

(2) If any person acts in contravention of the provisions of this section, he shall be guilty of an offence and liable on conviction to a fine not exceeding ₹ 5,000.

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549. A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

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550. (1) Subject to the provisions of section 553 of this Act, every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, shall state the matters specified in Part I of the Fifteenth Schedule to this Act and set out the reports specified in Part II of that Schedule, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

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(2) Any condition requiring or binding an applicant for shares in a company to waive compliance with any requirement of this section, or purporting to affect him with notice

of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if he proves that—

- (a) as regards any matter not disclosed, he was not cognisant of it; or
- (b) non-compliance or contravention arose from an honest mistake of fact on his part; or
- (c) the non-compliance or contravention was in respect of matters which in the opinion of the court dealing with the case were immaterial or was otherwise such as should, in the opinion of that court, having regard to all the circumstances of the case, reasonably be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 7(c) of the Fifteenth Schedule to this Act, no director or other person shall incur any liability in respect of the failure, unless it is proved that he had knowledge of the matters not disclosed.

551. The provisions of sections 548 and 550 of this Act shall not apply to the issue—

- (a) to existing members of a company of a prospectus or form of application relating to shares in the company whether or not an applicant for shares has the right to renounce in favour of other persons; or
- (b) of a prospectus or form of application relating to securities which are or are to be in all respects uniform with securities previously issued and for the time being dealt in or quoted on a recognised stock exchange,

but, subject as specified in paragraphs (a) and (b) of this section, sections 548 and 550 of this Act shall apply to a prospectus or a form of application issued on or with reference to the formation of a company, or at any time thereafter.

552. (1) Subject to this section, a person shall not issue, circulate, publish, disseminate or distribute any notice, circular or advertisement that—

- (a) offers for subscription or purchase, securities in a company, or invites subscription for, or purchase of any such securities; or
- (b) calls attention to—
 - (i) an offer, or intended offer, for subscription or purchase of securities in a company, or
 - (ii) an invitation, or intended invitation, to subscribe for or purchase any such securities, or
 - (iii) a prospectus.

(2) This section shall not apply to—

- (a) a notice or circular that relates to an offer or invitation not made or issued to the public;
- (b) a registered prospectus;
- (c) a notice, circular or advertisement that calls attention to a registered prospectus, which states that allotments of, or contracts with respect to, the shares referred to in the prospectus which will be made only on the basis of one of the forms of application referred to in, and attached to a copy of the prospectus and that contains no other information or matter other than some or all of the following information, namely—
 - (i) the number and description of the securities in the company to which the prospectus relates,
 - (ii) the name of that company, the date of its incorporation and the number of the company's issued securities and where the issue price of any securities is to be paid by instalments, the amounts paid and unpaid on those issued securities,
 - (iii) the general nature of its main business, or the proposed main business, of the company,
 - (iv) the names, addresses and occupations of the directors or proposed directors,
 - (v) the names and addresses of the brokers or underwriters (if any) to the issue,

(vi) the name of the stock exchange (if any) of which the brokers or underwriters to the issue are members,

(vii) particulars of the time and place at which copies of the registered prospectus and form of application for the shares to which it relates may be obtained; or

(d) to a notice or circular that—

(i) accompanies a notice or circular referred to in paragraph (b) or (c) of this section or would but for the inclusion in it of a statement referred to in subparagraph (iii) or (iv) of this paragraph, be a notice or circular so referred to,

(ii) is issued or circulated by a person whose ordinary business is, or includes advising clients in connection with their investments and is issued or circulated only to clients so advised in the course of that business,

(iii) contains a statement that the investment to which it or the accompanying document relates is recommended by that person, and

(iv) where the person is an underwriter or sub-underwriter of an issue of shares to which the notice or circular or accompanying document relates, contains a statement that the person making the recommendation is interested in the success of the issue as an underwriter or sub-underwriter, as the case may be.

(3) This section shall apply to notices, circulars and advertisements published or disseminated by newspaper, radio or television broadcasting, cinematograph or any other means.

(4) A person who contravenes the provisions of this section or a person who knowingly authorises or permits an act that constitutes a contravention of this section, shall be guilty of an offence.

(5) Where a notice, circular or advertisement relating to a company is issued, circulated, published, disseminated or distributed in contravention of this section by or with the authority or permission of an officer of the company, the company shall be guilty of an offence.

Exemption
certificate
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553. (1) Where—

- (a) it is proposed to offer any securities in a company to the public by a prospectus issued generally (that is to say, to persons who are not existing members of the company); and
- (b) application is made to a recognised stock exchange for permission for those securities to be dealt in or quoted on that stock exchange,

there may, on request of the applicant, be given, by or on behalf of that stock exchange, a certificate of exemption, that is to say, a certificate that, having regard to the proposal (as stated in the request) as to the size and other circumstances of the issue of securities and as to any limitations on the number and class of persons to whom the offer is to be made, compliance with the requirements of the Fifteenth Schedule to this Act would be unduly burdensome.

(2) If a certificate of exemption is given and the proposals mentioned in subsection (1) of this section are adhered to and the particulars and information required to be published in connection with the application for permission made to the stock exchange are so published, then—

- (a) a prospectus giving the relevant particulars and information, in the form in which they are so required to be published, shall be deemed to comply with the requirements of the Fifteenth Schedule to this Act; and
- (b) sections 548 and 550 of this Act shall not apply to any issue, after the permission applied for is granted, of a prospectus or form of application relating to the securities.

Fifteenth
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Expert's
statement in
prospectus.

554. (1) A prospectus inviting persons to subscribe for securities in a company and including a statement purporting to be made by an expert shall not be issued unless—

- (a) the expert has given and has not, before delivery of a copy of the prospectus for registration, withdrawn his written consent to the issue of it with the statement included in the form and context in which it is included; and
- (b) a statement that the expert has given and has not withdrawn his consent appears in the prospectus.

554. (2) If any prospectus is issued in contravention of this section, the company and every person who is knowingly a party to its issue shall be guilty of an offence and liable on conviction to a fine not exceeding ₹ 10,000.

(3) In this section, "expert" includes every engineer, legal practitioner, accountant and any other person whose profession gives authority to a statement made by him.

555. (1) Notwithstanding the provisions of section 543 of this Act, it shall be lawful to make an invitation to the public to acquire or dispose of any securities of a public company, if—

- (a) within six months prior to the making of the invitation, there has been delivered to the Commission and registered by it, in accordance with section 557 of this Act, a prospectus relating to such securities complying in all respects with the relevant provisions of sections 553, 554 and 556 of this Act; and
- (b) except as provided in subsection (2) of this section, every person to whom the invitation is made is supplied with a true copy of such prospectus; and
- (c) every copy of the prospectus states on its face that it has been at the time when the invitation is first made registered by the Commission and the date of registration thereof.

(2) Paragraph (b) of the foregoing subsection shall not apply to an invitation made by or through a member of an approved stock exchange to a client of that member or to an invitation made by or through an exempted dealer.

556. (1) Except as provided in section 553 of this Act, where the company invites the public to acquire any securities of a public company, the prospectus referred to in section 554 of this Act shall state the matters specified in Part I of the Fifteenth Schedule to this Act and set out the reports specified in Part II of that Schedule:

Provided that this subsection shall not apply to an invitation by a company in respect of shares of that company—

- (a) to its associated company made solely to the existing shareholders of that company; or
- (b) in all respects uniform with shares of that company previously issued and for the time being dealt in on an approved stock exchange.

(2) A prospectus relating to any invitation to the public to acquire or dispose of any securities of a public company, being an invitation not falling within subsection (1) of this section, either because it does not invite the public to acquire any securities or because it is excluded from the ambit of that subsection by virtue of the proviso, may not state all the matters or set out the reports specified in the Fifteenth Schedule to this Act but shall not contain any untrue statement, and if the securities to which it relates are dealt in on any stock exchange or if application has been, or is being made to a stock exchange for permission to deal in those securities to the prospectus shall—

- (a) state that the securities to be dealt in on that stock exchange or, as the case may be, that application has been or is to be made for permission for them to be dealt in on that stock exchange;
- (b) state whether or not that stock exchange is an approved stock exchange within the meaning of this Act; and
- (c) contain the particulars and information required by that stock exchange; and in any other case, shall state that the securities are not dealt in on any stock exchange.

(3) An invitation falling within subsection (1) of this section shall, hereafter in this Act, be described as a “general invitation” and an invitation falling within subsection (2) of this section shall, hereafter in this Act, be described as a “restricted invitation”.

557. (1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the Commission a copy of it for registration, signed by every person who is named in it as a director or proposed director of the company, or by his agent authorised in writing, and having endorsed on it or attached to it—

- (a) any consent to the issue of the prospectus required by section 554 of this Act from any person as an expert; and
- (b) in the case of a prospectus issued generally, also—

(i) a copy of any contract required by paragraph 11 of the Fifteenth Schedule to this Act to be stated in the prospectus or, if in the case of a prospectus deemed by virtue of a certificate granted under section 553 of this Act to comply with the requirements of that Schedule a contract or a copy of such contract or a memorandum of a contract is required to be available for inspection in connection with the application made under that section to the stock exchange, a copy of that contract, and

(ii) where the persons making any report required by Part II of the Fifteenth Schedule to this Act have made in it or without giving the reasons have indicated in it any such adjustments as are mentioned in paragraph 21 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons for them.

(2) The references in sub-paragraph (b)(i) of subsection (1) of this section to the copy of a contract required to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in any language other than English be taken as references to a copy of a translation of the contract in English or a copy embodying a translation in English of the parts in any other language, as the case may be, being a translation certified in any manner acceptable to the Commission to be a correct translation, and the reference to a copy of a contract required to be available for inspection shall include a reference to a copy of a translation of it or a copy embodying a translation of part of it.

(3) Every prospectus shall, on the face of it—

- (a) state that a copy has been delivered for registration as required by this section; and
- (b) specify, or refer to statements included in the prospectus which specify, any documents required by

this section to be endorsed on or attached to the copy so delivered.

(4) The Commission shall not register a prospectus unless it is satisfied that—

- (a) it is dated and signed as required by this section;
- (b) it has endorsed on it or attached to it the documents (if any) specified; and
- (c) the prospectus otherwise complies with the requirements of the Act,

and where the Commission refuses to register a prospectus on the ground that it fails to comply otherwise with the requirements of this Act, an appeal shall lie to the Court within twenty-one days after notification of the refusal by the Commission.

(5) If a prospectus is issued without a copy of it being delivered under this section to the Commission or without the copy so delivered having endorsed on it or attached to it the required documents, the company and every person who is knowingly a party to the issue of the prospectus, shall be guilty of an offence and liable on conviction to a fine not exceeding ₦50 for every day from the date of the issue of the prospectus until a copy of it is so delivered with the required documents endorsed on it or attached to it.

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558. A company limited by shares shall not, before the statutory meeting, vary the terms of a contract referred to in the prospectus, or statement in lieu of prospectus, except subject to the approval of the statutory meeting.

559. (1) Where a company allots or agrees to allot any securities in the company with a view to all or any of those securities being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and all enactments and rules of law as to the statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly, as if the securities have been offered to the public for subscription and as if persons accepting the offer in respect

of any shares, are subscribers for those securities but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of mis-statements contained in the document or otherwise.

(2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, securities was made with a view to the shares being offered for sale to the public if it is shown—

- (a) that an offer of the securities or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or
- (b) that at the date when the offer was made the whole consideration to be received by the company in respect of the securities had not been so received.

(3) Section 550 of this Act as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—

- (a) the amount of the consideration received by the company in respect of the securities to which the offer relates; and
- (b) the place and time at which the contract under which the said securities have been or are to be allotted may be inspected,

and section 557 of this Act as applied by this section shall have effect as though the persons making the offer were named in a prospectus as directors of a company.

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document is signed on behalf of the company or firm by two directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign by his agent authorised in writing.

560. For the purposes of the foregoing provisions of this Part of this Act a statement—

- (a) included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and

- (b) shall be deemed to be included in a prospectus if it is contained in the prospectus or in any report or memorandum appearing on the face of it or by reference incorporated or issued with it.

Statement in lieu of prospectus

561. A statement in lieu of prospectus shall be in the form and contain the particulars set out in Part I of the Sixteenth Schedule to this Act, and, in the cases mentioned in Part II of that Schedule, set out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

Civil and criminal liability in respect of prospectus and statement in lieu of prospectus

562. (1) Subject to the provisions of this section, where a prospectus invites persons to subscribe for shares in a company, the following persons shall be liable to pay compensation to all persons who subscribe for shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement included in it, that is to say, every person—

- (a) who is a director of the company at the time of the issue of the prospectus;
- (b) who has authorised himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;
- (c) being a promoter of the company; and
- (d) who has authorised the issue of the prospectus:

Provided that where, under section 554 of this Act, the consent of a person is required to the issue of a prospectus and he has given that consent, he shall not by reason of his having given it be liable under this subsection as a person who has authorised the issue of prospectus except in respect of an untrue statement purporting to be made by him as an expert.

(2) No person shall be liable under subsection (1) of this section if he proves—

- (a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
- (b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or
- (c) that, after the issue of the prospectus and before allotment, he, on becoming aware of any untrue statement in it, withdrew his consent and gave reasonable public notice of the withdrawal and of the reason for his withdrawal; or
- (d) that, as regards every untrue statement—
 - (i) not purporting to be made on the authority of an expert, or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares, as the case may be, believe, that the statement was true,
 - (ii) purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it and that person has given the consent required by section 554 of this Act to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment, and
 - (iii) purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document:

Provided that this subsection shall not apply in the case of a person liable, by reason of his having given a consent required of him by the section 554 of this Act, as a person who

has authorised the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert.

(3) A person who, apart from this subsection, would under subsection (1) of this section be liable, by reason of his having given a consent required of him by section 554 of this Act as a person who has authorised the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert, shall not be so liable if he proves that—

- (a) having given his consent under section 554 of this Act to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration; or
- (b) after delivery of a copy of the prospectus for registration and before allotment he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reason for his withdrawal; or
- (c) he was competent to make the statement and that he had reasonable ground to believe and did up to the time of the allotment of the shares, believe that the statement was true.

(4) Where—

- (a) the prospectus contains the name of a person as a director of the company, or as having agreed to become a director of the company and he has not consented to become director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to such issue; or
- (b) the consent of a person is required under section 554 of this Act to the issue of the prospectus and he either has not given the consent or has withdrawn it before the issue of the prospectus,

the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised such issue, shall be liable to indemnify the person so named or whose consent was so required, as the case may be, against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the

inclusion in the prospectus of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any action or legal proceeding brought against him in respect of the issue of the prospectus or the inclusion in the prospectus of the statement:

Provided that a person shall not be deemed for the purpose of this subsection to have authorised the issue of a prospectus by reason only of his having given the consent required by section 554 of this Act to the inclusion in it of a statement purporting to be made by him as an expert.

(5) For the purposes of this section—

- (a) “promoter” means a promoter who was a party to the preparation of the prospectus, or of the portion of it containing the untrue statement, but does not include any person by reason of his acting in a professional capacity, for persons engaged in procuring the formation of the company; and
- (b) “expert” has the same meaning as in section 554 of this Act.

563. (1) Where a prospectus issued after the commencement of this Act includes any untrue statement, any officer who authorised the issue of the prospectus shall be guilty of an offence and liable—

- (a) on conviction by the court upon an indictment, to imprisonment for a term not exceeding two years, or to a fine not exceeding ₦5,000 or to both such imprisonment and fine; or
- (b) on summary conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding ₦500 or to both such imprisonment and fine, unless he proves either that the statement was immaterial or that he has reasonable ground to believe and did, up to the time of the issue of the prospectus, believe that the statement was true.

(2) A person shall not be deemed for the purposes of this section to have authorised the issue of a prospectus by reason only of his having given the consent required by section 554 of this Act to the inclusion in it of a statement purporting to be made by him as an expert.

564. (1) Where a statement in lieu of prospectus includes any untrue statement, any person who authorised the delivery of the statement in lieu of prospectus for registration shall be guilty of an offence and liable—

- (a) on conviction by the court upon an indictment, to imprisonment for a term not exceeding two years or to a fine not exceeding ₦5,000 or to both such imprisonment and fine; or
- (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding ₦500 or both such imprisonment and fine,

unless he proves either that the untrue statement was immaterial or that he had reasonable ground to believe and did up to the time of the delivery for registration of the statement in lieu of prospectus believe that the untrue statement was true.

(2) For the purposes of this section—

- (a) a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and
- (b) a statement shall be deemed to be included in a statement in lieu of prospectus if it is contained in it or in any report or memorandum appearing on the face of it or by reference incorporated in it.

Allotment of securities in pursuance of prospectus

565. (1) There shall be constituted an Allotment Committee of the Commission which shall be responsible for the allotment of securities of public companies selling their securities to the public with or without a stock exchange quotation under such rules and regulations as may be laid down by the Commission.

(2) The Allotment Committee shall consist of the following members—

- (a) two representatives of the Commission of whom one shall be the chairman;
- (b) a representative of the Nigerian Stock Exchange; and
- (c) a representative of the appropriate issuing house.

566. (1) No allotment shall be made of any securities in a company in pursuance of prospectus issued generally and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the beginning of the third day after that on which the prospectus is first so issued or such later time (if any) as may be specified in the prospectus; and in this Act, the beginning of the said third day or such later time, as mentioned in this subsection, is hereafter referred to as "the time of the opening of the subscriptions lists".

(2) In subsection (1) of this section, the reference to the day on which the prospectus is first issued generally shall be construed as referring to the day on which it is first so issued as a newspaper advertisement:

Provided that, if it is not so issued as a newspaper advertisement before the third day after that on which it is first so issued in any other manner, the said reference shall be construed as referring to the day on which it is first so issued in any manner.

(3) The validity of an allotment shall not be effected by any contravention of the provisions of subsections (1) or (2) of this section but, in the event of any such contravention, the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine of ₦5,000.

(4) In the application of this section to a prospectus offering securities for sale, subsections (1) to (3) of this section shall have effect with the substitution of references to sale for references to allotment, and with the substitution for reference to the company and every officer of the company who is in default, of reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the contravention.

(5) An application for securities in a company which is made in pursuance of a prospectus issued generally shall not be revocable until after the expiration of the third day after the time of the opening of the subscription lists, or the giving before the expiration of the said third day, by some person responsible under section 562 of this Act for the prospectus, of a public notice having the effect under that section of excluding or limiting the responsibility of the person giving it.

(6) In reckoning for the purposes of this section and section 572 of this Act, the third day after another day, any intervening day which is a Saturday or Sunday or which is a public holiday in any part of Nigeria shall be disregarded, and if the third day (as so reckoned) is itself a Saturday or Sunday or such a public holiday, there shall for the said purposes be substituted the first day after which is none of them.

(7) This section shall not apply in relation to a prospectus to which paragraph (a) or (b) of subsection (2) of section 553 of this Act applies.

567. (1) No allotment shall be made of any securities of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which, in the opinion of the directors, is required to be raised by the issue of share capital in order to provide for the matters specified in paragraph 2 of the Fifteenth Schedule to this Act, has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company.

(2) For the purposes of subsection (1) of this section, a sum shall be deemed to have been paid to and received by the company if a cheque for that sum has been received in good faith by the company and the directors of the company have no reason for suspecting that the cheque will not be paid.

(3) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Act referred to as "the minimum subscription".

(4) The amount payable on application on each shall not be less than five *per cent* of the nominal amount of the share.

(5) If the conditions specified in subsections (1) to (3) of this section have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and if any such money is not repaid to them within forty-eight days, after the issue of the prospectus, the

directors of the company shall jointly and severally be liable to repay that money with interest at the current bank rate *per annum* from the expiration of the forty-eighth day:

Provided that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(6) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(7) This section, except subsection (4), shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

568. (1) All application and other moneys paid prior to allotment by an applicant on account of shares or other securities offered to the public shall, until the allotment of the shares or other securities, be held by the company or, in the case of an intended company, by the persons named in the prospectus as proposed directors and by the promoters, upon trust for the applicant, but there shall be no obligation or duty on any bank or third person with whom any such moneys have been deposited to inquire into or see to the proper application of those moneys so long as the bank or person acts in good faith.

(2) If default is made in complying with this section, every officer of the company in default or, in the case of an intended company, every person named in the prospectus as a proposed director and every promoter who knowingly and wilfully authorises or permits the default, shall be guilty of an offence.

569. (1) A public company having a share capital which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares unless at least three days, before the first allotment of the shares there has been delivered to the Commission for registration a statement in lieu of prospectus signed by every person who is named in it as a director or a proposed director of the company or by his agent authorised in writing in the form and containing the

particulars set out in Part I of the Sixteenth Schedule to this Act and, in the cases mentioned in Part II of that Schedule setting out the specified reports; and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2) Every statement in lieu of prospectus delivered under subsection (1) of this section shall, where the persons making any such statement have made in it or have, without giving the reasons, indicated in it any such adjustments as are mentioned in paragraph 5 of the Sixteenth Schedule to this Act, have, endorsed on it or attached to it, a written statement signed by those persons setting out the adjustments and giving the reasons for the adjustments.

(3) If a company acts in contravention of subsection (1) or (2) of this section, the company and every director of the company who knowingly and wilfully authorises or permits the contravention shall be guilty of an offence and liable on conviction to a fine not exceeding ₦1,000.

570. (1) An allotment made by a company to an applicant in contravention of the provisions of sections 567 and 569 of this Act shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment, and not later, and the allotments shall be so voidable notwithstanding that the company is in course of being wound up.

(2) If any director of a company knowingly contravenes, or permits or authorises the contravention of, any of the provisions of the sections mentioned in subsection (1) of this section, with respect to allotment, he shall be guilty of an offence and liable to compensate the company and the allottee respectively, for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby:

Provided that proceedings to recover any such loss, damages, or costs shall not be commenced after the expiration of two years from the date of the allotment.

571. A shareholder may bring an action against a company which has allotted shares under a prospectus, for the rescission of all allotments and the repayment to the holders of the shares of the whole or part of the issued price which has been paid in respect of them, if either the prospectus—

- (a) contained a material statement, promise or forecast which was false, deceptive or misleading; or
- (b) did not contain a statement, report or account required to be contained in it by section 550 and the Fifteenth Schedule to this Act.

572. (1) Where a prospectus, whether issued generally or not, states that application has been or will be made for permission for the securities offered by it to be dealt in on any recognised stock exchange, any allotment made on an application in pursuance of the prospectus shall, whenever made, be void if the permission has not been applied for before the third day after the first issue of the prospectus or if the permission has been refused before the expiration of three weeks from the date of the closing of the subscription lists or such longer period not exceeding six weeks as may, within the said three weeks, be notified to the applicant for permission by or on behalf of the stock exchange.

(2) Where permission for such dealing as referred to in subsection (1) of this section has been applied for or if applied for has been refused, the company shall forthwith repay without interest all money received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the directors of the company shall be jointly and severally liable to repay that money with interest at the current bank rate *per annum* from the expiration of the eight days:

Provided that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(3) All moneys received by virtue of this section shall be kept in a separate bank account so long as the company may become liable to repay it under subsection (2) of this section; and if default is made in complying with this subsection, the company and every officer of the company who is in default

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shall be guilty of an offence and liable on conviction to a fine not exceeding ₦5,000.

(4) Any condition requiring or binding any application for securities to waive compliance with any requirement of this section shall be void.

(5) For the purposes of this section, permission shall not be deemed to be refused if it is intimated that the application for it, though not at present granted, shall be given further consideration.

(6) This section shall have effect—

(a) in relation to any securities agreed to be taken by a person underwriting an offer by a prospectus as if he had applied for them in pursuance of the prospectus; and

(b) in relation to a prospectus offering securities for sale with the following modifications, that is to say—

(i) references to sale shall be substituted for references to allotment;

(ii) the persons by whom the offer is made and not the company, shall be liable under subsection (2) of this section to repay money received from applicants, and references to the company's liability under that subsection shall be construed accordingly; and

(iii) for the references in subsection (3) of this section to the company and every officer of the company, who is in default, there shall be substituted references to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the default.

573. (1) The issue of shares by a bank, otherwise than by capitalisation out of the reserves of the bank, shall be by way of a public offer.

(2) This section shall not apply to a bank incorporated as a private company.

(3) If a bank acts in contravention of this section, the bank and any officer in default shall be guilty of an offence and shall be liable on conviction to a fine of ₦5,000.

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574. (1) The Commission shall have the power to prescribe the maximum period, after appropriate consultation, within which the company or the issuing house, as the case may be, shall return surplus moneys due to subscribers to the issues of securities.

(2) The Commission may, subject to subsection (3) of this section, prescribe the rate of interest payable to subscribers whose surplus moneys are held beyond the prescribed period.

(3) The interest payable under the foregoing subsection shall not be less than one *per cent* above the Central Bank of Nigeria minimum rediscount rate and the Commission may—

(a) in addition, require a company which fails to honour its obligation under this section to pay higher rate of interest on the surplus moneys; and

(b) direct that such increased interest be paid into the Consolidated Revenue Fund of the Federation.

(4) Any person who fails to comply with the provision of this section shall be guilty of an offence under this Act and shall be liable on conviction to a fine of ₦5,000.

CHAPTER 3—Unit Trust

575. In this Chapter of this Part—

“auditor” means a member of a body of accountants from time to time recognised by an Act or Decree for the purpose of this Chapter of this Part and appointed as auditor of the trust by managers with the approval of the trustees;

“authorised unit trust scheme” means any unit trust scheme that is authorised by the Commission and registered in the register maintained by the Commission for the purpose of this Chapter of this Part;

“dealing in securities” means doing any of the following things (whether as a principal or as an agent), that is to say, making or offering to make with any person, or inducing or attempting to induce any person to enter into or offer to enter into any agreement for or with a view to acquiring, holding or disposing of securities or any other property, or any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties

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from the yield of securities or by reference to fluctuations in the value of securities;

“filing” means delivery to the Commission through mails or otherwise of all papers or applications required to be filed with the Commission pursuant to this Part and regulations made under it; and the date on which the papers or applications are actually received by the Commission at its principal office shall be the date of filing them;

“holder” means any investor or beneficiary who has acquired units or the unit trust scheme and trust deed, and is entitled to a *pro rata* share of dividends, interest or other income of the securities comprised in the unit;

“issuer” means the person performing the duties of a manager pursuant to the provisions of the trust under which the units are issued;

“manager” under a unit trust scheme, means the person in whom are vested the powers of management relating to property for the time being subject to any trust created in pursuance of the scheme;

“prospectus” includes offer for sale, advertisement, circular, letter, notice, scheme of arrangement, or other equivalent document published or circulated or proposed to be published or circulated relating to the unit trust scheme;

“register” means the register established and maintained for the purposes of this Chapter of this Part;

“trust deed” means the agreement drawn up between the trustees and the manager for regulating the operation of a unit trust scheme;

“trustee” under a unit trust scheme means the person in whom the property for the time being subject to any trust created in pursuance of the scheme is or may be vested in accordance with the terms of the trust;

“units” in relation to a unit trust scheme, means any units (described whether as units or otherwise) into which are divided the beneficial interest in the assets subject to any trust created under the scheme;

“unit trust scheme” means any arrangement made for the purpose, or having the effect, of providing facilities for the participation of the public as beneficiaries under a

trust in profits or income arising from acquisition, holding, management or disposal of securities or any other property whatsoever.

576. (1) Notwithstanding anything contained in this Act, no person shall establish or operate a unit trust scheme or carry on or purport to carry on the business of dealing in units of a unit trust scheme (described whether as units or otherwise) unless such scheme is authorised by and registered with the Commission. Author
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(2) An application for authorisation under this section shall be in the form prescribed by the Commission and shall be accompanied by such documents as may be specified, from time to time, by the Commission.

(3) Upon application to the Commission in accordance with this Act by the manager under a unit trust scheme, the Commission may authorise and register it but only if—

- (a) the Commission is satisfied that the competence in respect of matters of the kind with which they would be concerned in relation to a unit trust scheme and probity of the manager and trustee are such as to render them suitable to act as manager and trustee, respectively, under the scheme;
- (b) the manager under the scheme is a body corporate that is incorporated under this Act and having a minimum paid-up capital of ₦250,000;
- (c) the trustee under the scheme is a body corporate such as a bank or an insurance company licensed under the relevant statute and having a minimum paid up capital of ₦600,000;
- (d) the Commission is satisfied that the scheme is such that the effective control over the affairs of the company which is the manager under the scheme is and shall be exercised independently of the company which is the trustee under the scheme;
- (e) the Commission is satisfied that the trust deed is in compliance with the provisions of this Act and the rules and regulations for the time being in force thereunder;

and a copy of the trust deed aforesaid is deposited with the Commission; and

(f) the name of the scheme is not, in the opinion of the Commission, undesirable.

(4) The Commission may refuse to authorise a unit trust scheme if it fails to comply with the provisions of this Chapter and shall so notify the manager and the trustee under the scheme stating its reasons for refusal within thirty days of such refusal.

(5) Upon authorisation of a unit trust scheme, the Commission shall certify that the scheme is so authorised.

ion **577.** (1) It shall be unlawful for any person, directly or indirectly to deal in units of a trust scheme (described whether as units or otherwise) unless such units have been duly registered with the Commission.

(2) A unit may be registered pursuant to section 6(b) of the Securities and Exchange Commission Act by the issuer filing an application with the Commission in accordance with the provisions of this Part of this Act and the rules and regulations thereunder.

(3) Any application for registration of units filed pursuant to this section shall become effective on the sixtieth day after filing thereof or such earlier date as the Commission may determine having due regard to the adequacy of the information contained in such application and registration shall be deemed effective only as to the units specified therein as proposed to be offered.

(4) The Commission shall establish and maintain a register of units and unit trust schemes (in this Part of this Act referred to as the "register").

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578. (1) It shall be unlawful for any manager or trustee under a unit trust scheme to make any alteration in the deed in which are expressed the trusts of an authorised scheme or to make any change in the name of an authorised scheme without prior approval of the Commission.

(2) Where the manager or trustee under a unit trust scheme fails to comply with subsection (1) of this section, he shall be guilty of an offence and be liable on conviction to a fine of ₹ 2,500 and in addition to a penalty of ₹ 50 per day for the period during which the offence subsists.

579. (1) Subject to the provisions of this section, the Commission may revoke the authorisation of a scheme if in relation to an authorised unit trust scheme—

(a) there is a contravention of a provision of this Part of this Act or of a rule or regulation made thereunder; or

(b) the conditions specified in paragraphs (b), (c) and (e) of section 576(3) of this Act are not longer fulfilled; or

(c) the Commission is no longer satisfied in respect of the matter specified in paragraphs (a), (d) and (f) of section 576(3) of this Act; or

(d) the interest of the holders of units created under the scheme so require.

(2) The Commission shall before such revocation—

(a) notify the manager and the trustee under the scheme; and the manager and trustee may within twenty-one days from the date of such notification make representations in writing to the Commission in respect of the proposed revocation;

(b) consider any representation duly made by the manager and trustee under the scheme.

(3) The Commission shall communicate its decision to revoke its authorisation of the unit trust scheme within thirty days after the making of the representations or if none are made, within thirty days after the last day for making of the representations under this section.

580. (1) Any letter, notice, circular or document prepared by the manager for the purpose of offering units of a unit trust scheme to the public shall be approved by the trustee and submitted to the Commission for approval before such letter, notice, circular or document is published.

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(2) There shall be included in a document of the kind referred to in subsection (1) of this section, information in relation to such matters (if any) as may be specified, from time to time, by the Commission.

581. (1) Any manager under a unit trust scheme who offers or sells units by means of a letter, notice, circular, document or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission, shall be liable to the person purchasing such units who may sue in the Federal High Court to recover the consideration paid for such units, or for damages if he no longer owns the units.

(2) No action shall be maintained to enforce any liability under subsection (1) of this section, unless brought within two years after discovery of the untrue statement or after such discovery should have been made by the exercise of reasonable care.

582. (1) Whenever the holder of units of an authorised unit trust scheme so requests, the manager under the scheme, shall, within the time specified by the Commission, buy from the holder such number of those units as the holder may specify at the price for the time being at which the manager buys units of the scheme.

(2) Whenever the authorisation of a unit scheme under this Act stands revoked, the manager under the unit trust scheme shall buy all the units under the scheme at the price for the time being at which the manager buys units of the scheme.

583. (1) No company that is a manager under a unit trust scheme or is a subsidiary or holding company of the manager or a director or a person engaged in the management of such a company shall carry out transactions for itself or himself, or make a profit for itself or himself from transactions, in any

(2) A company that is a manager under a unit trust scheme or is a subsidiary or holding company of the manager shall not—

- (a) borrow money on behalf of the scheme for the purpose of acquiring securities or other property for the scheme; or
- (b) lend money that is subject to the trusts of the scheme to a person to enable him to purchase units of the scheme; or
- (c) mortgage or charge or impose any other encumbrance on any securities or other property subject to the trust of the scheme; or
- (d) engage in any transactions that are not in the interest of unit holders and of the scheme.

(3) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine equal to the amount of profits from any such transactions or to a fine of ₦5,000, whichever is higher.

584. Any provision in the deed, in which are expressed the trusts created in pursuance of an authorised unit trust scheme, shall be void in so far as it would have the effect of exempting the trustee under the scheme from or indemnifying it against liability for breach of trust where, having regard to the provisions of the trust deed conferring on him any powers, authorities or discretions, he fails to exercise the degree of care and diligence required of him as trustee.

585. (1) The manager of an authorised unit trust scheme shall cause proper books of account to be kept and annual accounts to be prepared which shall give a fair and true view of the affairs of the scheme during each year covered by the accounts and the accounts shall be audited by a person appointed as auditor by the manager under the scheme with the consent of the trustee under the scheme.

(2) A copy of the auditors' report on the accounts and of such account certified by an auditor shall be sent by the manager to the Commission and also published in national newspapers within four months after the end of the period to which the accounts relate or as the Commission may, from time to time, specify.

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(3) The auditor shall certify that the unit trust scheme has been operated within the provisions of this Act and the regulations prescribed by the Commission.

(4) The manager under the scheme shall call an annual general meeting of unit holders with the consent of the trustee not later than six months after each year to consider the accounts and other matters affecting the scheme.

(5) An extraordinary general meeting of the unit holders may be convened—

- (a) by the manager with the consent of the trustee; or
- (b) at the request of the trustees; or
- (c) by a requisition of twenty-five per cent of the unit holders; or
- (d) by the court on application by a member where the court is satisfied that it is just and equitable to do so.

(6) The provisions of Part VIII of this Act with respect to the procedure for general meetings of the company shall apply with necessary modifications to meetings of unit holders under this section.

586. The calculation of prices at which units of any unit trust scheme may be bought or sold shall be done in accordance with the formula laid down by the Commission in the rules and regulations made under this Act.

587. Every manager of an authorised unit trust scheme shall invest only in—

- (a) securities specified under the Trustee Investments Act as amended from time to time; and
- (b) such other investments as the Commission may, from time to time, approve.

588. The manager under an authorised unit trust scheme shall furnish the Commission with particulars to be specified, from time to time, by the Commission on a periodic basis.

589. (1) The Commission shall have the power at any time to make regulations in respect of any unit trust scheme.

(2) The Commission may investigate and report on the administration of any unit trust scheme, if it appears to it that it is in the interest of holders of units under the scheme to do so, or the matter is one of public concern.

(3) If an officer or agent of the manager or trustee whose affairs are investigated or inspected by virtue of this section refuses to produce to the Commission any document which it is his duty under this section so to produce or refuses to answer any question which is put to him by the Commission with respect to the unit trust scheme, he shall be guilty of an offence and be liable on conviction to a fine of ₦2,500 or to imprisonment for a term for twelve months.

CHAPTER 4—Reconstructions, Mergers and Take Overs of Companies

Definitions

590. In this Chapter of this Part—

“merger” means any amalgamation of the undertakings or any part of the undertakings or interest of two or more companies or the undertakings or part of the undertakings of one or more companies and one or more bodies corporate;

“bid” means an invitation or an offer;

“directors’ circular” means a circular referred to in section 602 of this Act;

“despatch” means communicate in any manner;

“invitation” means a statement, however expressed, that is not an offer, but expressed, or impliedly invites a holder of shares to dispose of shares;

“offer” means a statement, however expressed, that is not an invitation, but offers to acquire shares from a person who holds shares;

“offeree company” means a company whose shares are subject of a take-over bid;

“offeror” means a person or two or more persons jointly or in concert, who makes or make a take-over bid;

“regulations” means regulations made by the Commission pursuant to this Chapter of this Part;

“take over” means the acquisition by one company of sufficient shares in another company to give the acquiring company control over that other company;

“take-over bid” means a bid made for the purpose of a take-over as provided in section 594 of this Act.

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591. (1) Where under a scheme proposed for a compromise, arrangement or reconstruction between two or more companies or the merger of any two or more companies, the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as “the transferor company”) is to be transferred to another company, the court may, on the application in summary way of any of the companies to be affected, order separate meetings of the companies to be summoned in such manner as the court may direct.

(2) If a majority representing not less than three-quarter in value of the shares of members, being present and voting either in person or by proxy at each of the separate meetings, agree to the scheme, the scheme shall be referred to the Securities and Exchange Commission for approval.

(3) If the scheme is approved by the Securities and Exchange Commission, an application may be made to the court by one or more of the companies, and the court shall sanction the scheme, and when so sanctioned, the same shall become binding on the companies and the court may, by the order sanctioning the scheme or by any subsequent order make provision for all or any of the following matters—

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;
- (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;

- (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
- (d) the dissolution, without winding up, of any transferor company;
- (e) the provision to be made for any persons who in such manner as the court may direct, dissent from the compromise or arrangement;
- (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or merger shall be fully and effectively carried out.

(4) An order under paragraph (d) of subsection (3) of this section shall not be made unless—

- (a) the whole of the undertaking and the property, assets and liabilities of the transferor company are being transferred into the transferee company; and
- (b) the court is satisfied that adequate provision by way of compensation or otherwise have been made with respect to the employees of the company to be dissolved.

(5) Where an order under this section provides for the transfer of property or liabilities, that property or liabilities shall, by virtue of the order, be transferred to and become the property or liabilities of the transferee company, and in the case of any property, if the order so directs, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(6) Where an order is made under this section, every company in relation to which the order is made shall cause an office copy thereof to be delivered to the Commission for registration within seven days after the making of the order and a notice of the order shall be published in the *Gazette* and in at least one national newspaper and if default is made in complying with the provisions of this subsection, the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine of ₦100.

(7) In this section—

- (a) “property” includes property rights and powers of every description;
- (b) “liabilities” includes rights, powers and duties of every description notwithstanding that such rights, powers and duties are of a personal character which could not generally be assigned or performed vicariously;
- (c) “company” where used in this section does not include any company other than a company within the meaning of this Act.

592. (1) Where a scheme or contract (not being a take-over bid under this Part of this Act) involving the transfer of shares or any class of shares in a company (in this section referred to as “the transferor company”) to another company, whether a company within the meaning of this Act or not (in this section referred to as “the transferee company”) has, within four months after the making of the offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company, or its subsidiary), the transferee company may at any time within two months after the expiration of the said four months give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares.

(2) When a notice under subsection (1) of this section is given, the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company.

(3) Where shares in the transferor company of the said class or classes as the shares whose transfer is involved are already held as specified in subsection (1) of this section to a value greater than one-tenth of the aggregate of their value and that of the share (other than those already held as specified in the said subsection) whose transfer is involved, the foregoing provisions of this section shall not apply unless—

- (a) the transferee company offers the same terms to all holders of the shares (other than those already held as aforesaid) whose transfer is involved, or where those shares include shares, of different classes, of each class of them; and
 - (b) the holders who approve the scheme or contracts besides holding not less than nine-tenths in value of the shares (other than those already held as aforesaid) whose transfer is involved, shall not be less than three-quarters in number of the holders of those shares.
- (4) Where a notice has been given by the transferee company under subsection (1) of this section and the court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall—
- (a) on the expiration of one month from the date on which the notice has been given, or, if an application to the court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its behalf by the transferee company; and
 - (b) pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire,
- and the transferor company shall thereupon register the transferee company as the holder of those shares.
- (5) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.
- (6) In this section, “dissenting shareholder” includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his share to the transferee company in accordance with the scheme or contract.

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593. (1) This section shall apply where, in pursuance of any such scheme or contract under section 592 of this Act, shares in a company are transferred to another company or its nominee, and those shares together with any other shares in the first-mentioned company held by, or, by a nominee for the transferee company or its subsidiary at the date of the transfer comprise or include nine-tenths in value of the shares in the first-mentioned company or of any class of those shares.

(2) The transferee company shall within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement) give notice of that fact in the prescribed manner to the holder of the remaining shares or of the remaining shares of that class, as the case may be, who have not assented to the scheme or contract.

(3) Any such holder may, within three months from the giving of the notice to him, require the transferee company to acquire the shares in question.

(4) If a shareholder gives notice under subsection (3) of this section with respect to any shares, the transferee company shall be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to it, or on such other terms as may be agreed on as the court hearing the application of either the transferee company or the shareholder thinks fit.

Take-over bids

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594. (1) Any bid which constitutes a take-over bid shall be referred to as a bid under the take-over bid.

(2) A take-over bid shall be deemed to be dated as of the date on which a bid under the take-over bid is despatched or if such a bid is despatched on more than one date, on the latest date on which such a bid is despatched and for this purpose, a bid despatched by post shall be deemed dated as of the date on which it is posted.

(3) For the purposes of this Chapter of this Part, where two or more persons acting separately, or acting separately

through one, or more than one, agent, each despatching a bid at approximately the same time to shareholders of the same company, they shall, unless the contrary is proved, be deemed to have despatched a bid in concert if those persons so acting are persons comprised in any one of the following groups, namely—

- (a) a holding company and its subsidiary or subsidiaries;
- (b) two or more subsidiaries of the same holding company;
- (c) a company, and any associate company or companies;
- (d) a group of a kind referred to in paragraph (a) or (b) of this subsection together with one, or more than one, company which is an associate of any company or companies in the group;
- (e) a subsidiary and one, or more than one, associate of the holding company of the subsidiary;
- (f) the pension fund of two or more companies in any group of a kind referred to in paragraphs (a) to (e) of this section; or
- (g) any combination of—
 - (i) officers of one, or more than one, company in any group of a kind referred to in paragraphs (a) to (c) of this subsection,
 - (ii) members of the family or families of any such officer or officers, or
 - (iii) any such officer or officers and any such member or members,
 and for this purpose, the family of an officer includes a person (not being an officer) who is the husband or wife (including the reputed husband or wife), a child or the parents, of the officer.

(4) Where the shares in a company are not divided into two or more classes, those shares shall, for the purposes of this Act, be deemed to constitute a class.

595. (1) Subject to this section, a take-over bid shall be deemed to be made by a person who, either himself or through his agent, despatches a bid; or by two or more persons jointly or in concert who either themselves, or through their agent,

despatch a bid, to shareholders at approximately, the same time in order to acquire—

- (a) shares of any class in an offeree company which—
 - (i) either alone, or
 - (ii) if combined with shares of that class in the offeree company already, on the date of the take-over bid, beneficially owned or controlled directly or indirectly, by that person or, as the case may be, those persons or any of them, or any company belonging to the same group as that person or, as the case may be, those persons or any of them, would exceed one-third in number of the issued shares included in that class; or
- (b) sufficient shares in the offeree company to make that company the subsidiary of that person or, as the case may be, of any of those persons; or
- (c) sufficient shares in the offeree company to enable that person or, as the case may be, those persons or any of them, to exercise, or to control the exercise of, not less than one-third of the voting power at any general meeting of the offeree company.

(2) Subject to this section, a take-over bid shall be deemed to be made by a company which either itself or through its agent, despatches a bid to its shareholders at approximately the same time in order to re-purchase the company's own shares.

(3) A take-over bid shall not be made in any case where a bid is despatched—

- (a) to fewer than twenty shareholders or such other number as may be prescribed by regulations, in order to purchase shares by way of separate agreements;
- (b) to purchase shares in a company which has fewer than twenty or such other number as may be prescribed in the regulations; two or more persons who are joint shareholder being counted as one shareholder; or
- (c) in circumstances or for a purpose prescribed by regulations.

(4) A take-over bid shall not be made in any case where the shares to be acquired under a bid are shares in a private company.

596. (1) Subject to subsection (9) of this section, no person, or no two or more persons jointly or in concert, shall make a take-over bid, unless an authority to proceed with the take-over bid has been granted under this section and is in force at the date of the take-over bid.

(2) An application for an authority to proceed with a take-over bid shall—

- (a) be made to the Commission by or on behalf of, the person or persons proposing to make the bid;
- (b) give the name and other particulars of that person or those persons; and
- (c) give particulars of the proposed bid, and contain such information and be accompanied by documents or reports of such a kind, as may be prescribed by regulations.

(3) The Commission may require the person or persons making an application to furnish it such further information as it reasonably considers necessary to enable it to make a decision on the application and that person or those persons shall, if it is in their power to do so, give the information to the Commission.

(4) The Commission may consult with such persons as it deems necessary in order to make decision on an application.

(5) Except as may be necessary for the purpose of any consultation pursuant to subsection (1) of this section, the Commission shall keep confidential the contents of an application, any document or report accompanying an application and any information given pursuant to subsection (3) of this section.

(6) For the purpose of deciding whether or not to grant an authority to proceed with a take-over bid, the Commission shall have regard only to the likely effect of the take-over bid, if successfully made—

- (a) on the economy of Nigeria;
- (b) on any policy of the Federal Government with respect to manpower and development,

and if the Commission is satisfied that none of the matters referred to in paragraphs (a) and (b) of this subsection would be adversely affected, it shall grant an authority to proceed with the proposed take-over bid, but if not so satisfied it shall refuse to do so.

(7) An authority to proceed with a proposed take-over bid shall be in writing signed by or on behalf of the Commission, shall be dated and shall give sufficient particulars of the proposed take-over bid to enable it to be identified.

(8) An authority to proceed with a take-over bid shall remain in force—

- (a) for the period of three months following the date of the authority; or
- (b) for such longer period as the Commission may, on application made to it before the expiration of the period referred to in paragraph (a) of this subsection, allow.

(9) This section shall not apply in the case of a take-over bid of a kind referred to in subsection (2) of section 538 of this Act.

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597. (1) Subject to subsection (7) of this section, no person, or two or more persons jointly or in concert shall make a take-over bid unless a copy of any bid which it is proposed to despatch under the take-over bid, signed by or on behalf of that person or, as the case may be, each of those persons, has been registered under this section.

(2) A copy of a proposed bid required under subsection (1) of this section to be registered shall be lodged with the Commission which—

- (a) if satisfied that the proposed bid meets the requirements of subsection (1) or (2) of section 598 of this Act shall, subject to subsection (6) of this section, register the copy; and
- (b) if not so satisfied, shall refuse to register the copy,

and in either event, the Commission shall inform the person, or each person who signed the copy or on whose behalf the copy was signed, by a notice served on him, at an address provided by the person when the copy was lodged, that it has registered or, as the case may be, not registered the copy giving, in the latter case in the notice, its reasons for not doing so.

(3) Within thirty days after the service on him of a notice under subsection (2) of this section, a person may by notice in writing require the Commission to refer the fact of its refusal to register a copy of a proposed bid to the court, and the Commission shall do so; but only one reference shall be made notwithstanding that such a notice is served on more than one person and all or any of those persons require a reference to be made.

(4) The court may, after hearing a reference under subsection (3) of this section, either order the Commission to register the copy of the proposed bid and the Commission shall do so, or uphold the decision of the Commission in which case the copy of the proposed bid shall not be registered.

(5) The fact that the Commission registers a copy of a proposed bid may not be relied on in any proceedings by any person as a representation that the bid satisfies the requirements of subsection (1) or (2) of section 598 of this Act.

(6) The Commission shall not register a copy of a proposed bid unless, where required, an authority to proceed with the take-over bid has been granted under section 596 of this Act and is then in force.

(7) This section shall not apply in the case of a take-over bid of a kind referred to in subsection (2) of section 538 of this Act.

598. (1) A bid, being an invitation, under a take-over bid shall be incorporated in a document that—

- (a) states the name and address of the offeror or, where two or more persons constitute the offeror, each offeror, and in the case of an offeror that is a corporation, a statement of the date on which the approval of the

directors of the corporation was given pursuant to section 599 of this Act.

- (b) specifies the maximum number and other particulars of the shares in the offeree company proposed to be acquired during a period specified in the invitation;
- (c) specifies the terms on which those shares are proposed to be acquired;
- (d) specifies the number and other particulars of the shares in the offeree company to which—
 - (i) the offeror; and
 - (ii) any company in the same group of companies as the offeror or any one of the offerors, is or are entitled immediately before the date of the take-over bid;
- (e) states, if applicable, the matter required to be stated by paragraph (c) of section 604 of this Act or paragraph (e) of section 606 of this Act; and
- (f) specifies or sets out such other matter as may be prescribed by regulations to be included in an invitation.

(2) A bid, being an offer, under a take-over bid shall be incorporated in a document that—

- (a) states or specifies the matter referred to in paragraphs (a) and (d) of subsection (1) of this section;
- (b) specifies the number and other particulars of the shares in the offeree company proposed to be acquired during a period specified in the offer;
- (c) specifies the terms of the offer in respect of those shares;
- (d) sets out how and by what date the obligations of the offeror are to be satisfied;
- (e) sets out all other particulars of the offer;
- (f) states, if applicable, the matter required to be stated by paragraph (c) of section 604 of this Act or paragraph (e) of section 606 of this Act; and
- (g) specifies or sets out such other matters as may be prescribed by regulations to be included in an offer.

599. (1) A corporation shall not make a take-over bid, either alone or with any other person, unless the making of the take-over bid has been approved by resolution of the directors of the corporation.

(2) If default is made in complying with the provision of subsection (1) of this section, each director in default shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding twelve months or a fine not exceeding ₦1,600.

600. A bid under a take-over bid, and any amendment of such a bid, shall be despatched by the offeror concurrently to each director of the offeree company, to each shareholder of the offeree company and to the Commission.

601. Where a bid under a take-over bid states that the consideration for the shares deposited pursuant to the bid is to be paid in money or partly in money, the offeror shall make adequate arrangements to ensure that funds are available to make the required money payment for those shares.

602. (1) Where, under section 600 of this Act, a bid under a take-over bid is despatched to each of the directors of an offeree company, the directors shall send a directors' circular to each shareholder of the offeree company and to the Commission at least seven days before the date on which the take-over bid terminates or before the sixtieth day after the date of the take-over bid, whichever is the earlier.

(2) Unless the directors of an offeree company send a directors' circular as required by subsection (1) of this section within ten days of the date of a take-over bid, the directors shall forthwith notify the shareholders and the Commission that a directors' circular shall be sent to them, and may recommend that no shares be tendered pursuant to the take-over bid until the directors' circular is sent.

(3) The notice required by subsection (2) of this section shall be in the form prescribed by regulations.

(4) Where a director of an offeree company is of the opinion that a take-over bid is not advantageous to the

shareholders of the offeree company, or where a director disagrees with any statement in a directors' circular, he shall be entitled to indicate his opinion or disagreement in the directors' circular required by subsection (1) of this section and, if he indicates his opinion or disagreement, he shall include in the circular a statement setting out the reasons for his opinion or disagreement.

(5) The directors of an offeree company shall approve a directors' circular that contains the recommendations of a majority of them, and the approval shall be evidenced by the signature of one or more than one director.

(6) A directors' circular shall include particulars of any payment made to an officer or former officer of an offeree company by way of compensation for loss of his office, or of any office in connection with the management of the company's affairs, or of any office in connection with the management of any subsidiary of the company, or as consideration for or in connection with his retirement from any office.

603. (1) A bid under a take-over bid or a directors' circular shall not include a report, opinion or statement of a legal practitioner, auditor, accountant, engineer, appraiser or other expert unless that person has consented in writing to the inclusion of the report, opinion or statement in the bid or circular.

(2) Upon the demand of the Commission, a person referred to in subsection (1) of this section, shall forthwith send to the Commission a copy of any report, opinion or statement referred to in that subsection that is made by that person and included in a bid or directors' circular, together with his consent to its inclusion.

604. Where a bid under a take-over bid is for all the shares of a class in an offeree company—

- (a) shares deposited pursuant to the bid, if not taken up by the offeror, may be withdrawn by or on behalf of a shareholder in the offeree company at any time after sixty days following the date of the take-over bid;

- (b) the offeror shall not take up shares deposited pursuant to the bid until ten days after the date of the take-over bid; and
- (c) the offeror, if he so intends, shall state in the bid that he intends to invoke the right under section 608 of this Act to acquire the shares of shareholders of the offeree company who do not accept the bid and that the shareholder is entitled to dissent and to demand the fair value of his shares.

605. (1) Where a bid under a take-over bid is for less than all the shares of any class in the offeree company—

- (a) the offeror shall not take up shares deposited pursuant to the bid until twenty-one days after the date of the take-over bid;
- (b) the period of time within which shares may be deposited pursuant to the bid, or any extension thereof, shall not exceed thirty-five days from the date of the take-over bid; and
- (c) if a greater number of shares is deposited pursuant to the bid than the offeror is bound or willing to take up and pay for, the shares taken up by the offeror shall be taken up rateably, disregarding fractions, according to the number of shares deposited by each shareholder.

(2) Where a bid under a take-over bid for all the shares of any class in the offeree company is converted by amendment or otherwise to a bid for less than all those shares, the bid shall be deemed to be a bid to which subsection (1) of this section applies.

606. Whether a bid under a take-over bid is for all, or less than all, the shares of any class in the offeree company—

- (a) shares deposited pursuant to the bid may be withdrawn by or on behalf of a shareholder in the offeree company at any time within ten days after the date of the take-over bid;
- (b) shares deposited pursuant to the bid shall, if the terms stipulated by the offeror and not subsequently waived by him have been complied with, be taken up and paid

- for within fourteen days after the last day within which shares may be deposited pursuant to the bid;
- (c) the period of time within which shares may be deposited pursuant to a bid shall be less than twenty-one days after the date of the take-over bid;
- (d) if the terms of the bid are amended by increasing the consideration offered for the shares, the offeror shall pay the increased consideration to each shareholder whose shares are taken up pursuant to the bid, whether or not the shares have been taken up before the amendment;
- (e) if the offeror intends to purchase shares in the offeree company in the market during the period of time within which shares may be deposited pursuant to the bid, the offeror shall so state in the bid; and
- (f) if the offeror purchases shares to which a bid related otherwise than pursuant to the bid during the period of time within which shares may be deposited pursuant to the bid—
- (i) the payment otherwise than pursuant to the bid of an amount for a share that is greater than the amount offered in the bid shall be deemed to be an amendment of the bid to which paragraph (d) of the subsection applies,
- (ii) the offeror shall immediately notify the shareholder in the offeree company, as provided under section 598 of this Act as to the increased consideration being offered for the shares,
- (iii) the shares acquired otherwise than pursuant to the bid shall be counted to determine whether a condition as to minimum acceptance has been fulfilled, and
- (iv) the shares acquired otherwise than pursuant to the bid shall not be counted among the shares taken up rateably under paragraph (c) of subsection (1) of section 605 of this Act.

607. Where a take-over bid is made in relation to any company, the Commission shall cause to be placed on the file of the offeree company—

- (a) any bid or amendment received by it pursuant to section 600 of this Act; and
- (b) any directors' circular received by it pursuant to section 602 of this Act.

608. (1) For the purposes of this section—

- (a) where a take-over bid has been made in respect of all the shares included in a class of shares (other than shares to which the offeror or, where two or more persons constitute the offeror, any of those persons, or any company belonging to the same group of companies as that person or any of those persons, is entitled), the shares in respect of which that take-over offer was made shall be "shares subject to acquisition";
- (b) "outstanding shares" means shares subject to acquisition in respect of which a take-over bid was made but has not been accepted; and
- (c) a "dissenting offeree" means a person who is, or is entitled to be registered as, a holder of outstanding shares.

(2) Where a take-over bid in respect of shares included in the class of shares referred to in paragraph (a) of subsection (1) of this section representing not less than ninety *per cent* in number of shares subject to acquisition has been accepted, the offeror may, within one month after the date on which acceptance of the shares representing not less than that *per cent* is completed, give notice as prescribed to a dissenting offeree—

- (a) to the effect that the take-over bid has been accepted as mentioned in this section;
- (b) that the offeror is bound to take up and pay for or has taken up and paid for, shares of the offerees who accepted the take-over bid;
- (c) informing the dissenting offeree as to the election which he is required to make under subsection (3) of this section giving particulars of that election; and

- (d) informing the dissenting offeree as to the effect of subsection (4) of this section and as to the requirements of subsection (5) of this section, giving particulars in each case.
- (3) A dissenting offeree may, within twenty days of receiving a notice under subsection (2) of this section, by notice sent to the offeror elect—
- (a) to transfer his shares to the offeror on the terms on which the offeror acquired the shares of the offeree who accepted the take-over bid; or
- (b) to demand payment of the fair value of his shares in accordance with section 609 of this Act.
- (4) A dissenting offeree to whom a notice is given under subsection (2) of this section, who does not make any election as required by subsection (3) of this section, shall be deemed to have made an election under paragraph (a) of that subsection.
- (5) A dissenting offeree shall, within twenty days after receiving a notice sent under subsection (2) of this section, send to the offeree company his share certificate of the class of shares to which the take-over bid relates.
- (6) An offeror shall, within twenty days after he sends a notice under subsection (2) of this section to a dissenting offeree, pay or transfer to the offeree company the amount of money or other consideration that the offeror would have to pay if the dissenting offeree made an election under paragraph (a) of subsection (3) of this section, and the offeree company—
- (a) shall be deemed to hold that amount of money or consideration in trust for the dissenting offeree; and
- (b) shall—
- (i) pay the amount into a bank account established for the purpose, or
- (ii) place the consideration in the custody of a bank.
- (7) An offeror shall—
- (a) send to the offeree company a copy of every notice sent under subsection (3) of this section to a dissenting offeree; and

- (a) notify the offeree company of the election made by a dissenting offeree under subsection (3) of this section or deemed to have been made under subsection (4) by a dissenting offeree.
- (8) An offeror shall send to the Commission a copy of every notice sent under subsection (2) of this section, to a dissenting offeree not later than one month after the date on which it is so sent.
- 609.** (1) This section shall apply where a dissenting offeree makes an election under paragraph (b) of subsection (3) of section 608 of this Act.
- (2) The offeror may, within twenty days after he had paid the money or transferred the other consideration under subsection (6) of section 608 of this Act apply to the court to fix the fair value of the shares of the dissenting offeree.
- (3) If an offeror fails to apply to the court under subsection (2) of this section, a dissenting offeree may apply to the court for the same purpose within a further period of twenty days.
- (4) A dissenting offeree shall not be required to give security for costs in an application made under subsection (2) or (3) of this section.
- (5) Where an application is made under subsection (2) or (3) of this section—
- (a) all dissenting offerees who made an election under paragraph (b) of subsection (3) of section 608 of this Act shall be joined as parties and bound by the decision of the court; and
- (b) the offeror shall notify each affected dissenting offeree of the date and place of the application and of his right to appear and be heard in person or by counsel.
- (6) Upon an application to the court under subsection (2) or (3) of this section, the court shall fix a fair value for the shares of all dissenting offerees who made an election under paragraph (b) of subsection (3) of section 608 of this Act.
- (7) The court may, in its discretion, appoint one or more than one valuer to assist the court in fixing a fair value for the shares of a dissenting offeree.

(8) The final order of the court shall be made against the offeror in favour of each dissenting offeree who made an election under paragraph (b) of subsection (3) of section 608 of this Act and for the amount for his shares as fixed by the court.

(9) The court may, in connection with proceedings under this section, make an order it thinks fit and, without limiting the generality of the foregoing may—

- (a) by order, fix the amount of money or other consideration that is required to be held in trust under subsection (6) of section 608 of this Act;
- (b) order that that money or other consideration be held in trust by a person other than the offeree company; or
- (c) allow interest at the current bank rate on the amount payable to each dissenting offeree from the date he sends to the offeree company his share certificates under subsection (5) of section 608 of this Act until the date of payment.

(10) Where the amount of money or other consideration fixed by the court under paragraph (a) of subsection (9) of this section exceeds that held on trust pursuant to any payment or transfer already made under subsection (6) of section 608 of this Act by the offeror, the offeror shall—

- (a) make to the offeree company any payment or transfer necessary to comply with the order, and subsection (6) of section 608 of this Act shall apply in relation to the amount so paid or transferred; or
- (b) if the court made an order under paragraph (b) of subsection (9) of this section, make that payment or transfer to the other person by whom the money or consideration is to be held in trust.

(11) Where the court makes an order under paragraph (b) of subsection (9) of this section—

- (a) the order of the court shall operate to divest the offeree company of the money or other consideration subject to the trust and to vest it in the person named in the order on the like trust; and

(b) subsection (6) of section 608 of this Act shall apply to money or other consideration paid or transferred pursuant to paragraph (b) of subsection (1) of this section to that person.

610. (1) Where an offeree company is satisfied—

- (a) in the case of the dissenting offeree who makes an election under paragraph (a) of subsection (3) of section 608 of this Act or is deemed to have made such an election, that the offeror has made the payment or transfer required by subsection (6) of section 608 of this Act; and
- (b) in the case of a dissenting offeree who made an election under paragraph (b) of subsection (3) of section 608 of this Act, that the offeror has, in addition to making that payment or transfer, made any payment or transfer required under subsection (1) of section 609 of this Act to be made by the offeror,

the offeree company shall issue to the offeror a share certificate in respect of the shares that were held by the dissenting offeree.

(2) Where an offeree company is satisfied as provided in paragraph (a) or (b) of subsection (1) of this section, it shall—

- (a) in the case of a dissenting offeree who has complied with subsection (5) of section 608 of this Act, give to the dissenting offeree the money or other consideration to which he is entitled on application being made by him for that purpose or, if an order is made under paragraph (b) of subsection (9) of section 609 of this Act, notify the other person holding the money or the property in trust that the dissenting offeree has complied with subsection (5) of section 608 of this Act; or
- (b) in the case of a dissenting offeree who has not complied with subsection (5) of section 608 of this Act, send to the dissenting offeree a notice stating that—
 - (i) his shares have been cancelled;
 - (ii) a payment or transfer has been made under subsection (6) of section 608 of this Act or as the case

may be, under subsection (6) of section 609 of this Act and subsection (10) thereof, giving particulars; and

(iii) the offeree company shall give or, as the case may be, authorise any person holding money or property in trust pursuant to an order made under paragraph (b) of subsection (9) of section 609 of this Act to give to the dissenting offeree the money or other consideration, to which he is entitled, when he complies with subsection (6) of section 608 of this Act.

(3) A person holding money or property in trust pursuant to an order made under paragraph (b) of subsection (9) of section 609 of this Act shall, when he has been notified as provided in paragraph (a) of subsection (2) of this section or given authority as provided in subsection (2)(b)(iii) of this section, give to a dissenting offeree the money or other consideration to which he is entitled on application being made by him for that purpose.

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ents. 611. (1) In this section, "trustee" means an offeree company or any person who holds money or property in trust pursuant to an order made under paragraph (b) of subsection (9) of section 609 of this Act.

(2) A trustee shall not be required to give money or other consideration to a person applying for it under section 610 of this Act unless he is satisfied that that person is entitled to it.

(3) The court may—

- (a) on the application of any person, direct that the person is or is not a person entitled under section 610 of this Act to any money or other consideration; or
- (b) on the application of a trustee, direct that any money or other consideration held by the trustee and in respect of which no application has been made under section 610 of this Act in the period of three years after the nomination of the take-over bid concerned, be paid or transferred to, and held by the Commission; and in that event a claim by a person claiming to be entitled to the money or consideration shall be made to the Commission.

612. (1) The following subsections shall have effect when the aggregate number of— Rights
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- (a) shares included in a class of shares in an offeree company to which the offeror or, where two or more persons constitute the offeror, any of those persons become entitled in consequence of a take-over bid; and
- (b) any other shares included in that class to which the offeror or, where two or more persons constitute the offeror, any of those persons, or any company belonging to the same group of companies as that person or any of those persons, was entitled before any bid under the take-over bid was despatched,

is not less than ninety *per cent* of the issued shares included in that class.

(2) The offeror shall, within two months after the date on which the aggregate number of shares referred to in paragraphs (a) and (b) of subsection (1) of this section becomes not less than ninety *per cent* of the shares last mentioned in that subsection, give notice of that fact to the holders of the remaining shares included in that class who when the notice is given had not been given notice under subsection (2) of section 608 of this Act.

(3) A holder of the remaining shares referred to in subsection (2) of this section may, within two months after the giving of notice to him under that subsection, require the offeror to acquire shares included in that class of which he is the holder.

(4) Where a shareholder gives notice under subsection (3) of this section with respect to his shares, the offeror shall be entitled and bound to acquire those shares—

- (a) on the terms on which shares were acquired under the take-over bid; or
- (b) on such terms as are agreed or as the court, on the application of the offeror or the shareholder, thinks fit to order.

(5) In determining, for the purposes of paragraph (a) of subsection (4) of this section, the terms on which shares are

acquired under a take-over bid, the terms on which the shares of any dissenting offeree were acquired shall be ignored.

613. (1) Where a person, or two or more persons makes or make a take-over bid—

(a) to which section 596 of this Act applies and no authority to proceed with the take-over bid granted under that section is in force on the date of the take-over bid; or

(b) to which section 597 of this Act applies and a copy of a bid under the take-over bid has not been registered under that section,

that person or each of those persons shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding twelve months or a fine not exceeding ₦1,500.

(2) Where a person, or more than one person makes or make a take-over bid and a bid under the take-over bid does not comply—

(a) in the case of an invitation, with requirements of subsection (1) of section 598 of this Act; or

(b) in the case of an offer, with the requirements of subsection (2) of section 598 of this Act,

that person or each of those persons shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding twelve months or fine not exceeding ₦1,500.

(3) Where a report, an opinion or a statement referred to in subsection (1) of section 603 of this Act is included contrary to that subsection—

(a) in a bid under a take-over bid, the offeror or each offeror shall be guilty of an offence; or

(b) in a directors' circular, each of the directors shall be guilty of an offence.

(4) Any person who fails to comply with a demand of the Commission made under subsection (2) of section 603 of this Act as required by that subsection shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding twelve months or a fine not exceeding ₦1,500.

(5) Where an offence under any provision of this section (except paragraph (b) of subsection (3) of this section) is committed by a body corporate every director of the body corporate in default shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding twelve months or a fine not exceeding ₦1,500.

CHAPTER 5—INSIDER TRADING

614. (1) In this Chapter of this Part—

“company” means any company whether or not a company within the meaning of this Act;

“public officer” has the meaning assigned to it under section 277 of the Constitution of the Federal Republic of Nigeria 1979, as amended;

“related company” in relation to a company, means any body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company.

(2) For the purpose of this Chapter of this Part—

(a) an individual is an insider of a company, if he is, or at any time in the preceding six months has been knowingly connected with the company;

(b) an individual is connected with a company if, but only if—

(i) he is a director of that company or a related company; or

(ii) he occupies a position as an officer (other than a director) or employee of that company or a related company or a position involving a professional or business relationship between himself (or his employer or a company of which he is a director) and the first company or a related company which in either case may reasonably be expected to give him access to information which, in relation to securities of either company, is unpublished price sensitive information, and which, it would be reasonable to expect a person in his position not to disclose except for the proper performance of his functions;

(c) any reference to "unpublished price sensitive information" to any securities of a company is a reference to information which—

(i) relates to specific matters relating or of concern (directly or indirectly) to that company, that is to say, is not of a general nature relating or of concern to that company; and

(ii) is not generally known to those persons who are accustomed or would be likely to deal in those securities but which would, if it were generally known to them be likely materially to affect the price of those securities.

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615. (1) This section shall be subject to section 617 of this Act.

(2) An individual who is an insider of a company shall not buy or sell, or otherwise deal in the securities of the company, which are offered to the public for sale or subscription if he has information which—

(a) he holds by virtue of being connected with the company;

(b) it would be reasonable to expect a person so connected, and in the position by virtue of which he is so connected, not to disclose except for the proper performance of the functions attaching to that position; and

(c) he knows the unpublished price sensitive information in relation to those securities.

(3) An individual who is an insider of a company shall not buy or sell or otherwise deal in the securities of any other company, which are offered to the public for sale or subscription if he has information which—

(a) he holds by virtue of being connected with the first mentioned company;

(b) it would be reasonable to expect a person so connected, and in the position by virtue of which he is so connected, not to disclose except for the proper performance of the functions attaching to that position;

(c) he knows the unpublished price sensitive information in relation to those securities of that other company; and

(d) relates to any transaction (actual or contemplated) involving both the first company and that other company, or involving one of them and securities of the other, or to the fact that any such transaction is no longer contemplated.

(4) Subsection (5) of this section shall apply where—

(a) an individual has information which he knowingly obtained (directly or indirectly) from another individual who—

(i) is connected with a particular company, or was at any time within the six months preceding the obtaining of the information so connected; and

(ii) the former individual knows or has reasonable cause to hold the information by virtue of being so connected; and

(b) the former individual knows or has reasonable cause to believe that, because of the latter's connection and position, it would be reasonable to expect him not to disclose the information except for the proper performance of the functions attaching to that position.

(5) The former individual mentioned in subsection (4) of this section—

(a) shall not himself deal in securities of that company if he knows that the information is unpublished price sensitive information in relation to those securities; and

(b) shall not himself deal in securities of any other company if he knows that the information is unpublished price sensitive information in relation to those securities and it relates to any transaction (actual or contemplated) involving the first company and the other company, or involving one of them and securities of the other, or to the fact that any such transaction is no longer contemplated.

(6) Where an individual is contemplating, or has contemplated, making (whether with or without another person) a take-over offer for a company in a particular capacity, that individual shall not deal in securities of that company in another capacity if he knows that information

that the offer is contemplated, or is no longer contemplated, is unpublished price sensitive information in relation to those securities.

(7) Where an individual has knowingly obtained (directly or indirectly) from an individual to whom subsection (5) of this section applies, information that the offer referred to in that subsection is being contemplated or is no longer contemplated, the former individual shall not himself deal in securities of that company if he knows that the information is unpublished price sensitive information in relation to those securities.

(8) An individual who is for the time being prohibited by any provision of this section from dealing on a recognised stock exchange in any securities shall not counsel or procure any other person to deal in those securities, knowing or having reasonable cause to believe that that person would deal in them.

(9) An individual who is for the time being prohibited as above mentioned from dealing in any securities by reason of his having any information, shall not communicate that information to any other person if he knows or has reasonable cause to believe that that other person will make use of the information for the purpose of dealing, or of counselling or procuring any other person to deal in those securities.

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616. (1) This section applies to any information which—

- (a) is held by a public officer or former public officer by virtue of his position or former position as a public officer, or is knowingly obtained by an individual (directly or indirectly) from a public officer or former public officer who he knows or has reasonable cause to believe held the information by virtue of any such position;
- (b) it would be reasonable to expect an individual in the position of the public officer or former position of the public officer not to disclose except for the proper performance of the functions attaching to that position; and

(c) the individual holding it knows is unpublished price sensitive information in relation to securities of a particular company (referred to as “relevant securities”).

(2) This section applies to a public officer holding information to which this section applies and to any individual who knowingly obtained any such information (directly or indirectly) from a public officer or former public officer who that individual knows or has reasonable cause to believe held the information by virtue of this position or former position as a public officer.

(3) Subject to section 617 of this Act, an individual to whom this section applies shall not—

- (a) deal in any relevant securities;
- (b) counsel or procure any other person to deal in any such securities, knowing or having reasonable cause to believe that that other person, should deal in them; and
- (c) communicate to any other person the information held or (as the case may be) obtained by as mentioned in subsection (2) of this section if he knows or has reasonable cause to believe that he or some other person shall make use of the information for the purpose of dealing, or of counselling or procuring any other person to deal, on a recognised stock exchange in any such securities.

(4) If it appears to the Minister that the members, officers or employees of or persons otherwise connected with any body appearing to him to exercise public functions may have access to unpublished price sensitive information relating to securities, he may by order declare that those persons are to be public officers for the purposes of this section.

(5) The power to make an order under subsection (4) of this section shall be exercisable by statutory instrument.

617. (1) Sections 615 and 616 of this Act shall not prohibit an individual by reason of his having any information from—

- (a) doing any particular thing otherwise than with a view to the making of a profit or the avoidance of a loss

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(whether for himself or another person) by the use of that information;

- (b) entering into a transaction in the course of the exercise in good faith of his functions as liquidator, receiver or trustee in bankruptcy;
- (c) doing any particular thing if the information—
 - (i) was obtained by him in the course of a business of a stockbroker in which he was engaged or employed, and
 - (ii) was of a description which it would be reasonable to expect him to obtain in the ordinary course of that business, and he does that thing in good faith in the course of that business; or
- (d) doing any particular thing in relation to any particular securities, if the information was of a description which it would be reasonable to expect him to obtain in the ordinary course of that business, and he does that thing in good faith in the course of that business.

(2) An individual shall not, by reason only of his having information relating to any particular transaction, be prohibited by—

- (a) section 615(2), (4)(b), (5) or (6) of this Act from dealing on a recognised stock exchange in any securities; or
- (b) section 615(7) or (8) of this Act from doing any other thing in relation to the provisions mentioned in paragraph (a) of this subsection; or
- (c) section 616 of this Act from doing anything, if he does that thing in order to facilitate the completion or carrying out of the transaction.

618. (1) Where a trustee or personal representative is a body corporate, an individual, acting on behalf of that trustee or personal representative who, apart from paragraph (a) of section 617(1) of this Act would be prohibited by any of sections 615 to 617 of this Act from dealing, or counselling or procuring any other person from dealing, in any securities, deals in those securities or counsels or procures any other person from dealing in them, shall be presumed to have acted

with propriety and accordingly exempted from the provisions of sections 615 and 617 of this Act:

- Provided that he acted on the advice of a person who—
- (a) appears to him to be an appropriate person from whom to seek such service; and
 - (b) did not appear to him to be prohibited by virtue of section 615 or 616 of this Act from dealing in those securities.

(2) In this section, the expression “with propriety” means otherwise than with a view to the making of a profit or the avoidance of a loss (whether for himself or another person) by the use of the information in question.

619. No transaction shall be void or voidable by reason only that it was entered into in contravention of section 615 or 616 of this Act.

620. An insider who contravenes any provision of section 615 of this Act or any person who contravenes any provision of section 616 of this Act shall be guilty of an offence and—

- (a) liable to compensate any person for any direct loss suffered by that person as a result of the transaction, unless the information was known or with the exercise of reasonable diligence could have been known to that person at the time of the transaction; and
- (b) accountable to the company for the direct benefit or advantage received or receivable by the insider as a result of the transaction.

(2) An action to enforce a right created by subsection (1) of this section may be commenced only within two years after the date of completion of the transaction that gave rise to the cause of action.

621. An individual who contravenes the provisions of section 615 or 616 of this Act shall be guilty of an offence and liable on conviction to imprisonment for two years or a fine of ₦5,000 or to both such fine and imprisonment.

CHAPTER 6—MISCELLANEOUS

622. Any person who wilfully contravenes any other provision of this Part of this Act or any regulation made thereunder, or any person who wilfully or recklessly in any registration, statement, application, report, account, record, or other document filed, sent or delivered pursuant to this Part of this Act, makes or causes to be made any untrue statement of a material fact or omits to state any material fact, shall be guilty of an offence and shall be liable on conviction if no other punishment is prescribed, to a fine of ₦ 50,000 in the case of a body corporate or to imprisonment for five years or to a fine of ₦ 5,000 or to both such fine and imprisonment in the case of an individual.

623. Every document delivered to the Commission for filing under this Part of this Act shall be open to inspection by any person upon payment of a fee prescribed by the Commission and any person may obtain copies of certified true copies of any such document on payment of a fee prescribed by the Commission.

PART XVIII—MISCELLANEOUS AND SUPPLEMENTAL

Application of this Part of this Act

624. (1) Except as otherwise provided, this PART, that is, PART A of this Act shall apply to—

- (a) all companies formed and registered under this PART of this Act;
- (b) all existing companies;
- (c) all companies incorporated, formed or registered under other enactments; and
- (d) unregistered companies.

(2) This Act shall not apply to unions of workers or of employers; and registration of any such union whether described as such a union or as a trade union shall, if effected under the Companies Act 1968 before its repeal by this Act, be void.

625. (1) Except as otherwise expressly provided in this Act—

- (a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed, by it, or in any resolution passed by the company in general meeting or by its board of directors whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act; and
- (b) any provision contained in the memorandum or articles, agreement or resolution as in paragraph (a) of this subsection shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

(2) Any provision of this Act overriding or interpreting a company's articles as if a re-enacted provision of the Companies Act, 1968 shall, except as provided by this Act, apply in relation to articles in force at the commencement of this Act, as well as to articles coming into force thereafter, and shall apply also in relation to a company's memorandum as it applies in relation to its articles.

626. In the application of this Act to existing companies, it shall apply in the same manner—

- (a) in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by shares;
- (b) in the case of a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by guarantee; and
- (c) in the case of a company, other than a limited company, as if the company had been formed and registered under this Act as an unlimited company:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Companies Act,

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III of 1912 as the first Nigerian enactment in respect of companies, or as the case may be, any enactment relating to companies thereafter in force in Nigeria before the commencement of this Act.

tion to ies ed but med. 627. This Act shall apply to every company registered but not formed under the Companies Act 1912 referred to in section 626 of this Act or, as the case may be, any enactment relating to companies thereafter in force in Nigeria before the commencement of this Act:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the enactment in force in Nigeria at the date when it was registered.

tion to ed ies ed ormer nts. s. 51. 628. This Act shall apply to every unlimited company registered as a limited company in pursuance of section 52 of the Companies Act, 1968 or of any enactment replaced by that section, as the case may be, in the same manner as it applies to an unlimited company registered in pursuance of this Act as limited company:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered as a limited company under the said section 52 or any enactment replaced by that section, as the case may be.

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(2) The provisions of subsection (1) of this section shall not apply by virtue of this section to any of the following, that is to say—

- (a) any body incorporated under any enactment other than this Act;
- (b) any body not formed for the purpose of carrying on a business which has for its objects the acquisition of gain by the body or by the individual members thereof; and
- (c) any body for the time being exempted by the direction of the National Council of Ministers.

(3) This section shall not repeal or revoke in whole or in part any enactment or other instrument constituting or regulating any body in relation to which the said provisions are applied by virtue of this section; but in relation to any such body, the operation of any such enactment or instrument shall be suspended in so far as it is inconsistent with any of the said provisions as they apply for the time being to that body.

Administration

630. (1) The address of the registered or head office of a company given to the Commission in accordance with paragraph (e) of subsection (2) of section 35 of this Act or any change in the address made in accordance with the provisions of this section shall be the office to which all communications and notices to the company may be addressed.

(2) Notice of any change in the address of the registered or head office of the company shall be given within fourteen days of the change to the Commission which shall record the same:

Provided that a postal box address or a private mail bag address shall not be accepted by the Commission as the registered or head office.

(3) If a company carries on business without complying with subsection (2) of this section, the company and every officer in default shall be guilty of an offence liable on conviction to a fine of ₦50 for every day during which the company so carries on business.

(4) The fact that a change in the address of a company is included in its annual return shall not be taken to satisfy the obligation imposed by this section.

(5) Where a company incorporated before the commencement of this Act has provided an address not in accordance with this section or section 35 of this Act, as the case may be, it shall within fourteen days after such commencement comply with the requirements of this section and the failure shall be an offence punishable as prescribed by this section.

631. (1) Every company shall, after incorporation—

- (a) paint or affix, and keep painted or affixed, its name and registration number on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible;
- (b) have its name engraved in legible characters on its seals; and
- (c) have its name and registration number mentioned in legible characters in all business letters of the company and in all notices, advertisements, and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques, and order for money or goods purporting to be signed by or on behalf of the company, and in all bills or parcels, invoices, receipts, and letters of credit of the company.

(2) If a company fails to paint or affix, and keep painted or affixed its name in the manner directed by this Act, it shall be guilty of an offence and liable on conviction to a fine of ₦ 100 for not so painting or affixing its name, and for every day during which its name is not so kept, painted or affixed; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(3) If a company fails to comply with the provisions of paragraph (b) or (c) of subsection (1) of this section, the company shall be guilty of an offence and liable on conviction to a fine of ₦ 500.

(4) If any officer of a company or any person on its behalf—

- (a) uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraved as aforesaid; or
- (b) issues or authorises the issue of any business letter of the company or any notice, or other official publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque or order for money or goods wherein its name is not mentioned in the manner aforesaid; or
- (c) issues or authorises to be issued any bill or parcels, invoice, receipt, or letter of credit of the company, wherein its name is not mentioned in manner aforesaid,

he shall be guilty of an offence and liable on conviction to a fine of ₦ 500 and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless it is duly paid by the company.

632. (1) There shall be paid to the Commission in respect of the several matters mentioned in the Seventeenth Schedule to this Act the fees therein specified; and where no provision is made for fees in particular cases, the Minister may, with the approval of the National Council of Ministers, by order published in the *Gazette*, prescribe fees and amend the said Schedule to give effect to it.

(2) Subject to subsection (3) of this section, any fees paid to the Registrar of Companies before the commencement of this Act shall be deemed to have been validly paid under this Act.

(3) The fees referred to in subsection (2) to this section shall cease to be payable immediately the fees specified in the Seventeenth Schedule to this Act become operative and payable.

(4) All fees paid to the Commission and not otherwise directed by this Act for payment into a particular account, shall be paid into the Consolidated Revenue Fund of the Federation.

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633. (1) Any register, record, index, minute book or book of account required by this Act to be made and kept by a company may be made by making entries in bound books or in loose leaves, whether pasted or not, or in a photographic film form, or may be entered or recorded by any information storage device that is capable of reproducing the required information in intelligible written form within a reasonable time, or by recording the matters in question in any other manner in accordance with accepted commercial usage.

(2) Where any such register, record, index, minute book or book of account is not kept by making entries in a bound book, but by some other means, adequate precautions shall be taken for guarding against falsification and for facilitating its discovery and where default is made in complying with the provisions of this subsection, the company and every officer of the company who is in default shall be guilty of an offence and liable on conviction to a fine of ₦50 and where the offence is a continuing one, shall in addition be liable to a fine of ₦50 for every day during which the default continues.

(3) Where any such register, index, minute book or accounting record is not kept by making entries in a bound book, but by some other means including electronic means, adequate precautions shall be taken for guarding against falsification and facilitating its discovery.

(4) If default is made in complying with the provisions of subsection (3) of this section, the company and every officer of it who is in default shall be guilty of an offence and liable on conviction to a fine of ₦50 and for continuing contravention, to a daily default fine of ₦5.

(5) The power conferred on a company by subsection (1) of this section to keep a register, or other record by recording the matters in question otherwise than by making entries in bound books includes power to keep the register or other record by recording those matters otherwise than in legible form, so long as the recording is capable of being reproduced in a legible form.

(6) Any provisions of an instrument made by a company before 1st October, 1968 which requires a register of holders of the company debentures to be kept in a legible form shall

be read as requiring the register to be kept in a legible or non-legible form.

(7) If any such register or other record of a company as is mentioned in subsection (2) of this section or a register of holders of a company's debentures, is kept by the company by recording the matters in question otherwise than in a legible form, the duty imposed on the company by this Act to allow inspection of or to furnish a copy of the register or other record or any part of it shall be treated as a duty to allow inspection of, or to furnish a reproduction of the recording or of the relevant part of it in a legible form.

634. (1) Any person may, on payment of the fees prescribed in Part III of the Seventeenth Schedule to this Act inspect documents or obtain certificates of incorporation or copies of or extracts from documents held by the Commission for the purposes of this Act.

(2) Where a copy or extract from any document registered under this Act is certified by the Commission to be a true copy or extract, it shall in all proceedings be admissible in evidence as of equal validity with the original document, and it shall be unnecessary to prove the official position of the person certifying the copy or extract.

(3) No process for compelling the production of any document kept by the Commission shall issue from any court, except with the leave of that court, and such process, if issued, shall bear thereon a statement that it is issued with the leave of the court.

635. (1) The Chief Judge of the Federal High Court may make Rules of Court for carrying into effect the objects of this Act so far as they relate to the winding-up of companies or generally in respect of other applications to a court under this Act.

(2) For the purposes of this section, it is declared that rules made for the purpose of any enactment passed or made on or before, or to have effect on or after, the commencement of this Act shall, on its commencement, enure and have effect where they are not inconsistent with rules of court made or deemed to have been made, under this section.

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636. (1) Every banking company or an insurance company or a deposit, provident, or benefit society shall, before it commences business, and also on the first Monday in February and the first Tuesday in August in every year during which it carries on business, submit to the Commission a statement in the form in the Fourteenth Schedule to this Act or as near thereto as circumstances may admit.

(2) A copy of the statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

(3) Every member and every creditor of the company shall be entitled to a copy of the statement, on payment of a sum not exceeding ₹1.

(4) If default is made in compliance with this section, the company shall be guilty of an offence and liable on conviction to a fine of ₹100 for every day during which the default continues; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(5) For the purposes of this Act, a company that carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company.

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637. (1) All offences under this Act may be tried by a court of competent jurisdiction in the place where the offence is alleged to have been committed.

(2) Where provision is made in this Act for a criminal sanction to be imposed in case of an act, omission or default without reference therein to the default being an offence, or without reference to conviction thereof in a court, as the case may be, the reference to the act, omission or default shall be construed as referable to an offence, and the expression "offences" as used in this section shall have effect in relation to any such act, omission or default.

638. (1) If, on application made to a Judge of the Federal High Court in chambers by the Attorney-General of the Federation, there is shown to be reasonable cause to believe that a person has, while an officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company, an order may be made—

- (a) authorising any person named therein to inspect the said books or papers or any of them for the purpose of investigating and obtaining evidence of the offence; or
- (b) requiring the secretary of the company or any other officer thereof as may be named in the order to produce the said books or papers, to a person and at a place named in the order.

(2) The provisions of subsection (1) of this section shall apply also in relation to any books or papers of a person carrying on the business of banking so far as they relate to the company's affairs, as it applies to any books or papers of or under the control of the company, except that no such order as is referred to in paragraph (b) of that subsection shall be made by virtue of this subsection.

(3) No appeal shall lie from the decision of a Judge of the Federal High Court on any application under this section.

639. Where a limited company is the plaintiff in any action or other legal proceedings, any Judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company may be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

640. Where proceedings are instituted under this Act against any person by the Attorney-General of the Federation, nothing in this Act shall be taken to require any person who has acted as legal practitioner for the defendant to disclose any privileged communication made to him in that capacity.

641. (1) If, in any proceeding for negligence, default or breach of duty or breach of trust against an officer of a company or a person employed by a company as auditor, it appears to the court hearing the case that the officer or person is or may be liable in respect of the negligence, default, or breach of duty or breach of trust, but that he has acted honestly and reasonably and that, having regard to all the circumstances of the case, including those connected with his appointment he ought fairly to be excused for the negligence, default or breach of duty or breach of trust, the court may relieve him, either wholly or partly, from this liability on such terms as the court may deem fit.

(2) Where any such officer or person aforesaid has reason to apprehend that any claim may be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief, and the court on any such application shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

642. If any person trades or carries on business under any name or title of which the last word or words are "Unlimited", "Limited", "Public Limited Company" or "Limited by Guarantee" or their abbreviations, he shall, unless duly incorporated as an unlimited company, a private company limited by shares, a public company limited by shares, or a company limited by guarantee respectively, be guilty of an offence, and liable on conviction to a fine of ₦ 50 for every day during which the name or title is used.

643. (1) Where a penalty is not elsewhere prescribed in this Act and subject to the provisions of subsection (2) of this section, if any person in any return, report, certificate, balance sheet, or other document required by or for the purpose of any of the provisions of this Act, wilfully makes a statement which is false in any material particular knowing it to be false, he shall be guilty of an offence and liable—

(a) on conviction in the High Court to imprisonment for a term of two years; or

(b) on conviction in a lower court, to a fine of ₦ 1,000 or to imprisonment for a term of four months, or to both such fine and imprisonment.

(2) Nothing in this section shall affect the provisions of any enactment imposing penalties in respect of perjury in force in Nigeria.

644. The provisions of section 514(3) of this Act (which imposes penalty for certain offences connected with fraudulent trading discovered on winding-up a company) shall extend and apply to cases where fraudulent trading is discovered in circumstances other than on winding-up a company.

645. Any court imposing a fine under this Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings, or in or towards rewarding the person on whose information or at whose suit the fine is recovered and subject to any such direction, all fines under this Act shall notwithstanding anything in any other enactment be paid into the appropriate Consolidated Revenue Fund.

646. (1) The Commission may apply to court for directions in respect of any matter concerning its duties, powers and functions under this Act and on any such application, the court may give such directions and make such further order as it thinks fit in the circumstances.

(2) The Commission may conduct enquiries with respect to the compliance with the provisions of this Act by any person or company.

Miscellaneous

647. (1) The Commission may, with the approval of the National Council of Ministers, by regulations, rules or orders published in the *Gazette*, add to, delete from or otherwise alter the whole or any part of any of the Schedules, Tables or Forms prescribed or in force under this Act.

(2) It is hereby declared that until regulations, rules or orders are made under and for the purposes of this Act prescribing forms for use, the forms in force at the commencement of this Act shall be deemed to have been made under it and shall have effect accordingly.

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na. 648. (1) If a company, having made default in complying with any provision of this Act requiring it to file with, deliver or send to the Commission any return, account or other document, or to give notice to it of any matter, fails to make good the default within fourteen days after the service of a notice on the company requiring it to do so, the court may, on the application of any member or creditor of the company or of the Commission, order the company and any officer to make good the default within such time as may be specified in the order.

(2) Any order under this section may provide that all costs of or incidental to the application shall be borne by the company or by any officer of the company responsible for the default.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default as aforesaid.

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of 649. (1) The powers of a company include (if they would not otherwise do so apart from this section) power to make the following provisions for the benefit of persons employed or formerly employed by the company or any of its subsidiaries, that is to say, provision in connection with the cessation or the transfer to any person of the whole part of the undertaking of the company or subsidiary.

(2) The power conferred by subsection (1) of this section shall be exercisable notwithstanding that its exercise is not in the best interest of the company.

(3) The power which a company may exercise by virtue only of subsection (1) of this section shall only be exercised by the company if sanctioned—

(a) in a case not falling within paragraph (b) or (c) of this subsection, by a resolution of the company; or

(b) if so authorised by the memorandum or articles, by a resolution of the directors; or

(c) if the memorandum or articles require the exercise of the power to be sanctioned by a resolution other than a simple resolution of the company, by that other resolution.

(4) Any payment which may be made by a company under this section may, if made before the commencement of any winding-up of the company, be made out of profits of the company which are available for dividend.

650. (1) In this PART, that is, PART A of this Act, unless the context otherwise requires—

“accounts” includes a company’s group accounts, whether prepared in the form of accounts or not;

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

“alien” means a person or association whether corporate or unincorporated other than a Nigerian citizen or association;

“amalgamation” has the meaning assigned to it under section 590 of this Act;

“annual return” means the return required to be made, in the case of a company limited by shares, under sections 371 to 372; and, in the case of a company limited by guarantee, under section 373 of this Act;

“the appointed day” means a period of one year from the commencement of this Act;

“arrangement” has the meaning assigned to it under section 537 of this Act;

“articles” means the articles of association of a company, as originally framed or as altered by special resolution, including so far as they apply to the regulations contained in Table A in the First Schedule of the Companies Act, 1922 or in that Table as altered by any subsequent enactment or reprint of the laws, or in Table A in the First Schedule to this Act;

- “authorised minimum share capital” means ₦10,000, in the case of a private company and ₦500,000, in the case of a public company;
- “authorised share capital” means the share capital of a company at any given time;
- “book and paper” and “book or paper” include accounts, deeds, writings, and documents;
- “circulating capital” means a portion of the subscribed capital of the company intended to be used by being temporarily parted with and circulated in business, in the form of money, goods and other assets, and which, or the proceeds of which, are intended to return to the company with an increment, and are intended to be used again and again, and to always return with some accretion;
- “Commission” except when referred to in Part XVII of this PART, that is, PART A of this Act means the Corporate Affairs Commission established under section 1 of this Act;
- “company” or “existing company” means a company formed and registered under this Act or, as the case may be, formed and registered in Nigeria before and in existence on the commencement of this Act;
- “company limited by guarantee” and “company limited by shares” have the meanings assigned to them respectively by section 21 of this Act;
- “companies liquidation account” means the account kept on behalf of the Commission pursuant to section 428 of this Act;
- “contributory” means every person liable to contribute to the assets of a company in the event of its being wound up; and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, the expression includes any person alleged to be a contributory;
- “court” or “the court” used in relation to a company, means the Federal High Court, and to the extent to which application may be made to it as court, includes the Court of Appeal and the Supreme Court of Nigeria;

- “creditors voluntary winding-up” has the meaning assigned to it by section 462(4) of this Act;
- “debenture” means a written acknowledgement of indebtedness by the company, setting out the terms and conditions of the indebtedness, and includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not;
- “director” includes any person occupying the position of director by whatever name called; and includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;
- “dividend” means a proportion of the distributed profits of the company which may be fixed annual percentage, as in the case of preference shares, or may be variable according to the prosperity or other circumstances of the company, as in the case of equity shares;
- “document” includes summons, notice, order and other legal process, and registers;
- “equity share” means a share other than a preference share; and “equity share capital” shall be construed accordingly;
- “fixed capital” means that capital which a company retains in the form of assets upon which the subscribed capital or other sum has been expended, and which assets either themselves produce income, independent of any further action by the company, or being retained by the company are made use of to produce income or gain profits;
- “foreign company” means a company incorporated elsewhere than in Nigeria;
- “forename” includes a Christian name and a personal name, and “surname” includes a patronymic;
- “Federal Gazette” means the official *Federal Gazette* of the Federation;
- “group financial statements” has the meaning assigned to it by section 336(1) of this Act;
- “holding company” means a holding company as defined by section 338 of this Act;

17. "inability to pay debts" in relation to a company has the meaning assigned by section 409 of this Act;
- "insolvent person" where used in this Act means any person in Nigeria who, in respect of any judgement, decree or court order against him, is unable to satisfy execution or other process issued thereon in favour of a creditor, and the execution or other process remains unsatisfied for not less than six weeks;
- "issued generally" means, in relation to a prospectus, issued to persons who are not existing members or debenture holders of the company;
- "issued share capital" in relation to any reduction, has the meaning assigned by section 105(2) of this Act;
- "legal practitioner" has the meaning assigned to it by the Legal Practitioners Act;
- "member" includes the heir, executor, administrator or other personal representative, as the case may be, of the member;
- "members voluntary winding-up" has the meaning assigned to it by section 462(4) of this Act;
- "memorandum" means the memorandum of association of a company as originally framed or as altered in pursuance of any enactment;
- "minimum subscription" has the meaning assigned to it by section 567(3) of this Act;
- "Minister" means the Minister charged with responsibility for trade; and "Ministry" shall be constituted accordingly;
- "non-cash asset" means any property or interest in property other than cash and for this purpose, cash includes foreign currency;
- "officer" in relation to a body corporate, includes a director, manager or secretary;
- "official receiver" means the officer by whatever name called or known charged with control of affairs in bankruptcy and if the appointment is vacant for any reason whatsoever, means the sheriff;
- "personal representative" where customary law is applicable includes successors appointed in respect of deceased contributories;

- "preference share" means a share, by whatever name designated, which does not entitle the holder of it to any right to participate beyond a specified amount in any distribution whether by way of dividend or on redemption, in a winding-up, or otherwise;
- "prescribed" means, as respects the provisions of this Act (other than as to the winding-up of companies), prescribed by court or, as the case may be, by other proper authority by regulations or order, and as to winding-up, means as prescribed by rules of court, or deemed so to be;
- "private company" has the meaning assigned to it by section 22(1) of this Act;
- "prospectus" means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company and includes any document which, save to the extent that it offers securities for a consideration other than cash, is a prospectus;
- "receiver" includes a manager;
- "recognised stock exchange" means any body of persons for the time being recognised by the Securities and Exchange Commission as a stock exchange dealing in shares, debentures and other securities;
- "registered company" means a company incorporated or deemed to be incorporated under this Act;
- "Registrar-General" means the Registrar-General appointed under section 8 of this Act;
- "resolution for reducing share capital" has the meaning assigned to it by section 106 of this Act;
- "resolution for voluntary winding-up" has the meaning assigned to it by section 457 of this Act;
- "rules" includes rules made by the Chief Judge of the Federal High Court for the purpose of section 453 or 516, of this Act and includes rules of court made or deemed to have been made under section 635 of this Act and all incidental forms; and also rules made by the Corporate Affairs Commission and the Securities and Exchange Commission under this Act;

- “securities” include shares, debentures, debenture stock, bonds, notes (other than promissory notes) and units under a unit trust scheme;
- “share” means the interest in a company’s share capital of a member who is entitled to share in the capital or income of such company; and except where a distinction between stock and shares is expressed or implied, includes stock;
- “small company” has the meaning assigned to it under section 351 of this Act;
- “statutory declaration” means a declaration voluntarily made under the Oaths Act and in Nigeria includes one so made under any other enactment or law providing for the taking of voluntary declaration;
- “statutory meeting” means the meeting required to be held by section 211(1) of this Act;
- “statutory report” has the meaning assigned to it by section 211(2) of this Act;
- “subsidiary” means, in relation to a body corporate, a subsidiary as defined by section 338 of this Act;
- “Table A” means Table A in the First Schedule to this Act;
- “time of the opening of the subscription lists” has the meaning assigned to it by section 566(1) of this Act;
- “unlimited company” has the meaning assigned to it by section 21(1) of this Act;
- “units” and “unit trust scheme” have respectively the meanings assigned to them in section 575 of this Act;
- “unregistered company” where used in Part XV of this PART, that is, PART A of this Act, includes any partnership, association or company with the following exceptions—
- (a) a company and any existing company registered under this Act; and
 - (b) a partnership, association or company which consists of less than eight members and is not a foreign partnership, association or company.

(2) References in this Act to bodies corporate or to corporations exclude corporations sole; but unless the context

otherwise requires, they shall include references to companies incorporated outside Nigeria.

(3) For the purpose of any provision in this Act which stipulates that an officer of a company who is in default shall be liable to a fine or other penalty, or personally liable to any third party, reference to “officer who is in default” shall be construed as a reference to any officer of the company who knowingly and wilfully authorises or permits or connives at the default, refusal or contravention specified in the provision.

651. (1) Subject to the provisions of this section, the Companies Act 1968 and the Companies (Special Provisions) Act shall, on the commencement of this Act, be repealed. Rep
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(2) Nothing in this Act shall affect any order, rule, regulation, appointment, conveyance, mortgage, deed or agreement made, resolution passed, direction given, proceeding taken, instrument issued or thing done under the enactment hereby repealed; but any such order, rule, regulation, appointment, conveyance, mortgage, agreement, resolution, direction, proceeding, instrument or thing if in force immediately before the commencement of this Act shall, on the commencement of this Act, continue in force, and, so far as it could have been made, passed, given, taken, issued or done under this Act, shall have effect as if so made, passed, given, taken, issued or done.

(3) Nothing in this Act shall be construed so as to prohibit the continuation of an inspection by inspectors appointed under any enactment hereby repealed, begun before the commencement of this Act, and section 325 of this Act shall apply to a report of inspectors appointed under any enactment hereby repealed as it applies to a report of inspectors appointed under section 314 of this Act.

(4) Where, under the provisions of section 261 of the Companies Act 1968, a prosecution by a liquidator has been directed by the court and has not been completed on the commencement of this Act, subsection (2) of that section shall have effect and be construed as if all expenses properly incurred by the liquidator in the prosecution are to be defrayed as directed by the court under section 438 of this Act, and not in accordance with that subsection.

(5) Any register kept under the enactment hereby repealed shall be deemed to be kept under the corresponding provisions of this Act.

(6) Funds and accounts constituted under this Act shall be deemed to be in continuation of the corresponding funds and accounts constituted under the enactment hereby repealed.

(7) Nothing in this Act shall affect—

(a) the incorporation of any company registered under any enactment hereby repealed; or

(b) Table A in the First Schedule of the Companies Act in so far as it applies to any company existing at the commencement of this Act, except as otherwise provided in this Act.

(8) Where any offence, being an offence for the continuance of which a penalty was provided, has been committed under any enactment hereby repealed, proceedings may be taken under this Act in respect of the continuance of the offence after the commencement of this Act, in the same manner as if the offence had been committed under the corresponding provisions of this Act.

(9) Where by any enactment repealed by this Act a time is fixed for the doing of an act or the performance of a duty and in any particular case that time has expired or but for this Act would have expired between the date of the commencement of this Act and the date of its signing, the time so fixed shall, for the avoidance of doubt, be deemed to have been extended so as to expire not later than seven days after the date of commencement of this Act, so however that nothing herein shall be construed to authorise any extension of time for the doing or performance, as the case may be, of an act or duty otherwise to be done or performed within a period of time limited by any such repealed enactment.

(10) The provisions of this Act with respect to winding-up (other than section 511 which imposes a penalty for corrupt inducement affecting appointment of a liquidator) shall not apply to any company of which the winding-up commenced before the commencement of this Act, but every such company shall be wound up in the same manner and with the same incidents as if this Act (apart from section 511) had not

been made and, for the purposes of the winding-up, the enactment under which the winding-up commenced shall be deemed to remain in force.

(11) A copy of every order staying the proceedings in a winding-up commenced as aforesaid shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Commission which shall make a minute of the order in his books relating to the company.

(12) In this section "enactment hereby repealed" includes any enactment repealed or replaced by the Companies Act 1968, which itself is repealed by this Act.

PART B—BUSINESS NAMES

652. This PART of this Act and PART C thereof shall be administered by the Corporate Affairs Commission established under PART A of this Act.

653. There shall be established in each State of the Federation, a registry of business names where there shall be kept a register in the prescribed form in which shall be entered such matters as are required by this Act or any regulation made thereunder to be entered in it.

654. (1) The Registrar-General of Companies appointed under section 8 of this Act shall be the Registrar of Business Names.

(2) There may be appointed, from time to time, fit persons to be Assistant Registrars of Business Names or other officers as may be necessary for the administration of this PART of this Act.

655. (1) The Registrar shall cause business names to be registered in accordance with the provisions of this PART of this Act.

(2) For the purpose of the registration under this PART of this Act, of the business names of a firm, individual or corporation at any of the registries of business names, any Assistant Registrar may, subject to any direction that the Commission may give, perform any act or discharge any duty

which the Registrar may lawfully perform or discharge or is required by this Act to perform or discharge, and, subject to that, any reference in this PART of this Act to the Registrar, unless the context otherwise admits, shall accordingly be deemed to include a reference to an Assistant Registrar.

(3) Without prejudice to the generality of the foregoing provisions of subsection (1) of this section, an Assistant Registrar may be assigned to the registry of business names in a State for the purpose of registering business names and keeping a register of business names.

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656. (1) Every individual, firm or corporation having a place of business in Nigeria and carrying on business under a business name shall be registered in the manner provided in this PART of this Act if—

- (a) in the case of a firm, the name does not consist of the true surname of all partners without any addition other than the true forenames of the individual partners or the initials of such forenames;
 - (b) in the case of an individual the name does not consist of his true surname without any addition other than his true forenames or the initials thereof;
 - (c) in the case of a corporation whether or not registered under this Act, the names does not consist of its corporate name without any addition.
- (2) Notwithstanding subsection (1) of this section where—
- (a) the addition merely indicates that the business is carried on in succession to a former owner of the business, that addition shall not of itself render registration necessary;
 - (b) two or more individual partners have the same surname, the addition of an 's' at the end of that surname shall not of itself render registration necessary; and
 - (c) the business is carried on by a receiver or manager appointed by any court, registration shall not be necessary.

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657. (1) Every firm, individual or corporation required under this PART of this Act to be registered shall, within

twenty-eight days after the firm, individual or corporation commences the business in respect of which registration is required or within three months of the coming into operation of this Act furnish to the Registrar at the registry in the State in which the principal place of business of the firm, individual or corporation is situated, a statement in writing in the prescribed form, signed as required by this section and containing the following particulars—

- (a) the business name or, if the business is carried on under two or more business names, each of those business names;
- (b) the general nature of the business;
- (c) the full postal address of the principal place of business;
- (d) the full postal address of every other place of business;
- (e) where the registration to be effected is that of a firm—
 - (i) the present forenames and surname, any former forenames or surname, the nationality and, if that nationality is not the nationality of origin, the nationality of origin, the age, the sex, the usual residence and any other business occupation of each of the individuals who are partners, and
 - (ii) the corporate name and registered office of such corporation which is a partner;
- (f) where the registration to be effected is that of an individual, the present forenames and surname, any former forenames or surnames, the nationality and, if that nationality is not the nationality of origin, the nationality of origin, the age, the sex, the usual residence and any other business occupation of the individual;
- (g) where the registration to be effected is that of a company, the name and registered office of the company;
- (h) the date of commencement of the business whether before or after the coming into operation of this Act.

(2) Where the registration to be effected is that of an individual or a firm consisting only of individuals, there shall be submitted to the Registrar copies of the passport

photographs of the individual certified in a manner required by the Registrar.

(3) Where the registration to be effected is that of a firm or an individual carrying on business on behalf of another individual, firm or corporation whether as nominee or trustee, the statement required by subsection (1) of this section to be furnished shall contain the following particulars in addition to the particulars required by that subsection—

- (a) the present forenames and surname, any former forenames or surname, the nationality and, if that nationality is not the nationality of origin, the nationality of origin and the usual residence of each individual on whose behalf the business is carried on;
- (b) the name of each firm or corporation in whose behalf the business is carried on.

(4) Where the registration to be effected is that of a firm or an individual carrying on business as general agent for any concern carrying on business outside Nigeria, and not having a place of business in Nigeria, the statement required by subsection (1) of this section to be furnished shall, in addition to the particulars required by that subsection state the name and full postal address of each such concerns, provided that in the case of a firm or individual carrying on business as general agent for three or more such concerns, it shall be sufficient to state the fact that the business is so carried on and the countries in which the concerns carry on business.

(5) A statement furnished in accordance with subsections (1) to (4) of this section shall—

- (a) in the case of a statement furnished by an individual, be signed by him;
- (b) in the case of a statement furnished by a firm, be signed by each individual who is a partner and by a director or the secretary of each corporation which is a partner;
- (c) in the case of a company be signed by a director or the secretary:

Provided that, if the statement is accompanied by a statutory declaration made by any person to the effect that he is a partner of the firm or is a director or the secretary of a

corporation which is a partner of the firm the statement may be signed by that person alone.

(6) A statement furnished in accordance with subsections (1) to (4) of this section by an individual who is a minor or by a firm of which one of the partners is a minor shall, in addition to the requirements of subsection (1) of this section be signed by a magistrate, legal practitioner or police officer of or above the rank of Assistant Superintendent of Police.

658. (1) On receipt by the Registrar of the statement of particulars required to be furnished under section 657 of this Act, he shall, subject to subsection (2) of this section and to the provisions of any regulations made under this Act, cause to be entered in the register the business name of the individual, company or firm and file the statement.

(2) The Registrar shall add to the business name in the register the identification letters of the State which shall be in brackets at the end of the business name, and these shall form part of the business name.

659. (1) On the registration of any firm, company or individual under this Act, the Registrar shall issue a certificate in the prescribed form containing the business name together with the distinguishing State identification letters in brackets at the end of the name.

(2) On the registration of any change in the particulars registered in respect of any firm, individual or corporation the Registrar may in his discretion either amend the certificate previously issued or issue a fresh certificate.

(3) A certificate issued under this section shall be sent by registered post or delivered to the firm, individual or corporation registering, who shall thereupon exhibit and thereafter maintain the same in a conspicuous position at the principal place of the business so registered:

Provided that—

- (a) where a fresh certificate has been issued under subsection (2) of this section, the provisions of this subsection shall apply to such fresh certificate only and not to the certificate originally issued; and

(b) where any certificate has been lost or destroyed or rendered illegible, a copy of such certificate certified by the Registrar may be exhibited in place of the original.

(4) Where a firm, individual or corporation registered under this PART of this Act has more than one place of business, the original certificate shall be exhibited and maintained as required by subsection (3) of this section at the principal place of business and a copy of the certificate certified by the Registrar shall be exhibited and thereafter maintained in a conspicuous position in each of the other places of business.

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s. 660. (1) Whenever a change is made or occurs in the particulars required by section 657 of this Act to be furnished in respect of any firm, individual or corporation registered under that section, other than particulars as to the age of an individual, the firm or individual shall within twenty-eight days after such change notify the change to the Registrar at the registry at which the firm, individual or corporation is registered.

(2) The notice required under subsection (1) of this section shall be in writing signed as provided in section 657 of this Act.

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3m 661. (1) If any firm, individual or corporation registered under this PART of this Act ceases to carry on business it shall be the duty of the partner in the firm at the time when it ceased to carry on business or of the individual or if he is dead his personal representative, within three months after the business has ceased to be carried on, to send by post or deliver to the Registrar a notice, stating that the firm or individual has ceased to carry on business.

(2) On receipt of such a notice as mentioned in subsection (1) of this section the Registrar may remove the firm, individual or corporation from the register.

(3) Where the Registrar has reasonable cause to believe that any firm, individual or corporation registered under this PART of this Act is not carrying on business he may send to the firm, individual or corporation by registered post a notice that, unless an answer is received to such notice within two

months from the date thereof, the firm, individual or corporation may be removed from the register.

(4) If the Registrar either receives an answer from the firm, individual or corporation to the effect that the firm, individual or corporation is not carrying on business or does not within two months from the date of the notice receive an answer, he may remove the firm, individual or corporation from the register.

662. (1) Where any business name under which the business of a person is carried on or to be carried on—

(a) contains the word "National", "Government", "Municipal", "State", "Federal", or any other word which imports or suggests that the business enjoys the patronage of the Federal, State or Local Government; or

(b) contains the word "co-operative" or its equivalent in any other language or any abbreviation thereof; or

(c) contains the words "Chamber of Commerce", "Building Society", "Guarantee", "Trustee", "Investment", "Bank", "Insurance" or any word of similar connotation; or

(d) is identical with or similar to a name by which any firm, individual or corporation is registered under this Part of this Act or any company registered under this Act; or

(e) is similar to any trade mark registered in Nigeria, and the Registrar is of opinion that registration would likely mislead the public then the Registrar shall, unless the consent of the Commission has been first obtained by the person, refuse to register the business name or, as the case may be, cancel the registration thereof.

(2) Where any business name under which the business of a person is carried on—

(a) contains any word which, in the opinion of the Registrar, is likely to mislead the public as to the nationality, race or religion of the persons by whom the business is wholly or mainly owned or controlled; or

- (b) is, in the opinion of the Registrar, deceptive or objectionable in that it contains a reference direct or otherwise to any personage, practice or institution, or is otherwise unsuitable as a business name,

the Registrar shall refuse to register the business name, or, as the case may be, cancel the registration thereof, but any person aggrieved by a decision of the Registrar under this subsection may, within one month of such refusal or cancellation, appeal to the Commission.

(3) The Registrar may refuse to register an individual or firm under this PART of this Act if the age of the individual or of any individual who is a partner is stated in the statement furnished under section 657 of this Act to be less than eighteen years.

(4) Where the Registrar has irrefutable evidence to the effect that an individual, firm or corporation that has previously been involved in fraudulent trade malpractices either in local or international trade is submitting an application for the registration of a new business name, the Registrar shall refuse to register such a business name.

663. The Registrar shall allow searches to be made at all reasonable time, in any register book, register or file of registered documents in his possession.

664. (1) The Registrar shall upon request give a certified copy of any entry in any register book, register or filed documents in his possession.

(2) Every such certified copy shall be received in evidence without any further or other proof in all legal proceedings, civil or criminal.

665. (1) Every individual or firm required by this PART of this Act to be registered shall in all trade catalogues, trade circulars, show cards and business letters issued or sent by the individual or firm to any person have mentioned in legible characters—

- (a) in the case of an individual, his present forenames or the initials thereof and present surname and any former forenames or surname and his nationality; and

- (b) in the case of a firm, the present forenames or the initials thereof and present surname, and any former forenames or surnames and the nationality of all the partners in the firm or in the case of a corporation being a partner, the corporate name; and
- (c) the registration number of the business name.

(2) Where the individual referred to in subsection (1) of this section is a minor, the words "a minor" shall be added, in brackets, after his name.

666. Where any firm or individual required under this PART of this Act to furnish a statement of particulars or of any change in particulars makes default in so doing the rights of such defaulter under or arising out of any contract made or entered into by or on behalf of such defaulter in relation to the business in respect of which particulars were required at any time while he is in default shall not be enforceable by action or other legal proceedings either in the business name or otherwise:

Provided that—

- (a) the defaulter may apply to a High Court in which any such contract would otherwise be enforceable for relief against the disability imposed by this section and the High Court in which any such contract would otherwise be enforceable on being satisfied that the default was accidental, or due to inadvertence, or some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may grant such relief either generally as regards all contracts enforceable by the court or as respects any particular contract and on such conditions as the court may impose;
- (b) nothing herein contained shall prejudice the rights of any other party as against the defaulter in respect of such contract as aforesaid;
- (c) if any action or proceeding shall be commenced by any other party against the defaulter to enforce the rights of such party in respect of such contract, nothing herein contained shall preclude the defaulter from enforcing in that action or proceeding by way of a counter claim, set-off or otherwise such rights as he may have against that party in respect of such contract.

id **667.** (1) If any firm, individual or corporation required under this PART of this Act to be registered—

- (a) fails to comply with the provisions of section 657 of this Act; or
- (b) fails to comply with the provisions of subsection (3) or subsection (4) of section 659 of this Act; or
- (c) fails to comply with the provisions of section 660 of this Act; or of section 666 of this Act; or
- (d) carries on business under a business name, the registration of which has been refused or cancelled under section 662 of this Act,

every partner in the firm or the individual shall be guilty of an offence and liable on conviction to a fine of ₦ 50 for every day during which the default continues, and the court shall order a statement of the required particulars to be furnished to the Registrar within such time as may be specified in the order.

(2) If any person whose duty it is under subsection (1) of section 661 of this Act to give notice that the firm or individual has ceased to carry on business fails to comply with the provisions of that subsection, he shall be guilty of an offence and liable on conviction to a fine of ₦ 520.

(3) If any firm or individual in issuing any trade catalogues, trade circular, show card or business letter fails to comply with the provisions of section 665 of this Act, every partner in the firm or the individual shall be guilty of an offence and liable on conviction to a fine of ₦ 250.

(4) If any statement required to be furnished under this Act contains any matter which is false in any material particular to the knowledge of any person signing it, such person shall be guilty of an offence and liable on conviction to a fine of ₦ 500 or to imprisonment for six months or to both such fine and imprisonment.

ons. **668.** The Minister may, with the approval of the National Council of Ministers, make regulations—

- (a) for the governance and guidance of the Registrar and Assistant Registrars and of all persons acting under them;

- (b) prescribing the forms to be used for the purpose of this PART of this Act;
- (c) prescribing the fees to be taken by the officers by or before whom the acts for which the fees are payable are done under this PART of this Act;
- (d) generally for the conduct and regulation of registration under this PART of this Act and any matters incidental thereto.

669. Any firm or corporation which or individual who immediately before the coming into operation of this Act was registered under the Registration of Business Names Act 1961 hereby repealed shall be deemed to be registered under and in accordance with this PART of this Act and the provisions of this PART of this Act shall apply in respect of such firm, corporation or individual accordingly, and any statement furnished under the said Act hereby repealed shall be deemed to have been furnished under and in accordance with this Act.

670. (1) Every firm, individual or corporation carrying on business under a registered business name shall, not later than the 30th day of June in each year except the calendar year in which the business name is registered, deliver to the Commission a return in a prescribed form showing the particulars of the firm, individual or corporation, the nature of the business carried on and the state of the financial affairs of the business carried on by the firm, individual or corporation in the business name during the preceding period of January 1 to December 31.

(2) The returns shall be signed, in the case of an individual or firm consisting only of individuals, by the individuals and in the case of a corporation or a partner who is a corporation, by a director and the secretary.

(3) Failure to comply with any of the provisions of this sections shall be punishable with a fine of ₦ 200, and a daily default fine of ₦ 25.

671. (1) In this PART of this Act, unless the context otherwise requires—

- “Assistant Registrar” means an Assistant Registrar of Business Names appointed under section 654 of this Act;
- “business” includes any trade, industry and profession and any occupation carried on for profit;
- “business name”, means the name or style under which any business is carried on whether in partnership or otherwise;
- “firm” means an unincorporated body of two or more individuals or one or more individuals and one or more corporations, or two or more corporations, who or which have entered into partnership with one another with a view to carrying on business for profit;
- “forename” when used with a surname includes any first name;
- “initials” includes any recognised abbreviation of a forename;
- “Minister” means the Minister charged with responsibility for matters relating to the registration of business names;
- “minor” means a person who has not attained the age of eighteen years;
- “person” includes a firm, individual or corporation;
- “Registrar” means the Registrar of Business Names;
- “show cards” means a card containing or exhibiting articles dealt with, or samples or representations thereof.

(2) The Registration of a business name under this PART of this Act shall not be construed as authorising the use of that name if apart from such registration the use thereof could be prohibited.

672. The Registration of Business Names Act 1961 is hereby repealed.

PART C—INCORPORATED TRUSTEES

673. (1) Where one or more trustees are appointed by any community of persons bound together by custom, religion, kinship or nationality or by any body or association of persons established for any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose, he or they may, if so authorised by the community, body or association (hereinafter in this PART of this Act

referred to as “the association”) apply to the Commission in the manner hereafter provided for registration under this PART of this Act as a corporate body.

(2) Upon being registered by the Commission, the trustee or trustees shall become a corporate body in accordance with the provisions of section 679 of this Part of this Act.

674. (1) Application under section 673 of this Act shall be in the form prescribed by the Commission and shall state—

- (a) the name of the proposed corporate body which must contain the words “Incorporated Trustees of”;
- (b) the aims and objects of the association which must be for the advancement of any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose, and must be lawful;
- (c) the names, addresses and occupations of the secretary of the association, if any.

(2) There shall be attached to the application—

- (a) two printed copies of the constitution of the association;
- (b) duly signed copies of the minutes of the meeting appointing the trustees and authorising the application, showing the people present and the votes scored;
- (c) the impression or drawing of the proposed common seal.

(3) The application shall be signed by the person making it.

(4) The Commission may require such declaration or other evidence in verification of the statements and particulars in the application, and such other particulars, information, and evidence, if any, as it may think fit.

(5) If any person knowingly makes any false statement or gives any false information for the purpose of incorporating trustees under this PART of this Act, he shall be guilty of an offence and liable on conviction to imprisonment for one year or to a fine of ₦100.

675. (1) A person shall not be qualified to be appointed as a trustee if—

- (a) he is an infant; or
- (b) he is a person of unsound mind having been so found by a court; or
- (c) he is an undischarged bankrupt; or
- (d) he has been convicted of an offence involving fraud or dishonesty within five years of his proposed appointment.

(2) If a person disqualified under paragraph (c) or (d) of subsection (1) of this section acts as a trustee, he shall be liable to a fine of ₦50 for every day during which he so acts.

tion. * 676. The constitution of the association shall in addition to any other matter—

- (a) state the name or title of the association which shall not conflict with that of a company, or with a business name or trade mark registered in Nigeria;
- (b) the aims and objects of the association; and
- (c) make provisions, in respect of the following—
 - (i) appointment, powers, duties, tenure of office and replacement of the trustees,
 - (ii) the use and custody of the common seal,
 - (iii) the meetings of the association,
 - (iv) the number of members of the governing body, if any, the procedure for their appointment and removal, and their powers, and
 - (v) where subscriptions and other contributions are to be collected, the procedure for disbursement of the funds of the association, the keeping of accounts and the auditing of such accounts.

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ns. 677. (1) If the Commission is satisfied that the application has complied with the provisions of sections 674, 675 and 676 of this Act it shall cause the application to be published in a prescribed form in two daily newspapers circulating in the area where the corporation is to be situated and at least one of the newspapers shall be a national newspaper.

(2) The advertisement shall invite objections, if any, to the registration of the body.

(3) The objection shall state the grounds on which it is made and shall be forwarded to reach the Commission within twenty-eight days of the date of the last of the publications in the newspapers.

(4) If any objections are made, the Commission shall consider them and may require the objectors and applicants to furnish further information or explanation, and may uphold or reject the objections as it considers fit and inform the applicant accordingly.

678. (1) If, after the advertisement, no objection is received within the period specified in section 677 of this Act or, where any objection is received, and the same is rejected, the Commission, having regard to all the circumstances, may assent to the application or withhold its assent.

(2) If the Commission assents to the application, it shall register the trustees and issues a certificate in the prescribed form.

679. (1) From the date of registration, the trustee or trustees shall become a body corporate by the name described in the certificate, and shall have perpetual succession and a common seal, and power to sue and be sued in its corporate name as such trustee or trustees and subject to section 685 of this PART of this Act to hold and acquire, and transfer, assign or otherwise dispose of any property or interests therein belonging to, or held for the benefit of such association, in such manner and subject to such restrictions and provisions as the trustees might without incorporation, hold or acquire, transfer, assign or otherwise dispose of the same for the purposes of such community, body or association of persons.

(2) The certificate of incorporation shall vest in the body corporate all property and interests of whatever nature or tenure belonging to or held by any person in trust for such community, body or association of persons.

(3) A certificate of incorporation when granted shall be *prima facie* evidence that all the preliminary requisitions herein contained and required in respect of such incorporation have been complied with, and the date of

incorporation mentioned in such certificate shall be deemed to be the date on which incorporation has taken place.

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680. (1) Where the association is desirous of changing or altering its name or objects or any of them, the trustee shall apply to the Commission in the prescribed form setting out the alterations desired and attaching a copy of the resolution approving the change and duly certified by the trustees.

(2) The Commission on receipt of the application shall consider it and, if satisfied that the change or alteration is *prima facie* lawful shall—

- (a) cause the application to be published in two daily newspapers in the manner specified in subsection (1) of section 677 of this Act; and
- (b) direct the corporation to display for at least twenty-eight days a notice of the proposed change or alteration conspicuously mounted at the corporation headquarters, or at any branch offices, or any such places where a majority of the members are likely to see it as the Commission may require.

(3) The publication and notices shall call for objections which, if any, shall state the grounds of objection and be forwarded to reach the Commission not later than twenty-eight days after the last of the publications in the newspapers.

(4) The provisions of section 676 and of subsection (1) of section 677 of this PART of this Act shall apply to this section as they apply to an application for registration.

(5) If the Commission assents to the application the alterations shall be made and in the case of a change of name, the Commission shall issue a new certificate in the new name in place of the former certificate.

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681. Subject to sections 676 and 677 of this PART of this Act, an association whose trustees are incorporated under this PART of this Act may alter its constitution by a resolution passed by a simple majority of its members and approved by the Commission.

682. (1) Where a body or association intends to replace some or all its trustees or to appoint additional trustees, it may by resolution at a general meeting do so and apply in the prescribed form for the approval of the Commission.

(2) Upon such application the provisions of subsections (2) to (4) of section 680 of this Act, shall apply to this section as they apply to the change of name or object.

(3) If the Commission assents to the application it shall signify its assent in writing to the corporation and the appointment shall become valid as from the date of the resolution appointing the trustees.

683. Any change or alterations purported to be made in contravention of section 680, 681 or 682 of this PART of this Act shall be void.

684. The association may appoint a council, or governing body which shall include the trustees and may, subject to the provisions of this PART of this Act, assign to it such administrative and management functions as it deems expedient.

685. The powers vested in the trustees by or under this Act shall be exercised subject to the directions of the association, or of the council or governing body appointed under section 684 of this PART of this Act, as the case may be.

686. (1) The income and property of a body or association whose trustee or trustees are incorporated under this PART of this Act shall be applied solely towards the promotion of the objects of the body as set forth in its constitution and no portion thereof shall be paid or transferred directly or indirectly, by way of dividend, bonus, or otherwise by way of profit to any of the members of association:

(2) Nothing in subsection (1) of this section shall prevent the payment, in good faith, of reasonable and proper remuneration to an officer or servant of the body in return for any service actually rendered to the body or association:

Provided that—

- (a) With the exception of *ex-officio* members of the governing council, no member of a council of management or governing body shall be appointed to any salaried office of the body, or any office of the body paid by fees; and
- (b) no remuneration or other benefit in money or money's worth shall be given by the body to any member of such council or governing body except repayment of out-of-pocket expenses or reasonable and proper rent for premises demised, or let to the body or reasonable fee for services rendered.

(3) If any person knowingly acts or joins in acting in contravention of this section, he shall be liable to refund such income or property so misapplied to the association.

687. The common seal of the body corporate shall have such device as may be approved by the Commission; and any instrument to which the common seal of the corporate body has been affixed in apparent compliance with the regulations for the use of the common seal shall be binding on the corporate body, notwithstanding any defect or circumstance affecting the execution of such instrument.

688. Subject to the provisions of this PART of this Act and of the constitution of the association, the corporate body may contract in the same form and manner as an individual.

689. (1) The Commission shall preserve all documents delivered to it under this PART of this Act.

(2) Any person may on application to the Commission be permitted to inspect the documents kept under subsection (1) of this section on payment of a prescribed fee and may require a copy or extract of any such document to be certified by the Commission on payment of a prescribed fee.

690. (1) The trustees of the corporation shall not earlier than 30th June or later than 31st December each year (other than the year in which it is incorporated), submit to the Commission a return showing, among other things, the name of the corporation, the names, addresses and occupations of the trustees, and members of the council or governing

body, particulars of any land held by the corporate body during the year, and of any changes which have taken place in the constitution of the association during the preceding year.

(2) If the trustees fail to comply with subsection (1) of this section they shall be liable to a fine of ₦5 for each day during which the default continues.

691. (1) A body corporate formed under this PART of this Act may be dissolved by the court on a petition brought for that purpose by—

- (a) the governing body or council; or
- (b) one or more trustees; or
- (c) members of the association constituting not less than fifty *per cent* of the total membership; or
- (d) the Commission.

(2) The grounds on which the body corporate may be dissolved are—

- (a) that the aims and objects for which it was established have been fully realised and no useful purpose would be served by keeping the corporation alive;
- (b) that the body corporate is formed to exist for a specified period and that period has expired and it is not necessary for it to continue to exist;
- (c) that all the aims and objects of the association have become illegal or otherwise contrary to public policy; and
- (d) that it is just and equitable in all the circumstances that the body corporate be dissolved.

(3) At the hearing of the petition, all persons whose interest or rights may, in the opinion of the court, be affected by the dissolution shall be put on notice.

(4) If in the event of a winding-up or dissolution of the corporate body there remains after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the association, but shall be given or transferred to some other institutions having objects similar to the objects of the body,

such institutions to be determined by the members of the association at or before the time of dissolution.

(5) If effect cannot be given to the provisions of subsection (4) of this section, the remaining property shall be transferred to some charitable object.

692. The Minister may, with the approval of the National Council of Ministers, make regulations generally for the purpose of this PART of this Act and, in particular, without prejudice to the generality of the foregoing provisions, make regulations—

- (a) prescribing the forms and returns and other information required under this PART of this Act;
- (b) prescribing the procedure for obtaining any information required under this PART of this Act;
- (c) requiring returns to be made within the period specified therein by any body corporate to which this PART of this Act applies;
- (d) prescribing any fees payable under this PART of this Act.

693. In this PART of this Act, unless the context otherwise requires—

“Commission” means the Corporate Affairs Commission established under section 1 of this Act;

“court” means the Federal High Court;

“Federal Gazette” means the Federal Government Official Federal Gazette; and

“Minister” means the Minister charged with responsibility for matters relating to trade.

694. The Land (Perpetual Succession) Act, is hereby repealed.

695. All trustees duly registered as bodies corporate under the Land (Perpetual Succession) Act shall, as from the date of coming into operation of this Act, be deemed to be registered under and in accordance with this PART of this Act and the provisions of this PART of this Act shall apply in respect of such trustees accordingly.

PART D

SHORT TITLE

696. This Act may be cited as the Companies and Allied Matters Act.

SCHEDULES

FIRST SCHEDULE

TABLE A

FORM OF ARTICLES OF ASSOCIATION

PART I—REGULATIONS FOR THE MANAGEMENT OF A PUBLIC COMPANY LIMITED BY SHARES

Interpretation

1. (1) In these Regulations “the Act” means the Companies and Allied Matters Act.

(2) Unless the context otherwise requires, words or expressions contained in these Regulations bear the same meaning as in the Act.

Classes of Shares

2. The company may from time to time issue classes of shares. It shall be the responsibility of the directors to determine the classes of shares to be issued. All the rights or restrictions attached to each particular class of shares shall be specified in the terms of issue but such rights may at any time be varied in accordance with the provisions of section 141 of the Act.

Commissions and Brokerage

3. The company may exercise the powers of paying commissions conferred by section 131 of the Act, provided that the rate per cent or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the said section. Such commissions may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in one way and partly in the other.

4. The company may also on any issue of shares pay such brokerage as may be lawful.

Alteration of Capital

5. The company may from time to time by ordinary resolution effect an alteration of its share capital in any of the ways set out in section 100 of the Act.

6. Subject to the provisions of the Act on reduction of capital, the company may, whenever it considers it expedient to do so, by special resolution reduce its share capital, any capital redemption fund or any share premium account.

NINTH SCHEDULE—continued

provided in the form is insufficient, particulars of other directorships should be listed on a separate statement attached to this return.

Where all the partners in a firm are joint secretaries, the name and principal office of the firm should be stated.

*Delivered for filing by.....

*This should be printed at the bottom of the first page of the return.

CERTIFICATES AND OTHER DOCUMENTS ACCOMPANYING ANNUAL RETURN

Certificate to be given by a Director and the Secretary of every Private Company

We certify that the company has not since the date of the incorporation of the company/the last annual return issued any invitation to the public to subscribe for any shares or debentures of the company.

Signed.....Director

Signed.....Secretary

Further certificate to be given as aforesaid if the number of members of the company exceeds fifty.

We certify that the excess of the number of members of the company over fifty consists wholly of persons, who under section 22(3) of the Companies and Allied Matters Act are not to be included in reckoning the number of fifty, and we also certify that the company still retains its smallness.

Signed.....Director

Signed.....Secretary

Certified copies of Accounts

There shall be annexed to this return a written copy, certified both by a director and by the secretary of the company to be a true copy, of every balance sheet laid before the company in general meeting during the period to which this return relates (including every document required by law to be annexed to the balance sheet) and a copy (certified as aforesaid) of the report of the directors accompanying each such balance sheet. If any such balance sheet or document required by law to be annexed thereto is in a foreign language there must also be annexed to that balance sheet a translation in English of the balance sheet or document certified in prescribed manner to be a correct translation. If any such balance sheet as aforesaid or document required by law to be annexed thereto did not comply with the requirements of the law as in force at the date of audit with respect to the form of balance sheets or documents aforesaid, as the case may be, there shall be made such additions to and corrections in the copy

NINTH SCHEDULE—continued

as would have been required to be made in the balance sheet or document in order to make it comply with the said requirements, and the fact that the copy has been amended must be stated thereon.

TENTH SCHEDULE

ANNUAL RETURN OF A COMPANY LIMITED BY GUARANTEE

(Under the Companies and Allied Matters Act)

ANNUAL RETURN OF Limited made up to the day of 19..... (being the fourteenth day after the date of the annual general meeting for the year 19.....)

1. Address.
(Address of the registered office of the company).
2. Situation of Registers of Members and Debenture Holders.
 - (a) (Address of place at which the register of members is kept, if other than the registered office of the company).
 - (b) (Address of any place in Nigeria other than the registered office of the company at which is kept any register of holders of debentures of the company or any duplicate of any such register or part of any such register).
3. Particulars of Indebtedness.

Total amount of indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Commission under this Act, the particulars of which are set in the annexed statement. N

4. Particulars of Directors and Secretaries.

Particulars of the persons who are directors of the company at the date of this return.

Name	Any former fore- names or surname.	Nation- ality.	Usual residen- tial address.	Business occupation and parti- culars of other direc- torships.	Date of Birth.
Present fore- name or names and surname.					

TENTH SCHEDULE—continued

Particulars of the person who is secretary of the company at the date of this return.

Name	Any former forenames or surnames.	Usual residential address
(In the case of an individual, present forename or names and surname, in the case of a corporation, the corporate name).		(In the case of a corporation, the registered or principal office).

Signed..... Director

Notes

“Director” includes any person who occupies the position of a director by whatsoever name called and any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

“Former forename” and “former surname” do not include in the case of a married woman the name or surname by which she was known previous to the marriage.

The names of all bodies corporate incorporated in Nigeria of which the director is also a director, should be given, except bodies corporate of which the company making the return is the wholly-owned subsidiary of bodies corporate which are the wholly-owned subsidiaries either of the company or of another company of which the company is the wholly-owned subsidiary of another if it has no members except that other and that other’s wholly-owned subsidiaries and its or their nominees. If the space provided in the form is insufficient, particulars of both directorships should be listed on a separate statement attached to the return.

Where all partners in a firm are joint secretaries, the name and principal office of the firm should be stated.

*Delivered for filing by.....

*This should be printed at the bottom of the first page of the return.

CERTIFICATES AND OTHER DOCUMENTS ACCOMPANYING ANNUAL RETURN

Certificate to be given by a Director and the Secretary of every Private Company

We certify that the company has not since the date of the incorporation of the company/the last annual return issued any invitation to the public to subscribe for any shares or debentures of the company.

Signed..... Director

Signed..... Secretary

Companies and Allied Matters Act

TENTH SCHEDULE—continued

Further certificate to be given as aforesaid if the number of members of the company exceeds fifty.

We certify that the excess of the number of members of the company over fifty consists wholly of persons who, under subsection (3) of section 22 of the Companies and Allied Matters Act are not to be included in reckoning the number of fifty.

Signed..... Director

Signed..... Secretary

Certified copies of Accounts

There shall be annexed to this return a written copy, certified both by a director and by the secretary of the company to be a true copy, of every balance sheet laid before the company in general meeting during the period to which this return relates (including every document required by law to be annexed to the balance sheet) and a copy (certified as aforesaid) of the report of the directors accompanying each such balance sheet. If any such balance sheet or document required by law to be annexed thereto is in a foreign language there must also be annexed to that balance sheet a translation in English of the balance sheet or document certified in prescribed manner to be a correct translation. If any such balance sheet as aforesaid or document required by law to be annexed thereto did not comply with the requirements of the law as in force at the date of audit with respect to the form of balance sheets or documents aforesaid, as the case may be, there must be made such additions to and corrections in the copy as would have been required to be made in the balance sheet or document in order to make it comply with the said requirements, and the fact that the copy has been amended must be stated thereon.

ELEVENTH SCHEDULE

POWERS OF RECEIVERS AND MANAGERS OF THE WHOLE OR SUBSTANTIALLY THE WHOLE OF COMPANY’S PROPERTY

1. Power to take possession of, collect and get in the property of the company and, for that purpose, to take such proceedings as may seem to him expedient.
2. Power to sell or otherwise dispose of the property of the company by public auction or private contract.
3. Power to raise or borrow money and grant security therefore over the property of the company.
4. Power to appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions.