

**COMPANIES AND OTHER BUSINESS ENTITIES ACT**  
**[CHAPTER 24:31]**

ARRANGEMENT OF SECTIONSS

CHAPTER I

PRELIMINARY AND ADMINISTRATION

PART I

PRELIMINARY

*Section*

1. Short title and date of commencement.
2. Interpretation.
3. When persons deemed to be associates and when persons deemed to control companies
4. Non-application of Act to certain institutions.
5. Registrable business entities.

PART II

ADMINISTRATION

6. Office for the Registration of Companies and Other Business Entities; Registrar, registries and inspectorate.
7. Funds of Companies Office.
8. Annual and other reports of Companies Office.
9. Form of registers and other documents.
10. Forms and tables and application of certain Schedules and licences.
11. Registrar's power to refuse registration.
12. Extension of time for lodging returns, etc.
13. Proof of certain facts by affidavit.
14. Inspection and copies of documents in Companies Office and production of documents in evidence.
15. Additional copies of returns or documents.
16. Replacement of lost documents.
17. Exemption from liability for acts or omissions of Companies Office and persons employed therein.

CHAPTER II

PROVISIONS COMMON TO COMPANIES AND PRIVATE BUSINESS CORPORATIONS

PART I

GENERAL

18. Registration of constitutive documents.
19. Incorporation of companies and private business corporations and capacity and powers thereof.
20. Effect of registration of constitutive documents and limitation of liability of members of companies and private business corporations.

*Section*

21. Availability and publicity of constitutive documents.
22. No constructive notice of constitutive documents or other public documents.
23. Copies of constitutive documents to embody alterations.
24. Presumption of regularity; liability not affected by fraud.
25. Prohibition of undesirable name.
26. Change of name.
27. Statement of objects of registered business entity and effect thereof.
28. Provisions in connection with use of names by registered business entities.
29. Lawful use of assumed names by registered business entities.
30. Publication of directors' or members' names.
31. Postal address, electronic mail address and registered office.
32. Ratification of contracts.
33. Form of contracts.
34. Promissory notes and bills of exchange.
35. Execution of documents domestically and in foreign countries.
36. Official seal for use in foreign countries.
37. Authentication of documents.

## PART II

## INSPECTION AND INVESTIGATION

38. Purposes of inspections and investigations and powers in connection therewith.
39. Investigation by Registrar.
40. Investigation on request of minority shareholders.
41. Investigation to determine ownership or control.
42. Investigation of registered business entity's affairs in other cases.
43. Power of inspectors to investigate related registered or unregistered business entities.
44. Production of records and evidence on investigation.
45. Registrar's report.
46. Proceedings on Registrar's report.
47. Expenses of investigation of affairs of registered business entity.
48. Power to require information as to holders of shares, debentures or interests.
49. Power to impose restrictions on shares, debentures or interests.
50. Saving for legal practitioners and bankers.
51. Report following investigation to be evidence.

## PART III

## DEFUNCT BUSINESS ENTITIES

52. Striking off of defunct business entities from register and remedy for persons aggrieved by striking off.

*Section*

53. Undistributed property of dissolved or defunct company or private business corporation: *bona vacantia* orders

## PART IV

## COMMON PROVISIONS RELATING TO FIDUCIARY DUTIES, REMEDIES AND LEGAL PROCEEDINGS

*Subpart A: Duties of office bearers of companies and private business corporation*

54. Duty of care and business judgment rule.  
55. Duty of loyalty.

*Subpart B: Duty of loyalty – conflicts of interest*

56. Transactions involving conflict of interest.  
57. Duty to disclose conflict of interest.  
58. Avoidance and other remedies for conflict-of-interest transactions.

*Subpart C: Other legal proceedings and remedies*

59. Power of court to grant relief to defendants or potential defendants in certain cases  
60. Direct actions by members.  
61. Derivative actions by members on entity's behalf.  
62. Court remedies in deadlock, fraud, oppression and other situations; piercing the corporate veil.  
63. Security for costs.  
64. Service of documents.  
65. Allegations of voidness, impropriety, etc. by registered business entities.

*Subpart D: Indemnification and insurance*

66. Indemnification and insurance of persons referred to in sections 54, 55 and 57.

## PART V

## OFFENCES AND DEFAULTS COMMON TO REGISTERED BUSINESS ENTITIES

67. Penalties for false statements and oaths.  
68. Fraudulent, reckless or grossly negligent conduct of business.  
69. Fraudulent, reckless or wilful failure of financial accounting; falsification of records.  
70. Power to restrain fraudulent persons from managing companies or controlling PBCs.  
71. Unlawful personation and misrepresentation in relation to shares and interests.  
72. Obligation to maintain and file beneficial ownership information.  
73. Prohibition of concealment of beneficial ownership.  
74. Indemnity and civil and criminal liability of officers and auditors of companies and members of PBCs.

## CHAPTER III

## COMPANIES

## PART I

## INTRODUCTION

*Section**Sub-Part A: Incorporation of companies and matters incidental thereto*

75. Prohibition of association or partnership exceeding twenty persons.
76. Mode of forming company.
77. Memorandum of company.
78. Signing of memorandum.
79. Alteration of memorandum.
80. Group voting on amendments to memorandum.
81. Articles of association and alteration thereof.
82. Power to dispense with "Limited" in certain cases.

*Sub-Part B: Membership of company*

83. Membership of company; personal liability where business carried on with no members.
84. Membership of holding company.

*Sub-Part C: Private companies*

85. Definition of private company and consequences of default in complying with conditions for private company.
86. Statement in lieu of prospectus on ceasing to be private company.

*Sub-Part D: Co-operative companies*

87. Definition of co-operative company and consequences of default in complying with conditions for co-operative company
88. Co-operative company to maintain reserve fund.
89. Voting rights of members of co-operative company.
90. Application of surplus assets on liquidation of co-operative company.
91. Special method for reduction of share capital.
92. Disposal of produce of members to or through co-operative company.
93. Shares or interest of members: charge and set-off, and immunity from attachment or sale in execution.
94. Company ceasing to be co-operative company.

## PART II

## SHARE CAPITAL AND DEBENTURES

*Sub-Part A: General nature of share capital of companies*

95. Legal nature of shares and requirement to have shareholders.
96. Authorisation for shares.

*Section*

97. Preferences, rights, limitations and other share terms.
98. Issuing shares.
99. Subscription for additional shares in private companies.
100. Consideration for shares.
101. Options for subscription for shares or debentures.
102. Solvency and liquidity test.

*Sub-Part B: Prospectus*

103. Dating of prospectus.
104. Matters to be stated and reports to be set out in prospectus.
105. Expert's consent to issue of prospectus containing statement by him or her.
106. Registration of prospectus.
107. Non-registration of prospectus; unapproved alteration of terms mentioned in prospectus or in statement in lieu of prospectus.
108. Civil liability for misstatements in prospectus.
109. Criminal liability for misstatements in prospectus.
110. Underwriting contract and affidavit to be delivered to Registrar.
111. Document containing offer of shares or debentures for sale to be deemed to be prospectus.
112. Interpretation of provisions relating to prospectus.
113. Construction of references to offering shares or debentures to public.
114. Restrictions on offering shares for subscription or sale.

*Sub-Part C: Allotment*

115. Prohibition of allotment unless minimum subscription received.
116. Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to Registrar.
117. Effect of irregular allotment.
118. Allotment voidable if application form not attached to prospectus.
119. Application for and allotment of shares.
120. Allotment of shares and debentures to be dealt in on stock exchange.
121. Register and return as to allotments.

*Sub-Part D: Commissions and discounts*

122. Power to pay certain commissions and prohibition of payment of all other commissions, discounts.
123. Financial assistance by company for purchase of its own or its holding company's shares.

*Sub-Part E: Issue of shares at premium or discount and redeemable preference shares*

124. Application of share premiums.
125. Power to issue shares at a discount.

*Section*

126. Power to issue redeemable shares.
127. Financing at redemption.
128. Power of company to purchase own shares.
129. Authority required by company to purchase its own shares.
130. Cession or renunciation of rights.
131. Payments for rights to purchase or for release thereof.
132. Disclosure by company of purchase of own shares.
133. Capital redemption reserve.
134. Effect of failure by company to redeem or purchase shares

*Sub-Part F: Miscellaneous provisions as to share capital*

135. Power of company to arrange for different amounts being paid on shares.
136. Reserve liability of company.
137. Capitalisation shares.
138. Distributions must be authorised by board.
139. Existing shareholders' right of first refusal to new shares.
140. Notice to Registrar of consolidation of share capital, conversion of shares into stock.
141. Notice of increase of share capital.
142. Payment of interest out of capital.
143. Variation of rights attaching to shares.

*Sub-Part G: Reduction of share capital*

144. Special resolution for reduction of share capital.
145. Application to court to confirm order, objections by creditors.
146. Order confirming reduction.
147. Registration of order and minute of reduction.
148. Liability of members in respect of reduced shares.
149. Penalty for concealing name of creditor.

*Sub-Part H: Transfer of shares and debentures, evidence of titles, etc.*

150. Numbering of shares.
151. Transfer of title to shares and debentures.
152. Prohibition of bearer shares.
153. Evidence of title to shares.
154. Creation and registration of debentures; contracts to subscribe for debentures.
155. Register of mortgages and debentures and register of debenture holders.
156. Branch registers of debenture holders.
157. Power to re-issue redeemed debentures in certain cases.

## PART III

## MANAGEMENT AND ADMINISTRATION OF COMPANIES

*Section**Sub-Part A: Restrictions on commencement of business and register and index of members*

158. Restrictions on commencement of business.
159. Register and index of members and use of register as presumptive proof of membership.
160. Inspection of register and index.
161. Power to close register.
162. Power of court to rectify register.
163. Trusts in respect of shares.
164. Power to keep branch register in foreign countries.

*Sub-Part B: Annual return and meetings and proceedings*

165. Annual return to be made by company.
166. Statutory meeting and statutory report.
167. Annual general meeting.
168. Convening of extraordinary general meeting on requisition.
169. Length of notice for calling meetings.
170. General provisions as to meetings and votes and power of court to order meeting.
171. Proxies and voting on poll.
172. Procedure for compulsory adjournment.
173. Representation of body corporates at meeting of company and of creditors.
174. Circulation of members' resolutions.
175. Special resolutions.
176. Written resolutions.
177. Resolutions requiring special notice.
178. Registration and copies of special resolution.
179. Resolutions passed at adjourned meetings.
180. Minutes of meetings of members.
181. Inspection of minutes.

*Sub-Part C: Accounts and audit*

182. Keeping of financial records.
183. Statement of financial position and statement of comprehensive income and financial year of holding company and subsidiary.
184. General provisions as to contents and form of financial statements.
185. Meaning of holding company, subsidiary and wholly owned subsidiary.
186. Obligation to lay group accounts before holding company.
187. Form and contents of group accounts.

*Section*

188. Accounts and auditor's report to be annexed to signed statement of financial position.
189. Directors' report to be attached to statement of financial position.
190. Right to receive copy of statement of financial position and auditor's report.
191. Appointment, remuneration, duties, powers and removal of auditors.
192. Disqualifications for appointment as auditor.
193. Auditor's report.
194. Construction of references to documents annexed to accounts.

*Sub-Part D: Directors and other officers*

195. Directors and their functions and responsibilities.
196. Directors acting other than in person at meeting.
197. Liability of directors and prescribed officers.
198. Company secretary: functions, qualifications and disqualifications.
199. Restrictions on appointment or advertisement of director; share qualifications of directors.
200. Disqualification for appointment as director.
201. Appointment of directors to be voted on individually.
202. Removal and resignation of directors.
203. Vacancies on board of directors.
204. Quorum and vote required.
205. Minutes of meeting of board and committees.
206. Independent directors required for public companies.
207. Shareholder approval of directors' emoluments.
208. Prohibition of financial assistance to directors.
209. Approval of company requisite for payment by it to director for loss of office.
210. Approval of company requisite for payment in connection with transfer of its property to director for loss of office.
211. Duty of director to disclose payments for loss of office, made in connection with transfer of shares in company.
212. Provisions supplementary to sections 209, 210 and 211.
213. Register of directors' share holdings.
214. Prohibition of allotment of shares to directors save on same terms as to all members, and restriction on sale of undertakings by directors.
215. Particulars in accounts of directors' salaries and pensions.
216. Particulars in accounts of loans to officers.
217. Register of directors and secretaries.

*Sub-Part E: Responsibilities of boards, audit committees of public company and corporate governance guidelines for public companies*

218. Board's role and responsibilities.
219. Audit committee of public company.



*Section*

220. Corporate governance guidelines for public companies.

221. Officers of company.

*Sub-Part F: Protection of minority shareholders*

222. Meaning of “member” and “company” in sections 223 to 225.

223. Order on application of member.

224. Order on application of Registrar.

225. Powers of High Court in applications under sections 223 to 224.

*Sub-Part G: Mergers etc.*

226. Definitions in Chapter II Part III (G).

227. Power to undertake mergers and major asset transactions.

228. Procedure for merger.

229. Contents of contract of merger.

230. Independent financial opinion.

231. Effect of merger.

232. Procedure for major asset transactions.

233. Dissenting shareholders appraisal rights.

*Sub-Part H: Takeovers*

234. Definitions in Sub-Part H.

235. Disclosure of potential control acquisition.

236. Acquisition of control block of shares of public company.

237. Offer for remaining shares.

238. Drag-along: right of offeror with 90% to squeeze out minority.

239. Tag-along: right of minority to sell out to offeror having 90%.

## PART IV

## FOREIGN COMPANIES

*Sub Part A: General*

240. Definitions in Chapter III Part IV(A).

241. Requirements as to foreign companies.

242. Further administrative duties of foreign company.

243. Exemption in respect of transfer duty.

*Sub-Part: B Prospectuses of foreign companies*

244. Provisions with respect to prospectus of foreign company.

245. Contents of prospectus.

246. Provisions as to expert's consent and allotment.

## CHAPTER IV

## PRIVATE BUSINESS CORPORATION AND OTHER BUSINESS ENTITIES

## PART I

## PRIVATE BUSINESS CORPORATIONS

*Section**Sub-Part A: Incorporation of private business corporations and matters incidental thereto*

- 247. Formation.
- 248. Incorporation statement, signing thereof and registration of private business corporation.
- 249. Registration of amended incorporation statement.
- 250. Conversion of private business corporation into company.
- 251. Conversion of company into private business corporation.

*Sub-Part B: Members*

- 252. Number of members; commencement and termination of membership.
- 253. Requirements for membership.
- 254. Members' contributions.
- 255. Cessation of membership by order of court.

*Sub-Part C: Members' interests*

- 256. Nature of member's interest.
- 257. Certificate of member's interest.
- 258. Acquisition of member's interest by new member.
- 259. Disposal of interest of insolvent member.
- 260. Disposal of interest of deceased member.
- 261. Other disposals of members' interests.
- 262. Maintenance of total members' interests.
- 263. Acquisition by private business corporation of members' interests.
- 264. Financial assistance by private business corporation for acquisition of members' interests.

*Sub-Part D: Management and administration*

- 265. Power of members to bind private business corporation.
- 266. By laws.
- 267. Variable rules for management.
- 268. Meetings of members.
- 269. Protection against unfair prejudice.
- 270. Restriction on payments to members.

*Sub-Part E: Accounting*

- 271. Financial records.
- 272. Financial year.
- 273. Annual financial statements.
- 274. Examination of financial statements and report thereon.
- 275. Duties of accounting officer.
- 276. Accounting officer's right of access to records, etc., and to convene meetings.
- 277. Termination of accounting officer's mandate.

## PART II

## OTHER BUSINESS ENTITIES

- 278. Voluntary registration of partnership agreements, etc.

## CHAPTER V

## ELECTRONIC REGISTRY

- 279. Interpretation in Chapter V.
- 280. Establishment of electronic registry.
- 281. Use of electronic data generally as evidence.
- 282. User agreements.
- 283. Registration of registered users and suspension or cancellation of registration.
- 284. Digital signatures.
- 285. Production and retention of documents.
- 286. Sending and receipt of electronic communications.
- 287. Obligations, indemnities and presumptions with respect to digital signatures.
- 288. Alternatives to electronic communication in certain cases.
- 289. Use of electronic registry otherwise than for business entity registration.
- 290. Unlawful uses of computer systems.
- 291. Restrictions on disclosure of information.

## CHAPTER VI

BUSINESS ENTITY INCORPORATION AGENTS AND BUSINESS ENTITY SERVICE PROVIDERS,  
SHELL AND SHELF COMPANIES AND COMPANY STATUS VERIFICATION EXERCISES

- 292. Business entity incorporation agents and business entity service providers.
- 293. Shell companies and shelf companies.

## CHAPTER VII

## GENERAL

## PART I

## CIVIL PENALTY ORDERS

- 294. Power of Registrar to issue civil penalty orders and categories thereof.
- 295. Service and enforcement of civil penalties and destination of proceeds thereof.

*Section*

296. Additional due process requirements before service of certain civil penalty orders.  
297. Evidentiary provisions in connection with civil penalty orders.

## PART II

## FURTHER GENERAL PROVISIONS

298. Enforcement of duty to make returns.  
299. Co-operation with foreign company registries.  
300. Minister may give policy directions to Registrar.  
301. Regulations.  
302. Alteration of fees, tables, forms and certain provisions of this Act.  
303. Repeals, re-registration of companies and PBCs, general transitional provisions and savings.  
304. Transitional Provisions in relation to par value of shares, treasury shares, capital accounts and share certificates.

FIRST SCHEDULE: Form of Memorandum of Association of a Company.

SECOND SCHEDULE: Form of Statement in Lieu of Prospectus to be Delivered to Registrar by Private Company on Ceasing to be Private Company and Reports to be Set Out Therein.

THIRD SCHEDULE: Form of Statement in Lieu of Prospectus to be Delivered to Registrar by a Company Which Does Not Issue Prospectus or Which Does Not Go to Allotment on a Prospectus Issued, and Reports to be Set Out Therein.

FOURTH SCHEDULE: Form of Annual Return of Company.

FIFTH SCHEDULE: Fees.

SIXTH SCHEDULE: Model Articles and By-laws.

SEVENTH SCHEDULE: User Agreement.

EIGHTH SCHEDULE: Matters to be Specified in Prospectus and Reports to be Set Out Therein.

NINTH SCHEDULE: Penalties for Late Submissions of Documents or Notices.

TENTH SCHEDULE: Form for Re-registration of Companies and PBCs.



## ZIMBABWE

# ACT

To provide for the constitution, incorporation, registration, management and internal administration of companies and winding up of companies and private business corporations; to enable the voluntary registration of other business entities; to ensure the removal of defunct companies and private business corporations by re-registering all existing companies and private business corporations; to repeal the Companies Act [*Chapter 24:03*] and the Private Business Corporations Act [*Chapter 24:11*]; and to provide for matters connected therewith or incidental thereto.

ENACTED by the Parliament and the President of Zimbabwe

### CHAPTER I

#### PRELIMINARY, ADMINISTRATION AND COMMON PROVISIONS

#### PART I

#### PRELIMINARY

### 1 Short title and date of commencement

This Act may be cited as the Companies and Other Business Entities Act [*Chapter 24:31*], and shall commence on the ninetieth day after the date of its promulgation.

### 2 Interpretation

(1) In this Act—

“accounting officer” means a person chosen by the members of a private business corporation to do the tasks specified in Chapter IV Part I;

- “accounts” includes a public company’s group accounts, whether prepared in the form of financial statements or not;
- “articles” means a company’s articles of association registered in accordance with section 81 (“Articles of association and alteration thereof”);
- “associate” or “associated”, for the purposes of section 43 (“Power of inspectors to investigate related registered or unregistered business entities”), 44 (“Production of records and evidence on investigation”), 56 (“Transactions involving conflict of interest”), 57 (“Duty to disclose conflict of interest”) or 73 (“Prohibition of concealment of beneficial ownership”), has the meaning given to it by section 3 (“When persons deemed to be associates and when persons deemed to control companies”);
- “beneficial owner” in relation to a company means a natural person who ultimately owns or controls the rights to or benefits from property or a person who exercises ultimate effective control over a legal person, and, more specifically, refers to a natural person who—
- (a) directly or indirectly holds more than twenty *per centum* of the company’s shares; or
  - (b) directly or indirectly holds more than twenty *per centum* of the company’s voting rights; or
  - (c) directly or indirectly holds the right to appoint or remove a majority of the company’s directors; or
  - (d) otherwise exercises or has the right to exercise significant influence or control;
- “business entity” means a company, a private business corporation, a syndicate, a partnership or any other association of persons, whether corporate or unincorporated, which has a business character;
- “business entity incorporation agent” and “business entity service provider” have the meanings given to those terms in section 292 (“Business entity incorporation agents and business entity service providers”)(1);
- “by-laws” means the by-laws of a private business corporation adopted or altered in terms of section 266 (“By-laws”);
- “certified”, in relation to a copy or translation of any document, means certified in the prescribed manner to be a true copy or a correct translation;
- “Chief Registrar” means the Chief Registrar of Companies and Other Business Entities appointed in terms of section 6 (“Office for the Registration of Companies and Other Business Entities; Registrar, registries and inspectorate”)(3)(a);
- “civil penalty order” means an order issued in terms of Part I (“Civil Penalty Orders”) of Chapter VII (“General”);
- “civil penalty provision” means any provision of this Act for the breach of which a defaulter is liable to a civil penalty;
- “Companies Office” or “Office” means the Office for the Registration of Companies and Other Business Entities established by section 6 (“Office for the Registration of Companies and Other Business Entities; Registrar, registries and inspectorate”);

“company” means —

- (a) a company incorporated under this Act or a repealed law; or
- (b) a foreign company, to the extent that the provisions of this Act apply to such companies;

“company limited by guarantee” means a company described in section 76 (“Mode of forming a company”)(b);

“company limited by shares” means a company described in section 76 (a);

“company secretary” or “secretary” includes any official of a company, whatever his or her title, who performs the duties normally performed by a secretary of a company;

“constitutive documents”, in relation to—

- (a) a company other than a foreign company, means its memorandum and articles;
- (b) a foreign company, means its charter, statutes, memorandum, articles or other instrument that constitutes it or defines its scope;
- (c) a private business corporation, means its incorporation statement and by-laws;
- (d) a business entity other than a company or a private business corporation, means the constitution or agreement that constitutes it or defines its scope;

“controlling member”, in relation to a private business corporation—

- (a) means the member having a percentage interest that enables him or her to control the corporation; and
- (b) when used in the plural, means any two or more members who, between them, have a combined percentage interest that enables them to control the corporation;

“co-operative company” has the meaning given it by section 87 (“Definition of co-operative company and consequences of default in complying with conditions for co-operative company”);

“court”, in relation to—

- (a) any offence against this Act means the Magistrate’s court (which for this purpose shall have jurisdiction in relation to that offence even if under the Magistrates Court Act [*Chapter 7:10*] the penalty for such offence exceeds its criminal jurisdiction);
- (b) the recovery of any civil penalty means a Magistrates court (which for this purpose shall have jurisdiction in relation to that matter even if under the Magistrates Court Act [*Chapter 7:10*] that matter exceeds its civil monetary jurisdiction);
- (c) sections 162 (“Power of court to rectify register”), 233 (“Dissenting shareholders’ appraisal rights”), 255 (“Cessation of membership by order of court”) and 269 (“Protection against unfair prejudice”), the magistrates court having jurisdiction in the area where the registered business entity concerned has its registered office or physical address, as the case may be;
- (d) contexts other than those mentioned above, means whichever court has jurisdiction in the matter;

“cumulative penalty clause” has the meaning given to it in section 294 (“Power of Registrar to issue civil penalty orders and categories thereof”);

- “debenture” includes debenture stock and bonds;
- “director” includes any person occupying the position of director or alternate director of a company, whatever his or her title;
- “distribution”, in relation to a distribution by a company, means a direct or indirect—
- (a) transfer by a company of money or other property of the company, other than its own shares, to or for the benefit of members or shareholders in their capacity as members or shareholders of that company or of another company within the same group of companies, whether—
    - (i) in the form of a dividend; or
    - (ii) as a payment in lieu of a capitalisation share, as contemplated in section 137 (“Capitalisation shares”); or
    - (iii) in consideration for the acquisition—
      - A. by the company of any of its shares, as contemplated in section 128 (“Power of company to purchase own shares”); or
      - B. by any company within the same group of companies, of any shares of a company within that group of companies; or
    - (iv) otherwise in respect of any of the shares of that company or of another company within the same group of companies, subject to section 233 (“Dissenting shareholders’ appraisal rights”) (17);
  - (b) incurrence of a debt or other obligation by a company for the benefit of one or more holders of any of the shares of that company or of another company within the same group of companies; or
  - (c) forgiveness or waiver by a company of a debt or other obligation owed to the company by one or more holders of any of the shares of that company or of another company within the same group of companies, but does not include any such action taken upon the final liquidation of the company;
- “document” means any document or material on which information is recorded or marked and which is capable of being read or understood by a person, or by an electronic system or other device, and includes a register, index, minute and financial record;
- “effective date” means the date of commencement of this Act specified in section 1 (“Short title and date of commencement”);
- “electronic record” has the meaning given to it in section 9 (“Form of registers and other documents”);
- “electronic registry” has the meaning given to it in section 279 (“Interpretation in Chapter V”);
- “emoluments”, means all or any of the items comprehended by the expression “emoluments” in section 215 (“Particulars in accounts of directors’ salaries and pensions”)(2);
- “equity share capital” has the meaning given to it by section 185 (“Meaning of holding company, subsidiary and wholly owned”) (6);
- “expert” means any person whose professional or technical training gives authority to a statement made by him or her;



“financial records”, in relation to—

- (a) a company, mean the records referred to in section 182 (“Keeping of financial records”)(1) (a), (b) and (c), otherwise known as the “books of account”;
- (b) private business corporation mean the records referred to in section 271 (“Financial records”)(2);

“financial statements”, in relation to—

- (a) a company, mean any of the following—
  - (i) the statement of comprehensive income (inclusive of what is commonly known as a profit and loss account or income and expenditure account);
  - (ii) the statement of financial position, otherwise known as the balance sheet;
  - (iii) audited or unaudited monthly, quarterly or annual financial accounts;
  - (iv) financial information in a circular, prospectus or provisional announcements of results that an actual or prospective creditor or holder of the company’s securities or the Office or Securities and Exchange Commission may reasonably be expected to rely on;
  - (v) any other statement that may be prescribed under this Act or the Public Accountants and Auditors Act [*Chapter 27:12*] in relation to companies or private business corporations;
- (b) in relation to a private business corporation mean any of the financial statements referred to in section 273 (“Annual financial statements”);

“financial year”, in relation to a business entity, means the period covered by its financial statements laid before its members in general meeting, whether that period is a year or not;

“fixed penalty clause” has the meaning given to it in section 294 (“Power of Registrar to issue civil penalty orders and categories thereof”);

“foreign company” means a company or other association of persons incorporated outside Zimbabwe which has established a place of business in Zimbabwe;

“foreign country” means a state or territory other than Zimbabwe;

“foreign language” means any language other than an officially recognised language;

“generally accepted accounting practices” means accounting practices and procedures that are consistent with this Act and are recognised by the Public Accountants and Auditors Board established by section 5 (“Entities that may be registered and effect of registration”) of the Public Accountants and Auditors Act [*Chapter 27:12*];

“group accounts” has the meaning given to it by section 186 (“Obligation to lay group accounts before holding company”)(1);

“holding company” means a holding company as defined by section 185 (“Meaning of holding company, subsidiary and wholly owned subsidiary”);

“identity document” means —

- (a) a document issued to a person in terms of section 7(1) or (2) of the National Registration Act [*Chapter 10:17*] or a passport or drivers licence issued by the Government of Zimbabwe; or
  - (b) a passport, identity document or drivers licence issued by the government of a foreign country;
- “incorporation statement” means the incorporation statement of a private business corporation registered in terms of section 248 (“Incorporation statement, signing thereof and registration of private business corporation”) or 249 (“Registration of amended incorporation statement”);
- “inspector” means an officer of the Companies Office responsible for assisting the Registrar to conduct investigations in terms of this Act and ensuring compliance generally with this Act;
- “interest”, in relation to a member of a private business corporation, means the member’s percentage interest in the private business corporation as stated in its incorporation statement;
- “internal rules”, in relation to—
- (a) a company, means its articles and, if appropriate, any rules binding on the company by virtue of a shareholder’s agreement;
  - (b) a private business corporation, means its by-laws;
- “issued generally”, in relation to a prospectus, means issued to persons who are not members or debenture holders of the company;
- “level”, in relation to a penalty imposed under a civil penalty order, means a level on the Standard Scale of Fines referred to in section 280 of the Criminal Law Code, as amended or replaced from time to time;
- “local securities exchange” means a stock exchange registered in terms of the Securities and Exchange Act [*Chapter 24:25*];
- “manager” in relation to a company or private business corporation, means a person (whatever his or her title and whether or not he or she is a director) who is the principal officer and agent of the company or corporation with authority to represent and bind the company or corporation in transactions with other parties;
- “member”, in relation to—
- (a) a company, has the meaning given to it in section 20 (“Effect of registration of constitutive documents and limitation of liability of members of companies and private business corporations”)(3)(a);
  - (b) a private business corporation, means a person who has an interest in a private business corporation;
- “memorandum” means a company’s memorandum of association registered in terms of section 77 (“Memorandum of company”);
- “minimum subscription” has the meaning given to it by section 115 (“Prohibition of allotment unless minimum subscription received”)(2);
- “Minister” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;
- “near relative” of a person means (for the purpose of section 3)—
- (a) a spouse of that person; or
  - (b) a parent of that person, including a step-father or step-mother; or
  - (c) a child (natural or adopted) or step-child of that person; or

- (d) a brother, half-brother, step-brother, sister, half-sister or step-sister of that person; or
- (e) the adopter or adopters of that person; or
- (f) the spouse of a relative of a person referred to in paragraph (c), (d) or (e);

“officer” in relation to a company, means an officer appointed by the company’s board of directors as provided in section 221 (“Officers of company”) and includes a director, manager or secretary;

“officer who is in default”, in relation to a civil penalty provision, means—

- (a) an officer or employee of a company; or
- (b) a member or employee of a private business corporation;

who knowingly authorised or permitted the default, refusal, omission or contravention mentioned in the provision;

“officially recognised language” means any one of the languages mentioned in section 7(1) of the Constitution;

“ordinary resolution” has the meaning given to it by section 175 (“Special resolutions”)(5);

“prescribed” means prescribed by regulations made under this Act;

“prescribed form” means any form set out in a Schedule to this Act or any form prescribed under this Act;

“printed” in relation to words, figures or symbols, means embodied in any readable, material and visible form;

“private business corporation” means a private business corporation incorporated under this Act;

“private company” has the meaning given to it by section 85 (“Definition of private company and consequences of default in complying with conditions for private company”);

“promoter”, in relation to a prospectus, means any person who is a party to the preparation of the prospectus but does not include a person who acts in a professional capacity for persons engaged in procuring the formation of a company;

“prospectus” means a prospectus, notice, circular or advertisement, in printed or electronic form, inviting the public to subscribe for or purchase any shares or debentures of a company;

“public company” means any company, including a co-operative company, which is not a private company or a company limited by guarantee;

“quoted”, in relation to a share, debenture or other security, means that dealings in the share, debenture or security are permitted on a local securities exchange or on a securities exchange in a foreign country, and “unquoted” shall be construed accordingly;

“register” without qualification, includes incorporate ( in relation to a domestic company or private business corporation) or register (in relation to a foreign company), as may be appropriate to the context;

“registered business entity” means a company, including a foreign company, or a private business corporation, registered or incorporated in terms of this Act;

“registered user” means a person who is registered as a user of the electronic registry in terms of section 283 (“Registration of registered users and suspension or cancellation of registration”);

“Registrar” means—

- (a) the Chief Registrar or other registrar appointed in terms of section 6; or
- (b) in relation to anything which an officer has been authorised to do on behalf of the Registrar in terms of section 6(4), that officer;

“repealed law” means the Companies Act [*Chapter 24:03*] or the Private Business Corporations Act [*Chapter 24:11*];

“self-actor” means any authorised user of the electronic registry other than a legal practitioner, chartered accountant, chartered secretary, or business entity service provider referred to in section 292 (“Business entity incorporation agents and business entity service providers”);

“serve”, in relation to any document or record, has the meaning given to it in section 64 (“Service of documents”);

“share” means a share in the share capital of a company and includes stock, except where a distinction between stock and shares is expressed or implied;

“shelf company” has the meaning given to it in section 293 (“Shell companies and shelf companies”)(1);

“shell company” has the meaning given to it in section 293 (1);

“special notice” has the meaning given to it by section 175 (“Resolutions requiring special notice”);

“special resolution” means a resolution passed at a general meeting of a company in accordance with section 175 (“Special resolutions”) (1), (2) and (3);

“statement of comprehensive income” means a statement which, as well as detailing profits and losses (or income and expenditure, as the case may be), reflects any changes in net assets due to transfer of equity holdings, change of ownership, and other factors.

“subsidiary” and “wholly owned subsidiary” have the meanings given to them by section 185 (“Meaning of holding company, subsidiary and wholly owned subsidiary”);

“syndicate” means an association of individuals, companies or other business entities, or other bodies corporate or unincorporated, formed for the purpose of conducting and carrying out some particular business transaction;

“treasury share” has the meaning given to that phrase in section 95 (“Legal nature of company shares and requirement to have shareholders”) (5);

“uncertificated share” means a share the title to which is evidenced and transferred without a material certificate;

“unregistered association” means any association of persons whatsoever not registered under any law whether incorporated or unincorporated;

“untrue statement” or “false statement” includes a statement that is misleading in the form and context in which it is made, subject to subsection (4) and (5).

(2) References in this Act to—

- (a) the citation clause of a civil penalty order shall be construed as references to the part of the order in which the Registrar names the defaulter and cites the provision of the Act in respect of which the default is alleged to have been made, together with, if necessary, a brief statement of the facts constituting the default;

- (b) the penalty clause of a civil penalty order shall be construed as references to the part of the order that fixes the penalty to be paid by the defaulter, and “fixed penalty clause” and “cumulative penalty clause” shall be construed accordingly;
- (c) the remediation clause of a civil penalty order shall be construed as references to the part of the order that stipulates the remedial action to be taken by the defaulter.

(3) Where a civil penalty provision states that any person or entity is liable to a civil penalty order, the provision shall be construed as meaning that the Registrar may serve a civil penalty order on that person or entity.

(4) For the purposes of this Act, a person is to be regarded by or in respect of a company as being a member of the public, despite that person being a shareholder of a company or a purchaser of goods from the company.

(5) An untrue statement is regarded to have been included in a prospectus, written statement, or summary directing a person to either a prospectus or written statement, if it is contained in any report or memorandum—

- (a) that appears on the face of the prospectus, written statement, or summary:  
or
- (b) that is incorporated by reference within, or has attached to or accompanies, the prospectus, written statement or summary.

### **3 When persons deemed to be associates and when persons deemed to control companies**

(1) This section applies where it is necessary for the purposes of section 43 (“Power of inspectors to investigate related registered or unregistered business entities”), 44 (“Production of records and evidence on investigation”), 71 (“Prohibition of concealment of beneficial ownership”) or 56 (“Transactions involving conflicts of interest”), 57 (“Duty to disclose conflict of interest”) or 58 (“Avoidance and other remedies for conflict-of-interest transactions”), or any regulations that apply this section to the determination of any prescribed matter, to determine whether or not a person or entity is associated with or related to another person or entity, or whether or not a person controls a company,

(2) Where a person, other than an employee, acts in accordance with the directions, requests, suggestions or wishes of another person, whether or not the persons are in a business relationship and whether or not those directions, requests, suggestions or wishes are communicated to the first-mentioned person, both persons shall be treated as associates of each other for the purposes of this Act.

(3) Without limiting the generality of subsection (2), the following shall be treated as a person’s associate—

- (a) a near relative of the person, unless the Registrar is satisfied that neither person acts in accordance with the directions, requests, suggestions or wishes of the other;
- (b) a partner of the person, unless a court or the Registrar is satisfied that neither person acts in accordance with the directions, requests, suggestions or wishes of the other;
- (c) a partnership in which the person is a partner, if the person, either alone or together with one or more associates, controls fifty *per centum* or more of the rights to the partnership’s income or capital;

- (d) the trustee of a trust under which the person, or an associate of the person, benefits or may benefit;
- (e) a company which is controlled by the person, either alone or together with one or more associates;
- (f) where the person is a partnership, a partner in the partnership who, either alone or together with one or more associates, controls fifty *per centum* or more of the rights to the partnership's income or capital;
- (g) where the person is the trustee of a trust, any other person who benefits or may benefit under the trust;
- (h) where the person is a company—
  - (i) a person who, either alone or together with one or more associates, controls the company; or
  - (ii) another company which is controlled by a person referred to in subparagraph (i), either alone or together with one or more associates.

(4) For the purposes of this section, a person shall be deemed to control a company if the person, either alone or together with one or more associates or nominees—

- (a) controls the majority of the voting rights attaching to all classes of shares in the company, whether directly or through one or more interposed companies, partnerships or trusts; or
- (b) has any direct or indirect influence that, if exercised, results in him or her or his or her associates or nominees factually controlling the company.

#### **4 Non-application of Act to certain institutions**

(1) Nothing contained in this Act shall apply to any banking institution, building society, insurer, micro-finance institution, co-operative society or other entity, the formation, registration and management whereof are governed by any other enactment, save as may be otherwise expressly provided in this Act or in such enactment.

(2) This Act shall not be construed as applying to a trade union or employers' organisation.

(3) In this section "employers organisation" and "trade union" have the meanings given to them respectively by section 2 of the Labour Act [*Chapter 28:01*].

#### **5 Registrable business entities**

(1) The following types of business entities are registrable under this Act—

- (a) a public limited company;
- (b) a private limited company;
- (c) a company limited by guarantee;
- (d) a co-operative company;
- (e) a foreign company;
- (f) a private business corporation;
- (g) subject to section 278 ("Voluntary registration of partnership agreements, etc."), partnerships, syndicates, joint ventures and certain associations of persons.

(2) The effects of registering the entities referred to in subsection (1) shall be as set out in this Act.

## PART II

## ADMINISTRATION

**6 Office for the Registration of Companies and Other Business Entities; Registrar, registries and inspectorate**

(1) For the registration of companies and other business entities registrable under this Act, there is hereby established the Office for the Registration of Companies and Other Business Entities (“the Companies Office”), which shall be a body corporate capable of suing and being sued in its corporate name and, subject to this Act, of doing anything that bodies corporate may do by law.

(2) The Companies Office shall be located in Harare and Bulawayo and other locations that the Minister may designate.

(3) There shall be—

- (a) a Chief Registrar of Companies and Other Business Entities, who shall exercise general supervision and direction of the Companies Office; and
- (b) such numbers of registrars, assistant registrars and other officers as may be necessary for the purposes of this Act, and
- (c) such number of inspectors as may be necessary for the purposes of this Act;

whose offices shall be public offices and form part of the Civil Service.

(4) The Chief Registrar of Companies and Other Business Entities may in writing authorise an assistant registrar, inspector or other officer referred to in subsection (3) (b) or (c) to exercise any of the functions of a Registrar under this Act.

(5) Subsection (4) shall not be construed as limiting the power of the Chief Registrar of Companies and Other Business Entities to delegate functions under any other law.

(6) The Chief Registrar shall provide every inspector with a document identifying him or her as an inspector, and the inspector shall produce it on request by any interested person.

**7 Funds of Companies Office**

The funds of the Companies Office shall consist of—

- (a) such funds as may be appropriated for the purpose of the Companies Office by Parliament; and
- (b) such portion of the Deeds Retention Fund established under section 18 of the Public Finance Management Act [*Chapter 22:19*] (No. 11 of 2009) (inclusive also of the proceeds of fees and civil penalties levied in terms of this Act) which must be credited to the office in terms of the constitution of that fund; and
- (c) funds that may accrue to the Office in virtue of section 53 (“Undistributed property of dissolved or defunct company or private business corporation: *bona vacantia* orders”); and
- (d) such donations as are approved by the Minister.

**8 Annual and other reports of Companies Office**

(1) The Chief Registrar shall, on behalf of the Companies Office, no later than sixty days after the end of each financial year submit to the Minister an annual report on the operations and activities of the Companies Office during the preceding financial year.

- (2) In addition, the Chief Registrar, on behalf of the Companies Office—
- (a) shall submit to the Minister any other report, and provide him or her with any other information, that he or she may require in regard to the operations and activities of the Companies Office; and
  - (b) may submit to the Companies Office any other report that it considers desirable.

(3) The Minister shall table before Parliament all reports submitted to him or her by the Chief Registrar under subsections (1) and (2) within ninety days.

## **9 Form of registers and other documents**

(1) Any register, index, minutes or financial records required by this Act to be kept by a registered business entity may be kept either by making entries in written and legible form, paginated, indexed and bound together (hereafter in this section called a “bound record”) or by recording the matters in question in any other written or electronic and easily retrievable, visible, readable and referable manner.

(2) Where any such register, index, minutes, financial statements or other document required by this Act to be kept by a registered business entity is not kept by making entries in a bound record, but by some other means, adequate precautions shall be taken for guarding against falsification and for facilitating their retrieval.

(3) Any such register, index, minutes, financial statements and document required by this Act to be kept by a registered business entity and every document required by this Act or by an entity’s constitutive documents to be issued or circulated by a registered business entity shall be in the English language or in any officially recognised language:

Provided that where such a record is not in the English language and is required to be furnished to the Registrar, an auditor or any other person, the business entity shall provide the Registrar, auditor or other person with a certified English translation.

(4) If it comes to the notice of the Registrar that default is made in complying with—

- (a) subsection (1) the Registrar may serve a category 4 civil penalty order upon the defaulting registered business entity, the suspension of which is conditioned upon the defaulting entity (no later than seven days from the date of service of the civil penalty order) binding or embodying all relevant records to the satisfaction of the Registrar that were or should have been made in relation to a period of three years before the issuance of the order, or if the entity has been incorporated or registered for less than three years, from the date of its incorporation or registration;
- (b) subsection (2) the Registrar may serve a category 2 civil penalty order upon the defaulting registered business entity, the suspension of which is conditioned upon the defaulting entity (no later than seven days from the date of service of the civil penalty order) instituting adequate precautions to the satisfaction of the Registrar, guarding against falsification or facilitating their retrieval.
- (c) subsection (3) the Registrar may serve a category 4 civil penalty order, the suspension of which is conditioned upon the defaulting registered business entity (no later than seven days from the date of service of the civil penalty order) furnishing the required translation.

(5) If a registered business entity is a registered user of the electronic registry, it may, subject to section 282 (“User agreements”), keep the documents referred to in



this section in electronic or digital form, in which event the provisions of this section shall not apply to such company with respect to the transfer of shares.

## **10 Forms and tables and application of certain Schedules and licences**

(1) Subject to section 302 (“Alteration of fees, tables, forms and certain provisions of this Act”), the forms and tables set forth in the First (“Form of memorandum of association of a company”), Second (“Form of statement in lieu of prospectus to be delivered to Registrar by private company on ceasing to be private company and reports to be set out therein”), Third (“Form of statement in lieu of prospectus to be delivered to Registrar by a company which does not issue a prospectus or which does not go to allotment on a prospectus issued and reports to be set out therein”) and Fourth (“Form of annual return of company”) Schedules or forms and tables as near thereto as the circumstances admit shall be used in all matters to which those forms and tables refer.

(2) Subject to section 302 and to the discretion by this Act conferred on the Registrar, there shall be paid in respect of the several matters or services mentioned in the Fifth Schedule (“Fees”) the several fees specified therein.

## **11 Registrar’s power to refuse registration**

If the Registrar is satisfied that any document submitted to him or her—

- (a) contains any matter contrary to law; or
- (b) by reason of any omission or misdescription has not been duly completed; or
- (c) does not comply with the requirements of this Act; or
- (d) contains any error, alteration or erasure;

he or she shall refuse to register or receive the document and request that the document be appropriately amended or completed and resubmitted or that a fresh document be submitted in its place.

## **12 Extension of time for lodging returns, etc.**

Whenever by this Act a time is prescribed for filing with or delivering or sending to the Registrar any return, account or other record or for giving notice to him or her of any matter, the Registrar may, on application to him or her before the expiry of the prescribed time, extend such time for so long as may seem to him or her to be reasonable; and if any prescribed time is extended by the Registrar under this section the provisions of section 298 (“Enforcement of duty to make returns”) shall be read as applying to a default in respect of the time as so extended.

## **13 Proof of certain facts by affidavit**

(1) In any civil proceedings in the name of the Registrar, or criminal proceedings under this Act concerning the failure of a person to file with or deliver to the Registrar any return or other document, a document purporting to be an affidavit made by a person who alleges therein that—

- (a) he or she is employed in the Companies Office; and
- (b) if the said return or other document had been filed with or delivered to the Registrar, it would in the ordinary course of events have come to the deponent’s knowledge and a record thereof, available to him or her, would have been kept; and
- (c) no such return or other document has to the deponent’s knowledge been filed with or delivered to the Registrar and that he or she has satisfied himself or herself that no such record was kept;

shall on its mere production in those proceedings by any person, but subject to subsection (2), be *prima facie* proof that such return or other document has not been filed with or delivered to the Registrar.

(2) The court in which any such affidavit is produced in evidence may, and, at the request of the accused made not less than seven days before the trial, shall, cause the person who made it to be summoned to give oral evidence in the proceedings in question.

(3) Nothing in this section contained shall affect any other rule of law under which any certificate or other document is admissible in evidence, and this section shall be deemed to be additional to, and not in substitution for, any such rule of law.

#### **14 Inspection and copies of documents in Companies Office and production of documents in evidence**

(1) Any person may after application in the prescribed manner and on payment of the prescribed fees, inspect the documents kept under this Act by the Companies Office; and any person may require a certificate of the incorporation or registration of any registered business entity or a copy or extract of any constitutive document or other document or part of any other document to be certified by the Registrar or assistant registrar on payment of the prescribed fee for the certificate, certified copy or extract.

(2) A copy of or extract from any document kept under this Act by the Companies Office, certified to be a true copy under the hand of the Registrar or assistant registrar, shall in all legal proceedings be admissible in evidence as of equal validity with the original document. Certified copies or extracts may be handed into court by the party who desires to avail himself or herself of them.

(3) It shall not be necessary in any legal proceedings for the Registrar himself or herself or for any officer under him or her to produce any original document kept under this Act by the Registrar, but it shall be deemed sufficient if such document is produced by some person authorised by him or her to do so.

#### **15 Additional copies of returns or documents**

(1) Where in or under this Act any document is lodged or transmitted, the person lodging or transmitting the same shall, as and when it is required by or under this Act, lodge or transmit an additional copy or additional copies of the document.

(2) The Minister may in regulations provide in the respective cases whether such additional copy or copies shall be in duplicate original form, or shall be in the form of clearly legible copy or copies certified in a manner prescribed in such regulations or be in the form of an electronic record.

#### **16 Replacement of lost documents**

(1) Where a document required to be filed by a registered business entity has been lost, defaced or destroyed, or where the Registrar cannot locate the file copy of a document, the registered business entity may apply to the Registrar in the prescribed manner for leave to file a copy of the document, and the Registrar, on being satisfied—

- (a) that the original document has been lost, defaced or destroyed; and
- (b) of the date of the filing of the original document; and
- (c) that the copy of the document produced is a correct copy;

may certify on that copy that he or she is so satisfied and direct that the copy be filed in the same manner as the original document.

(2) Where the Registrar has lost or cannot locate a document that was filed in the Companies Office, no fee shall be payable for filing a copy of it in terms of subsection (1).

(3) A copy filed in terms of subsection (1) shall have the same effect as the original document.

(4) Where a document required to be issued by the Registrar has been lost, defaced or destroyed, the Registrar shall upon application in the prescribed manner replace the document.

(5) The company secretary shall submit all the contemplated applications in this section together with affidavits as prescribed in the regulations.

(6) If a duplicate certificate has been issued in substitution for a certificate which has been lost, defaced or destroyed, the original certificate if still in existence shall thereupon become void and in the case of a defaced certificate, the applicant for its replacement must return it to the Registrar.

(7) If a certificate which has become void in terms of subsection (6) comes into the possession or custody of any person who knows that a duplicate has been issued in substitution therefor, he or she must without delay deliver or transmit such certificate to the Registrar.

(8) If any person makes a fraudulent application for the replacement for a lost, defaced or destroyed document or certificate under this section, or if a person contravenes subsection (7), he or she shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year, or to both such fine and such imprisonment.

## **17 Exemption from liability for acts or omissions of Companies Office and persons employed therein**

No act or omission whatever of the Companies Office or the Registrar or of any officer, clerk, inspector or other person employed in the Companies Office shall render the Companies Office, the State or the Registrar or any such officer, clerk, inspector or person liable in respect of any loss or damage sustained by any person in consequence of such act or omission unless the act or omission was in bad faith or was due to a want of reasonable care or diligence.

## CHAPTER II

### PROVISIONS COMMON TO COMPANIES AND PRIVATE BUSINESS CORPORATIONS

#### PART I

#### GENERAL

## **18 Registration of constitutive documents**

(1) The registration of a memorandum and articles of association or an incorporation statement may be done either electronically or manually in accordance with this section.

(2) The electronic registration of constitutive documents shall be done by a person who is either a self-actor or a registered user of the electronic registry.

(3) Where the registration is manual the constitutive documents shall be delivered to the Registrar together with either a duplicate original or a printed notarial copy:

Provided that in the case of a company or private business corporation to be registered in Bulawayo or any other location that the Minister may designate there shall be delivered in addition either a further duplicate original or a further printed notarial copy.

(4) In relation to a company, subject to due compliance with section 199 (“Restrictions on appointment or advertisement of director; share qualifications of director”) (whenever that section is applicable) and upon payment of the prescribed fees, the Registrar shall, if the memorandum and the articles, if any, are in accordance with this Act, register the same, and shall return to the company a duplicate original or one notarial copy of the memorandum and of the articles, if any, with the date of the registration endorsed thereon.

(5) In relation to a private business corporation, the Registrar shall, upon payment of the prescribed fee, register any incorporation statement delivered to him or her, if it is in accordance with this Act

(6) On registering the memorandum of association or the incorporation statement as the case may be, the Registrar shall—

- (a) assign a registered number to the company or the private business corporation; and
- (b) return one copy of the memorandum of association or the incorporation statement to the applicant; and
- (c) issue a certificate of incorporation.

(7) The certificate of incorporation or a copy thereof issued in terms of subsection (6)(c) shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with and that the company or private business corporation is duly incorporated under this Act.

## **19 Incorporation of companies and private business corporations and capacity and powers thereof**

A company or a private business corporation shall be incorporated from the date of issue by the Registrar of its certificate of incorporation and the company or private business corporation shall thereupon become a body corporate, with the capacity and powers of a natural person of full legal capacity in so far as a body corporate is capable of having such capacity and exercising such powers, until it is struck off the register or dissolved in terms of the Insolvency Act [*Chapter 6:07*].

## **20 Effect of registration of constitutive documents and limitation of liability of members of companies and private business corporations**

(1) Subject to this Act, the constitutive documents of a company or private business corporation shall, when registered, bind the company or private business corporation and the members thereof to the same extent as if they respectively had been signed by each member and contained undertakings on the part of each member to observe all the provisions of the constitutive documents.

(2) Individual natural persons of full capacity acting in their own right and, subject to section 83 (“Membership of company; personal liability where business carried on with no members”) or section 253 (“Requirements for membership”), other persons may be members of a company or private business corporation.

(3) Membership of a company or private business corporation is commenced, evidenced and terminated as follows—

- (a) in the case of a company—
- (i) the subscribers to the memorandum of the 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;
  - (ii) every other person who agrees to become a member of a company and whose name is entered in its register of members shall be a member of the company and continue to be so until his or her name is removed from it for any reason;
- and in either case membership is terminated if the company is dissolved in terms of the Insolvency Act [*Chapter 6:07*];
- (b) in the case of a private business corporation—
- (i) a member's membership shall commence on the registration of the incorporation statement or amended incorporation statement in which his or her name and signature as a member first appear;
  - (ii) unless previously terminated by an order of court made under section 255 ("Cessation of membership by order of court"), a member's membership shall terminate—
    - A. on the registration of an amended incorporation statement in which his or her name and signature as a member first do not appear; or
    - B. on the dissolution of the private business corporation in terms of the Insolvency Act [*Chapter 6:07*];

(4) Subject to this Act, the members of a company or a private business corporation shall not, solely by reason of their membership, be liable for the debts or obligations of the company or private business corporation.

(5) All money payable by any member to the company or private business corporation under the constitutive documents thereof shall be a debt due from him or her to the company or private business corporation.

## **21 Availability and publicity of constitutive documents**

(1) Every company and private business corporation shall send to every member at his or her request, on payment of one United States dollars (or such reasonable greater amount as the Minister may prescribe for the purposes of this section), or such other amount as the company or private business corporation may fix, a copy of its constitutive documents, or shall afford to every member or to his or her duly authorised agent reasonable facilities for making a copy at his or her own expense of the constitutive documents.

(2) Every company and private business corporation shall keep either at its registered office or accounting officer's physical address, the original or a certified copy of its constitutive documents together with any amendments.

(3) Any person is entitled to inspect any document referred to in subsection (2) at any reasonable time during normal business hours and, on payment of the reasonable costs thereof, to obtain a copy of any such document.

(4) If it comes to the notice of the Registrar that any company or private business corporation has made default in complying with subsections (1), (2) or (3), the Registrar may serve a category 3 civil penalty order upon the defaulting company or corporation.

## **22 No constructive notice of constitutive documents or other public documents**

The fact that a company's memorandum of association or a private business corporation's incorporation statement or any other constitutive document has been registered in terms of this Act or is available or required to be available for inspection in terms of this Act, shall not, of itself, be construed as giving any person notice or knowledge of its contents.

## **23 Copies of constitutive documents to embody alterations**

(1) Where an alteration is made in the constitutive documents of a company or a private business corporation, every copy of the constitutive documents issued after the date of the alteration must embody such alteration.

(2) If it comes to the notice of the Registrar that any such alteration has been made, and that the company or private business corporation has at any time after the date of the alteration issued any copy of its constitutive documents which does not embody the alteration, the Registrar may issue a category 3 civil penalty order upon the defaulting company or corporation.

## **24 Presumption of regularity; liability not affected by fraud**

(1) Any person having dealings with a registered business entity or with someone deriving title from a registered business entity shall be entitled to make the following assumptions, and the company or private business corporation and anyone deriving title from it shall be estopped from denying their truth—

- (a) that the company's or private business corporation's internal regulations have been duly complied with;
- (b) that every person described in the company's register of directors and secretaries or as a member in its register of members, or every person described as a member in the incorporation statement of the private business corporation, or in any return delivered to the Registrar by the company or the private business corporation in terms of section 217 ("Register of directors and secretaries") as a director, manager or secretary of the company or member of the private business corporation, has been duly appointed and has authority to exercise the functions customarily exercised by a director, manager or secretary of a company or member of the private business corporation, as the case may be, carrying on business of the kind carried on by the company or the private business corporation;
- (c) that every person whom the company, acting through its members in general meeting or through its board of directors or its manager or secretary, represents to be an officer or agent of the company, has been duly appointed and has authority to exercise the functions customarily exercised by an officer or agent of the kind concerned;
- (d) that 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;
- (e) that a document has been sealed by the company if it bears what purports to be the seal of the company attested by what purports to be the signature of a person who, in accordance with paragraph (b), can be assumed to be a director of the company:

Provided that —

- (i) a person shall not be entitled to make such assumptions if he or she has actual knowledge to the contrary or if he or she ought reasonably to know 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 provide that the authority to act in the matter may be delegated to a committee or to an officer or agent.

(2) A company or private business corporation shall be bound in terms of subsection (1), notwithstanding that the officer or agent concerned acted fraudulently or forged a document purporting to be sealed or signed on behalf of the company or corporation.

(3) For the avoidance of doubt it is declared that if the registered business entity has a seal, and the entity's constitutive documents require that any execution of a document should be done under its seal, any person having dealings with the entity shall not be assumed to have notice of that fact.

## **25 Prohibition of undesirable name**

(1) The Registrar may refuse to register a company or private business corporation with a name which—

- (a) is identical to that under which another company or private business corporation is already registered under this Act, or which is so similar to any such name as to be likely to deceive; or
- (b) is likely to mislead the public; or
- (c) is blasphemous or indecent or likely to cause offence to any person or class of persons; or
- (d) suggests patronage of the Government or some other authority or organisation unless the consent thereof has been obtained; or
- (e) is undesirable for any other reason.

(2) The Registrar may upon application and payment of such fees as may be prescribed reserve, for a period not exceeding one month, a name for a company or a private business corporation pending its registration or change of name.

(3) If the Registrar after due inquiry and considering any evidence that may be placed before him or her, considers that a company or private business corporation is registered, whether originally or by reason of a change of name, by a name which is objectionable for any reason mentioned in subsection (1) (a), (b), (c), (d) or (e), he or she shall serve upon the company or private business corporation a category 2 civil penalty order ordering the company or private business corporation in writing to change its name, and the company or private business corporation shall thereupon do so within a period of six weeks from the date of service of the civil penalty order or such longer period as the Registrar may see fit to allow:

Provided that the Registrar may not make such an order if a period of more than twelve months has elapsed since the date of the registration of the company or private business corporation or the change of name of the company or private business corporation, as the case may be.

(4) If a company or private business corporation fails to comply with an order made in terms of subsection (3), the Registrar may apply to the High Court for an order to have the name of the company or private business corporation changed.

(5) The High Court, on application by an interested person, shall have the same powers as the Registrar to make an order in terms of subsection (1), but shall not be limited in the exercise of its powers by the period of twelve months referred to in the proviso to that subsection.

## 26 Change of name

(1) A company (by special resolution filed with the Registrar) or private business corporation that wishes to change its name shall first obtain the written approval of the Registrar.

(2) If the Registrar grants written approval for a registered business entity to change its name, the company or private business corporation shall publish in the *Gazette* and in a daily newspaper circulating in the district in which the registered office of the company or private business corporation is situated an advertisement stating the change of name, and shall then apply for a certificate of change of name.

(3) Where the name of a registered business entity is changed in terms of this section, the Registrar shall enter the new name in the register in place of the former name.

(4) Upon the application in writing of a registered business entity that has changed its name in terms of this section and on production of the certificate of change of name, a Registrar of Deeds or mining commissioner, or other officer responsible for the registration of deeds or mining titles, shall make such alterations in his or her registers and on any title deeds and other documents evidencing title as may be necessary as a result of the changed name:

Provided that nothing in this subsection shall exempt the registered business entity from paying any fees prescribed under the Deeds Registries Act [Chapter 20:05] or the Mines and Minerals Act [Chapter 21:05] in respect of such alterations.

(5) The change of the name of a registered business entity shall not affect any right or obligation of the registered business entity, or render defective any legal proceedings by or against the entity, and any legal proceedings that might have been continued or commenced by or against it under its former name may be continued or commenced under its new name.

## 27 Statement of objects of registered business entity and effect thereof

(1) No—

- (a) statement of the objects of a registered business entity, whether in its constitutive documents or elsewhere; or
- (b) agreement by the members of a registered business entity to enlarge or restrict the objects or activities of the entity;

shall invalidate any transaction carried out by the entity which exceeds any such objects or extends any such activities, even if any other party to the transaction was aware of the statement or agreement.

(2) Without derogation from any other remedies that may be available—

- (a) a court may, on application made prior to the event by a member or debenture holder of a registered business entity whose members have agreed to limit its activities to specified objects, issue an interdict



restraining the entity from entering into or completing any transaction that exceeds its objects;

- (b) where a registered business entity has concluded a transaction that exceeded its objects and resulted in loss to the entity, a court may, on application made by a member or debenture holder of the entity, order any officer or member of the entity who entered into or took part in the transaction to compensate the entity for the loss:

Provided that, where it appears that the officer or member against whom the claim is made acted honestly and reasonably and, having regard to all the circumstances of the case, it would be just and fair to do so, the court may decline to award compensation against him or her or may make an award for part only of the compensation or may make such other order or award as the court thinks fit.

## **28 Provisions in connection with use of names by registered business entities**

- (1) In this section—

“business paper” means any —

- (a) business letter, notice or other official publication of a registered business entity; or
- (b) bill of exchange, promissory note, cheque or order for money or goods purporting to be signed by or on behalf of a registered business entity, including any endorsement made or purporting to be made by the entity on any such bill, note, cheque or order; or
- (c) delivery note, invoice, receipt or letter of credit of a registered business entity.

- (2) Every registered business entity—

- (a) shall have its name engraved in legible characters on its seal, if any; and
- (b) shall have its name mentioned in legible characters in all its business papers.

(3) For the purposes of subsection (2), the abbreviations “Ltd”, “Pvt”, “Co-op” and “PBC” may be used for the words “Limited”, “Private”, “Co-operative” and “private business corporation” respectively, and the abbreviation “Co” and the symbol “&” may be used for the words “Company” and “and”.

(4) Any officer or member of a registered business entity or any person on its behalf who—

- (a) uses or permits the use of a seal, purporting to be a seal of the entity, on which its name is not engraved as required in subsection (2)(a); or
- (b) issues or permits the issue of any business paper of the entity, or signs or endorses or permits to be signed or endorsed on behalf of the entity any bill of exchange, promissory note, cheque or order for money or goods on which the entity’s name is not mentioned as required in subsection (2)(b);

shall be guilty of an offence and liable to a fine not exceeding level three and shall further be personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods for the amount thereof, unless it is duly paid by the registered business entity concerned.

(5) If default is made in complying with subsection (2) (a) or (b), any person acting on behalf of the registered business entity concerned who uses or permits the use of any seal or business paper so as to constitute such a default shall be personally liable for any debt incurred by the entity as a result of such use, unless the debt is duly discharged by the entity.

(6) Any person who trades or carries on business under a name or title—

(a) of which “Limited”, “Co-operative Company”, “Private Business Corporation” or any contraction or imitation of those words, is the last word; and

(b) which is not registered in terms of this Act as the name of that person;

shall be guilty of an offence and liable to a fine not exceeding level two for every day on which that name or title has been used.

(7) If it comes to the notice of the Registrar that any default is made in complying with subsection (5) or (6) then, independently of a prosecution, if any, for an offence under that subsection, the Registrar may serve a category 4 civil penalty order upon the defaulter conditioned upon his or her demonstrating to the satisfaction of the Registrar within the period specified in the order that he or she has ceased to trade or carry on business under a name that contravenes subsection (6), or that the entity concerned has ceased using or permitting the use of any seal or business paper in contravention of subsection (2)(a) or (b), as the case may be.

## **29 Lawful use of assumed names by registered business entities**

(1) Subject to this section, a registered business entity may assume a name other than its registered name for use in conducting business in Zimbabwe.

(2) Before using an assumed name in terms of subsection (1), a registered business entity shall file with the Registrar a notice that it will be conducting business under the name, which notice shall state—

(a) the entity’s true name as stated in its constitutive documents; and

(b) the assumed name under which it will be conducting business; and

(c) that the entity intends to conduct business in Zimbabwe under that assumed name;

and the Registrar shall keep the notice on public file, together with the entity’s constitutive documents.

(3) Section 25 (“Prohibition of undesirable name”) shall apply, with any necessary changes, in relation to the use by a registered business entity of an assumed name in terms of this section.

## **30 Publication of directors’ or members’ names**

(1) In this section—

“business letter” includes a quotation or order form, but does not include—

(a) an invoice, statement, delivery note, packing note or similar document; or

(b) a letter written by a professional person on behalf of a registered business entity as a client;

“send or issue”, in relation to a business letter, includes send or issue electronically.

(2) Every registered business entity shall, in all business letters which it sends or issues to any person and on or in which the entity's name appears, state in legible characters the present forenames, or their initials, and present surname of—

- (a) every director, in the case of a company; and
- (b) every member, in the case of a private business corporation:

Provided that, in the case of a private business corporation with more than three members, it shall suffice for its business letters to bear the name of its controlling members or, if the interests held in the corporation are equal or nearly equal, the names of at least two current members followed by the phrase "and others" or words to the same effect.

(3) Any person acting on behalf of a registered business entity who sends or issues or permits the sending or issuing of a business letter that does not comply with subsection (2) shall be personally liable for any debt incurred by the entity as a result of the letter, unless the debt is duly discharged by the entity.

(4) A private business corporation may, in complying with this section, describe any or all of its members as directors:

Provided that the fact that some but not all of the members are so described shall not of itself be taken as notice to any person dealing with the private business corporation that a member not so described has no authority or restricted authority to act on behalf of the private business corporation.

### **31 Postal address, electronic mail address and registered office**

- (1) Every registered business entity shall have in Zimbabwe—
- (a) a postal address, that is to say an address to which postal articles may be sent to the entity; and
  - (b) a registered office at a physical address at which legal process may be served on the entity:

Provided that the registered office of a private business corporation may be the physical address of its accounting officer.

(2) Particulars of a registered business entity's postal address and registered office shall be recorded in the entity's constitutive documents and amended whenever necessary.

(3) Where a registered business entity transacts any of its business or administration electronically, it shall—

- (a) record the particulars of its electronic mail address, website, portal or other interactive electronic link in its constitutive documents and amend those documents whenever the particulars change; and
- (b) deliver a notice to the Registrar setting out the particulars referred to in paragraph (a), and any changes in those particulars, which notice the Registrar shall file with the entity's constitutive documents.

(4) The Registrar may, on application being made in the prescribed form, authorise a registered business entity to use its electronic mail address, website, portal or other interactive electronic link for effecting any filings or other transactions with the Companies Office that may be required under this Act, whether or not the entity is a registered user of the electronic registry.

(5) If it comes to the notice of the Registrar that default has been made in complying with subsections (1), (2) or (3), he or she may serve a category 3 civil penalty

order upon the defaulting business entity, in which order the cumulative part of the penalty shall be suspended conditionally upon the defaulter satisfying the Registrar within seven days of service that it has remedied the default.

### **32 Ratification of contracts**

A contract made in writing by a person professing to act as agent or trustee for a company or private business corporation not yet formed, incorporated or registered shall be capable of being ratified or adopted by or otherwise made binding upon and enforceable by the company or private business corporation after it has become a registered business entity, if—

- (a) on registration, the entity's constitutive documents contain as one of the entity's objects the adoption or ratification of or the acquisition of rights and obligations in respect of such contract; and
- (b) the contract or a certified copy thereof is delivered to the Registrar simultaneously with the delivery of the entity's constitutive documents in terms of section 18 ("Registration of constitutive documents").

### **33 Form of contracts**

(1) Contracts on behalf of a registered business entity may be made in the following manner—

- (a) any contract which, if made between private persons, would be required to be in writing and signed by the parties, may be made on behalf of the entity in writing and signed by any person acting under its authority, expressed or implied, and may in the same manner be varied or discharged;
- (b) any contract which, if made between private persons, would be valid though made verbally only and not reduced to writing, may be made verbally on behalf of the entity by any person acting under its authority, expressed or implied, and may in the same manner be varied or discharged.

(2) All contracts made in accordance with subsection (1) shall be effectual in law and shall bind the registered business entity and its successors and all other parties to the contracts.

### **34 Promissory notes and bills of exchange**

(1) A bill of exchange or promissory note shall be deemed to have been made, accepted or endorsed on behalf of a registered business entity if made, accepted or endorsed in the name of, or by or on behalf or on account of, the registered business entity by any person acting under its authority.

(2) All documents, other than the documents mentioned in section 33 ("Form of contracts") (1), shall, if executed on behalf of a registered business entity, be signed as prescribed in section 35 by any person acting under its authority, expressed or implied, unless the articles otherwise provide.

### **35 Execution of documents domestically and in foreign countries**

(1) Except as otherwise provided in this Act or in the constitutive documents of the entity concerned, documents to be executed by a registered business entity shall be validly executed if signed by any person acting under its authority, express or implied.

(2) A registered business entity may in writing authorise any person, either generally or in respect of any specified matters, to execute documents on its behalf in any foreign country; and every document signed by such agent, on behalf of the entity, shall bind the entity, if valid in other respects:

Provided that—

- (i) if the entity has a seal, and the entity's constitutive documents require that any execution of a document should be done under its seal, such authorisation shall be under its seal and signed, in the case of a company, by one of its directors or, in the case of a private business corporation, by one of its members;
- (ii) if the entity has no seal, such authorisation shall be signed—
  - A. in the case of a company, by two of its directors or by one director and its secretary;
  - B. in the case of a private business corporation, by two of its members.

### **36 Official seal for use in foreign countries**

(1) A registered business entity whose objects require or comprise the transaction of business in a foreign country may, if authorised by its constitutive documents, have an official seal for use in a foreign country, which seal shall be a facsimile of the seal referred to in subsection (2), if the entity has such a seal, with the addition on its face of the name of the foreign country where it is to be used.

(2) Subject to subsection (4), where a registered business entity has an official seal for use in a foreign country, a document to which the seal has been affixed by a person authorised thereto by the entity in writing shall bind the entity, if valid in other respects.

(3) A person in a foreign country affixing an official seal to a document in terms of subsection (2) shall certify on the document the date on which and the place at which the seal is affixed.

(4) Unless the law of a foreign country in question requires the document concerned to be affixed with a seal for the transaction in question to be valid, the failure to affix such seal shall not affect the validity of any transaction to which the document relates if the transaction is valid in other respects and was executed by any person authorised thereto in writing by the entity, or the document relating to the transaction is signed—

- (a) by two of its directors or by one director and its secretary, in the case of a company; or
- (b) by two of its members, in the case of a private business corporation.

### **37 Authentication of documents**

A document or proceeding requiring authentication by a registered business entity may be signed by a director, secretary, member or other authorised officer of the entity, and need not be under its seal.

## **PART II**

### **INSPECTION AND INVESTIGATION**

### **38 Purposes of inspections and investigations and powers in connection therewith**

(1) In addition to ensuring compliance with this Act, the purpose of inspection and investigation of registered business entities is to —

- (a) promote good corporate governance; and
- (b) inspire confidence in investors in such entities that their investments are safe and are being dealt with transparently.

(2) For the purposes of this Part, the Registrar and every inspector shall have the same powers, rights and privileges as are conferred upon a commissioner by Commissions of Inquiry Act [Chapter 10:07], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 19 of that Act shall apply with necessary changes in relation to the investigation or inspection by the Registrar and to any person summoned to give evidence or giving evidence before him or her.

### **39 Investigation by Registrar**

(1) Where the Registrar has reasonable cause to believe that provisions of this Act relating to the submission to him or her of any document are not being complied with, or where he or she is of the opinion that any document submitted to him or her under this Act does not disclose the true facts or a full and fair statement of the matters to which it purports to relate, he or she may, by written order, call on the registered business entity concerned to produce all or any of the documents of the registered business entity specified in the order and to furnish in writing such information or explanation as the Registrar may specify in his or her order, and such documents shall be produced and such information or explanation shall be furnished within such time as may be specified in the order.

(2) On receipt of an order under subsection (1) it shall be the duty of all persons who are or have been officers of the registered business entity to produce such documents or to furnish such information or explanation so far as lies within their power.

(3) Any person who fails to comply with subsection (2) shall be in default and subject to a category 2 civil penalty order:

Provided that the period within which the documents or information must be produced or furnished before the defaulter becomes criminally liable in terms of section 294 ("Power of Registrar to issue civil penalty orders and categories thereof")(3) shall be seven days and the level of the daily cumulative civil penalty shall be level six.

### **40 Investigation on request of minority stakeholders**

(1) On the request of a shareholder or shareholders or member or members holding at least five *per centum* of the ordinary shares of the company, or five *per centum* of the interests of the private business corporation, the Registrar may assign one or more inspectors to investigate the affairs of the registered business entity and to report thereon as the Registrar may direct.

(2) Any such request shall be dated and signed by all of the requesting shareholders or members, shall state the number of shares or the extent of the interests they each hold, and shall state the purpose for which the investigation is requested, and a copy of the request shall be delivered by the requesting shareholders or members to the company's board of directors or to the private business corporation's controlling members, as the case may be.

(3) The Registrar may, before assigning an inspector, require the requesting shareholders or members to give satisfactory security in an amount which may be prescribed towards the costs of the investigation.

### **41 Investigation to determine ownership or control**

(1) The Registrar may, with or without a request from members of the registered business entity concerned, assign one or more inspectors to investigate and report on the shareholding of a company, the interests of a private business corporation and other matters, to determine the persons who are or have been financially interested in the success or failure of the entity or are able to control or materially influence the entity's policies.

(2) Where an investigation under this section is conducted at the request of any member of a registered business entity, that member shall pay the reasonable costs incurred by the Registrar in conducting it and, before assigning an inspector under subsection (1), the Registrar may require the member to give satisfactory security, not exceeding an amount that may be prescribed, for payment of the costs of the investigation.

(3) In an investigation under this section an inspector may require any person whom he or she has reasonable cause to believe—

- (a) to be or to have been interested in any shares, debentures or interests; or
- (b) to act or to have acted in relation to any shares, debentures or interests as the agent of someone interested therein;

to give the inspector such information as that person has or can reasonably be expected to obtain concerning present and past interests in those shares, debentures or interests, 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, debentures or interests.

(4) For the purposes of this section, and without limiting the phrase, a person shall be deemed to have an interest in a share if he or she has a right to acquire or dispose of the share or any interest therein or to vote with respect thereto, or if the person's consent is necessary for the exercise of any of the rights of other persons interested therein, or other persons interested therein can be required or are accustomed to exercise their rights in accordance with the person's instructions.

#### **42 Investigation of registered business entity's affairs in other cases**

(1) Without prejudice to his or her powers under section 39 ("Investigation by Registrar"), the Registrar—

- (a) shall assign one or more inspectors to investigate the affairs of a registered business entity and to report thereon in such manner as he or she directs if—
  - (i) in the case of a company, the company by special resolution; or
  - (ii) the High Court by order;declares that its affairs ought to be investigated by the Registrar; and
- (b) may do so, if it appears to the Registrar that there are circumstances suggesting a reasonable suspicion that—
  - (i) its business is being conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive of any part of its members or that it was formed for any fraudulent or unlawful purpose; or
  - (ii) persons concerned with its formation or the management of its affairs have in connection therewith been guilty of fraud or other misconduct towards it or towards its members; or
  - (iii) its members have not been given all the information with respect to its affairs which they might reasonably expect.

(2) Whenever the Registrar intends to act in terms of subsection (1)(b) he or she shall give adequate prior notice to the Minister of his or her intended action.

**43 Power of inspectors to investigate related registered or unregistered business entities**

(1) In this section—

“associated entity” means an entity, whether registered or not, which controls or is controlled by a primary business entity;

“primary business entity” means the registered business entity whose affairs an inspector has been assigned to investigate.

(2) Subject to subsections (3), (4) and (5), where an inspector who has been assigned to investigate the affairs of a primary business entity considers that, for the purposes of that investigation, it is necessary to investigate the affairs of an associated entity, the inspector may, with the approval of the Registrar and subject to subsection (3), investigate the affairs of the associated entity and report on them in so far as the inspector thinks the results of that investigation are relevant to the affairs of the primary business entity.

(3) Before conducting an investigation in terms of subsection (1) into the affairs of—

- (a) an associated entity which is a registered business entity, the inspector shall obtain the written authority of the Registrar; or
- (b) an associated entity which is not a registered business entity, the inspector shall obtain a warrant from—
  - (i) a justice of the peace (other than a police officer ) for the district; or
  - (ii) a magistrate having jurisdiction in the area;

in which the entity is located or carries on any of its activities.

(4) A justice of the peace or magistrate may issue a warrant for the purposes of subsection (3)(b) if he or she is satisfied, from information on oath, that—

- (a) the primary business entity is located or carries on any of its activities in his or her district or area; and
- (b) the inspector has lawful authority to investigate the affairs of the primary business entity and that the entity in respect of which the warrant is sought is an associated entity of the primary business entity; and
- (c) there are reasonable grounds for believing that an investigation of the affairs of the associated entity will disclose information relevant to the investigation of the primary business entity.

(5) A warrant issued for the purposes of subsection (3)(b) shall be in writing and state—

- (a) the identity and registered office of the primary business entity and the purpose for which it is being investigated; and
- (b) the identity and address of the associated entity; and
- (c) the period for which the warrant is required to be issued.

(6) An inspector to whom a warrant has been issued in terms of this section shall have the same powers—

- (a) to enter and search the premises of the associated entity concerned and to seize its property as a police officer to whom a search warrant has been issued in terms of Part VI of the Criminal Procedure and Evidence Act [*Chapter 9:07*]; and



- (b) to investigate the affairs of the associated entity concerned as if the entity was the primary business entity whose affairs the inspector had been assigned to investigate.

#### **44 Production of records and evidence on investigation**

(1) In this section—

“agent”, in relation to a registered business entity or an associated entity, includes any person who is or at any time was engaged as the entity’s legal practitioner, accountant, auditor or banker;

“officer”, in relation to a registered business entity or an associated entity, means any person who is or at any time was an officer or employee of the entity.

(2) Subject to the laws relating to privileges, all officers and agents of a registered business entity or associated entity whose affairs are investigated by an inspector under this Part shall—

- (a) on request, produce to the inspector all records relating to the entity which are in their custody or power; and
- (b) subject to subsection (3), answer any lawful question the inspector may put to him or her regarding the affairs of the entity;

and generally shall give the inspector all assistance in connection with the investigation which they are reasonably able to give.

(3) An officer or agent may refuse to answer a question in terms of subsection (2) if the answer would render him or her liable to—

- (a) criminal proceedings in respect of an offence against the law of Zimbabwe; or
- (b) proceedings for the recovery of any penalty or forfeiture in favour of the State in terms of any enactment in force in Zimbabwe;

Provided that if, at the request of the Registrar—

- (a) the Prosecutor-General by written notice to the officer or agent concerned grants him or her immunity from prosecution for the offence, criminal proceedings shall not thereafter be instituted against the officer or agent for the offence; or
- (b) the Attorney-General by written notice to the officer or agent concerned grants him or her exemption from the penalty or forfeiture concerned, the officer or agent shall no longer be liable to the penalty or forfeiture;

and the officer or agent shall thereupon answer the question.

(4) Subject to subsection (3), if an officer or agent contravenes subsection (2), he or she shall be in default and the Registrar may serve upon him or her a category 5 civil penalty order, suspended on condition that he or she remedies the default as soon as possible and in any event within twenty-four hours of the service of the order.

Provided that—

- (i) the period within which any records or information shall be produced or furnished under the order shall be seven days; and
- (ii) the level of the fixed penalty under the order shall be level six.

#### **45 Registrar's report**

On concluding an investigation under this Part, an inspector shall furnish a written report on it to the Registrar, who—

- (a) shall send a copy of the report to—
  - (i) the Minister; and
  - (ii) every entity (primary or associated) whose affairs were investigated; and
  - (iii) every shareholder or member who requested the investigation in terms of section 40 (“Investigation on request of minority shareholders”); and
  - (iv) the Registrar of the High Court, where the Court ordered the investigation in terms of section 42 (“Investigation of registered business entity’s affairs in other cases”) (1) (a) (ii);and
- (b) may, on request and on payment of the prescribed fee, provide a copy of the report to any shareholder, member or creditor of an entity whose affairs were investigated, or to any other person whose interests appear to the Registrar on reasonable grounds to be affected by the report; and
- (c) may cause the report to be published if it appears to the Registrar on reasonable grounds that such publication is in the public interest.

#### **46 Proceedings on Registrar’s report**

(1) If, from the report made under section 45 (“Registrar’s report”), it appears to the Registrar that—

- (a) any person is liable to prosecution for an offence in relation to an entity whose affairs were investigated by the inspector, the Registrar shall refer the matter to the Prosecutor-General;
- (b) an entity whose affairs were investigated by the inspector should be wound up, the Registrar may apply to the High Court for it to be wound up;
- (c) an entity whose affairs were investigated by the inspector should bring proceedings for the recovery of damages in respect of fraud or misconduct in connection with the entity’s promotion or formation or the conduct of its affairs, or for the recovery of any property of the entity which has been misapplied or wrongfully retained, the Registrar may, if it appears to the Registrar that such proceedings ought in the public interest to be brought on behalf of the entity (unless the members of the entity have earlier instituted the proceedings in question) bring such proceedings in any court in the name of and on behalf of the entity:

Provided that the Registrar shall indemnify the entity against costs incurred in connection with such proceedings.

(2) After considering the report made under section 45, the Registrar may, by written notice to an entity whose affairs were investigated by the inspector, direct that the entity shall not pay dividends on, or permit the exercise of any rights, including the right of transfer, attached to any of its shares or interests for a specified period and subject to any specified conditions.

(3) Any officer or member of an entity on which a notice in terms of subsection (2) has been served who knowingly contravenes the notice shall be in default and the Registrar may serve on him or her a category 1 civil penalty order.

#### **47 Expenses of investigation of affairs of registered business entity**

(1) The expenses of and incidental to an investigation by an inspector under this Part shall be defrayed in the first instance by the Registrar, but the following persons shall, to the extent mentioned, be liable to repay the Registrar—

- (a) any person who is convicted on a prosecution instituted as a result of the investigation or who is ordered to pay damages or restore any property in proceedings brought by virtue of section 46 may, in the same proceedings, be ordered to pay the said expenses to such extent as may be specified in the order;
- (b) any entity in whose name proceedings are brought as aforesaid shall be liable to the amount or value of any sums of property recoverable by it as a result of those proceedings;
- (c) unless as a result of the investigation a prosecution is instituted—
  - (i) any entity dealt with by the report, where the inspector was assigned otherwise than of the Registrar's own motion, shall be liable, except so far as the Registrar may otherwise direct; and
  - (ii) the applicants for the investigation, where the inspector was assigned under section 40 ("Investigation on request of minority stakeholders"), shall be liable to such extent, if any, as the Registrar may direct;

and any amount for which an entity is liable by virtue of paragraph (b) shall be a first charge on the sums or property mentioned in that paragraph.

(2) The report by the Registrar of an investigation initiated otherwise than by his or her own motion may, if he or she thinks fit, include a recommendation as to the directions, if any, which he or she thinks appropriate, in the light of his or her investigation, to be given under subsection (1)(c).

(3) For the purpose of this section, any costs or expenses incurred by the Registrar on or in connection with proceedings brought by virtue of section 46 ("Proceedings on Registrar's report")(1)(c), shall be treated as expenses of the investigation giving rise to the proceedings.

(4) Any liability to repay the Registrar imposed by subsection (1)(a) and (b) shall be a liability also to indemnify —

- (a) all persons against liability under subsection (1) (c), that is to say to be liable to reimburse—
  - (i) the Registrar (if the Registrar has not already received repayment) pursuant to subsection (1)(a) or (b); and
  - (ii) the applicants for the investigation under section 40 (if they have made repayment to the Registrar under subsection (1) (c));
- (b) the entity against liability under subsection (1)(b), that is to say to be liable to reimburse the entity for any repayment made by it to the Registrar by virtue of that provision.

(5) Any person liable to make reimbursement by virtue of subsection (4) shall be entitled to contribution from any other person with whom he or she is jointly so liable according to the amount of their respective liabilities.

(6) The expenses to be defrayed by the Registrar under this section shall, so far as not recovered, be paid out of the funds of the Companies Office.

#### **48 Power to require information as to holders of shares, debentures or interests**

- (1) Where it appears to the Registrar that there is good reason to investigate —
  - (a) the ownership of any share in or debenture of a company; or
  - (b) who holds an interest in a private business corporation, or the extent of that interest;

the Registrar may by written notice require any person whom he or she has reasonable cause to believe—

- (i) to be or to have been interested in that share, debenture or interest;  
or
- (ii) to act or to have acted in relation to that share, debenture or interest as the agent of someone else;

to give him or her any information which he or she has or can reasonably be expected to obtain as to the share, debenture or interest and the name and address of any person who holds or has held it or who is or has been interested in it.

(2) For the purposes of subsection (1), a person shall be deemed to be interested in a share, debenture or interest if he or she has any right to acquire or dispose of it or any interest in it or to vote in respect of it, or if his or her consent is necessary for any other person to exercise any right in it, or if other persons interested therein can be required or are accustomed to exercise their rights in accordance with his or her instructions.

(3) Any person who—

- (a) fails to give any information required of him or her under subsection (1) shall be in default and liable to a category 2 civil penalty order:

Provided that the period within which the information shall be produced or furnished before the defaulter becomes criminally liable in terms of section 294 (“Power of Registrar to issue civil penalty orders and categories thereof”) (3) shall be seven days and the level of the cumulative penalty shall be level six;

- (b) in response to a notice under subsection (1), makes a statement which he or she 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 not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

#### **49 Power to impose restrictions on shares, debentures or interests**

(1) Where, in connection with an investigation or inquiry under this Part, it appears to the Registrar that there is undue difficulty in ascertaining relevant facts about any share, debenture or interest and that the difficulty is due wholly or mainly to the unwillingness of the registered business entity that is the subject of the investigation or inquiry or of any person with an interest in the share, debenture or interest concerned to assist the investigation as required by this Part, the Registrar may, by written order, direct that until the order is revoked or amended the share, debenture or interest shall be subject to the restrictions imposed by this section.

(2) So long as an order under subsection (1) is in force in relation to any share, debenture or interest—

- (a) any transfer of the share, debenture or interest or, in the case of an unissued share, any issue of it or transfer of the right to be issued with it, shall be void; and
- (b) no voting rights shall be exercisable in respect of the share, debenture or interest; and
- (c) no further shares or debentures shall be issued in right of the share or debenture or in pursuance of any offer made to its holder; and

- (d) except in a liquidation, no payment shall be made of any sums due from the registered business entity on those shares, debentures or interests, whether in respect of capital or otherwise.

(3) The Registrar may at any time, by written order, amend or revoke an order under subsection (1).

(4) Any person aggrieved by an order under subsection (1), or by the Registrar's refusal to amend or revoke such an order, may apply to the High Court for appropriate relief and the court may make such order in the matter as it considers appropriate.

(5) Any person who, knowing that a share, debenture or interest is subject to an order under subsection (1)—

- (a) knowingly contravenes or fails to comply with the order; or  
(b) assists any other person to do anything that contravenes the order in relation to the share, debenture or interest;

shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

## 50 Saving for legal practitioners and bankers

Nothing in this Part shall require disclosure to the Registrar or an inspector—

- (a) by a legal practitioner of any privileged communication or information made to or held by him or her in that capacity, except as respects the name and address of his or her client; or  
(b) except by order of a court, by a registered business entity's banker of any information as to the affairs of any of its customers other than the registered business entity concerned.

## 51 Report following investigation to be evidence

A copy of any report of any inspector assigned under this Part shall be admissible in any legal proceedings as evidence.

### PART III

#### DEFUNCT BUSINESS ENTITIES

## 52 Striking off of defunct business entities from register and remedy for persons aggrieved by striking off

(1) Where the Registrar has reasonable grounds to believe that a registered business entity is not carrying on business or is not in operation, he or she may send the entity a written notice to that effect, stating that if an answer showing cause to the contrary is not received within fourteen days from the date of the notice, a notice will be published in the *Gazette* with a view to striking the name of the entity off the register.

(2) A notice under subsection (1) shall be sent to the registered office of the registered business entity concerned or, if it has no registered office, to any of its officers whose name and address are known to the Registrar or, if there is no such officer, to each of the persons who signed the entity's memorandum or incorporation statement.

(3) Unless the Registrar receives an answer within fourteen days from the date of the notice sent in terms of subsection (1) to the effect that the registered business entity is carrying on business or is in operation, the Registrar may publish in the *Gazette* and send to the entity, a notice that at the expiration of one month from the date of that notice the entity's name will, unless cause is shown to the contrary, be struck off the register and the entity will thereby be dissolved.

(4) Whenever the Registrar receives notice in the prescribed form from a registered business entity or a director, secretary or member thereof that the entity is not carrying on business or is not in operation the Registrar may if the entity in question has not rendered a return for the preceding year and the Registrar is otherwise satisfied that the entity is not carrying on business or is not in operation, forthwith publish in the *Gazette* a notice referred to in subsection (3).

(5) If, on the expiry of the period mentioned in a notice referred to in subsection (3), no cause to the contrary has been shown, the Registrar may strike the name of the registered business entity concerned from the register and shall publish notice of the striking off in the *Gazette*.

Provided that the liability, if any, of the liquidator and of every officer and of every member of the entity shall continue and may be enforced as if the entity had not been dissolved.

(6) If the Registrar receives from a registered business entity a written statement in the form prescribed, signed—

- (a) in the case of a company, by every director of the entity; or
- (b) in the case of a private business corporation, by every member;

stating that the entity has ceased to carry on business and has no assets or liabilities, the Registrar may strike the entity's name from the register and shall publish notice of the striking off in the *Gazette*.

(7) Upon the publication of a notice in the *Gazette* in terms of subsection (5) or (6) to the effect that the name of a business entity has been struck from the register, the entity shall, subject to subsections (8) and (9), thereby be dissolved:

Provided that the liability, if any, of the liquidator and of every officer and member of the entity shall continue and may be enforced as if the entity had not been dissolved.

(8) Where the name of a business entity has been struck from the register in accordance with this section, any creditor or member or former member of the entity may at any time after the date of publication of the notice of striking off of the entity under subsection (5) apply to the magistrates court within whose area of jurisdiction the entity had its principal place of business for an order that the entity's name be restored to the register, and if the court is satisfied that—

- (a) the entity was carrying on business or in operation when its name was struck off; or
- (b) it is otherwise just that the entity's name should be restored to the register;

the court may grant the order sought and, in addition may—

- (i) direct that the entity, or any officer or member of the entity, need not file or lodge any return that the entity, officer or member may have been required to file or lodge in terms of this Act; and
- (ii) give such directions and orders as seem just for placing the entity and all other persons in the same position, as nearly as may be, as if the entity's name had not been struck from the register.

(9) Upon the making of an order in terms of subsection (8)—

- (a) the business entity concerned shall be deemed, subject to the terms and conditions of the order, to have continued in existence as if its name had not been struck from the register; and

- (b) the Registrar shall forthwith restore the name of the business entity concerned to the register, with a note indicating that it has been restored in accordance with this section.

### **53 Undistributed property of dissolved or defunct company or private business corporation: *bona vacantia* orders**

(1) Where a company or private business corporation is dissolved, whether as a result of being wound up or as a result of being struck off the register as defunct, any undistributed property of the company or corporation shall, subject to this section, become *bona vacantia* and shall vest in the State.

(2) At any time after a company or private business corporation (in this section referred to as a “defunct entity”) is declared to be defunct in terms of section 52 (“Striking off of defunct business entities from register and remedy for persons aggrieved by striking off”) (6), the Attorney-General may (unless application has earlier been made to restore a defunct entity to the register under section 52 and such application was successful), on behalf of and in the name of the Chief Registrar apply *ex parte* to the High Court for an order (hereinafter called a “*bona vacantia* order”) declaring any property of the defunct company or private business corporation to be *bona vacantia*.

(3) Before the making of an application under subsection (2), the Chief Registrar shall publish a notice in the *Gazette* notifying any persons who may be interested in the contemplated application that—

- (a) it is intended to make such an application in relation to the named defunct company or private business corporation not earlier than fourteen days from the date of publication of the notice in the *Gazette*; and
- (b) any interested person has a right to oppose the application; and
- (c) notice of the Registrar’s intention to strike off the defunct entity was published on a specified date and that the defunct entity was struck off the Register by notice published section 52 (5) or (6) on a specified date; and
- (d) specified property (a brief description of which shall be given in the notice) belonged or apparently belonged to the defunct entity at the date when it was struck off the Register; and
- (e) any interested person who is a creditor of the defunct entity or has any other interest in the defunct entity or its property may, at any time before the application for a *bona vacantia* order is made, restore the defunct entity to the Register in terms of section 52 (8).

(4) If, within fourteen days from the publication of the notice in terms of subsection (3), no interested person has instituted the application required to restore the defunct entity to the register in terms of section 52 (or, having instituted such application, the application failed), the Attorney-General may proceed with the application for the *bona vacantia* order.

(5) There shall be submitted together with the application for the *bona vacantia* order a copy of the notice referred to in subsection (3), together with a copy of the notices referred to in subsection (3)(c).

(6) If the court grants the application for a *bona vacantia* order, it shall have the same effect as a writ for the attachment and sale in execution of the property declared to be *bona vacantia*.

(7) The proceeds from the sale in execution of property declared to be *bona vacantia* shall be applied to meeting the following costs in the following sequence—

- (a) the sheriff's costs of executing the *bona vacantia* order; and
- (b) the costs incurred by the Attorney-General in obtaining the *bona vacantia* order; and
- (c) the costs incurred by the Companies Office in publishing the notices referred to in subsection (2) and (2)(c), together with the proven costs incurred by the Office in identifying, securing and safeguarding the property declared to be *bona vacantia*;

(8) Any amount remaining after application of the amounts referred to in subsection (7) shall form part of the Deeds Office Fund.

#### PART IV

##### COMMON PROVISIONS RELATING TO FIDUCIARY DUTIES, REMEDIES AND LEGAL PROCEEDINGS

###### *Subpart A: Duties of office bearers of companies and private business corporations*

### **54 Duty of care and business judgment rule**

(1) Every manager of a private business corporation and every director or officer of a company has a duty to perform as such in good faith, in the best interests of the registered business entity, and with the care, skill, and attention that a diligent business person would exercise in the same circumstances.

(2) In performing that duty, the manager, officer or director as the case may be referred to in subsection (1) may rely on information, opinions, reports or statements (including financial statements) of independent auditors or legal practitioners or of experts or employees of the registered business entity whom the person reasonably believes are reliable and competent to issue such information, opinions, reports or statements.

(3) Subsection (2) applies only if the person makes proper inquiry where the need for inquiry is indicated by the circumstances, and has no knowledge that such reliance is unwarranted.

(4) A person who makes a business judgment acting as stated in subsection (1), (2) and (3) fulfils the duty under this section with respect to that judgment if that person—

- (a) does not have a personal interest as defined in section 56 (“Transactions involving conflict of interest”) in the subject of the judgment; and
- (b) is fully informed on the subject to the extent appropriate under the circumstances; and
- (c) honestly believes when the judgment is made that it is in the best interests of the company or corporation.

(5) No provision, whether contained in a company's articles or a private business corporation's by-laws or otherwise, shall relieve a director or member from the duty to act in accordance with this Part or relieve him or her from any liability incurred as a result of any breach of such duty.

### **55 Duty of loyalty**

(1) For purposes of this section a “controlling member” is a person referred to in the definition of “controlling member” in section 2 or a person referred to in section 3(4).

(2) A manager or controlling member of a private business corporation and a director, officer or controlling member of a company has a duty to act with loyalty to



that registered business entity and, in the case of a company, towards any subsidiary of that company.

(3) The duty of loyalty referred to in subsection (2) includes but is not limited to a duty—

- (a) not to use property of the registered business entity for his or her personal benefit or for the benefit another person other than the entity; and
- (b) not to disclose confidential information of the entity or to use confidential information of the entity for his or her personal benefit or for the benefit another person other than the entity; and
- (c) to communicate to the board or members (as the case may be) at the earliest practicable opportunity any information that comes to his or her attention, unless the he or she—
  - (i) reasonably believes that the information is—
    - A. immaterial to the entity; or
    - B. generally available to the public, or known to the other managers, directors, officers or controlling members;
  - or
  - (ii) is bound not to disclose that information by a legal or ethical obligation of confidentiality;
- and
- (d) not to abuse the person's position in the registered business entity for his or her personal benefit, or for the benefit another person other than the entity; and
- (e) not to take business opportunities of the registered business entity for his or her personal benefit, or for the benefit another person other than the entity; and
- (f) not to compete in business with the registered business entity (including competing individually or as a manager of a private business corporation, or a director or officer of a company which competes in business with the registered business entity of which he or she is manager, director or officer); and
- (g) not to accept a benefit from a third party for doing or not doing anything as a person referred to above (but this shall not include benefits which are *de minimis* in value or cannot reasonably be regarded as likely to give rise to a conflict of interest with the registered business entity concerned); and
- (h) to never knowingly cause harm to the entity; and
- (i) to serve only the registered business entity's interest in all transactions involving the entity in which the person has a personal interest.

*Subpart B: Duty of loyalty – conflicts of interest*

## **56 Transactions involving conflict of interest**

(1) In this section—

“personal financial interest”, when used with respect to any person—

- (a) means a direct material interest of that person, of a financial, monetary or economic nature, or to which a monetary value may be attributed; but

(b) does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act [*Chapter 24:19*] (No. 25 of 1997), unless that person has direct control over the investment decisions of that fund or investment.

(2) This section does not apply—

(a) to a director of a company—

(i) in respect of a decision that may generally affect—

A. all of the directors of the company in their capacity as directors;  
or

B. a class of persons, despite the fact that the director is one member of that class of persons, unless the only members of the class are the director or associates of the director;

(ii) in respect of a proposal to remove that director from office as contemplated in section 202 (“Removal and resignation of directors”);

or

(b) to a company or its director, or a private business corporation—

(i) if one person—

A. holds all of the beneficial interests of all of the issued securities of the company and is the only director of that company; or

B. holds all the beneficial interests of the private business corporation and is the only member of the private business corporation.

(3) If a person is the only director of a company, but does not hold all of the beneficial interests of all of the issued shares or debentures of the company, that person may not—

(a) approve or enter into any agreement in which the person or an associate has a personal financial interest; or

(b) as a director, determine any other matter in which the person or an associate has a personal financial interest,

unless the agreement or determination is approved by an ordinary resolution of the shareholders after the director has disclosed the nature and extent of that interest to the shareholders.

(4) At any time, a director may disclose any personal financial interest in advance, by delivering to the board, or shareholders in the case of a company contemplated in subsection (3), a notice in writing setting out the nature and extent of that interest, to be used generally for the purposes of this section until changed or withdrawn by further written notice from that director.

(5) A person referred to in section 55 (“Duty of loyalty”) is deemed to have a personal financial interest in an act or transaction with the registered business entity if—

(a) that person or a near relative or other associate of that person is a party to the act or transaction or has a material financial interest in the act or transaction; or

(b) that person has a financial or family member relationship with a party to the act or transaction, or with a person who has a material financial interest in the act or transaction, that could reasonably be expected to affect that person’s judgment adversely to the registered business entity.

(6) A person who enters into a contract or transaction with the registered business entity in which that person has a personal interest, has not violated the duty of loyalty stated in section 55 (“Duty of loyalty”) if the contract or transaction is authorised in advance or ratified after the fact by either—

- (a) a majority of the votes of members of the registered business entity who do not have a personal interest in the act or transaction; or
- (b) a majority of the board of directors who do not have such personal interest, in the case of a company; or
- (c) all members in a case where there are no members who do not have such personal interest;

Provided that in all such cases all material facts regarding the personal interest have been disclosed or are known to the authorising persons, and the conflicted person did not participate in their decision.

(7) Any person who contravenes subsection (3) shall be guilty of an offence and be liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding two years, or both.

(8) If it comes to the notice of the Registrar that any default is made in complying with this section, then independently of a prosecution, if any, for an offence under subsection (7), the Registrar may serve upon a person referred to in section 55 alleged to be in contravention of this section a category 1 civil penalty order.

### **57 Duty to disclose conflict of interest**

(1) If a person referred to in section 55 (“Duty of loyalty”) (but subject to section 56 (“Transactions involving conflict of interest”)(2)(b) or (3)), has a personal financial interest in respect of a matter to be considered at a meeting of the board of the company or meeting of the members of the private business corporation, or knows that an associate has a personal financial interest in the matter, the person—

- (a) must disclose the interest and its general nature before the matter is considered at the meeting; and
  - (b) must disclose to the meeting any material information relating to the matter, and known to the person; and
  - (c) may disclose any observations or pertinent insights relating to the matter if requested to do so by the other persons; and
  - (d) if present at the meeting, must leave the meeting immediately after making any disclosure contemplated in paragraph (b) or (c); and
  - (e) must not take part in the consideration of the matter, except to the extent contemplated in paragraphs (b) and (c); and
  - (f) while absent from the meeting in terms of this subsection—
    - (i) is to be regarded as being present at the meeting for the purpose of determining whether sufficient directors or members are present to constitute the meeting; and
    - (ii) is not to be regarded as being present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted;
- and
- (g) must not execute any document on behalf of the registered business entity in relation to the matter unless specifically requested or directed to do so by the board or meeting of members.

(2) If a director of a company acquires a personal financial interest in an agreement or other matter in which the company has a material interest, or knows that an associate has acquired a personal financial interest in the matter, after the agreement or other matter has been approved by the company, the director must promptly disclose to the board, or to the shareholders in the case of a company contemplated in section 56(3), the nature and extent of that interest, and the material circumstances relating to the director or associate’s acquisition of that interest.

(3) A decision by the board, or a transaction or agreement approved by the board, or by a company as contemplated in section 56(3), is valid despite any personal financial interest of a director or an associate of the director, if it—

- (a) was approved in the manner contemplated in this section; or
- (b) has been ratified by an ordinary resolution of the shareholders.

(4) A court, on application by any interested person, may declare valid a transaction or agreement that had been approved by the members of a private business corporation, or board or shareholders of a company, as the case may be, despite the failure of the person referred to in section 55 to satisfy the requirements of section 56 and this section.

(5) Any person referred to in section 55 who fails to comply with this section shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

(6) If it comes to the notice of the Registrar that any default is made in complying with this section, then independently of a prosecution, if any, for an offence under subsection (5), the Registrar may serve upon a person referred to in section 55 alleged to be in contravention of this section a category 1 civil penalty order.

(7) Nothing in this Part shall be taken to prejudice the operation of any rule of law restricting any person referred to in section 55 from having any interest in contracts with the registered business entity concerned.

## **58 Avoidance and other remedies for conflict-of-interest transactions**

(1) A transaction which is contrary to section 56 shall be voidable at the option of the registered business entity concerned, but any such avoidance shall be without prejudice to rights of a third party which were acquired in good faith and without knowledge of or participation in the contravention.

(2) A registered business entity concerned may also assert, and the competent court shall have power to order, other remedies including remedies of the kind referred to in sections 59, 60, 61 and 62, and the person having the conflict of interest shall be liable to account for and transfer to the registered business entity any gain which he or she has made from the act or transaction and to indemnify the registered business entity for any loss or damage suffered by it as a result of the act or transaction.

### *Subpart C: Other legal proceedings and remedies*

## **59 Power of court to grant relief to defendants or potential defendants in certain cases**

(1) If in any proceeding for negligence, default, breach of duty or breach of trust against a person to whom this section applies it appears to the court that that person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he or she has acted honestly and reasonably and that, having regard to all the circumstances of the case, including those connected with his or her appointment, he or she ought fairly to be excused for the negligence, default, breach of duty or breach of trust, the court may relieve him or her, either wholly or partly, from his or her liability, on such terms as the court may think fit.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him or her in respect of any negligence, default, breach of duty or breach of trust, he or she may apply to the court for relief and the court on any such application shall have the same power to relieve him or her 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.