(a) the issue of the shares at a discount must be authorised by special resolution of the company and must be sanctioned by the court;

(b) the special resolution must specify the maximum rate of discount at which the shares are to be issued;

(c) not less than one year must, at the date of the issue, have elapsed since the date on which the company was entitled to commence business;

(d) the shares to be issued at a discount must be issued within thirty days after the date on which the issue is sanctioned by the court or within such extended time as the court may allow.

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

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

(4) If default is made in complying with this section the company and every officer of the company who is in default shall be liable to a category 1 civil penalty order.

126 Power to issue redeemable shares

(1) Subject to this section and sections 127 ("Financing at redemption"), 128 ("Power of company to purchase own shares"), 133 ("Capital redemption reserve") and 134 ("Effect of failure by company to redeem or purchase shares"), a company may, if authorised by its articles, issue shares which are to be redeemed or which are liable to be redeemed at the option of the company or the shareholder concerned.

(2) No redeemable shares shall be issued at a time when there are no issued shares of the company which are not redeemable.

(3) Redeemable shares may not be redeemed unless they are fully paid, and the terms of redemption shall provide for payment on redemption.

127 Financing at redemption

(1) Subject to section 134 ("Effect of failure by company to redeem or purchase shares") (2) and (4)—

(a) redeemable shares shall be redeemed only out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption; and

(b) any premium payable for redemption shall be paid out of profits of the company which would otherwise be available for dividend.

(2) If redeemed shares were issued at a premium, any premium payable on their redemption may be paid out of the proceeds of a fresh issue of shares made for the purposes of the redemption, up to an amount equal to—

(a) the aggregate of the premiums received by the company on the issue of the shares redeemed; or

(b) the current amount of the company's share premium account, including any sum transferred to that account in respect of the premiums on the new shares;

whichever is the lesser, and in that event the amount of the company's share premium account shall be reduced by a sum corresponding, or by sums in the aggregate corresponding, to the amount of any payment made by virtue of this subsection out of the proceeds of the issue of the new shares.

(3) Subject to this section and to sections 128 ("Power of company to purchase own shares"), 133 ("Capital redemption reserve") and 134 ("Effect of failure by company to redeem or purchase shares"), redemption of shares may be effected on such terms and in such manner as may be provided by the company's articles.

(4) Shares redeemed under this section shall be treated as cancelled on redemption and the amount of the company's share capital shall be diminished by the nominal value of those shares, but the redemption of shares by a company shall not be taken as reducing the amount of the company's authorised share capital.

(5) Without prejudice to subsection (4), where a company is about to redeem shares, it shall have power to issue shares up to the nominal value of the shares to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not, for the purposes of any law relating to stamp duty, be deemed to be increased by the issue of shares in pursuance of this subsection:

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

128 Power of company to purchase own shares

(1) Subject to this section and to sections 129 ("Authority required by company to purchase its own shares") to 134 ("Effect of failure by company to redeem or purchase shares"), a company may, if authorised by its articles, purchase its own shares, including any redeemable shares.

(2) Sections 126 ("Power to issue redeemable shares") and 127 ("Financing at redemption") shall apply, with the necessary changes, to the purchase by a company of its own shares save that the terms and manner of purchase need not be determined by the articles as required by section 127 (3).

(3) A company shall not purchase its own shares if as a result of the purchase there would no longer be any member holding shares other than redeemable shares.

129 Authority required by company to purchase its own shares

(1) A company shall not purchase its own shares unless the purchase has been authorised in advance by the company in a general meeting.

(2) An authority granted by the company in a general meeting shall not be valid for the purposes of subsection (1)—

(a) unless it specifies—

   (i) the price, or the maximum and minimum prices, at which the shares may be acquired; and

   (ii) the maximum number of shares which may be acquired and the class thereof; and

   (iii) the date on which the authority will expire;

(b) where the shares are to be purchased otherwise than on a securities exchange registered under the Securities and Exchange Act [*Chapter 24:25*], if any person holding shares to which the authority relates has voted for the resolution conferring the authority:

Provided that this paragraph shall not apply in the case of a private company or in the case of a public company when a class of shares are all to be purchased or are to be purchased *pro rata* from all the shareholders who hold shares of the class concerned.

130 Cession or renunciation of rights

(1) Where a company has obtained rights to purchase shares pursuant to an authority obtained in terms of section 129 ("Authority required by company to purchase its own shares")—

(a) such rights shall not be capable of being ceded;

(b) any agreement to renounce such rights shall not be valid unless the renunciation has been authorised in advance by the company in a general meeting.

(2) An authority granted by the company in a general meeting shall not be valid for the purposes of subsection (1) (b)—

(a) unless it specifies the shares or the number of shares concerned; or

(b) where the purchase is to be effected otherwise than on a securities exchange registered under the Securities and Exchange Act [*Chapter 24:25*], if any person holding shares to which the authority relates has voted for the resolution conferring the authority:

Provided that this paragraph shall not apply in the case of a private company or in the case of a public company when a class of shares are all to be purchased or are to be purchased *pro rata* from all the shareholders who hold shares of the class concerned.

131 Payments for rights to purchase or for release thereof

(1) A payment made by a company in consideration of—

(a) acquiring any right to purchase its shares pursuant to an authority granted in terms of section 129 ("Authority required by company to purchase its own shares"); or

(b) the release of any obligation to purchase shares in pursuance of an authority granted in terms of section 129;

shall be made out of the profits that would otherwise be available for dividend.

(2) If the requirements of subsection (1) are not complied with, the purchase or release concerned, as the case may be, shall be void.

132 Disclosure by company of purchase of own shares

(1) Within the period of twenty-eight days next following the date of delivery of any of its own shares purchased by it, a company shall deliver to the Registrar a return in the prescribed form showing, with respect to each class of shares purchased—

(a) the number and nominal value of the shares; and

(b) the date on which the shares were delivered to the company; and

(c) the aggregate amount paid by the company for the shares; and

(d) the maximum and minimum prices paid in respect of shares of each class purchased.

(2) Particulars of shares delivered to the company on different dates and under different authorities to purchase may be included in a single return to the Registrar and, when this is done, the amount to be stated in terms of subsection (1)(c) shall be the aggregate amount paid by the company for all the shares to which the return relates.

(3) Where a company has purchased its own shares it shall keep a copy of the contract of purchase or, if the purchase is not in terms of any written contract, a memorandum of the terms of the purchase at its registered office for a period of ten years reckoned from the date of completion of the purchase of all the shares concerned or, as the case may be, from the date of termination of the contract.

(4) The copy of the contract or memorandum, as the case may be, required to be kept in terms of subsection (3) shall be available for inspection, at all reasonable times, free of charge by any person.

(5) Every officer of a company who is in default in complying with—

(a) subsection (3) shall be liable to a category 1 civil penalty order;

(b) subsection (4) shall be liable to a category 4 civil penalty order;

(6) The obligation to keep and to allow inspection of a copy of any contract or a memorandum in terms of subsections (3) and (4) shall apply, with necessary changes, to any variation of the contract.

133 Capital redemption reserve

(1) Where shares of a company are redeemed or purchased wholly out of the company's profits, the amount by which the company's issued share capital is diminished in accordance with section 127 ("Financing at redemption")(4) on cancellation of the shares concerned shall be transferred to a reserve, to be called "the capital redemption reserve".

(2) If shares are redeemed or purchased by a company wholly or partly out of the proceeds of a fresh issue and the aggregate amount of those proceeds is less than the nominal value of the shares redeemed or purchased, the amount of the difference shall be transferred to the capital redemption reserve.

(3) The provisions of this Act relating to the reduction of a company's share capital shall apply to any reduction of the capital redemption reserve as if the capital redemption reserve were paid-up share capital of the company:

Provided that the reserve may be applied by the company in paying up its unissued shares to be allotted to its members, directors or employees, or to a trustee for such persons, as fully paid bonus shares.

134 Effect of failure by company to redeem or purchase shares

(1) Where a company has —

(a) issued shares on terms that they are or are liable to be redeemed; or

(b) agreed to purchase any of its own shares;

the company shall not be liable in damages in respect of any failure on its part to redeem or purchase any of the shares, and no order for specific performance of the terms of redemption or purchase shall be made by any court, if the company shows that it is unable to meet the costs of redeeming or purchasing, as the case may be, the shares in question out of profits of the company that would otherwise be available for dividend.

(2) Subject to subsection (3), if a company is wound up and at the commencement of the winding up any shares referred to in subsection (1) have not been redeemed or purchased by the company, the terms of redemption or purchase may be enforced against the company, and when shares are redeemed or purchased under this subsection they shall be treated as cancelled.

(3) Subsection (2) shall not apply if—

(a) the terms under which the shares were to be redeemed or purchased provided for the redemption or purchase to take place at a date later than that of the commencement of the winding up; or

(b) during the period commencing with the date on which the redemption or purchase was to have taken place and ending with the commencement of the winding up, the company could not at any time have lawfully paid a dividend to shareholders equal in value to the price at which the shares were to have been redeemed or purchased.

(4) There shall be paid in priority to any amount which the company is liable in terms of subsection (2) to pay in respect of any shares—

(a) all other debts and liabilities of the company, other than any due to members in their capacity as such; and

(b) if other shares carry rights, whether as to capital or as to income, which are preferent to the rights as to capital attaching to the first-mentioned shares, any amount due in satisfaction of those preferred rights;

and, thereafter, any such amount shall be paid in priority to any amounts due to members in satisfaction of their rights, whether as to capital or income, as members.

(5) Where by virtue of the Insolvency Act [*Chapter 6:07*], a creditor of a company is entitled to the payment of any interest only after payment of all other debts of the company, the company's debts and liabilities shall, for the purpose of subsection (4), include the liability to pay that interest.

Sub-Part F: Miscellaneous provisions as to share capital

135 Power of company to arrange for different amounts being paid on shares

A company, if so authorised by its articles, may do any one or more of the following things—

(a) make arrangements on the issue of shares for a difference between members in the amounts and times of payment of calls on their shares;

(b) accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any shares held by him or her, although no part of that amount has been called up, and, if the whole amount unpaid on any shares be paid, issue those shares as fully paid up;

(c) where a larger amount is paid up on some shares than on others, pay dividends in proportion to the amount paid up on each share.

136 Reserve liability of company

A company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up or, in respect of a company placed under judicial management, with the sanction of the court, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

137 Capitalisation shares

(1) Except to the extent that a company's memorandum of incorporation provides otherwise—

(a) the board of that company, by resolution, may approve the issuing of any authorised shares of the company, as capitalisation shares, on a *pro rata* basis to the shareholders of one or more classes of shares; and

(b) shares of one class may be issued as a capitalisation share in respect of shares of another class; and

(c) subject to sub-section (2), when resolving to award a capitalisation share, the board may at the same time resolve to permit any shareholder entitled to receive such an award to elect to receive payment in cash, at a value determined by the board.

(2) The board of a company may not resolve to offer a cash payment in lieu of awarding a capitalisation share, as contemplated in subsection(1)(c),unless the board—

(a) has applied the solvency and liquidity test, as required by section 138 ("Distributions must be authorised by board "), on the assumption that every such shareholder would elect to receive cash; and

(b) is satisfied that the company would satisfy the solvency and liquidity test immediately upon the completion of the distribution.

138 Distributions must be authorised by board

(1) A company must not make any proposed distribution unless—

(a) the distribution—

(i) is pursuant to an existing legal obligation of the company, or a court order; or

(ii) the board of the company, by resolution, has authorised the distribution;

and

(b) it reasonably appears that the company will satisfy the solvency and liquidity test immediately after completing the proposed distribution; and

(c) the board of the company, by resolution, has acknowledged that it has applied the solvency and liquidity test, as set out in section 102 ("Solvency and liquidity test"), and reasonably concluded that the company will satisfy the solvency and liquidity test immediately after completing the proposed distribution.

(2) When the board of a company has adopted a resolution contemplated in subsection (1)(c), the relevant distribution must be fully carried out, subject only to subsection (3).

(3) If the distribution contemplated in a particular board resolution, court order or existing legal obligation has not been completed within one hundred and twenty (120) business days after the board made the acknowledgement required by subsection (1)(c), or after a fresh acknowledgement being made in terms of this subsection, as the case may be—

(a) the board must re-apply the solvency and liquidity test with respect to the remaining distribution to be made pursuant to the original resolution, order or obligation; and

(b) despite any law, order or agreement to the contrary, the company must not proceed with or continue with any such distribution unless the board adopts a further resolution as contemplated in subsection (1)(c).

(4) If a distribution takes the form of the incurrence of a debt or other obligation by the company, as contemplated in paragraph (b) of the definition of 'distribution' set out in section 2 (" Interpretation")(1), the requirements of this section—

(a) apply at the time that the board resolves that the company may incur that debt or obligation; and

(b) do not apply to any subsequent action of the company in satisfaction of that debt or obligation, except to the extent that the resolution, or the terms and conditions of the debt or obligation, provide otherwise.

(5) If, after applying the solvency and liquidity test as required by this section, it appears to the company that the section prohibits its immediate compliance with a court order contemplated in subsection (1)(a)(i)—

(a) the company may apply to a court for an order varying the original order; and

(b) the court may make an order that—

(i) is just and equitable, having regard to the financial circumstances of the company; and

(ii) ensures that the person to whom the company is required to make a payment in terms of the original order is paid at the earliest possible date compatible with the company satisfying its other financial obligations as they fall due and payable.

(6) A director of a company is liable to the extent set out in section 197 ("Liability of directors and prescribed officers")(3)(e)(vi) if the director—

(a) was present at the meeting when the board approved a distribution as contemplated in this section, or participated in the making of such a decision in terms of section 196 ("Directors acting other than at a meeting"); and

(b) failed to vote against the distribution, despite knowing that the distribution was contrary to this section.

139 Existing shareholders' right of first refusal to new shares

(1) Shareholders of a company shall have a pre-emptive right to acquire newly-issued shares as provided in this section, for which purpose—

(a) "shares" does not include options to acquire shares or non-share securities convertible into shares;

(b) the right shall be to acquire the newly-issued shares *pro rata* in proportion to the number of shares already held by such existing shareholders, at a price no less favourable than that offered to other persons.

(2) The company shall give each existing shareholder advance notice of any proposed issuance stating, at a minimum, the number of shares to be issued, the proposed price or method of determining the price of issuance, and the time period and procedure for exercising the pre-emptive rights:

Provided that the time period must be a reasonable one and all rules and procedures for the exercise of the pre-emptive rights shall be uniform for all shareholders having the right.

(3) Unless otherwise (and except to the extent) provided in the company's memorandum of association, only holders of ordinary shares shall have pre-emptive rights, and there shall be no pre-emptive rights to acquire any of the following—

(a) preference shares, except for preference shares which are convertible into or carry a right to subscribe for or acquire ordinary shares;

(b) shares issued in accordance with this Act to directors, officers or employees as compensation for their services;

(c) shares issued in accordance with this Act to satisfy conversion or option rights created to provide compensation to directors, officers or employees for their services.

(4) Shares subject to pre-emptive rights that are not acquired by existing shareholders pursuant to such rights may be issued to any person for a period of three months after having been offered to existing shareholders under this section, at the same price as the price set for the exercise of pre-emptive rights. Any offer at a lower price during such three-month period, and any offer after such period, shall be subject to existing shareholders' rights under this section.

(5) The pre-emptive rights provided for in this section may be further restricted or eliminated by a company's memorandum of association.

140 Notice to Registrar of consolidation of share capital, conversion of shares into stock

(1) If the company has—

(a) consolidated and divided its share capital into shares of larger amount than its existing shares; or

(b) converted any shares into stock; or

(c) reconverted stock into shares; or

(d) subdivided its shares or any of them; or

(e) redeemed any redeemable preference shares; or

(f) cancelled any shares, otherwise than in connection with a reduction of share capital under section 96 ("Authorisation for shares")(3)(a);

it shall, within one month after so doing, give notice thereof to the Registrar specifying, as the case may be, the shares consolidated, divided, converted, subdivided, redeemed or cancelled or the stock reconverted and the Registrar shall register such consolidated, divided, converted, subdivided, redeemed or cancelled shares or the stock reconverted shares.

(2) If default is made in complying with the requirements of subsection (1) the company and every officer of the company who is in default shall be liable to a category 3 civil penalty order.

141 Notice of increase of share capital

(1) Where a company, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered share capital, it shall give to the Registrar notice thereof within one month after the passing of the special resolution authorising such increase and the Registrar shall register the increase.

(2) If default is made in complying with the requirements of subsection (1) the company and every officer of the company who is in default shall be liable to a category 3 civil penalty order.

142 Payment of interest out of capital

Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of works or buildings or the provision of any plant which cannot be made profitable for a lengthy period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and may charge the sum to capital as part of the cost of construction of the works or buildings or the provision of plant, as the case may be, subject to the following conditions—

(a) no such payment shall be made unless it is authorised by the articles or by special resolution; and

(b) whether authorised by the articles or by special resolution, no such payment shall be made without the prior approval of the Minister; and

(c) before approving any such payment the Minister may at the expense of the company appoint a person to inquire and report to him or her as to the circumstances of the case and before making such appointment may require the company to give satisfactory security for the payment of the costs of the inquiry; and

(d) the payment shall be made only for such period as may be determined by the Minister and such period shall in no case extend beyond the close of the half year next after the half year during which the works or buildings have been completed or the plant provided, as the case may be; and

(e) the rate of interest shall in no case exceed *6 per centum per annum* or such other rate as may for the time being be prescribed; and

(f) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid.

143 Variation of rights attaching to shares

(1) If, in the case of a company the shares of which are divided into different classes of shares, provision is made by the memorandum or articles for authorising the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the provisions of sections 232 ("Dissenting shareholders appraisal rights") shall apply to any holder of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, with necessary changes.

(2) The expression "variation" in this section includes abrogation and the expression "varied" shall be construed accordingly.

Sub-Part G: Reduction of share capital

144 Special resolution for reduction of share capital

(1) Subject to confirmation by the court, a company may, if so authorised by its articles, by special resolution reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, may—

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or

(b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or

(c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company;

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

(2) A special resolution under subsection (1) is in this Sub-Part referred to as "a resolution for reducing share capital".

145 Application to court to confirm order, objections by creditors

(1) Where a company has passed a resolution for reducing share capital it may apply to the court for an order confirming the reduction.

(2) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any member of any paid-up share capital, and in any other case if the court so directs, the following provisions shall have effect, subject nevertheless to subsection (3)—

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

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

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

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

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

(3) Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any member of any paid-up share capital, the court may, if having regard to any special circumstances of the case it thinks proper so to do, direct that subsection (2) shall not apply as regards any class or any classes of creditors.

146 Order confirming reduction

The court, if satisfied, with respect to every creditor of the company who under section 145 ("Application to court to confirm order, objections by creditors") is entitled to object to the reduction, that either his or her consent to the reduction has been obtained or his or her debt or claim has been discharged or has determined or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

147 Registration of order and minute of reduction

(1) The Registrar, on production to him or her of an order of the court confirming the reduction of the share capital of a company, and the delivery to him or her of a copy of the order and of a minute approved by the court, showing with respect to the share capital of the company, as amended by the order, the amount of the share capital, the number of shares into which it is to be divided and the amount of each share and the amount, if any, at the date of the registration deemed to be paid up on each share, shall register the order and minute.

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

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

(4) The Registrar shall certify the registration of the order and minute, and his or her certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with and that the share capital of the company is such as is stated in the minute.

(5) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum and shall be valid and amendable as if it had been originally contained therein.

(6) The substitution of any such minute as aforesaid for part of the memorandum of the company shall be deemed to be an amendment of the memorandum within the meaning of section 23 (" Copies of constitutive documents to embody alterations").

148 Liability of members in respect of reduced shares

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

Provided that, if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, through no default on his or her part, ignorant of the proceedings for reduction and is in consequence not entered on the list of creditors and if at any time within twelve months after the reduction the company is unable within the meaning of section 3 of the Insolvency Act [*Chapter 6:07*] to pay the amount of his or her debt or claim then—

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

(b) if the company is wound up, the court, on the application of any such creditor and proof of his or her ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

(2) Nothing in subsection (1) shall affect the rights of the contributories among themselves.

149 Penalty for concealing name of creditor

If any officer of the company—

(a) wilfully conceals the name of any creditor entitled to object to the reduction; or

(b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or

(c) aids, abets or is privy to any such concealment or misrepresentation as aforesaid;

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.

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

150 Numbering of shares

(1) Each share in a company shall be distinguished by its appropriate number:

Provided that if at any time all the issued shares in a company, or all the issued shares therein of a particular class, are fully paid up and rank on an equal footing for all purposes, none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks on an equal footing for all purposes with all shares of the same class for the time being issued and fully paid up.

(2) Where in terms of the proviso to subsection (1) shares are not distinguished by appropriate numbers, the certificates of such shares shall be so distinguished, and upon the registration of transfer of any such shares the certificate relating thereto shall, in addition to the distinguishing number, bear on its face such an endorsement, in the form of a reference number or otherwise, as will enable the immediately preceding holder of the shares to be identified.

151 Transfer of title to shares and debentures

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

Provided that nothing in this section shall prejudice any power of the company to register as member or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

(2) On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for entry were made by the transferee and subject also to the law relating to stamp duty.

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

(4) If default is made in complying with the requirements of subsection (3) the company and every officer of the company who is in default shall be liable to a category 3 civil penalty.

(5) A transfer of the share or other interest of a deceased member of a company made by his or her executor shall, although the executor is not himself or herself a member, be as valid as if he or she had been a member at the date of the execution of the instrument of transfer subject always to the law relating to stamp duty.

152 Prohibition of bearer shares

(1) No company shall issue any share (commonly known as a "bearer share") in respect of which it is purported that the holder at any time of the share certificate thereof has title to it without the need to register him or her as the owner of the share in the share register, and any such share purportedly so issued is void.

(2) Where a share in a company or is held or purported to be held by a person as a bearer share in contravention of subsection (1), then—

(a) no person purporting to hold a bearer share shall, either personally or by proxy, cast a vote attached to the share nor shall any person receive a dividend payable on the share; and

(b) the Registrar may issue a category 1 civil penalty order upon the company purporting to issue any bearer share.

(3) The validity of any resolution adopted by a company shall not be affected by a vote cast in contravention of subsection (2)(a), if the resolution was adopted by the requisite majority of votes which were validly cast.

(4) A dividend referred to in subsection (2)(a) shall accrue to the company concerned.

153 Evidence of title to shares

(1) Subject to subsection (3) and (5), every company shall, within two months after the allotment of any of its shares, debentures or debenture stock, and within two months after the date on which a transfer of any such shares, debentures or debenture stock is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

For the purpose of this subsection, the expression "transfer" means a transfer duly stamped and otherwise valid and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.

(2) A certificate evidencing any certificated share, debenture or debenture stock of a company must state on its face —

(a) the name of the issuing company; and

(b) the name of the person to whom the share, debenture or debenture stock was issued; and

(c) the number and class of share, debenture or debenture stock and the designation of the series, if any, evidenced by that certificate; and

(d) any restriction on the transfer of the share, debenture or debenture stock evidenced by that certificate.

(3) A certificate, whether or not under the seal of the company, shall be signed by one of its directors and counter-signed by another director or the secretary, specifying any shares or stock held by any member in that company shall be *prima facie* evidence of the title of the member to such shares or stock.

(4) The signature of a director and secretary for the purpose of subsection (3) may be affixed to the certificate by autographic, electronic or manual means.

(5) If a company is a registered user of the electronic Registry, it may issue uncertificated shares, subject to the conditions of the issuance of such shares in section 289 ("Use of electronic registry otherwise than for business entity registration"), in which event the provisions of this section shall not apply to such company with respect to the transfer of shares.

(6) Any holder of any uncertificated shares may demand proof of title to his or her shares in the form of a material certificate endorsed in accordance with subsection (5), and the company concerned shall issue such certificates to the shareholder no later than fourteen days after such request is received in writing:

Provided that if there is any restriction on the transfer of such shares by virtue of the shares in question being warehoused in pursuance of an employee share ownership trust or scheme or for any other reason, such certificate shall be clearly endorsed to that effect.

(7) If default is made in complying with the requirements of subsection (1), (2), (3) or (6) the company and every officer of the company who is in default shall be liable to a category 3 civil penalty order.

154 Creation and registration of debentures; contracts to subscribe for debentures

(1) A company, if so authorised by its memorandum or articles, may, subject to this section, create and issue debentures, and as security for the fulfilment of the obligation undertaken by the company thereunder may in the manner hereinafter described bind so much of the movable or immovable property of the company as is described therein.

(2) If such debentures purport to bind only movable property, or assets that may be detached from immovable property, they may be registered as a security interest in terms of the Movable Property Security Interest Act [*Chapter 14:35*].

(3) If such debentures purport to bind immovable property, registration in respect thereof may be effected in the Deeds Registry by means of a mortgage bond or bonds executed on behalf of the company.

(4) A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

155 Register of mortgages and debentures and register of debenture holders

(1) Every company shall keep—

(a) a register of mortgages, registered security interests referred to in section 154 ("Creation and registration of debentures; contracts to subscribe for debentures")(2) and debentures and enter therein within fourteen days of the date of any hypothecation full particulars thereof, giving in each case the date of the hypothecation, a short description of the property mortgaged, the amount of the debt secured, the rate of interest payable thereon and the names and addresses of the mortgagees and debenture holders;

(b) a register of debenture holders showing the number of debentures issued, and outstanding, specifying whether issued to bearer or not, and, in the case of those not issued to bearer, specifying further the names and addresses of the holders thereof.

(2) The registers referred to in subsection (1) shall be kept at the registered office of the company:

Provided that if—

(a) the work of making them up is done at another office of the company, they may be kept at that other office;

(b) the company arranges with some other person for the making up of the registers to be undertaken on behalf of the company by that other person, they may be kept at the office of that other person at which the work is done;

so, however, that they shall not be kept at a place outside Zimbabwe.

(3) If a company keeps the registers referred to in subsection (1) at an office other than its registered office, the company shall give notice in writing to the Registrar of the office at which the registers are kept and of any change of that office and any such notice shall be given within one month of the date on which the registers are first kept at the office or of the change of that office, as the case may be.

(4) If default is made in complying with subsection (1), (2) or (3) the company and every officer of the company who is in default shall liable to a category 4 civil penalty.

(5) The register of mortgages, registered security interests and debentures shall be open at all reasonable times to the inspection of the Registrar or any person authorised by him or her or any creditor or member of the company without fee, and any other person on payment of such fee, not exceeding twenty cents per hour or part of an hour, for such inspection as the company may fix.

(6) The register of debenture holders shall, except when closed during such period or periods, not exceeding in the whole sixty days in any year, as may be specified in the articles, be open to the inspection of any creditor or member of the company but subject to such reasonable restrictions as the company may in a general meeting impose so that at least two hours in each business day are appointed for inspection and the company shall furnish to any creditor or member at his or her request extracts from the register on payment of fifteen cents for every one hundred words or fractional part thereof required to be extracted.

(7) A copy of any trust deed for securing any issue of debentures shall be transmitted to any holder of such debentures at his or her request on payment of the sum of seventy-five cents or such less sum as may be fixed by the company.

(8) If any inspection, copy, extract or other facility prescribed by subsection (5), (6) or (7) is refused or not transmitted the Registrar may serve upon the company and every officer of the company who is in default a category 4 civil penalty order in which the remediation clause may, in addition to forbidding future defaults, direct that an immediate inspection be granted of the register concerned or that copies required shall, subject to payment of the prescribed sum, be delivered to the person requiring them.

(9) If a company is a registered user of the electronic registry, it may create and issue any debenture in dematerialised form, subject to the conditions of the issuance and creation of such debentures in section 289 ("Use of electronic registry otherwise than for business entity registration"), in which event the provisions of this section shall not apply to such company with respect to the creation and issuance of debentures.

(10) Any holder of a dematerialised debenture may demand proof that he or she is the holder thereof in the form of a material debenture certificate and the company concerned shall issue such certificate to the debenture holder no later than fourteen days after such request is received in writing.

(11) If default is made in complying with the requirements of subsection (10) the company and every officer of the company who is in default shall be liable to a category 3 civil penalty order.

156 Branch registers of debenture holders

(1) A company issuing debentures may, if so authorised by its articles, cause to be kept in any foreign country a branch register of debenture holders (in this Act called "a branch register of debenture holders").

(2) The company shall give to the Registrar notice of the situation of the office where any branch register of debenture holders is kept and of any change in its situation, and if it is discontinued of its discontinuance, and any such notice shall be given within one month of the opening of the office or of the change or discontinuance, as the case may be.

(3) If default is made in complying with the requirements of subsection (2) the company and every officer of the company who is in default shall be liable to a category 4 civil penalty.

(4) A branch register of debenture holders shall be deemed to be part of the company's register of debenture holders (in this section called "the principal register").

(5) It shall be kept in the same manner in which the principal register is by this Act required to be kept.

(6) The company shall—

(a) transmit to the office at which the principal register is kept a copy of every entry in its branch register of debenture holders as soon as may be after the entry is made; and

(b) cause to be kept at the place where the company's principal register is kept a duplicate of its branch register of debenture holders duly entered up from time to time.

(Every such duplicate shall for all the purposes of this Act be deemed to be part of the principal register).

(7) Subject to the provisions of this section with respect to the duplicate register, the debentures registered in a branch register of debenture holders shall be distinguished from the debentures registered in the principal register, and no transaction with respect to any debentures registered in a branch register of debenture holders shall, during the continuance of that registration, be registered in any other register.

(8) A company may discontinue to keep a branch register of debenture holders, and thereupon all entries in that register shall be transferred to some other branch register of debenture holders or to the principal register.

(9) Subject to this Act and any law relating to stamp duty, any company may, by its articles, make such provisions as it may think fit respecting the keeping of branch registers of debenture holders.

(10) If default is made in complying with subsection (6) the company and every officer of the company who is in default shall be liable to a category 4 civil penalty.

157 Power to re-issue redeemed debentures in certain cases

(1) Where a company has redeemed any debentures previously issued, then—

(a) unless any provision to the contrary, whether expressed or implied, is contained in the articles or in any contract entered into by the company; or

(b) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled and not re-issued;

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

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

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

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

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

PART III

MANAGEMENT AND ADMINISTRATION OF COMPANIES

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

158 Restrictions on commencement of business

(1) Nothing in this section shall apply to a private company or to an existing company or to an association licensed under section 82 ("Power to dispense with "Limited" in certain cases").

(2) If a company has issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers unless—

(a) shares held subject to the payment of the whole amount thereof in cash have been allotted to a total amount of not less than the minimum subscription; and

(b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him of her and for which he or she is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and

(c) there has been delivered to the Registrar for registration an affidavit by the secretary or one of the directors in the prescribed form that the aforesaid conditions have been complied with; and

(d) the Registrar has certified that the company is entitled to commence business.

(3) If a company has not issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers, unless—

(a) there has been delivered to the Registrar for registration a statement in lieu of prospectus; and

(b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him or her and for which he or she is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash; and

(c) there has been delivered to the Registrar for registration an affidavit by the secretary or one of the directors in the prescribed form that paragraph (b) has been complied with; and

(d) the Registrar has certified that the company is entitled to commence business.

(4) The Registrar shall, on the delivery to him or her of the affidavit and, in the case of a company which is required by this section to deliver a statement in lieu of prospectus, of such statement, certify that the company is entitled to commence business and that certificate shall be conclusive evidence that the company is so entitled.

(5) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only and shall not be binding on the company until that date, and on that date it shall become binding.

(6) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(7) If any company commences business or exercises borrowing powers in contravention of this section every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a category 4 civil penalty.

159 Register and index of members and use of register as presumptive proof of membership

(1) Every company shall keep a register of its members and punctually enter therein the following particulars—

(a) the names and addresses of the members, a statement of the shares held by each member, distinguishing each share by its number so long as the share has a number, and of the amount paid or agreed to be considered as paid on the shares of each member;

(b) the date at which each person was entered in the register as a member;

(c) the date at which any person ceased to be a member:

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

(2) The register of members shall be kept at the registered office of the company:

Provided that if—

(a) the work of making it up is done at another office of the company, it may be kept at that other office; or

(b) the company arranges with some other person for the making up of the register to be undertaken on behalf of the company by that other person, it may be kept at the office of that other person;

so, however, that it shall not be kept at a place outside Zimbabwe.

(3) Every company shall send notice in writing to the Registrar of the place where its register of members is kept and of any change in that place within one month of the date of its incorporation or change of place:

Provided that a company shall not be required to send any notice in terms of this subsection where the register is kept at the registered office of the company.

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

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

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

(7) If default is made in complying with this section the company and every officer of the company who is in default shall be liable to a category 4 penalty, and for the purposes of this section any person with whom the company makes an arrangement in terms of proviso (b) to subsection (2) shall be deemed to be an officer of the company and liable accordingly.

(8) If a company is a registered user of the electronic Registry, it may keep an electronic register of its members, subject to the conditions of the keeping of such a register in section 289 ("Use of electronic registry otherwise than for business entity registration"), in which event the provisions of this section and of sections 160 ("Inspection of register and index") and 164 ("Power to keep branch register in foreign countries"), shall not apply to such company.

(9) The register of members shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

160 Inspection of register and index

(1) Except where the register of members is closed under this Act, the register and index of the names of the members of a company shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection), be open to the inspection of any member without charge and of any other person on payment of twenty-five cents per hour or part of an hour, or such less sum as the company may fix, for each inspection.

(2) Any member may require a copy of the register, or of any part thereof, on payment of twenty cents or such less sum as the company may fix, for every hundred words or fractional part thereof required to be copied.

The company shall cause any copy so required by any member to be sent to such member within a period of twenty-one days commencing on the day next after the day on which the requirement is received by the company.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper period, the company and every officer of the company who is in default shall, in the case of a contravention of subsection (1), be liable to a category 4 penalty, and in the case of a contravention of subsection (2) be liable to a category 3 penalty, and the remediation clause of the relevant civil penalty order may, in addition to any other appropriate remedial action, compel an immediate inspection of the register and index or direct that the copies required shall, subject to payment of the appropriate sum, be sent to persons requiring them.

161 Power to close register

(1) A company may by resolution of its directors close the register of members at any time for a period not exceeding thirty days, so, however, that the number of days on which the register is closed shall not exceed sixty in any year.

(2) Every person to whom inspection of the register of members is refused on the ground that the register is closed under subsection (1) shall be entitled to require a written certificate from the company stating the period during which the register is so closed.

(3) If default is made in complying with the request for a certificate referred to in subsection (2) the company and every officer of the company who is in default shall be liable to a category 4 civil penalty.

162 Power of court to rectify register

(1) If—

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

(b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member;

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

(2) Where an application is made under this section, the court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.

(3) On an application under this section the court may decide any question relating to the title of any person who is a party to the application to have his or her name entered in or omitted from the register, whether the question arises between members or alleged members or between members or alleged members on the one hand and the company on the other hand, and generally may decide any question necessary or expedient to be decided for rectification of the register.

(4) The court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the Registrar.

163 Trusts in respect of shares

(1) A company may in its discretion enter in its register the fact that any share is held in trust but where it exercises its discretion to register that fact, it must verify the legal status of any trust or of any trustee who is registered as a member.

(2) There shall be no obligation on any company that exercises its discretion to register the fact that any share is held in trust, to see to the due and proper carrying out of any trust, whether express, implied or constructive, in respect of any share.

164 Power to keep branch register in foreign countries

(1) A company may, if so authorised by its articles, cause to be kept in any foreign country a register (in this Act called a "branch register") of members resident in that foreign country.

(2) The company shall give to the Registrar notice of the situation of the office where any branch register is kept and of any change in its situation, and if it is discontinued of the discontinuance, and any such notice shall be given within one month of the opening of the office or of the change or discontinuance, as the case may be.

(3) If default is made in complying with subsection (2) the company and every officer of the company who is in default shall be liable to a category 4 penalty.

(4) A branch register, shall be deemed to be a part of the company's register of members in this section called the principal register.

(5) A branch register shall be kept in the same manner in which the principal register is required by this Act to be kept.

(6) The company shall transmit to its registered office a copy of every entry in its branch register as soon as may be after the entry is made; and shall cause to be kept at its registered office, duly entered up from time to time, a duplicate of its branch register, and the duplicate shall, for all purposes of this Act, be deemed to be part of the principal register.

(7) The company may discontinue any branch register, and thereupon all entries in that register shall be transferred to some other branch register kept by the company, or to the principal register.

(8) Subject to this Act and of any law relating to stamp duty, any company may, by its articles, make such provisions as it may think fit respecting the keeping of branch registers.

(9) If default is made in complying with subsection (6) the company and every officer of the company who is in default shall be liable to a category 4 civil penalty.

Sub-Part B: Annual return and meetings and proceedings

165 Annual return to be made by company

(1) Subject to subsection (2), every company shall make and file with the Registrar an annual return consisting of a summary, in the form contained in the Fourth Schedule (" Form of annual return of company") or as near thereto as circumstances admit, specifying the following particulars—

(a) all such particulars with respect to the persons who at the date of the return are the directors of the company and any person who at that date is secretary of the company as are by this Act required to be contained with respect to directors and the secretary, respectively, in the register of directors and secretaries of a company and the name and address of every person appointed as an auditor of the company;

(b) the situation of the registered office of the company;

(c) the place where the register of members is kept if, under the provisions of this Act, it is not kept at the registered office of the company (this provision does not apply if the company is permitted in terms of section 153(5) to issue uncertificated shares);

(d) the number of the shares of the company analysed by class of share as at the date of the return, and the number of shares issued and fully paid-up as at the date of return;

(2) The annual return of a company must be submitted within twenty-one (21) days of the anniversary date of its incorporation, registration or re-registration (in terms of section 303).

(3) Every private company shall send with the annual return a certificate signed by a director and the secretary stating—

(a) that the company has not since the date of the last return or, in the case of a first return, since the date of the incorporation of the company, issued

any invitation to the public to subscribe for any shares, stock or debentures of the company; and

(b) the number of members of the company at the date of the certificate; and

(c) if the number exceeds fifty, that such excess consists only of persons who, under section 85 ("Definition of private company and consequences of default in complying with conditions for private company"), are to be excluded in reckoning the number of fifty.

(4) Every annual return filed by a company with the Registrar shall be certified under the hands of a director and the secretary of the company in the manner prescribed in the Fourth Schedule and a duplicate copy so signed shall be kept at the registered office of the company and shall be open for inspection by any person whenever the register of members is open for inspection by such person.

(5) In the case of a company keeping a branch register, where an annual return is made between the date when any entries are made in the branch register and the date when copies of those entries are received at the registered office of the company, the particulars contained in those entries so far as relevant to an annual return shall be included in the next or a subsequent annual return as may be appropriate, having regard to the particulars included in that return with respect to the company's register of members.

(6) The Registrar may from time to time require a company to transmit to him or her particulars of the transfer of any fully paid up share or shares and a list of the persons for the time being members of the company and of all persons who have ceased to be members since the date of the last return or, if no return has been made, since the date of the incorporation of the company.

(7) If the company makes default in complying with any of the requirements of this section the company and every officer of the company who is in default shall be liable to a category 3 civil penalty.

166 Statutory meeting and statutory report

(1) Save in the case of a private company, every company shall, within a period of not less than one month nor more than three months from the date at which it is entitled to commence business, hold a general meeting of its members which shall be called "the statutory meeting".

(2) The directors shall, at least fourteen days before the day on which the meeting is held, forward a certified report, in this Act referred to as "the statutory report", to every member of the company:

Provided that if the statutory report is forwarded later than is required by this subsection it shall, notwithstanding that fact, be deemed to have been duly forwarded if it is so agreed by all the members entitled to attend and vote at the meeting.

(3) The statutory report shall be certified by not less than two directors of the company and shall state—

(a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up or paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted; and

(b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid; and

(c) an abstract of the receipts of the company and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting

under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company; and

(d) the names, addresses and descriptions of the directors, auditors, if any, managers, if any, and secretary of the company; and

(e) if the modification or proposed modification of any contract is to be submitted to the meeting for its information or approval, full particulars thereof.

(4) The statutory report shall, so far as it relates to the shares allotted by the company and to the cash received in respect of such shares and to the receipts and payments of the company, be certified as correct by the auditors, if any, of the company.

(5) The directors shall cause a copy of the statutory report, certified as required by this section, to be filed with the Registrar within one month of the date on which it is so certified.

(6) The directors shall cause a list showing the names, descriptions and addresses of the members of the company and the number of shares held by them, respectively, to be produced at the commencement of the meeting and to remain open and accessible to any member of the company during the continuance of the meeting.

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(8) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, whether before, at or subsequently to the former meeting, may be passed and the adjourned meeting shall have the same power as an original meeting.

(9) If default by any director is made in complying with—

(a) subsection (1), (2) (unless this default is condoned in terms of the proviso thereto) or (5), he or she shall be liable to a category 3 civil penalty;

(b) subsection (6), he or she shall be liable to a category 4 civil penalty;

(c) subsection (7), he or she shall be liable to a category 1 civil penalty.

167 Annual general meeting

(1) Subject to this section, every company shall, within the periods specified in subsection (2), hold general meetings to be known and described in the notices calling such meetings as annual general meetings of that company.

(2) Annual general meeting of a company must be held once in every period of twelve months.

(3) The annual general meeting of a company shall deal with and dispose of all matters required in terms of this Act to be dealt with and disposed of at an annual general meeting and may deal with and dispose of such further matters as are provided for in the articles of the company and, subject to this Act, any matters capable of being dealt with by any general meeting of the company.

(4) At an annual general meeting, only matters within the scope of the notice and agenda previously sent may be voted on except in the case of essential and urgent matters which arose after the notice was given and could not have been included in the

notice, but this restriction shall not prevent discussion of other matters and shareholders shall be free to raise any other matters.

(5) The agenda for an annual general meeting shall in any event include the following items—

(a) electing the members of the board of directors who are to be elected at that time;

(b) setting or approving the compensation of directors including emoluments, salaries and pensions referred to in sections 207 ("Shareholder approval of directors' emoluments") and 215 ("Particulars in accounts of directors' salaries and pensions");

(c) reviewing the report of the board with respect to its responsibilities and activities referred to in sections 183 ("Statement of financial position and statement of comprehensive income and financial year of holding company and subsidiary") and 218 ("Board's role and responsibilities")(5);

(d) in a public company, the report of the audit committee pursuant to section 219 ("Audit committee of public company");

(e) in a public company, reviewing the board's "comply or explain" report on the company's corporate governance guidelines and the current National Code on Corporate Governance referred to in section 220 ("Corporate governance guidelines for public companies");

(f) reviewing the external auditor's report (if an audit report is required under this Act or is otherwise provided) and this report shall include but not be limited to—

(i) a statement of whether the auditor has obtained the information it deems necessary for performing its duties satisfactorily; and

(ii) whether the financial statements are in accordance with the financial reporting standards prescribed by the Public Auditors and Accounting Board under the Public Accountants and Auditors Act [*Chapter 27:12*], and any other appropriate accounting rules and standards; and

(iii) whether the board's report is consistent with those standards; and

(iv) whether there have been violations of the company's memorandum of association or of this Act during the financial year which affect the company's activities or financial position;

(g) appointing the company's external auditor and setting its compensation for the following financial year after review of the report and recommendation of the board's audit committee with respect thereto (except in cases where an external audit is not required); and

(h) reviewing the board's recommendations and actions authorising any distributions or relating to issuance of bonds or other borrowing by the company.

(6) A member or members of a company shall have the right to place issues on the agenda of that meeting including the right to propose candidates for election at that meeting to the company's board of directors, as provided in section 174 (" Circulation of members resolutions").

(7) A company which has failed to hold an annual general meeting within the period specified in terms of subsection (2) shall be liable to a category 4 civil penalty.

168 Convening of extraordinary general meeting on requisition

(1) On the requisition of members of a company holding at the date of the deposit of the requisition not less than five *per centum* of such of the paid-up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company the directors of the company, notwithstanding anything in its articles, shall, within twenty-one days of the deposit of the requisition, issue a notice to members convening an extraordinary general meeting of the company for a date not less than fourteen nor more than twenty-eight days from the date of the notice:

Provided that if a special resolution is to be submitted the period of the notice shall not be less than twenty-one days.

(2) The requisition shall state the objects of the meeting and shall be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

(3) If the directors do not within twenty-one days from the date of the deposit of the requisition issue a notice as required by subsection (1) the requisitionists, or any of them numbering more than fifty or representing more than fifty *per centum* of the total voting rights of all of them, may themselves convene a meeting, stating the objects thereof, on twenty-one days' notice, but no meeting so convened shall be held after the expiration of three months from the said date.

(4) Any meeting convened under this section by the requisitionists—

(a) shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors;

(b) at an extraordinary meeting, only business within the scope of the notice and agenda previously sent may be voted on.

(5) Any reasonable expense incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were knowingly party to the default.

(6) Any officer of the company who is knowingly a party to a default in convening a meeting as required by subsection (1) shall be liable to a category 3 civil penalty.

169 Length of notice for calling meetings

(1) A company's annual general meeting may be called by twenty-one days' notice in writing, and a meeting of a company, other than an annual general meeting or a meeting for the passing of a special resolution, may be called by fourteen days' notice in writing or, in the case of a private company, by seven days' notice in writing; and any provision of a company's articles shall be void so far as it provides for the calling of a meeting of the company, other than an adjourned meeting, by shorter notice than that specified in this subsection.

(2) A meeting of a company shall, notwithstanding that it is called by shorter notice than that specified in subsection (1) or in the company's articles, as the case may be, be deemed to have been duly called if it is so agreed—

(a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat;

(b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority holding

not less than ninety-five *per centum* in nominal value of the shares giving a right to attend and vote at the meeting.

(3) If it is mutually agreed in writing between the officer of the company responsible for calling meetings of the membership of the company and any of the members concerned to serve notices of any such meeting by electronic mail, then, if such meeting is called by such means and in accordance with the conditions agreed between the officer and the members, such notice shall be valid for the purpose of this section.

170 General provisions as to meetings and votes and power of court to order meeting

(1) A majority of the total number of votes entitled to vote on a matter shall constitute a quorum for decision of the meeting on that matter unless the company's memorandum of association provides for a greater or lesser quorum but not less than one-third of the votes of the shares entitled to so vote.

(2) A meeting may not act or make decisions for the company unless a quorum is present.

(3) If a quorum specified in subsection (2) is not present the meeting shall be adjourned.

(4) If a meeting is adjourned because of a lack of quorum it may be reconvened with the same proposed agenda for a date not later than twenty days from the date of adjournment:

Provided that the quorum at such a reconvened meeting shall be twenty-five *per centum* of the votes of shares entitled to vote on a matter which shall be decided, unless the memorandum requires a greater quorum.

(5) If a quorum is present, the affirmative vote of a majority of the shares present and entitled to vote on the matter shall be the decision of the meeting, unless a greater number of votes are required by this Act or the company's memorandum.

(6) The vote of a special resolution is required under this Act—

(a) whenever so stated in a memorandum; or

(b) for adoption of an amendment to the memorandum; or

(c) for adoption of a plan and contract for merger; or

(d) for approval of a major transaction; or

(e) for a decision to dissolve the company.

(7) The following provisions shall have effect in so far as the articles of a company do not make other provision in that behalf—

(a) notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A of the Sixth Schedule ("Model, articles and by-laws");

(b) two or more members holding not less than one-tenth of the issued share capital may call a meeting, subject to section 175 ("Special resolutions");

(c) any member elected by the members present at a meeting may be chairperson thereof;

(d) every member shall have one vote in respect of each share or each twenty dollars of stock held by him or her.

(8) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in manner prescribed by the articles or this Act, or if for any other reason

the court sees fit, the court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the court thinks fit, and where any such order is made may give such ancillary or consequential directions as it thinks expedient, including a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(9) Any meeting called, held and conducted in accordance with an order under subsection (8) shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.

(10) If so provided in the articles of a company or by a resolution thereof—

(a) a private company may hold a virtual as opposed to a physical meeting, that is to say a meeting at which the members can hear and see each other by electronic means although they are not physically present at the meeting;

(b) a public company may permit the participation of members who are not physically present at the meeting, but can be heard and seen by the other members by electronic means.

171 Proxies and voting on poll

(1) Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint one or more persons, whether members or not, to act in the alternative as his or her proxy to attend and vote instead of him or her, and a proxy appointed to attend and vote instead of a member shall also have the same right as the member to speak at the meeting.

(2) The instrument appointing a proxy to vote at a meeting of a company shall be deemed also to confer authority to demand or join in demanding a poll.

(3) In every notice calling a meeting of a company and on the face of every proxy form issued at the company's expense shall appear, with reasonable prominence, a statement that a member entitled to attend and vote is entitled to appoint one or more proxies to act in the alternative, to attend and vote and speak instead of him or her, and that a proxy need not also be a member; and if default is made in complying with this subsection as respects any meeting every officer of the company who authorizes, knowingly permits or is party to the default shall be liable to a category 1 civil penalty.

(4) Any provision contained in a company's articles shall be void in so far as it would have the effect of requiring the instrument appointing a proxy, or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy, to be received by the company or any other person more than forty-eight hours before a meeting in order that the appointment may be effective thereat.

(5) If, for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to some only of the members entitled to be sent a notice of the meeting and to vote thereat by proxy, every officer of the company who authorizes or knowingly permits or is a party to the issue as aforesaid shall be liable to a category 1 civil penalty:

Provided that an officer shall not be liable under this subsection by reason only of the issue to a member at his or her written request of a form of appointment naming the proxy or of a list of persons willing to act as proxy if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(6) On a poll taken at a meeting of a company, a member entitled to more than one vote need not, if he or she votes, use all his or her votes or cast all the votes he or she uses in the same way.

(7) This section shall apply to meetings of any class of members of a company as it applies to general meetings of the company.

(8) A director or officer of a company may not act as a proxy for a shareholder, and shall be liable to a category 1 civil penalty if he she purports to do so.

(9) No proxy appointment shall be valid for longer than six months unless otherwise provided in the proxy appointment or the Articles of Association.

(10) Any vote cast by a person purporting to vote as a proxy in violation of subsection (8) or (9) shall be invalid.

172 Procedure for compulsory adjournment

(1) If, at any meeting of a company, any member of the company who is present and entitled to vote at that meeting demands an adjournment of the meeting upon any grounds stated by him or her, the chairperson shall put the demand to the vote of the meeting, and if a majority of the members present personally or by proxy and entitled to vote at the meeting or if such members representing either personally or by proxy more than half of the share capital of the company represented at the meeting vote in favour of an adjournment, the chairperson shall adjourn the meeting to a day seven days after the date of the meeting or, if that day is a public holiday, to the next succeeding day, other than a public holiday.

(2) When a meeting has been adjourned as aforesaid the secretary of the company shall, upon a date not later than four days after the adjournment, publish in a newspaper circulating in the district where the registered office of the company is situated, a notice stating—

(a) the time and place to which the meeting was adjourned; and

(b) the matter before the meeting at the time when it was adjourned; and

(c) the ground for adjournment.

This subsection shall not apply to a private company.

(3) Any person acting as chairperson of a meeting of a company who fails to comply with the requirements of subsection (1) and any secretary of a company other than a private company who fails to comply with the requirements shall be liable to a category 1 civil penalty.

173 Representation of body corporates at meeting of company and of creditors

(1) A body corporate whether a company within the meaning of this Act or not, may—

(a) if it is a member of another body corporate, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company;

(b) if it is a creditor, including a holder of debentures, of another body corporate, being a company within the meaning of this Act or any other law, authorise, by resolution of its directors or other governing body, such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorised as aforesaid shall be entitled to exercise the same powers on behalf of the body corporate which he or she represents as that body corporate could exercise if it were an individual member, creditor or holder of debentures of that other company.

174 Circulation of members' resolutions

(1) Subject to the following provisions, it shall be the duty of a company, on the requisition in writing of such number of members as is hereinafter specified and, unless the company otherwise resolves, at the expense of the requisitionists—

(a) to give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution which may properly be moved and is intended to be moved at that meeting;

(b) to circulate to members entitled to have notice of any general meeting sent to them any statement of not more than one thousand words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

(2) The number of members necessary for a requisition under subsection (1) shall be—

(a) any number of members representing not less than five *per centum* of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or

(b) not less than one hundred members holding shares in the company on which there has been paid up an average sum, per member, of not less than two hundred United States dollars.

(3) Notice of any such resolution shall be given, and any such statement shall be circulated, to members of the company entitled to have notice of the meeting sent to them by serving a copy of the resolution or statement on each such member in any manner permitted for service of notice of the meeting and notice of any such resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving him or her notice of meetings of the company:

Provided that the copy shall be served, or notice of the effect of the resolution shall be given, as the case may be, in the same manner and, so far as practicable, at the same time as notice of the meeting and, where it is not practicable for it to be served or given at that time, it shall be served or given as soon as practicable thereafter.

(4) A company shall not be bound under this section to give notice of any resolution or to circulate any statement unless—

(a) a copy of the requisition signed by the requisitionists, or two or more copies which between them contain the signatures of all the requisitionists, is deposited at the registered office of the company—

(i) in the case of a requisition requiring notice of a resolution, not less than six weeks before the meeting;

(ii) in the case of any other requisition, not less than twenty-one days before the meeting;

and

(b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect thereto:

Provided that if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting

is called for a date six weeks or less after the copy has been deposited, the copy though not deposited within the time required by this subsection shall be deemed to have been properly deposited for the purposes thereof.

(5) The company shall also not be bound under this section to circulate any resolution or statement if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on an application under this section to be paid in whole or in part by the requisitionists, notwithstanding that they are not parties to the application.

(6) Notwithstanding anything in the company's articles, the business which may be dealt with at an annual general meeting shall include any resolution of which notice is given in accordance with this section, and for the purposes of this subsection notice shall be deemed to have been so given notwithstanding the accidental omission, in giving it, of one or more members.

(7) In the event of any default in complying with this section every officer of the company who authorizes, or knowingly permits or is party to, the default shall be liable to a category 1 civil penalty.

175 Special resolutions

(1) A resolution shall be a special resolution when it has been passed by a majority of not less than seventy-five *per centum* of such members entitled to vote as are present in person or by proxy at a general meeting of which not less than twenty-one days' notice has been given, specifying the intention to propose the resolution as a special resolution and the terms of the resolution and at which members holding in the aggregate not less than twenty-five *per centum* of the total votes of the company are present in person or by proxy.

(2) If the members present at the meeting hold less than twenty-five *per centum* of the total votes of all members entitled to vote, the meeting shall stand adjourned to the same day in the following week or, if that is a public holiday, to the next succeeding day other than a public holiday. At the adjourned meeting the members present in person or by proxy may deal with the business for which the original meeting was convened and a resolution passed by not less than seventy-five *per centum* of such members shall be deemed to be a special resolution, notwithstanding that less than twenty-five *per centum* of the total votes of the company are represented at such adjourned meeting.

(3) If it is so agreed by a majority in number of the members having the right to attend and vote at any such meeting, being a majority together holding not less than ninety-five *per centum* in nominal value of the shares giving that right, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given, and subsection (7) shall not apply for the purposes of this subsection.

(4) All other resolutions at a general meeting shall be called ordinary resolutions.

(5) At any meeting at which a special resolution is submitted to be passed, a declaration of the chairperson that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(6) When a poll is demanded regard shall be had in computing the majority on the poll to the number of votes cast for and against the resolution.

(7) For the purposes of this section, notice of a meeting shall be deemed to be duly given and the meeting shall be deemed to be duly held when the notice is given and meeting held in the manner provided by the articles but subject always to the provisions of this Act.

176 Written resolutions

(1) In the case of a private company, a resolution in writing signed by all the members for the time being entitled to attend and vote on such resolution at a general meeting, or, being bodies corporate, by their duly authorised representatives, shall be as valid and effective for all purposes as if the same had been passed at a general meeting of the company duly convened and held, and if described as a special resolution shall be deemed to be a special resolution. Such resolution shall be deemed to have been passed on the date on which the same was signed by the last member to sign, and where the resolution states a date as being the date of his or her signature thereof by any member such statement shall be *prima facie* evidence that it was signed by that member on that date.

(2) Subsection (1) shall not apply to a resolution to remove an auditor or to remove a director.

177 Resolutions requiring special notice

(1) Where, in this Act or in the articles of association of a company, special notice is required of a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the company not less than twenty-eight days before the meeting at which it is moved, and the company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice thereof, either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the articles, not less than twenty-one days before the meeting:

Provided that if, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date twenty-eight days or less after the notice has been given, the notice though not given within the time required by this subsection shall be deemed to have been properly given for the purposes thereof.

(2) If the status of any person in relation to a company will be affected by the terms of a resolution of which special notice has been given the company shall send to, or serve upon, such person a copy of such resolution and of the notice of the meeting at which it will be moved at the time when similar notice is given to the members of the company, and such person shall be entitled to speak on the resolution at the meeting before any vote is taken upon it.

(3) If default is made by a company in giving notice to its members or to any person whose status is affected as aforesaid the company and every officer of the company who is in default shall be liable to a category 3 civil penalty.

178 Registration and copies of special resolution

(1) Within one month after the passing of any special resolution a copy of that resolution shall be transmitted to the Registrar who shall, subject to subsection (2), register that resolution and that resolution shall be of no force or effect until it is so registered:

Provided that on the registration of the special resolution that resolution shall be of force or effect from the date it was passed.

(2) The Registrar may, except upon the order of the court, refuse to register any special resolution so transmitted to him or her if such resolution appears to him or her to be contrary to this Act or of the memorandum or articles of the company.

(3) Where articles have been registered, a copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the registration of the resolution.

(4) Where articles have not been registered, a copy of every special resolution shall be transmitted to any member of the company at his or her request on payment of one United States dollar or such less sum as the company may direct.

(5) If default is made—

(a) in transmitting the copy of a special resolution to the Registrar

(b) in complying with subsection (3) or (4);

the company and every officer of the company who is in default shall be liable to a category 4 civil penalty.

179 Resolutions passed at adjourned meetings

If a resolution is passed at an adjourned meeting of—

(a) a company; or

(b) the holders of any class of shares in a company; or

(c) the directors of a company;

the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and shall not be deemed to have been passed on any earlier date.

180 Minutes of meetings of members

(1) A record of each meeting of members shall be prepared as promptly as possible but not later than twenty (20) days after the meeting, and shall be signed by the chairperson and any secretary of the meeting, who shall be responsible for its completeness and accuracy.

(2) The minutes shall include the date, time and place of the meeting, the name of the chairperson and any secretary of the meeting, in the case of a private company, the names of the shareholders present, the agenda, the number of shares and votes represented both in person and by proxy, the ballot or other procedures used for voting, the issues voted on and the number of votes "for," "against" or abstained on each issue, a summary of speeches and discussions, and a list of the decisions actually made at the meeting.

(3) The minutes shall be retained by the company and made available to any shareholder for inspection and copying at his or her expense during normal business hours.

(4) If it comes to the notice of the Registrar that a company has not been keeping minutes in accordance with this section it shall be liable to a category 2 civil penalty.

181 Inspection of minutes

(1) The minutes of proceedings of any general meeting of a company, certified by a director or secretary, shall be kept at the registered office of the company and shall during business hours (subject to such reasonable restrictions as the company may by

its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection), be open to the inspection of any member without charge.

(2) Any member shall be entitled to be furnished, within fourteen days after he or she has made a request in that behalf to the company, with a copy of such minutes as aforesaid certified by the secretary or a director as correct, at a charge not exceeding twenty United States cents for every hundred words.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper time the Registrar may serve upon company and every officer of the company who is in default a category 3 civil penalty order, in which the remediation clause must, in addition to any other appropriate remedial action, require an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall, subject to the payment of the appropriate sum, be sent to the persons requiring them.

Sub-Part C: Accounts and audit

182 Keeping of financial records

(1) Every company shall cause to be kept in the English language or (subject to the proviso to section 9 ("Form of registers and other documents")(3)) any officially recognised language financial records with respect to—

(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(b) all sales and purchases of goods by the company;

(c) the assets and liabilities of the company.

(2) For the purposes of subsection (1), financial records shall not be deemed to be kept with respect to the matters aforesaid if there are not kept such records as are necessary to give a true and fair view of the state of the company's affairs and to explain transactions.

(3) The financial records shall be kept at the registered office of the company or at such other place as the directors think fit and shall at all times be open to inspection by the directors:

Provided that if financial records are kept at a place outside Zimbabwe there shall be sent to, and kept at a place in, Zimbabwe and be at all times open to inspection by the directors such accounts and returns with respect to the business dealt with in the financial records so kept as will disclose with reasonable accuracy the financial position of that business at intervals not exceeding twelve months and will enable to be prepared in accordance with this Act the company's financial statements, and any document annexed to any of those documents giving information which is required by this Act and is thereby allowed to be so given.

(4) The financial records kept in terms of this section may be destroyed after eight years from the completion of the transactions or operations to which they relate.

(5) If any director of a company fails to take all reasonable steps to secure compliance by the company with the requirements of this section or has been the cause of any default by the company thereunder the Registrar may (unless he or she is satisfied that the director's conduct was fraudulent, reckless or wilful, in which event section 69 (" Fraudulent, reckless or wilful failure of financial accounting; falsification of records")(1)(a) shall apply) serve upon him or her a category 2 civil penalty order in which the remediation clause may, in addition to any other appropriate remedial action, require that proof be given to the Registrar within a specified period that—

(a) the director concerned has commenced or completed an appropriate course of instruction to enable him or her to comply with the requirements of this section; or

(b) the company has employed a competent and reliable person with the duty of seeing that the requirements of this section are complied with.

(6) It shall be no defence to a civil penalty order or proposed civil penalty under subsection (5) for a director to prove that he or she had reasonable grounds to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that the requirements of this section were complied with and was in a position to discharge that duty.

(7) Subsection (3) shall not exempt a person from compliance with the Customs and Excise Act [*Chapter 23:02*] or any other law.

(8) A person who retains, in terms of section 81(2) of the Income Tax Act [*Chapter 23:06*], a photographic reproduction of any books of account shall be deemed for the purposes of this section to have kept such financial records.

183 Statement of financial position and statement of comprehensive income and financial year of holding company and subsidiary

(1) The directors of a company shall cause to be made out in respect of every financial year of the company, and to be laid before the company at each annual general meeting required to be held in terms of section 167 ("Annual general meeting"), a statement of financial position and a statement of comprehensive income as at the end of the financial year, which shall comply with section 184 ("General provisions as to contents and form of financial statements") .

(2) A holding company's directors shall ensure that, except where in their opinion there are good reasons against it, the financial year of each of its subsidiaries shall coincide with the company's own financial year.

(3) In addition to the requirements of subsection (1), directors of a public company shall cause to be presented at each annual general shareholders' meeting the report of the board's audit committee referred to in section 220 ("Corporate governance guidelines for public companies"), giving a descriptive review of the nature of the business of the company and any subsidiaries and any changes therein, and the total amount of remuneration paid to and the value of any benefits received by each director or former director during the financial year last ended.

(4) If any director of a company fails to take all reasonable steps to comply with the requirements of this section the Registrar may (unless he or she is satisfied that the director's conduct was fraudulent, reckless or wilful, in which event section 69 ("Fraudulent, reckless or wilful failure of financial accounting; falsification of records") (1)(a) shall apply), subject to subsection (5), serve upon him or her a category 3 civil penalty order.

(5) It shall be a partial defence to a civil penalty order or proposed civil penalty under subsection (4) for a director to prove (the burden whereof rests on him or her) that he or she had reasonable grounds to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that the requirements of this section were complied with and was in a position to discharge that duty, in which case the Registrar may waive those parts of the penalty clause of the order referred to in section 294 ("Power of Registrar to issue civil penalty orders and categories thereof") (4)(a) and (b)(i).

184 General provisions as to contents and form of financial statements

(1) Every statement of financial position of a company shall give a true and fair view of the state of affairs of the company as at the end of its financial year, and every statement of comprehensive income of a company, shall give a true and fair view of the profits and losses (or income and expenditure, as the case may be) and other items of comprehensive income of the company for the financial year.

(2) Subject to subsection (1), a company's statement of financial position and statement of comprehensive income and income and expenditure account shall comply with any requirements that may be prescribed in regard to their form and content and any additional information to be provided by way of notes.

(3) The requirements of subsection (2) shall be without prejudice either to the general requirements of subsection (1) or to any other requirements of this Act.

(4) The Registrar may, on the application or with the consent of a company's directors, modify in relation to that company any of the requirements of this Act as to the matters to be stated in a company's statement of financial position or statement of comprehensive income, except the requirements of subsection (1), for the purpose of adapting them to the circumstances of the company.

(5) Subsections (1) and (2) shall not apply to a company's statement of comprehensive income if—

(a) the company has subsidiaries; and

(b) the statement of comprehensive income is framed as a consolidated statement of comprehensive income dealing with all or any of the company's subsidiaries as well as the company and—

(i) complies with the requirements of this Act relating to consolidated statements of comprehensive income; and

(ii) shows how much of the consolidated comprehensive income for the financial year is dealt with in the accounts of the company.

(6) If a director of a company fails to take all reasonable steps to secure compliance by the company as respects any financial statements required to be laid before the company in general meeting with the provisions of this section and with the other requirements of this Act as to the matters to be stated in financial statements, the Registrar may (unless he or she is satisfied that the director's conduct was fraudulent, reckless or wilful, in which event section 69 ("Fraudulent, reckless or wilful failure of financial accounting; falsification of records")(1)(a) shall apply), subject to subsection (7), serve upon him or her a category 3 civil penalty order

(7) It shall be a partial defence to a civil penalty order or proposed civil penalty under subsection (6) for a director to prove (the burden whereof rests on him or her) that he or she had reasonable grounds to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that the requirements of this section were complied with and was in a position to discharge that duty, in which case the Registrar may waive those parts of the penalty clause of the order referred to in section 294 ("Power of Registrar to issue civil penalty orders and categories thereof") (4)(a) and (b)(i).

(8) For the purposes of this Act, except where the context otherwise requires, any reference to a statement of financial position or statement of comprehensive income shall include any note thereon or document annexed thereto giving information which is required by this Act and is thereby allowed to be so given.

(9) Financial statements made in terms of this section shall comply with international financial accounting standards adopted by the Public Accountants Auditors Board constituted under the Public Accountants and Auditors Act [*Chapter 27:12*] and prescribed as applicable for the purposes of this section.

185 Meaning of holding company, subsidiary and wholly owned subsidiary

(1) A company shall, subject to subsection (3), be deemed to be a subsidiary of another if —

(a) that other either—

(i) is a member of it and controls the composition of its board of directors; or

(ii) holds more than half in nominal value of its equity share capital;

or

(b) the first-mentioned company is a subsidiary of any company which is that other's subsidiary:

Provided that the first-mentioned company shall be deemed to be a subsidiary of that other if subsidiaries of that other between them hold more than fifty *per centum* in nominal value of the equity share capital of the first-mentioned company or if that other and one or more of its subsidiaries between them hold more than fifty *per centum* of such capital.

(2) For the purposes of subsection (1), the composition of a company's board of directors shall be deemed to be controlled by another company if that other company by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove the holders of all or a majority of the directorships; but for the purposes of this provision that other company shall be deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied, that is to say—

(a) that a person cannot be appointed thereto without the exercise in his or her favour by that other company of such power as aforesaid; or

(b) that a person's appointment thereto follows necessarily from his or her appointment as director of that other company.

(3) In determining whether one company is a subsidiary of another—

(a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it;

(b) subject to paragraphs (c) and (d), any shares held or power exercisable—

(i) by any person as a nominee for that other except where that other is concerned only in a fiduciary capacity; or

(ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity;

shall be treated as held or exercisable by that other;

(c) any shares held or power exercisable by any person by virtue of any debenture of the first-mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded;

(d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary, not being held or exercisable as mentioned in paragraph (c), shall be treated as not held or exercisable by that other if the ordinary

business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(4) A company shall be deemed to be the wholly-owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees.

(5) A company shall be deemed to be another's holding company if that other is its subsidiary.

(6) In this section, the expression "company" includes any body corporate, including a body corporate formed under the law of a foreign country, and the expression "equity share capital" means, in relation to a company, its issued share capital excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.

186 Obligation to lay group accounts before holding company

(1) Where at the end of its financial year a company has subsidiaries, accounts or statements, in this Act referred to as "group accounts", dealing as hereinafter mentioned with the state of affairs and comprehensive income of the company and the subsidiaries shall, subject to subsection (2), be laid before the company in general meeting when the company's own financial statements are so laid.

(2) Notwithstanding anything in subsection (1)—

(a) group accounts shall not be required where the company is, at the end of its financial year, the wholly owned subsidiary of another company incorporated in Zimbabwe;

(b) group accounts need not deal with a subsidiary of the company if the company's directors are of the opinion that—

(i) it is impracticable, or would be of no real value to members of the company, in view of the insignificant amounts involved, or would entail expense or delay out of proportion to the value to members of the company; or

(ii) the result would be misleading or harmful to the business of the company or any of its subsidiaries; or

(iii) the business of the holding company and that of the subsidiary are so different that they cannot reasonably be treated as a single undertaking;

(c) group accounts shall not be required if the directors are of an opinion described in paragraph (b) about each of the company's subsidiaries:

Provided that—

(i) the auditor of the holding company shall in every case report on the decision of directors not to deal in group accounts with any subsidiary;

(ii) the approval of the Registrar shall be required for not dealing in group accounts with a subsidiary on the ground that the result would be harmful or on the ground of the difference between the business of the holding company and that of the subsidiary.

(3) If any director of a company fails to take all reasonable steps to secure compliance as respects the company with the requirements of this section the Registrar may (unless he or she is satisfied that the director's conduct was fraudulent, reckless or wilful, in which event section 69 (" Fraudulent , reckless or wilful failure of financial accounting; falsification of records")(1)(a) shall apply), subject to subsection (4), serve upon him or her a category 3 civil penalty order.

(4) It shall be a partial defence to a civil penalty order or proposed civil penalty under subsection (3) for a director to prove (the burden whereof rests on him or her) that he or she had reasonable grounds to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that the requirements of this section were complied with and was in a position to discharge that duty, in which case the Registrar may waive those parts of the penalty clause of the order referred to in section 294 ("Power of Registrar to issue civil penalty orders and categories thereof") (4)(a) and (b)(i).

187 Form and contents of group accounts

(1) The group accounts laid before a holding company shall be consolidated accounts comprising—

(a) a consolidated statement of financial position dealing with the state of affairs of the company and all the subsidiaries to be dealt with in the group accounts;

(b) a consolidated statement of comprehensive income dealing with the profit or loss (or income and expenditure, as the case may be) and other items of comprehensive income of the company and those subsidiaries.

(2) If the company's directors are of opinion that it is better for the purpose—

(a) of presenting the same or equivalent information about the state of affairs and comprehensive income of the company and those subsidiaries; and

(b) of so presenting it that it may be readily appreciated by the company's members;

the group accounts may be prepared in a form other than that required by subsection (1) and in particular may consist of more than one set of consolidated accounts, that is to say, one set dealing with the company and one group of subsidiaries and one or more sets dealing with other groups of subsidiaries, or of separate accounts dealing with each of the subsidiaries, or of statements expanding the information about the subsidiaries in the company's own accounts, or any combination of these forms.

(3) The group accounts may be wholly or partly incorporated in the company's own financial statements.

(4) The group accounts laid before a company shall give a true and fair view of the state of affairs and comprehensive income of the company and the subsidiaries dealt with thereby as a whole, so far as concerns members of the company; and in particular shall exclude inter-group balances and any profit or loss (or income and expenditure) arising from transactions within the group in so far as those profits or losses (or income and expenditure) may not have been realized or incurred so far as concerns members of the company.

(5) Where the financial year of a subsidiary does not coincide with that of the holding company the group accounts shall, unless the Registrar on the application or with the consent of the holding company's directors otherwise directs, deal with the subsidiary's state of affairs as at the end of its financial year ending last before that of the holding company and with the subsidiary's profit or loss for that financial year.

(6) Without prejudice to subsection (4), the group accounts, if prepared as consolidated accounts, shall comply with the requirements of the regulations referred to in section 301 (" Regulations")(2) so far as applicable thereto and if not so prepared, shall give the same or equivalent information:

Provided that the Registrar may, on the application or with the consent of a company's directors, modify the said requirements in relation to that company for the purpose of adapting them to the circumstances of the company.

188 Accounts and auditor's report to be annexed to signed statement of financial position

(1) The statement of comprehensive income and, so far as not incorporated in the financial statements, any group accounts laid before a company in general meeting shall be annexed to the statement of financial position and approved by the board of directors before the statement of financial position is signed on its behalf and the auditor's report shall be attached thereto, except in the case of a private company which in terms of section 166 (" Statutory meeting and statutory report") (7) is not required to appoint an auditor.

(2) If any copy of a statement of financial position is issued, circulated or published without having a copy annexed thereto of the statement of comprehensive income or any group accounts required by this section to be so annexed or without having attached thereto a copy of the auditor's report as required by this section, the Registrar may serve upon the company and every officer who is in default a category 2 civil penalty order.

(3) Every statement of financial position of a company shall be signed on behalf of the board by two of the directors of the company.

(4) If any copy of a statement of financial position which has not been signed as required by this section is issued, circulated or published, the Registrar may serve upon the company and every officer who is in default a category 2 civil penalty order.

189 Directors' report to be attached to statement of financial position

(1) There shall be attached to every statement of financial position laid before a company in general meeting a report by the directors with respect to the state of the company's affairs, the amount, if any, already paid or declared or which they recommend should be paid by way of dividend and the amount, if any, which they propose to carry to reserves within the meaning of the regulations referred to in section 301 (" Regulations") (2) and, if directors' remuneration is to be determined at the meeting, the amount of remuneration recommended:

Provided that this subsection shall not apply to a private company unless one or more members of that private company is—

(a) a public company, whether incorporated under this Act or the law of a foreign country; or

(b) a private company which is a subsidiary, as determined in terms of section 185 (" Meaning of holding company, subsidiary and wholly owned subsidiary"), of a public company referred to in paragraph (a).

(2) The said report shall deal, so far as is material for the appreciation of the state of the company's affairs by its members and will not in the directors' opinion be harmful to the business of the company or of any of its subsidiaries, with any change during the financial year in the nature of the company's business or in the company's subsidiaries or in the classes of business in which the company has an interest, whether as member of another company or otherwise.

(3) If any director of a company fails to take all reasonable steps to comply with subsection (1) the Registrar may (unless he or she is satisfied that the director's conduct was fraudulent, reckless or wilful, in which event section 69 ("Fraudulent, reckless or wilful failure of financial accounting; falsification of records")(1)(a) shall apply), serve upon the defaulting director a category 1 civil penalty order:

Provided that the Registrar may waive the penalty if director to proves that he or she had reasonable grounds to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that the requirements of this section were complied with and was in a position to discharge that duty.

190 Right to receive copy of statement of financial position and auditor's report

(1) A copy of every statement of financial position, including every document required by this Act to be annexed thereto, which is to be laid before the company in general meeting, together with group accounts, if any, prepared under sections 186 ("Obligation to lay group accounts before holding company") and 187 ("Form and contents of group accounts") and a copy of the auditor's report, shall, not less than fourteen days before the date of the meeting, be sent to all persons entitled to receive notices of general meetings of the company:

Provided that this subsection shall not apply to a private company unless one or more members of that private company is—

(a) a public company, whether incorporated under this Act or the law of a foreign country; or

(b) a private company which is a subsidiary, as determined in terms of section 185 ("Meaning of holding company, subsidiary and wholly owned subsidiary"), of a public company referred to in paragraph (a).

(2) Any member and any debenture holder of the company shall be entitled to be furnished on demand, without charge, with a copy of the last statement of financial position of the company, including every document required by law to be annexed thereto, together with a copy of the auditor's report on the statement of financial position unless he or she shall previously have been supplied therewith.

(3) If default is made in complying with subsection (1) the company and every officer of the company who is in default shall be liable to a category 1 civil penalty, and if, where any person makes a demand for a document to which he or she is by virtue of subsection (2) entitled, default is made in complying with the demand within fourteen days after the making thereof, the company and any officer of the company who is in default shall be liable to a category 3 civil penalty.

191 Appointment, remuneration, duties, powers and removal of auditors

(1) The first auditor of a company shall be appointed by the directors within one month of the issue of the certificate that the company is entitled to commence business in the case of a company to which section 158 ("Restrictions on commencement of business") applies and, in the case of other companies, within one month of the issue of the certificate of incorporation; and an auditor so appointed shall hold office until the conclusion of the first annual general meeting:

Provided that—

(i) the company may at a general meeting remove any such auditor and appoint in his or her place any other person who has by special notice

been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than fourteen days before the date of the meeting;

(ii) if the directors fail to exercise their powers under this subsection the company in general meeting may appoint the first auditor and thereupon the said powers of the directors shall cease;

(iii) if neither the directors nor the company appoint an auditor under this subsection the Registrar may on the application of any member do so.

(2) Every company shall, at each annual general meeting, appoint an auditor to hold office from the conclusion of that annual general meeting until the conclusion of the next annual general meeting.

(3) Where at an annual general meeting no auditor is appointed or reappointed, the Registrar, on the application of any member may appoint a person to fill the vacancy.

(4) The company shall, within one week of the Registrar's power under subsection (3) becoming exercisable, give the Registrar notice of that fact and, if a company fails to give notice as required by this subsection, the company and every officer of the company who is in default shall be liable to a category 3 civil penalty:

Provided that, instead of the remediation clause in the civil penalty order concerned, the Registrar shall give notice to the company of his or her appointment of the auditor.

(5) The directors may fill any casual vacancy in the office of auditor but while any such vacancy continues the surviving or continuing auditor, if any, may act.

(6) The remuneration of the auditor of a company shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

For the purposes of this subsection, any sums paid by the company in respect of the auditor's expenses shall be deemed to be included in the expression "remuneration".

(7) A private company shall not be required to appoint an auditor if—

(a) the number of members in such company does not exceed ten; and

(b) none of the members of such company is—

(i) a public company, whether incorporated under this Act or the law of a foreign country; or

(ii) a private company which is a subsidiary, as determined in terms of section 185 ("Meaning of holding company, subsidiary and wholly owned subsidiary"), of a public company referred to in subparagraph (i);

and

(c) such company is not a subsidiary of a holding company which has itself appointed auditors; and

(d) all the members in such company agree that an auditor shall not be appointed.

(8) The relevant provisions of the Public Accountants and Auditors Act [*Chapter 27:12*] and of generally accepted accounting practices shall apply to the terms of appointment, qualifications, independence and work of the auditor.

(9) Without limiting the foregoing—

(a) a company's auditor may not own shares in the company, may not be a director or officer of the company, and may not directly or indirectly supervise the company's internal accounts, while engaged in auditing the company or for a period of two years prior thereto or thereafter;

(b) a company's auditor may not perform non-audit services for the company if the performance of those services is or may be inconsistent with the performance of audit services for the company

(10) For the purposes of subsection (9) an auditor includes an individual who is an auditor and any family member of that individual, and any firm that is an auditor or any employee or agent of that firm who participates in that firm's audit of the company in question.

(11) No person shall serve as an auditor of a company for more than five consecutive financial years:

Provided that where a person has served as the auditor or designated auditor of a company for two or more consecutive financial years and then ceases to be such, such person shall not be re-appointed as the auditor or designated auditor of that company until after the expiry of at least two further financial years.

(12) A company's auditor shall have the right—

(a) of full access to the company's books, records, vouchers, securities and documents, and the right to verify the existence and value of the company's assets and liabilities;

(b) to ask any director or officer of the company for particulars which the auditor deems necessary for the performance of the auditor's duties and responsibilities;

(c) of access to all current and former accounts of any company subsidiary thereto and be entitled to require from the officers of the holding or subsidiary company all such information and explanations in connection therewith as he or she may deem necessary;

(d) to attend any general meeting of the company and to receive all notices of and other communications relating to any general meeting which any member of the company is entitled to receive and to be heard at any general meeting which he or she attends on any part of the business of the meeting which concerns him or her as auditor.

(13) Special notice shall be required for a resolution at a company's annual general meeting appointing as auditor a person other than a retiring auditor or providing expressly that a retiring auditor (other than one retiring by the operation of subsection (11)) shall not be reappointed.

192 Disqualifications for appointment as auditor

(1) The following persons shall not be qualified for appointment as auditors of a company—

(a) an officer or servant of the company;

(b) a person who is a partner of an officer or servant of the company;

(c) a person who is an employer or an employee of an officer or servant of the company;

(d) a person who is an officer or servant of a body corporate which is an officer of the company;

(e) a person who by himself or herself, or his or her partner or his or her employee, regularly performs the duties of secretary or bookkeeper to the company.

(2) A person shall also not be qualified for appointment as auditor of a company if he or she is, by virtue of subsection (1), disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company, or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company.

(3) Any person who acts as auditor of a company when disqualified as aforesaid shall be guilty of an offence and liable to a fine not exceeding level fourteen or imprisonment not exceeding two years.

(4) In addition, the Registrar may serve upon a company that is knowingly in contravention of this section a category 2 civil penalty order.

193 Auditor's report

(1) The auditor shall make a report to the members on the accounts examined by him or her and on every financial statement laid before the company in general meeting during his or her tenure of office and the report shall contain statements as to the following matters—

(a) whether, in his or her opinion, the financial statements or, in the case of a holding company submitting group accounts, the said accounts of the company and the group accounts are properly drawn up in accordance with this Act so as to give a true and fair view of the state of the company's affairs at the date of its financial statements for its financial year ended on that date; or

(b) in the case of a company registered as a commercial bank, an accepting house or a finance house in terms of the Banking Act [*Chapter 24:20*], whether, in his or her opinion, the financial statements or, in the case of a holding company submitting group accounts, the said accounts of the company and the group accounts are properly drawn up so as to disclose the state of the company's affairs at the date of its financial statements for its financial year ended on that date, so far as is required by the provisions of this Act applicable to the class of company concerned.

(2) The auditor shall include in his or her report statements which, in his or her opinion, are necessary if—

(a) he or she has not obtained all the information and explanations which to the best of his or her knowledge and belief were necessary for the purposes of his or her audit;

(b) so far as appears from his or her examination, proper financial records have not been kept by the company;

(c) proper returns adequate for the purpose of his or her audit have not been received from branches not visited by him or her;

(d) the company's financial statements are not in agreement with the financial records and returns from branches.

(3) In the event of the auditor being unable to make such report or to make it without further qualification he or she shall inscribe upon or attach to the statement of financial position a statement of that fact or of the nature of the qualification, as the case may be, and he or she shall set forth therein the facts or circumstances which prevent him or her from making the report or from making it without qualification.

(4) The auditor's report or any statement under subsection (3) shall, unless all the members present agree to the contrary, be read before the company in general meeting and shall, in any event, be open to inspection by any member.

194 Construction of references to documents annexed to accounts

References in this Act to a document annexed or required to be annexed to a company's accounts or any of them shall not include the directors' report or the auditor's report:

Provided that any information which is required by this Act to be given in accounts, and is thereby allowed to be given in a statement annexed, may be given in the directors' report instead of the accounts and, if any such information is so given, the report shall be annexed to the accounts and this Act shall apply in relation thereto accordingly, except that the auditor shall report thereon only so far as it gives the said information.

Sub-Part D: Directors and other officers

195 Directors and their functions and responsibilities

(1) A private company with more than one and fewer than ten shareholders shall have two or more directors, a private company with ten or more shareholders shall have not fewer than three directors, and a public company shall have not fewer than seven nor more than fifteen directors.

(2) At least one director shall be ordinarily resident in Zimbabwe.

(3) Any director who is a company's chief executive officer shall not also be the chairperson of the board of that company

(4) Each or every director (as the case may be) shall exercise independent judgment and shall act within the powers of the company in a way that he or she considers, in good faith, to promote the success of the company for the benefit of its shareholders as a whole.

(5) For the purpose of subsection (4), every director shall have regard to, among other things—

(a) the long-term consequences of any decision;

(b) the interests of the company's employees;

(c) the need to foster the company's relationships with suppliers, customers and others;

(d) the impact of the company's operations on the community and the environment;

(e) the desirability of the company maintaining a reputation for high standards of business conduct;

(f) the need to act fairly as between shareholders of the company.

(6) An individual director may not assign or delegate his or her responsibility or accountability under this Act to another person.

Provided that for the avoidance of doubt this subsection does not prohibit the delegation of clerical, administrative and other non-core management functions to other staff or to a company service provider licensed under section 292 ("Business entity incorporation agents and business entity service providers").

(7) Every person signing the memorandum of a company shall, until other directors are appointed, be deemed to be a director of the company and be liable for all the duties and obligations of a director.

Provided that where a person signs the memorandum, whether as agent or otherwise, on behalf of some other person who is not qualified to be a director of the company, the first-mentioned person shall be deemed to be a director.

(8) The provision of this section relating to the duties of a director of a company are in addition to, and do not derogate from, the duties of care and loyalty outlined in sections 54 ("Duty of care and business judgment rule") and 55 ("Duty of loyalty").

(9) In the case of public company no director shall serve on more than six boards of unassociated public companies, and his or her service to other boards shall be disclosed at every general meeting.

(10) Where any director contravenes subsection (9), he or she shall be in default and be liable to a category 2 civil penalty:

Provided that any director who serves on more than six boards on the effective date may continue to do so until the expiration of his or her term of office of the board in question.

(11) The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his or her appointment or qualification.

196 Directors acting other than in person at meeting

(1) A decision that could be voted on at a meeting of the board of a company may instead be adopted by written consent, stating the action so taken, signed by all of the directors entitled to vote on the matter. A decision made in such manner is of the same effect as if it had been approved by voting at a meeting.

(2) Unless prohibited by a company's memorandum of association or articles of association, a meeting of a company's board may be held by means of electronic, conference telephone or other audio or visual communications equipment if all participants can hear and talk or otherwise communicate concurrently with each other. The persons attending a meeting in this way shall be considered to be present at the meeting.

197 Liability of directors and prescribed officers

(1) In this section—

"director" includes an alternate director, and a person who is a member of a committee of a board of a company, or of the audit committee of a company, irrespective of whether or not the person is also a member of the company's board;

"reasonable public notice", in relation to the giving of such notice by a director for the purpose of proviso (vii) or (viii) to paragraph (d), may be constituted by the giving of a written notice to the Registrar timeously, that is to say before the issue of the prospectus in the case of proviso (viii), or at the time the director concerned became aware of the untrue statement in the case of proviso (viii), as the case may be (but in either case the onus is on the director to prove timeousness).

(2) A director of a company may be held liable—

(a) in accordance with the principles of the common law relating to breach of a fiduciary duty, for any loss, damages or costs sustained by the company as a consequence of any breach by the director of—

(i) a duty contemplated in section 54 ("Duty of care and business judgment rule"), 55 ("Duty of loyalty"), and 57 ("Duty to disclose conflict of interest") and 195 ("Directors and their functions and responsibilities") (4), (5) and (6); or

(ii) section 56 ("Transactions involving conflict of interest"); or

(iii) any provision of this Act not otherwise mentioned in this section; or

(iv) any provision of the company's memorandum and articles of association for which the director is personally responsible or may be held personally liable.

(3) A director of a company is liable for any loss, damages or costs sustained by the company as a direct or indirect consequence of the director having—

(a) acted in the name of the company, signed anything on behalf of the company, or purported to bind the company or authorise the taking of any action by or on behalf of the company, despite knowing that the director lacked the authority to do so; or

(b) acquiesced in the carrying on of the company's business despite knowing that it was being conducted in a manner described in section 68 ("Fraudulent, reckless or grossly negligent conduct of business")(3); or

(c) been a party to an act or omission by the company despite knowing that the act or omission was calculated to defraud a creditor, employee or shareholder of the company, or had another fraudulent purpose; or

(d) signed, consented to, or authorised, the publication of—

(i) any financial statements that were false or misleading in a material respect; or

(ii) a prospectus or a statement in lieu of prospectus that contains—

A. an "untrue statement" as defined and described in section 2 ("Interpretation")(1); or

B. a statement to the effect that a person had consented to be a director of the company, when no such consent had been given, despite knowing that the statement was false, misleading or untrue, as the case may be:

Provided that the liability contemplated in this paragraph does not apply if —

(iii) with respect to every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, the director had reasonable grounds to believe, and did up to the time of the allotment of the shares or the acceptance of the offer, as the statement may be, believe that the statement was true; or

(iv) the director had reasonable grounds to believe and did up to the time that the prospectus believe that the expert who made the statement was competent to make it and consent as required by this Act to the issue of the prospectus or the making of the offer and had not withdrawn that consent before the prospectus was filed or, to that director's knowledge, before any allotment or before the acceptance of the offer; or

(v) any untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document was a correct and fair representation of the statement or copy or extract from the document; or

(vi) the director consented to become a director of the company, but subsequently withdrew that consent before the issue of the prospectus and that it was issued without his or her consent; or

(vii) the prospectus was issued without the knowledge or consent of the director concerned, and on becoming aware of its issue, the director forthwith gave reasonable public notice that it was issued without his or her knowledge or consent; or

(viii) after the issue of the prospectus and before allotment or acceptance thereunder, the director, on becoming aware of any untrue statement in it, withdrew any consent to the prospectus and gave reasonable public notice of the withdrawal and of the reason for it;

(e) been present at a meeting, or participated in the making of a decision in terms of section 196 ("Directors acting other than in person at meeting"), and failed to vote against—

(i) the issuing of any unauthorised shares, despite knowing that those shares had not been authorised in accordance with section 96 ("Authorisation for shares ");

(ii) the issuing of any authorised shares or debentures, despite knowing that the issue of those shares or debentures was inconsistent with section 96 and 139 ("Existing shareholders' right of first refusal to new shares ");

(iii) the granting of options to any person contemplated in section 101 ("Options for subscription of shares or debentures")(4), despite knowing that any shares—

A. for which the options could be exercised; or

B. into which any shares could be converted;

had not been authorised in terms of section 96;

(iv) the provision of financial assistance to any person contemplated in section 123 ("Financial assistance by company for purchase of its own or its holding company's shares") for the acquisition of securities of the company, despite knowing that the provision of financial assistance was inconsistent with section 121 or the company's memorandum of association, to the extent that the resolution or agreement has been declared void in terms of section 123(2)(a) ("Financial assistance by company for purchase of its own or its holding company's shares"), read with section 65 ("Allegations of voidness, impropriety, etc. by registered business entities ")(1);

(v) the provision of financial assistance to a director for a purpose contemplated in section 208 ("Prohibition of financial assistance to directors"), despite knowing that the provision of financial assistance was inconsistent with that section or the company's memorandum of association;

(vi) a resolution approving a distribution, despite knowing that the distribution was contrary to section 138 ("Distributions must be authorised by board"), subject to subsection (4);

(vii) the acquisition by the company of any of its shares, or the shares of its holding company, despite knowing that the acquisition was contrary to section 138 or 128 ("Power of company to purchase own shares"); or

(viii) an allotment by the company, despite knowing that the allotment was contrary to any provision of Sub-Part C ("Allotment") of Part II ("Share Capital and Debentures") of this Chapter to the extent that the allotment or an acceptance is declared void under that Sub-Part as read with section 65(1).

(4) The liability of a director in terms of subsection (3)(e)(vi) as a consequence of the director having failed to vote against a distribution in contravention of section 138—

(a) arises only if—

(i) immediately after making all of the distribution contemplated in a resolution in terms of section 135 ("Power of company to arrange for different amounts being paid on shares"), the company does not satisfy the solvency and liquidity test; and

(ii) it was unreasonable at the time of the decision to conclude that the company would satisfy the solvency and liquidity test after making the relevant distribution;

and

(b) does not exceed, in aggregate, the difference between—

(i) the amount by which the value of the distribution exceeded the amount that could have been distributed without causing the company to fail to satisfy the solvency and liquidity test; and

(ii) the amount, if any, recovered by the company from persons to whom the distribution was made.

(5) If the board of a company has made a decision in a manner that contravened this Act, as contemplated in subsection (3)(e)—

(a) a company, or any director who has been or may be held liable in terms of subsection (3)(e), may apply to a court for an order setting aside the decision of the board; and

(b) the court may make—

(i) an order setting aside the decision in whole or in part, absolutely or conditionally; and

(ii) any further order that is just and equitable in the circumstances, including an order—

A. to rectify the decision, reverse any transaction, or restore any consideration paid or benefit received by any person in terms of the decision of the board; and

B. requiring the company to indemnify any director who has been or may be held liable in terms of this section, including indemnification for the costs of the proceedings under this subsection.

(6) The liability of a person in terms of this section is joint and several with any other person who is or may be held liable for the same act.

(7) Proceedings to recover any loss, damages or costs for which a person is or may be held liable in terms of this section may not be commenced more than three years after the act or omission that gave rise to that liability.

(8) In addition to the liability set out elsewhere in this section, any person who would be so liable is jointly and severally liable with all other such persons—

(a) to pay the costs of all parties in the court in a proceeding contemplated in this section unless the proceedings are abandoned, or exculpate that person; and

(b) to restore to the company any amount improperly paid by the company as a consequence of the impugned act, and not recoverable in terms of this Act.

(9) In any proceedings against a director, other than for wilful misconduct or wilful breach of trust, the court may relieve the director, either wholly or partly, from any liability set out in this section, on any terms the court considers just if it appears to the court that—

(a) the director is or may be liable, but has acted honestly and reasonably; or

(b) having regard to all the circumstances of the case, including those connected with the appointment of the director, it would be fair to excuse the director.

(10) A director who has reason to apprehend that a claim may be made alleging that the director is liable, other than for wilful misconduct or wilful breach of trust, may apply to a court for relief, and the court may grant relief to the director on the same grounds as if the matter had come before the court in terms of subsection (9).

198 Company secretary: functions, qualifications and disqualifications

(1) Every company shall have at least one secretary ordinarily resident in Zimbabwe.

(2) The board of a public company shall appoint one or more secretaries, being a person or persons who are qualified in terms of subsection (4) to be the secretary of a public company, and who must not also hold another office as an officer of the company.

(3) The functions of the secretary shall include but need not be restricted to—

(a) acting as custodian of the company's records including the shareholder records referred to in Sub-Part H ("Transfer of shares and debentures, evidence of titles, etc") of Part II ("Share Capital and Debentures") of Chapter III and the company's accounting records; and

(b) ensuring that notices of all shareholder meetings, board meetings and board committee meetings are given in accordance with this Act; and

(c) ensuring that minutes of all such meetings are recorded in accordance with this Act; and

(d) advising the directors as to their duties and powers under this Act; and

(e) making the directors aware of other laws relevant to or affecting the company; and

(f) certifying in the company's annual financial statements whether the company has filed required returns and notices in terms of this Act, including but not limited to the company's annual return and the board's "comply or explain" report to shareholders on corporate governance under section 220 ("Corporate governance guidelines for public companies")(3).

(4) A person shall be qualified to hold office as secretary of a public company if—

(a) for at least three of the five years immediately before his or her appointment as secretary, he or she held office as secretary of a public company; or

(b) he or she is registered or entitled to be registered as a chartered accountant under the Chartered Accountants Act [*Chapter 27:02*]; or

(c) he or she is registered or entitled to be registered as a chartered secretary under the Chartered Secretaries (Private) Act [*Chapter 27:03*]; or

(d) he or she is registered or entitled to be registered as a legal practitioner under the Legal Practitioners Act [*Chapter 27:07*]; or

(e) he or she is registered or entitled to be registered as a public accountant or public auditor under the Public Accountants and Auditors Act [*Chapter 27:12*]; or

(f) he or she holds such other qualification as may be prescribed in regulations.

(5) The following persons shall be disqualified from being appointed as secretary of a public company (and if any of the following disqualifications affect a secretary of a private company, subsection (10) shall apply thereto)—

(a) a minor or any other person under legal disability;

(b) except with the leave of the court, any person who has at any time been adjudged or otherwise declared insolvent or bankrupt under a law in force in Zimbabwe or any other country, and has not been rehabilitated or discharged;

(c) except with the leave of the court, any person who has at any time been convicted, whether in Zimbabwe or elsewhere, of theft, fraud, forgery or uttering a forged document or perjury and has been sentenced for that offence to imprisonment without the option of a fine or to a fine exceeding level five;

(d) except with the leave of the court, any person who has been removed by a competent court from an office of trust on account of misconduct.

(6) The directors of every public company shall take reasonable steps to ensure that the company's secretary is a person who is qualified in terms of subsection (4) and is not disqualified in terms of subsection (5) and, in addition, has the requisite knowledge and experience to discharge the functions of secretary of the company.

(7) A secretary of a public company shall cease to hold office as such if—

(a) he or she has at any time been or is adjudged or otherwise declared insolvent or bankrupt under a law in force in Zimbabwe or any other country; or

(b) he or she is convicted, whether in Zimbabwe or elsewhere, of theft, fraud, forgery or uttering a forged document or perjury and has been sentenced therefor to serve a term of imprisonment without the option of a fine or to a fine exceeding level five; or

(c) he or she is removed by a competent court from any office of trust on account of misconduct.

(8) If a person who is disqualified under this section from being or continuing to be a secretary of any public company directly or indirectly takes part in or is concerned in the management of any company, 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 two years or to both such fine and such imprisonment.

(9) Nothing in this section shall be deemed to prevent a company from applying under its regulations any further disqualification for the appointment of, or the retention of office by, a secretary.

(10) The director or principal shareholder of a private company is not bound by the provisions of subsections (4) and (5) when appointing or continuing to retain the secretary of that company, but the director or principal shareholder must file with the Registrar (within thirty days of becoming so aware) a statement in the event that the secretary of his or her company becomes affected by any of the disqualifications in subsection (3) that would apply to him or her if the secretary was the secretary of a public company, which statement shall be available for inspection to the public at normal working hours.