

Provided that the director or principal shareholder shall withdraw such filing in the event of the secretary of his or her company no longer being subject to any such disqualification.

199 Restrictions on appointment or advertisement of director; share qualifications of directors

(1) This section shall not apply to—

- (a) an association licensed under section 82 (“Power to dispense “Limited” in certain cases”); or
- (b) a private company; or
- (c) a company which was a private company before becoming a public company; or
- (d) a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company was entitled to commence business.

(2) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in the list to be lodged in terms of subsection (4) or in any prospectus issued by or on behalf of the company, or in relation to an intended company or in any statement in lieu of prospectus lodged by or on behalf of the company, unless, before the lodging of the list or registration of the articles or the publication of the prospectus, or the lodging of the statement in lieu of prospectus, as the case may be, he or she has himself or herself or by his or her agent authorised in writing—

- (a) signed and lodged with the Registrar a consent in writing to act as such director; and
- (b) either signed the memorandum of association for a number of shares not less than his or her qualification, if any, or signed and lodged with the Registrar a contract in writing to take from the company and pay for his or her qualification shares, if any.

(3) The share qualification mentioned in subsection (2) means a share qualification required on appointment to the office of director or within a period determined by reference to the time of appointment and the words “qualification shares” shall be construed accordingly.

(4) When application is made under section 18 (“Registration of constitutive documents”) for registration of the memorandum and of the articles, if any, of a company the applicant shall lodge with the Registrar a list, in the prescribed form, of the persons, if any, not being less than two, with their full names, addresses and occupations, who have consented to be directors of the company and, upon such registration, the persons who have so consented shall, until other directors are appointed, be deemed to be the directors of the company and liable for all the duties and obligations of a director.

(5) For the purposes of subsection (4), a person who, having consented to be a director, has before the lodging of the list with the Registrar withdrawn his or her consent by notice in writing lodged with the Registrar, shall be deemed to be a person who has not so consented.

(6) Without prejudice to the restrictions imposed by this section, it shall be the duty of every director who is by the articles of the company required to hold a specified share qualification and who is not already qualified, to obtain his qualification within two months after his or her appointment or such shorter time as may be fixed by the articles.

(7) The office of director of a company shall be vacated if the director does not, within two months from the date of his or her appointment or within such shorter time as may be fixed by the articles, obtain his qualification or if, after the expiration of the said period or shorter time, he or she ceases at any time to hold his or her qualification.

(8) A person vacating office under subsection (7) shall be incapable of being reappointed director of the company until he or she has obtained his or her qualification.

(9) If, after the expiration of the said period or shorter time, any unqualified person acts as a director of the company, the Registrar may serve upon him or her a category 1 civil penalty order, in which the cumulative penalty shall be calculated for every day between the expiration of the said period or shorter time, or the day on which he or she ceased to be qualified, as the case may be, and the last day on which it is proved that he or she acted as a director.

200 Disqualification for appointment as director

(1) Any of the following persons shall be disqualified from being appointed a director of a public company—

- (a) a body corporate; or
- (b) a minor or any other person under legal disability; or
- (c) a person who is removed by the court from any office of trust on account of misconduct save with the leave of the court; or
- (d) a person who has at any time been convicted whether in Zimbabwe or elsewhere, of theft, fraud, forgery 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.

(2) A director of any public company shall cease to hold office as such if—

- (a) he or she has 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 perjury and has been sentenced therefore to serve a term of imprisonment without the option of a fine or to a fine exceeding level five; or
- (c) 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;

(3) If any person who is disqualified under this section from being or continuing to be a director of any 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 ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(4) 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 director.

(5) In relation to private companies, the secretary or principal shareholder shall file with the Registrar (within thirty days of becoming so aware) a statement in the event that a director of his or her company is or becomes affected by any of the disqualifications in this section that would apply to him or her if the director was the director of a public company, which statement shall be available for inspection to the public at normal working hours:

Provided that the secretary or principal shareholder shall withdraw such filing in the event of the director of his or her company no longer being subject to any such disqualification.

201 Appointment of directors to be voted on individually

(1) At a general meeting of a company other than a private company a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be made, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

(2) A resolution moved in contravention of subsection (1) shall be void, whether or not its being so moved was objected to at the time:

Provided that—

- (i) this subsection shall not be taken as excluding the operation of section 195 (“Directors and their functions and responsibilities”)(5);
- (ii) where a resolution so moved is passed, no provision for the automatic reappointment of retiring directors in default of another appointment shall apply.

(3) For the purposes of this section, a motion for approving a person’s appointment or for nominating a person for appointment shall be treated as a motion for his or her appointment.

202 Removal and resignation of directors

(1) One or more directors may be removed, with or without a stated reason or cause, at a general meeting by a majority of the votes of shares then entitled to vote at an election of directors, except that no director may be removed unless the notice of the meeting states that a purpose of the meeting was to vote on the removal of such director at the meeting.

(2) The removal of a director shall not in itself prejudice any right to compensation upon removal which the director may have under a contract with the company. However, the election or status of a person as a director shall not, in itself, create any such rights.

(3) A director may resign at any time by giving written notice, as far in advance as is practicable, to the board of directors or its chairperson. A resignation is effective when the notice is given unless the notice specifies a future date. The pending vacancy may be filled before the effective date of the resignation, but the successor shall not take office until the effective date.

203 Vacancies on board of directors

(1) A vacancy on a board of directors shall be filled by election at the next general meeting at which directors are to be elected, except that the company’s articles of association may provide that the board of directors may fill such vacancy until such time, in which case it may do so but subject to subsection (2).

(2) If at any time vacancies on a board equal twenty-five (25) *per centum* or more of the total number of board seats, the board shall convene an extraordinary shareholder meeting to meet within two months after that event occurs, for the purpose filling the vacancies.

(3) The foregoing shall not apply if the annual general meeting is to occur within that time.

(4) A director elected to fill a vacancy shall serve until the expiration of the term of the director whose vacancy the person filled.

204 Quorum and vote required

(1) A majority of the total number of directors fixed in a company's articles of association shall constitute a quorum for decision making and the transaction of business, unless a greater number for a quorum is specified in the articles of association.

(2) The affirmative vote of a majority of the directors present at a meeting at which a quorum is present shall be the act and decision of the board of directors, unless the articles of association requires a greater number of directors.

(3) The chairperson of the board shall have a casting vote in the event of a deadlock of the vote referred to in subsection (2), unless provided otherwise in the articles of association.

205 Minutes of meeting of board and committees

(1) Minutes of each meeting of the board and any committee shall be prepared promptly after the meeting, and shall be submitted to the board or committee at its next meeting for its review and adoption.

(2) The minutes referred to in subsection (1) shall include—

- (a) a statement of the place and time of the meeting; and
- (b) the persons present; and
- (c) the agenda at the meeting; and
- (d) the issues submitted for voting; and
- (e) the results of each vote including the names of the directors who voted "for" or "against" or who abstained; and
- (f) the decisions which were adopted at the meeting.

(3) The minutes required to be kept in terms of this section shall be deemed approved if signed by the chairperson of the meeting.

(4) Failure to act as required by subsection (1) shall not in itself affect otherwise valid decisions of the board of directors

(5) 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.

206 Independent directors required for public companies

(1) In this section—

"independent director" means a director of the company who has not, or whose family members have not received any payment or held any share or interest, or any post in the company referred to in the definition of "non-executive director";

"non-executive director" means a director of the company who, or any of whose family members either separately or together with him or her or each other, during the two years preceding the time in question—

- (a) was not an employee of the company; and
- (b) did not—
 - (i) make to or receive from the company payments of more than fifty thousand (50 000) United States dollars or the equivalent thereof; or

- (ii) own more than a twenty (20) *per centum* of the shares or other ownership interest of the same extent, directly or indirectly, in an entity that made to or received from the company payments of more than the amount stated in subparagraph (i); or
- (iii) act as a partner, manager, director or officer of a partnership or company that made to or received from the company payments of more than such amount;

and

- (c) did not own directly or indirectly (including for this purpose ownership by and family shareholder or related person) more than twenty (20) *per centum* of the shares of any type or class of the company; and
- (d) was not engaged directly or indirectly as an auditor for the company.

(2) A public company shall have at least three non-executive or independent directors on its board of directors.

(3) In a public company, any person who nominates candidates for the board who would comprise a majority of the members of the board must nominate at least three candidates any one of whom would, if appointed, be an independent director.

207 Shareholder approval of directors' emoluments

(1) A company may pay reasonable emoluments to directors which may include shares or options for shares of the company.

(2) The emoluments of a director of a public company must be approved by the shareholders of that company at the annual general meeting.

(3) If it comes to the notice of the Registrar that a public company has not complied with subsection (2) to the Registrar shall serve a category 2 civil penalty order upon the company

208 Prohibition of financial assistance to directors

(1) It shall not be lawful for a company to make a loan or render other financial assistance to any person who is its director or a director of its holding company or to enter into any guarantee or provide any security in connection with a loan made to such a person as aforesaid by any other person:

Provided that nothing in this section shall apply—

- (a) subject to subsection (2), to anything done to provide any such person as aforesaid with funds to meet expenditure incurred or to be incurred by him or her for the purposes of the company or for the purpose of enabling him or her properly to perform his or her duties as an officer of the company; or
- (b) in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, to anything done by the company in the ordinary course of that business; or
- (c) to anything done by a private company, which is not a subsidiary company, with the consent of members holding at least nine-tenths of the issued share capital; or
- (d) to the making of a loan to a director with a view to enabling him or her to purchase or subscribe for fully paid shares in the company to be held by him or her or in trust for him or her, if the loan is made in accordance with section 123 ("Financial assistance by company for purchase of its own or its holding company's shares").

(2) Proviso (1) (a) shall not authorise the making of any loan or the entering into any guarantee or the provision of any security, except—

- (a) with the prior approval of the company given at a general meeting at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed; or
- (b) on condition that, if the approval of the company is not given as aforesaid at or before the next following annual general meeting, the loan shall be repaid or the liability under the guarantee or security shall be discharged, as the case may be, within six months from the conclusion of that meeting.

(3) Where the approval of the company is not given as required by any such condition, the directors authorising the making of the loan or the entering into the guarantee or the provision of the security shall be jointly and severally liable to indemnify the company against any loss arising therefrom.

(4) If it comes to the notice of the Registrar that any default has been made in complying with subsection (1), he or she may serve a category 3 civil penalty order upon the company and every officer of the company who is in default, in which the remediation clause shall require the director receiving any loan in contravention of this section to repay it to the company within the specified period together with interest at twice the level of the prescribed rate of interest prevailing at the time the civil penalty order is issued

(5) In relation to any private company, the secretary or principal shareholder shall file with the Registrar (within thirty days of becoming so aware) a statement in the event that a director receives any loan which in this section would be prohibited if the director was a director of a public company, which statement shall be available for inspection by the public during normal working hours.

209 Approval of company requisite for payment by it to director for loss of office

(1) It shall not be lawful for a public company to make to any director of the company any payment by way of compensation for loss of office or as consideration for or in connection with his or her retirement from office, without full particulars with respect to the proposed payment, including the amount thereof, being disclosed to members of the company and the proposal being approved by the company in general meeting.

(2) In relation to private companies, the secretary or principal shareholder shall file with the Registrar (within thirty days of becoming so aware) a statement in the event that a director has been paid for loss of office, furnishing all the particulars thereof, which statement shall be available for inspection by the public during normal working hours.

210 Approval of company requisite for payment in connection with transfer of its property to director for loss of office

(1) It shall not be lawful, in connection with the transfer of the whole or any part of the undertaking or property of a public company, for any payment to be made by any person to any director of the company by way of compensation for loss of office or as consideration for or in connection with his or her retirement from office, unless particulars with respect to the proposed payment, including the amount thereof, have been disclosed to the members of the company and the proposal approved by the company in general meeting.

(2) Where a payment which is hereby declared to be illegal is made to a director of the company, the amount received shall be deemed to have been received by him or her in trust for the company.

(3) In relation to private companies, the secretary or principal shareholder shall file with the Registrar (within thirty days of becoming so aware) a statement in the event that a transfer contemplated by subsection (1) has been made, furnishing all the particulars thereof, which statement shall be available for inspection by the public during normal working hours.

211 Duty of director to disclose payments for loss of office, made in connection with transfer of shares in company

(1) Where, in connection with the transfer to any persons of all or any of the shares in a public company, being a transfer resulting from—

- (a) an offer made to the general body of shareholders; or
- (b) an offer made by or on behalf of some other body corporate with a view to the company becoming its subsidiary or a subsidiary of its holding company; or
- (c) an offer made by or on behalf of an individual with a view to his or her obtaining the right to exercise or control the exercise of not less than one-third of the voting power at any general meeting of the company; or
- (d) any other offer which is conditional on acceptance to a given extent;

a payment is to be made to a director of the company by way of compensation for loss of office or as consideration for or in connection with his or her retirement from office, it shall be the duty of that director to take all reasonable steps to secure that particulars with respect to the proposed payment, including the amount thereof, shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders

(2) If—

- (a) any such director fails to take reasonable steps as aforesaid; or
- (b) any person who has been properly required by any such director to include the said particulars in or send them with any such notice as aforesaid fails so to do;

such director or such person, as the case may be, shall be liable to a category 1 civil penalty.

(3) If—

- (a) the requirements of subsection (1) are not complied with in relation to any such payment as is therein mentioned; or
- (b) the making of the proposed payment is not, before the transfer of any shares in pursuance of the offer, approved by a meeting summoned for the purpose of the holders of the shares to which the offer relates and of other holders of shares of the same class as any of the said shares;

any sum received by the director on account of the payment shall be deemed to have been received by him or her in trust for any persons who have sold their shares as a result of the offer made and the expenses incurred by him or her in distributing that sum amongst those persons shall be borne by him or her and not retained out of that sum.

(4) Where the shareholders referred to in subsection (3)(b) are not all the members of the company and no provision is made by the articles for summoning or regulating such a meeting as is mentioned in that provision, the provisions of this Act

and of the company's articles relating to general meetings of the company shall, for that purpose, apply to the meeting either without modification or with such modifications as the Registrar on the application of any person concerned may direct for the purpose of adapting them to the circumstances of the meeting.

(5) If at a meeting summoned for the purpose of approving any payment as required by subsection (3)(b) a quorum is not present and, after the meeting has been adjourned to a later date, a quorum is again not present, the payment shall be deemed for the purposes of that subsection to have been approved.

212 Provisions supplementary to sections 209, 210 and 211

(1) Where in proceedings for the recovery of any payment as having, by virtue of section 209 ("Approval of company requisite for payment by it to director for loss of office") (1), 210 ("Approval for company requisite for payment in connection with transfer of its property to director for loss of office")(1) and (2) or 211 ("Duty of director to disclose payment for loss of office, made with transfer of shares in company")(1) and (3), been received by any person in trust it is shown that—

- (a) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question or within one year before or two years after that agreement or the offer leading thereto; and
- (b) the company or any person to whom the transfer was made was privy to that arrangement;

the payment shall be deemed, except in so far as the contrary is shown, to be one to which the aforementioned provisions apply.

(2) If, in connection with any such transfer as is mentioned in section 210 or 211—

- (a) the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him or her is in excess of the price which could at the time have been obtained by other holders of the like shares; or
- (b) any valuable consideration is given to any such director;

the excess or the money value of the consideration, as the case may be, shall, for the purposes of that section, be deemed to have been a payment made to him or her by way of compensation for loss of office or as consideration for or in connection with his or her retirement from office.

(3) References in section 208 ("Prohibition of financial assistance to directors"), 209 or 210 to payments made to any director of a company by way of compensation for loss of office or as consideration for or in connection with his or her retirement from office do not include any *bona fide* payment by way of damages for breach of contract or by way of pension in respect of past services and for the purposes of this subsection the expression "pension" includes any superannuation allowance, superannuation gratuity or similar payment.

(4) Nothing in section 208 or 209 shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are therein mentioned or with respect to any other like payments made or to be made to the directors of a company.

213 Register of directors' share holdings

(1) Every company, other than a private company, shall keep a register showing as respects each director of the company the number, description and amount of any

shares in or debentures of the company or any other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company, which are held by or in trust for him or her or of which he or she has any right to become the holder, whether on payment or not:

Provided that the register need not include shares in any body corporate which is the wholly owned subsidiary of another body corporate.

(2) The nature and extent of a director's interest or right in or over any shares or debentures recorded in relation to him or her in the said register must be indicated in the register.

(3) The company shall not, by virtue of anything done for the purposes of this section, be affected with notice of or put upon inquiry as to, the rights of any person in relation to any shares or debentures.

(4) The said register shall, subject to this section, be kept at the company's registered office and shall be open to inspection during business hours, subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection, as follows—

- (a) during the period beginning fourteen days before the date of the company's annual general meeting and ending three days after the date of its conclusion, it shall be open to the inspection of any member or holder of debentures of the company; and
- (b) during that or any other period it shall be open to the inspection of any person acting on behalf of the Registrar.

In computing the fourteen days and the three days mentioned in this subsection any day which is a Saturday or Sunday or public holiday shall be disregarded.

(5) The Registrar may at any time require a copy of the said register or any part thereof.

(6) The said register shall be produced at the commencement of the company's annual general meeting and remain open and accessible during the continuance of the meeting to any person attending the meeting.

(7) In this section—

- (a) any person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be deemed to be a director of the company; and
- (b) a director of a company shall be deemed to hold, or to have an interest or right in or over, any shares or debentures if a body corporate other than the company holds them or has that interest or right in or over them, and—
 - (i) that body corporate or its directors are accustomed to act in accordance with his or her directions or instructions; or
 - (ii) he or she is entitled to exercise or control the exercise of one-third or more of the voting power at any general meeting of that body corporate.

(8) It shall be the duty of every director of a company and of every person deemed to be a director under subsection (7) (a) to give notice to the company of such matters relating to himself or herself as may be necessary for the purposes of this section. Any such notice shall be in writing and if it is not given at a meeting of directors the person giving it shall take reasonable steps to secure that it is brought

up and read at the next meeting of directors after it is given. Any person who makes default in complying with this subsection shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(9) If default is made in complying with—

- (a) subsection (1) or (2), the company and every officer of the company who is in default shall be liable to a category 3 civil penalty;
- (b) subsection (4), the company and every officer of the company who is in default shall be liable to a category 4 civil penalty;
- (c) subsection (5), the company and every officer of the company who is in default shall be liable to a category 2 civil penalty;
- (d) subsection (6) or (8), the company and every officer of the company who is in default shall be liable to a category 1 civil penalty.

214 Prohibition of allotment of shares to directors save on same terms as to all members, and restriction on sale of undertakings by directors

(1) Notwithstanding anything in the articles, the directors of a company shall not be empowered, without the approval of the company in general meeting—

- (a) to issue or allot reserve shares or new shares to any director or his or her nominee save in so far as they are issued or allotted to him or her or to such nominee as a member on the same terms and conditions as have been simultaneously offered in respect of the said issue or allotment of shares to all the members of the company in proportion to their existing holdings;
- (b) to dispose of the undertaking of the company or of the whole or the greater part of the assets of the company.

(2) No resolution of the company shall be effective as approving of the differential issue or allotment of shares to a director or of a disposal in terms of subsection (1)(b) unless it authorises, in terms, the specific transaction proposed by the directors.

215 Particulars in accounts of directors' salaries and pensions

(1) In any accounts of a company laid before it in general meeting or in a statement annexed thereto there shall, subject to and in accordance with this section, be shown so far as the information is contained in the company's financial records or the company has the right to obtain it from the persons concerned—

- (a) the aggregate amount of the directors' emoluments; and
- (b) the aggregate amount of directors' or past directors' pensions; and
- (c) the aggregate amount of any compensation to directors or past directors in respect of loss of office.

(2) The amount to be shown under subsection (1) (a) —

- (a) shall include any emoluments paid to or receivable by any person in respect of his or her services as director of the company or in respect of his or her services, while director of the company, as director of any subsidiary thereof or otherwise in connection with the management of the affairs of the company or any subsidiary thereof; and
- (b) shall distinguish between emoluments in respect of services as director, whether of the company or its subsidiary, and other emoluments;

and for the purposes of this section the expression “emoluments”, in relation to a director, includes fees and share of the profits, shares and share options, any sums paid by way of expenses allowance in so far as those sums are deemed under any law to be taxable income of the recipient, any contribution paid in respect of him or her under any pension scheme and the estimated money value of any other benefits received by him or her otherwise than in cash.

(3) The amount to be shown under subsection (1) (b) —

- (a) shall not include any pension paid or receivable under a pension scheme if the scheme is such that the contributions thereunder are substantially adequate for the maintenance of the scheme, but save as aforesaid shall include any pension paid or receivable in respect of any such services of a director or past director of the company as are mentioned in subsection (2), whether to or by him or her or, on his or her nomination or by virtue of dependence on or other connection with him or her, to or by any other person; and
- (b) shall distinguish between pensions in respect of services as director, whether of the company or its subsidiary, and other pensions;

and for the purposes of this section the expression “pension” includes any superannuation allowance, superannuation gratuity or similar payment and the expression “pension scheme” means a scheme for the provision of pensions in respect of services as director or otherwise which is maintained in whole or in part by means of contributions, and the expression “contribution”, in relation to a pension scheme, means any payment, including an insurance premium, paid for the purposes of the scheme by or in respect of persons rendering services in respect of which pensions will or may become payable under the scheme, except that it does not include any payment in respect of two or more persons if the amount paid in respect of each of them is not ascertainable.

(4) The amount to be shown under subsection (1) (c) —

- (a) shall include any sums paid to or receivable by a director or past director by way of compensation for the loss of office as director of the company or for the loss, while director of the company or on or in connection with his or her ceasing to be a director of the company, of any other office in connection with the management of the company’s affairs or of any office as director or otherwise in connection with the management of the affairs of any subsidiary thereof; and
- (b) shall distinguish between compensation in respect of the office of director, whether of the company or its subsidiary, and compensation in respect of other offices;

and for the purposes of this section references to compensation for loss of office shall include sums paid as consideration for or in connection with a person’s retirement from office.

(5) The amounts to be shown under each paragraph of subsection (1)—

- (a) shall include all relevant sums paid by or receivable from—
 - (i) the company; and
 - (ii) the company’s subsidiaries; and
 - (iii) any other person;

except sums to be accounted for to the company or any of its subsidiaries or, by virtue of section 211 (“Duty of director to disclose payment for loss of office, made in connection with transfer of shares in company”), to past or present members of the company or any of its subsidiaries or any class of those members; and

- (b) shall distinguish, in the case of the amount to be shown under subsection (1)(c), between the sums respectively paid by or receivable from the company, the company's subsidiaries and persons other than the company and its subsidiaries.

(6) The amounts to be shown under this section for any financial year shall be the sums receivable in respect of that year, whenever paid, or, in the case of sums not receivable in respect of a period, the sums paid during that year so, however, that where—

- (a) any sums are not shown in the accounts for the relevant financial year on the ground that the person receiving them is liable to account therefor as mentioned in subsection (5)(a), but the liability is thereafter wholly or partly released or is not enforced within a period of two years; or
- (b) any sums paid by way of expenses allowance are included in the recipient's taxable income after the end of the relevant financial year;

those sums shall, to the extent to which the liability is released or not enforced or they are included as aforesaid, as the case may be, be shown in the first accounts in which it is practicable to show them or in a statement annexed thereto and shall be distinguished from the amounts to be shown therein apart from this provision.

(7) Where it is necessary so to do for the purpose of making any distinction required by this section in any amount to be shown thereunder, the directors may apportion any payments between the matters in respect of which they have been paid or are receivable in such manner as they think appropriate.

(8) If in the case of any accounts the requirements of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report thereon, so far as they are reasonably able to do so, a statement giving the required particulars.

(9) In this section any reference to a company's subsidiary—

- (a) in relation to a person who is or was, while a director of the company, a director also, by virtue of the company's nomination, direct or indirect, of any other body corporate, shall, subject to paragraph (b), include that body corporate, whether or not it is or was in fact the company's subsidiary; and
- (b) shall, for the purposes of subsections (2) and (3), be taken as referring to a subsidiary at the time the services were rendered and, for the purposes of subsection (4), be taken as referring to a subsidiary immediately before the loss of office as director of the company.

(10) It shall be the duty of every director of a public company and of every person who has at any time during the preceding two years been a director to give notice to the company of such matters relating to himself or herself as may be necessary for the purposes of this section; and if he or she makes default in complying with such duty he or she shall be liable to a category 3 civil penalty.

216 Particulars in accounts of loans to officers

(1) Save in the case of private companies, the accounts which, in pursuance of this Act, are to be laid before every company in general meeting shall, subject to this section, contain particulars showing—

- (a) the amount of any loans which during the period to which the accounts relate have been made by the company or by any subsidiary company, or by any other person under a guarantee from or on a security provided by the

company or such subsidiary to any director or other officer of the company, including any such loans which were repaid during the said period;

- (b) the amount of any loans made in manner aforesaid to any director or officer at any time before the period aforesaid and outstanding at the expiration thereof.

(2) With respect to loans subsection (1) shall not apply—

- (a) in the case of a company or a subsidiary thereof the ordinary business of which includes the lending of money, to a loan made by the company or the subsidiary in the ordinary course of its business; or
- (b) to a loan made by the company or the subsidiary to any employee of the company if the loan does not exceed four thousand United States dollars and is certified by the directors of the company or the subsidiary, as the case may be, to have been made in accordance with any scheme adopted by the company or the subsidiary with respect to loans to its employees.

(3) With respect to loans subsection (1) shall apply to a loan to any person who has, during the company's financial year, been a director or other officer of the company made before he or she became a director or officer, as it applies to a loan to a director or officer of the company.

(4) If in the case of any such accounts as aforesaid provisions of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report on the balance sheet of the company, so far as they are reasonably able to do so, a statement giving the required particulars.

(5) References in this section to a subsidiary shall be taken as referring to a subsidiary at the end of the company's financial year, whether or not a subsidiary at the date of the loan.

(6) It shall be the duty of every director and of every other officer of a company and of every person who had, at any time within the previous two years, been a director or officer to give notice to the company of any such matters relating to himself or herself as may be necessary for the purposes of this section; and if he or she makes default in complying with such duty he or she shall be liable to a category 3 civil penalty.

217 Register of directors and secretaries

(1) Every company shall keep at the office at which the register of members of the company is kept a register of its directors and secretaries.

(2) The said register shall contain with respect to each director his or her present first name and surname, any former first name and surname, an identification reference number appearing in his or her identity document, his or her full residential or business address and postal address, his or her nationality and particulars of any other directorships held by him or her:

Provided that it shall not be necessary for the register to contain particulars of directorships held by a director in companies of which the company is the wholly owned subsidiary or which are the wholly owned subsidiaries either of the company or another company of which the company is the wholly owned subsidiary, and for the purposes of this proviso the expression "company" shall include any body corporate incorporated in Zimbabwe.

(3) The said register shall contain the following particulars with respect to the secretary, that is to say—

- (a) in the case of an individual, his or her present first name and surname, any former first name and surname, an identification reference number

appearing in his or her identity document and his or her full residential address or business and postal addresses; and

- (b) in the case of a corporation, partnership or other association, its name and registered or principal office.

(4) The company shall, within the periods respectively mentioned in subsection (5), deliver to the Registrar a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors or in its secretary or in any of the particulars contained in the register and of the date of any such change:

Provided that, except when making its annual return in terms of section 165 (“Annual return to be made by company”), it shall not be necessary for a company to deliver to the Registrar a notification of any change in the particulars of directorships held by any of its directors in any other company.

(5) The period within which the return or notification referred to in subsection (4) is to be delivered to the Registrar shall be one month after the incorporation of the company or the date on which the change is notified to the company, as the case may be.

(6) It shall be the duty of every director and secretary of every company to furnish the company with all particulars required for inclusion in the said register, including any addition to or alteration or other change in any such particulars, and any director or secretary who neglects or fails without reasonable excuse to furnish the company with any particulars so required within seven days after demand made by the company, or who furnishes the company with any particular which is incorrect in any respect, shall be in default and liable to a category 3 civil penalty.

(7) The resignation of a director or a secretary shall not relieve him or her of his or her duties as director or secretary, as the case may be, under this Act or under the articles of the company unless the director or secretary, having notified the Registrar and the company of his or her resignation, had reasonable ground to believe that the company would comply with subsection (5).

(8) The register to be kept under this section shall, during business hours, subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection, be open to the inspection of any member of the company without charge, and of any other person on payment of twenty cents or such less sum as the company may prescribe for each inspection.

(9) The company shall, on application, furnish any person with a copy or extract from such register on payment of twenty-five cents or such less sum as the company may prescribe for every hundred words or part thereof of the required copy or extract or afford to such person adequate facilities for making such copy or extract.

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

(10) Subject to subsection (11), if default is made in complying with subsection (1), (2), (3) or (4) the defaulting company shall be liable to a category 4 civil penalty.

(11) If any inspection under this section is refused, the defaulting company shall be liable to a category 2 civil penalty.

(12) For the purposes of this section—

- (a) a person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be deemed to be a director and officer of the company;
- (b) in the case of a peer or person usually known by a title different from his or her surname the expression “surname” means that title;
- (c) references to a former first name or surname do not include—
 - (i) in the case of any person, a former first name or surname where the name or surname was changed or disused before the person bearing the name attained the age of eighteen years; or
 - (ii) in the case of a married woman, the name or surname by which she was known previous to the marriage.

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

218 Board’s role and responsibilities

(1) The board of directors shall be responsible for decisions on all matters except those reserved to the shareholders by this Act or by the company’s constitutive documents.

(2) Without limiting the foregoing, the board’s responsibilities include—

- (a) determining and directing overall business performance and strategy plans for the company; and
- (b) ensuring that the financial records, financial statements and external audit referred to in Sub-Part C (“Accounts and audit”) are kept, maintained and performed as stated in that Sub-Part; and
- (c) the appointment, removal, compensation and performance of officers and oversight of management of the company; and
- (d) the convening of and preparation of the initial agenda for shareholder meetings; and
- (e) determining the record date for shareholders entitled to participate in a shareholder meeting, and setting the amounts and the record dates of, and payment dates for, and procedures in connection with, the payment of dividends and other distributions; and
- (f) authorising the issuance of shares and other securities that the board is authorised to issue and authorising the borrowing of money and otherwise incurring debt, except in each case when those powers are reserved to the shareholders; and
- (g) deciding any other matters referred to the exclusive competence of the board of directors in the company’s constitutive documents.

(3) The board shall exercise collectively the responsibilities that under section 195 (“Directors and their functions and responsibilities”)(2) directors must exercise individually.

(4) The responsibilities and accountability of the board of directors and its committees may not be transferred to, discharged by or determined by other persons or other bodies within or outside the company; in particular, an individual director may not assign or delegate his or her responsibilities or accountability under this Act to another person.

219 Audit committee of public company

(1) The Board of every public company shall have such committees as may be specified in its articles of association, but must in any event appoint an audit committee consisting of at least three appointees, all of whom shall be independent directors (under no circumstances may the chairperson of the board be a member of the audit committee) and having the responsibilities specified in subsection (2).

(2) The audit committee shall be responsible for—

- (a) the selection, remuneration, and terms of engagement of an external auditor, who, in its judgment, is independent of the company, subject to ratification by the shareholders; and
- (b) proposing, for approval by the shareholders, the engagement of that auditor upon such remuneration and other terms as it has determined to be reasonable; and
- (c) monitoring the independence of the company's external auditor in terms of subsection (4); and
- (d) discharging the particular tasks referred to in subsection (5); and
- (e) reporting to the shareholders generally on its activities and on matters of its greatest concern.

(3) Subsection (2) does not preclude the appointment by the shareholders at an annual general meeting of an auditor other than one nominated by the audit committee, but if such an auditor is appointed, the appointment shall be valid only if the audit committee is satisfied that the proposed auditor is independent of the company and qualified to audit public companies under the Public Accountants and Auditors Act [Chapter 27:12].

(4) For that purpose of subsection (2)(c) the audit committee shall have authority to pre-approve any arrangement under which the auditor, directly or indirectly, provides non-audit services to the company, and the audit committee shall, in any event, make a determination at least once each year of the auditor's independence taking account of any relationships of the auditor with the company or other persons that may compromise the auditor's independence

(5) The audit committee shall, in addition—

- (a) regularly review and discuss with the auditor the scope and results of its audit, any difficulties the auditor encountered including any restrictions on its access to requested information and any disagreements or difficulties encountered with management; and
- (b) review and discuss with the company's management and the auditor each annual and each quarterly financial statement of the company including judgments made in connection with the financial statements; and
- (c) review and discuss the adequacy of the company's internal auditing personnel and procedures and its internal controls and compliance procedures, and any risk management systems, and any changes to those; and
- (d) oversee the company's compliance with legal and regulatory requirements including but not limited to its compliance with generally accepted accounting practices; and
- (e) review and discuss arrangements under which company employees can confidentially raise concerns about possible improprieties in financial reporting or other matters, and ensure that arrangements are in place for independent investigation and follow-up regarding such matters.

(6) The board shall ensure that the audit committee has the resources necessary for its duties including the authority to engage external legal, accounting or other advisors without seeking the approval of the Board. The company shall provide funding for the compensation of any such persons.

220 Corporate governance guidelines for public companies

(1) The board of every public company shall establish or adopt written corporate governance guidelines covering matters such as standards for qualification and independence of a director, directors' responsibilities including meeting attendance, diligence in reviewing materials, and rules for disclosure and review of potential conflicts of interest with the company, director compensation policy, succession planning for both directors and officers, and other corporate governance matters deemed appropriate. Such guidelines shall be consistent with the then current National Code on Corporate Governance.

(2) The company shall make such guidelines available in print to any shareholder who requests it, at the shareholder's expense.

(3) At each annual shareholders' meeting the company's board of directors shall report to the meeting on the company's compliance with its guidelines and their conformity to the principles set forth in the National Code on Corporate Governance, and explain the extent if any to which it has varied them or believes that any noncompliance therewith is justified.

(4) Every public company shall formulate and implement a policy to promote diversity and gender balance in their governance structures and employment policies from the board downwards.

221 Officers of company

(1) A board of directors shall appoint one or more individual persons as officers.

(2) A person may be both a director and an officer, and a person may simultaneously hold more than one office, unless provided otherwise in the company's memorandum or articles.

(3) The officers shall be under the direction of the board of directors and their responsibility shall include management and operation of current activities of the company or parts thereof, other than matters within the exclusive competence of the board of directors or the members.

(4) The board of directors may elect a head officer and give such person the title "chief executive officer," "president," "managing director," or another similar title, and the person's duties may be prescribed in detail in the company's articles of association or by a separate resolution of the board.

(5) The head officer referred to in subsection (4) shall have authority to act generally in the company's name, representing the company's interests, concluding transactions on the company's behalf and giving instructions to the company's employees.

(6) The board shall elect such other officers, and may authorise officers to appoint subordinate officers, as the board considers appropriate, and the board may prescribe their respective titles, functions and authorities.

(7) An appointment as an officer shall not of itself create contractual rights, and any officer may be removed by the board of directors at any time with or without specific cause, but such removal shall not in itself prejudice rights under an employment contract, if any, of the person so removed.

*Sub-Part F: Protection of minority shareholders***222 Meaning of “member” and “company” in sections 223 to 225**

(1) In sections 223 (“Order on application of member”), 224 (“Order on application of Registrar”) and 225 (“Powers of High Court in applications under sections 223 and 224”)—

“member” includes a person who is not a member of the company but to whom shares in the company have been transferred or transmitted by operation of law.

(2) In sections 223 and 224 —

“company” includes a body corporate referred to in section 43 (“Power of inspectors to investigate related registered or unregistered entities”) .

223 Order on application of member

A member of a company may apply to the court for an order in terms of section 225 (“Powers of High Court in applications under sections 223 to 224”) on the ground that the company’s affairs are being or have been conducted in a manner which is oppressive or unfairly prejudicial to the interests of some part of the members, including himself or herself, or that any actual or proposed act or omission of the company, including an act or omission on its behalf, is or would be so oppressive or prejudicial.

224 Order on application of Registrar

(1) If in the case of any company—

- (a) the Registrar has received a report from an investigator under section 45 (“Registrar’s report”) (1); and
- (b) it appears to him or her that the company’s affairs are being or have been conducted in a manner which is oppressive or unfairly prejudicial to the interests of some part of the members, or that any actual or proposed act or omission the company, including an act or of omission on its behalf, is or would be so oppressive or prejudicial;

he or she may, in addition to or instead of applying under section 46 (“Proceedings on inspector’s report”)(2) for the winding up of the company, apply to the court for an order in terms of section 225 (“Powers of High Court in applications under sections 223 to 224”).

225 Powers of court in applications under sections 223 and 224

(1) If the High Court is satisfied that an application under section 223 (“Order on application of member”) or 224 (“Order on application of Registrar”) is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.

(2) Without prejudice to the generality of subsection (1), the court’s order may—

- (a) regulate the conduct of the company’s affairs in the future;
- (b) require the company to refrain from doing or continuing an act complained of by the applicant or to do an act which the applicant has complained it has omitted to do;
- (c) authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons as the court may direct;

(d) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly.

(3) If an order under this section prohibits a company from altering its constitutive documents, the company shall not have power without leave of the court to make any such alteration.

(4) Any alteration in the company's constitutive documents made by virtue of an order under this section shall be of the same effect as if duly made by resolution of the company.

(5) A copy of an order under this section altering or giving leave to alter a company's constitutive documents, certified by the registrar of the court shall, within fourteen days from the making of the order or such longer period as the court may allow, be delivered by the company to the Registrar for registration.

(6) If it comes to the notice of the Registrar that a company has made default in complying with subsection (5), the defaulting company shall be liable to a category 3 civil penalty.

Sub-Part G: Mergers, etc.

226 Definitions in Chapter II Part III (G)

In this Sub-Part—

“amalgamation” means a merger in which one more existing companies merge into another existing company;

“consolidation” means a merger in which two or more companies are consolidated into a new company;

“major asset transaction” means a transaction or related series of transactions involving—

- (a) the purchase or other acquisition outside the usual course of the company's business; or
- (b) the sale or other transfer outside the usual course of the company's business; or
- (c) the pledge or mortgage or other encumbrance outside the usual course of the company's business;

by the company of another company's property, property rights, or other rights the value of which, on the date of the company's decision to complete the transaction, is fifty *per centum* or more of the book value of the company's assets based on the company's most recently compiled statement of financial position;

“merger” means amalgamation or consolidation of two or more companies.

227 Power to undertake mergers and major asset transactions

A private or public company or cooperative company may undertake and complete a merger at any time as provided by the Tariff and Competition Act [*Chapter 14:20*] or a major asset transaction in accordance with this Sub-Part.

228 Procedure for merger

(1) Two or more public companies or any combination of companies consisting of at least one public company and at least one private company (hereafter called the “merging companies”) may undertake a merger which must comply with the following requirements—

- (a) enter into a provisional contract for merger compliant with section 229 (“Contents of contract of merger”); and
- (b) the merging companies shall publish notice of the proposed merger in the *Gazette* and in a daily newspaper circulating in the district in which the registered office of the company is situated, making mention of the names of the merging companies;
- (c) give notice of the provisional contract of merger to the shareholders of each of the merging companies, which notice shall be compliant with the requirements for a special resolution and shall be accompanied by—
 - (i) a copy of the contract for merger together with an explanation which describes the legal and economic grounds for the merger; and
 - (ii) any recommendation of the board of directors on the proposed merger and the reasons for the recommendation; and
 - (iii) a copy of an opinion of an independent financial adviser if such an opinion has been obtained or is required under section 230 (“Independent financial opinion”); and
 - (iv) the annual financial statements of all the companies which are parties to the merger for the previous three years (or any shorter time of the company’s existence):

Provided if the latest annual financial statement was as of a date more than six months before the contract for merger, an audited financial statement for the intervening period ending not less than one month before the shareholder meeting concerned which reflects the financial condition of the company concerned (except that the foregoing shall not apply to any new company which was created to be the surviving company in the merger), and

- (v) a notice that in the event that the merger is approved, dissenting shareholders are entitled to the rights referred to section 233 (“Dissenting shareholders’ appraisal rights”);
- (d) not later than fourteen days after the approval of the merger by the last shareholder meeting to approve it, the merged company or the merging companies, as the case may be, shall—
 - (i) file the contract for merger with the Registrar in the prescribed manner and form and together with the prescribed fee, upon which registration the merger shall become effective;
 - (ii) publish notice of the merger in the *Gazette* and in a daily newspaper circulating in the district in which the registered office of the company is situated, making mention of the names of the merging companies.

(2) Notwithstanding the foregoing provisions of this section, a company that owns ninety *per centum* or more of the shares of each class of shares of another company may—

- (a) merge that subsidiary into itself; or
- (b) merge that company into another such subsidiary; or
- (c) merge itself into that subsidiary;

without the approval of the board of directors or shareholders of the subsidiary, unless the constitutive documents of the subsidiary expressly provides otherwise.

(3) A company engaging in a merger referred to in subsection (2) shall not require approval of its shareholders in terms of this section, unless the constitutive

documents of the holding company provides otherwise. In any such case where approval by the subsidiary's shareholders is not required, the parent company shall, within ten days after the effective date of the merger, notify each of the subsidiary's shareholders that the merger has become effective.

(4) If default is made in complying with subsection (1) (d) (i) or (ii) the defaulting merged company or the merging companies, as the case may be, shall be liable to a category 3 civil penalty.

229 Contents of contract of merger

A contract of merger shall include—

- (a) the name of the registered office and company secretary of each company that will merge and of the surviving or new company into which each company plans to merge; and
- (b) the terms and conditions of the proposed merger; and
- (c) the manner and basis of converting the shares of each merging company into cash or other property, or shares, other securities or debt or other obligations of the surviving or new company or of any shareholder of the surviving company; and
- (d) the full text of the constitutive documents of the surviving or new company as it will be in effect immediately following the merger; and
- (e) the date from which the transactions of each non-surviving company shall be treated for accounting purposes as being those of the surviving or new company; and
- (f) the rights conferred by the surviving or new company on the holders of securities other than shares, or the measures proposed concerning them; and
- (g) any provisions under which the proposed merger can be abandoned before its completion; and
- (h) other provisions relating to the merger including but not limited to a possible provision that payment will not be made for any converted shares until after the merger has become effective.

230 Independent financial opinion

The board of directors of a private company may, and the board of a public company must, obtain an opinion of an independent professional financial adviser on the terms of the contract for merger and the proposed merger, in which the adviser shall state—

- (a) the adviser's analysis and an explanation of all the terms of the contract for merger, including the method or methods used to arrive at any proposed share exchange ratio and the values arrived at using each method; and
- (b) an opinion as to the fairness of the merger to the shareholders and, if there is more than one type or class of shareholders, to each type or class of shareholders and creditors of the merging companies.

231 Effect of merger

The effect of a merger is that--

- (a) the companies that are parties to the merger are one single company which will be the new or surviving company named in its constitutive documents filed with the Registrar under section 228 ("Procedure for merger") (1)(d) (i), and the separate existence of all such companies except the surviving or new company shall terminate on the date of such filing; and

- (b) the surviving or new company owns all of the assets of and claims by each company that was a party to the merger, in each case of every kind, whether in contract, delict or otherwise and whether known or unknown, and will owe all of the debts, liabilities and obligations of and be subject to and responsible for all of the claims by any person against each company that was a party to the merger, in each case of every kind, whether in contract, delict or otherwise and whether known or unknown; and
- (c) all legal actions or other claims against any company that was a party to the merger may be continued against the surviving or new company, which will be substituted in the lawsuit or claim for the company whose existence has terminated; and
- (d) the constitutive documents of the surviving or new company shall be the constitutive documents as set forth in or together with the contract; and
- (e) the shares of each company that was a party to the merger are converted into shares, other securities or debt or other obligations or the right to receive money of the surviving or new company, and the former holders of such shares shall be entitled only to the rights provided in the contract of merger.

232 Procedure for major asset transactions

(1) A public company may undertake a major asset transaction subject to the following conditions—

- (a) the board of directors of the company must recommend the transaction and direct that it be submitted for approval to an annual or extraordinary shareholder meeting; and
- (b) written notice of the transaction must be dispatched not less than twenty-one days before the meeting of the shareholders, stating that the purpose of the meeting is to consider the transaction and including —
 - (i) a summary of the transaction and the recommendation of the board of directors on the transaction; and
 - (ii) a statement of the shareholders' right to dissent to the transaction; and
 - (iii) a statement that in the event that the transaction is approved, aggrieved shareholders are entitled to the rights referred to section 233 ("Dissenting shareholders appraisal rights"); and
- (c) the shareholders shall approve the transaction by adopting a special resolution upon the affirmative vote of holders of all shares entitled to vote on the transaction and, if group voting is required, a special resolution of the votes of each voting group entitled to group voting on the transaction and of the total number of votes of the shares entitled to vote on the transaction.

(2) If at any time before the transaction in question is referred to a meeting of shareholders, any dispute or question arises as to whether the transaction in question is outside the usual course of the business of the company or not, or that the transaction is a merger and not a major asset transaction, any dissenting director or shareholder of the company concerned or any other interested person may on notice to the other disputants make a chamber application to a Magistrate having jurisdiction in the area where the company has its registered office.

233 Dissenting shareholders' appraisal rights

(1) If a company has given notice to shareholders of a meeting to consider adopting a resolution to enter into a transaction contemplated in section 143 ("Variation

of rights attaching to shares”) and 228 (“Procedure for merger”), that notice must include a statement informing shareholders of their rights under this section.

(2) At any time before a resolution referred to in subsection (1) is to be voted on, a dissenting shareholder may give the company a written notice objecting to the resolution.

(3) Within ten business days after a company has adopted a resolution contemplated in this section, the company must send a notice that the resolution has been adopted to each shareholder who—

- (a) gave the company a written notice of objection in terms of subsection (1); and
- (b) has neither—
 - (i) withdrawn that notice; or
 - (ii) voted in support of the resolution.

(4) A shareholder may demand that the company pay the shareholder the fair value for all of the shares of the company held by that person if—

- (a) the shareholder—
 - (i) sent the company a notice of objection, subject to subsection (5); and
 - (ii) in the case of section 140 (“Notice to Registrar of consolidation of share capital, conversion of shares into stock”) holds shares of a class that is materially and adversely affected by the alteration;and
- (b) the company has adopted the resolution contemplated in subsection (1); and
- (c) the shareholder—
 - (i) voted against that resolution; and
 - (ii) has complied with all of the procedural requirements of this section.

(5) The requirement of subsection (4)(a)(i) does not apply if the company failed to give notice of the meeting, or failed to include in that notice a statement of the shareholders rights under this section.

(6) A shareholder who satisfies the requirements of subsection (4) may make a demand contemplated in that subsection by delivering a written notice to the company within—

- (a) twenty business days after receiving a notice under subsection (4); or
- (b) if the shareholder does not receive a notice under subsection (4), within twenty business days after learning that the resolution has been adopted.

(7) A demand delivered in terms of subsections (4) to (6) must state—

- (a) the shareholder’s name and address; and
- (b) the number and class of shares in respect of which the shareholder seeks payment; and
- (c) a demand for payment of the fair value of those shares.

(8) A shareholder who has sent a demand in terms of subsections (4) to (6) has no further rights in respect of those shares, other than to be paid their fair value, unless—

- (a) the shareholder withdraws that demand before the company makes an offer under subsection (9), or allows an offer made by the company to lapse, as contemplated in subsection (10)(b); or
- (b) the company fails to make an offer in accordance with subsection (9) and the shareholder withdraws the demand; or
- (c) the company revokes the adopted resolution that gave rise to the shareholder's rights under this section.

(9) If any of the events contemplated in subsection (8) occur, all of the shareholder's rights in respect of the shares are reinstated without interruption.

(10) Within five business days after the later of—

- (a) the day on which the action approved by the resolution is effective; or
- (b) the last day for the receipt of demands in terms of subsection (6)(a); or
- (c) the day the company received a demand as contemplated in subsection (6)(b), if applicable;

the company must send to each shareholder who has sent such a demand a written offer to pay an amount considered by the company's directors to be the fair value of the relevant shares, subject to subsection (14), accompanied by a statement showing how that value was determined.

(11) Every offer made under subsection (10)—

- (a) in respect of shares of the same class or series must be on the same terms; and
- (b) lapses if it has not been accepted within thirty business days after it was made.

(12) If a shareholder accepts an offer made under subsection (10)—

- (a) the shareholder must either in the case of—
 - (i) shares evidenced by certificates, tender the relevant share certificates to the company or the company's transfer agent; or
 - (ii) uncertificated shares, take the steps required in terms of section 151 ("Transfer of title to shares and debentures") to direct the transfer of those shares to the company or the company's transfer agent;
 and
- (b) the company must pay that shareholder the agreed amount within ten business days after the shareholder accepted the offer and—
 - (i) tendered the share certificates; or
 - (ii) directed the transfer to the company of uncertificated shares.

(13) A shareholder who has made a demand in terms of subsections (4) to (7) may apply to a court to determine a fair value in respect of the shares that were the subject of that demand, and an order requiring the company to pay the shareholder the fair value so determined, if the company has—

- (a) failed to make an offer under subsection (10); or
- (b) made an offer that the shareholder considers to be inadequate, and that offer has not lapsed.

(14) On an application to the court under subsection (13)—

- (a) all dissenting shareholders who have not accepted an offer from the company as at the date of the application must be joined as parties and are bound by the decision of the court; and

- (b) the company must notify each affected dissenting shareholder of the date, place and consequences of the application and of their right to participate in the court proceedings; and
- (c) the court—
 - (i) may determine whether any other person is a dissenting shareholder who should be joined as a party; and
 - (ii) must determine a fair value in respect of the shares of all dissenting shareholders, subject to subsection (15); and
 - (iii) in its discretion may—
 - A. appoint one or more appraisers to assist it in determining the fair value in respect of the shares; or
 - B. allow a reasonable rate of interest on the amount payable to each dissenting shareholder from the date the action approved by the resolution is effective, until the date of payment; and
 - (iv) may make an appropriate order of costs, having regard to any offer made by the company, and the final determination of the fair value by the court; and
 - (v) must make an order requiring—
 - A. the dissenting shareholders to either withdraw their respective demands, in which case the shareholder is reinstated to their full rights as a shareholder, or to comply with subsection (12)(a); and
 - B. the company to pay the fair value in respect of their shares to each dissenting shareholder who complies with subsection (12)(a), subject to any conditions the court considers necessary to ensure that the company fulfils its obligations under this section.

(15) The fair value in respect of any shares must be determined as at the date on which, and time immediately before, the company adopted the resolution that gave rise to a shareholder's rights under this section.

(16) If there are reasonable grounds to believe that compliance by a company with subsection (12)(b), or with a court order in terms of subsection (14)(c)(v)(B), would result in the company being unable to pay its debts as they fall due and payable for the ensuing twelve months—

- (a) the company may apply to a court for an order varying the company's obligations in terms of the relevant subsection; 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 owes money in terms of this section is paid at the earliest possible date compatible with the company satisfying its other financial obligations as they fall due and payable.

(17) If the resolution that gave rise to a shareholder's rights under this section authorised the company to conclude a merger or major asset transaction or variation of shares with one or more other companies, such that the company whose shares are the subject of a demand in terms of this section has ceased to exist, the obligations of that

company under this section are obligations of the successor to that company resulting from the amalgamation or merger or variation of shares.

(18) For greater certainty, the making of a demand, tendering of shares and payment by a company to a shareholder in terms of this section do not constitute a distribution by the company, or an acquisition of its shares by the company within the meaning of section 128 (“Power of company to purchase its own shares”), and therefore are not subject to—

- (a) the provisions of that section; or
- (b) the application by the company of the solvency and liquidity test set out in section 102 (“Solvency and liquidity test”).

Sub-Part H: Takeovers

234 Definitions in Sub-Part H

In this Sub-Part—

“associate” of a person means any natural or juristic person who (whether or not with a view to enabling them to acquire a control block of shares in a public company) is an associate in virtue of all or any of the following, that is to say in virtue of—

- (a) acting by mutual agreement in concert or combination with the first-mentioned person; or
- (b) holding the control block of shares in the first-mentioned person, or the first mentioned person holding the controlling block of shares in the associate; or
- (c) acting in accordance with the first-mentioned person’s instructions, or the first-mentioned person acting in accordance with the associate’s instructions; or
- (d) being related by blood or marriage to each other;

“control block” means thirty-five *per centum* or more of the total of the ordinary shares of a company and any preference shares which have the right to vote with ordinary shares.

235 Disclosure of potential control acquisition

(1) A person who alone or together with any associate acquires or owns more than twenty *per centum* of the ordinary shares of a public company shall, no later than fifteen days from the date that such person acquires such number of shares, send written notice to the company stating the person’s name, the names of the associate or associates, if any, the number of shares of the company belonging to him or her or to each of them (as the case may be), and whether the person intends to acquire a control block.

(2) If a person makes default in complying with subsection (1) the company secretary or other responsible officer of the public company concerned shall request any person—

- (a) to whom it is about to allot, issue or transfer any of its shares that may exceed the threshold mentioned in that provision, to furnish it with the information required by that provision, and if the person fails or refuses within a reasonable time to comply with the request the company shall not allot, issue or transfer the shares or interest to him or her; or
- (b) whom it has reason to believe holds shares that may exceed the threshold mentioned in that provision to furnish it with the information required

by that provision, and for so long as the person fails or refuses within a reasonable time to comply with the request he or she shall not, either personally or by proxy, cast a vote attached to the share nor receive a dividend payable on the share.

236 Acquisition of control block of shares of public company

(1) A person who intends, alone or together with one or more associates to acquire, taking into account the number of shares belonging to the person and the associate or associates, a control block of shares of a public company must, no later than thirty days prior to the date of acquiring the control block, send written notice to the company stating the person's intent to acquire a control block of shares.

(2) A public company in which a control block of shares is sought to be acquired under subsection (1), may stop the acquisition of the control block, by a decision of a shareholder meeting within the thirty-day notice period, adopted by majority vote of the holders of ordinary shares participating in the meeting, excluding votes of shares held by shareholders who intend to acquire the control block, and excluding votes of shares held by associates who intend to acquire the control block.

(3) Any shareholder or class of shareholders may for good cause shown, by application to a magistrate in chambers having jurisdiction in the area where the takeover is being effected, apply for an interdict stopping the acquisition of the control block after notice of intention to acquire it is given in terms of this section, whereupon the magistrate may if he or she thinks fit, refer the matter for trial.

237 Offer for remaining shares

(1) A person who alone or together with the person's associate or associates has acquired a control block of shares of a public company must on the date of acquisition give notice thereof to shareholders in writing and within sixty days of such notice must give further notice in writing to all of the remaining company's shareholders offering to acquire the company's ordinary shares belonging to them at a price not less than the weighted average price at which he or she acquired the company's shares comprising the control block during the last six months preceding the date of acquisition of the control block, except for the case when a shareholder meeting adopts a decision to waive the rights of shareholders to sell the shares belonging to them in accordance with subsection (3).

(2) The notice of offer shall contain information identifying and describing the person who has acquired the control block and the person's associate or associates, including their names, residence and business addresses, the number of shares belonging to them, the price offered for the shares, the price or prices paid by them for the shares which they hold, and the period during which the offeree shareholders can accept the offer to acquire shares (which may not be less than thirty days from the date of sending the offer to shareholders).

(3) Any decision under subsection (1) to waive the shareholders' right to sell shares belonging to them to a person who has acquired or intends to acquire a control block may be adopted by a shareholder meeting by a majority of votes of the holders of ordinary shares participating in the meeting, excluding votes of shares belonging to the person who has acquired or intends to acquire a control block of shares and excluding votes of shares held by the person's associate or associates.

(4) Any shareholder or class of shareholders may by application to a magistrate in chambers having jurisdiction in the area where the takeover is being effected, apply for an interdict stopping the acquisition of the control block on the grounds that the

person acquiring the control block and his or her associates are not complying with the requirements of this section, whereupon the magistrate may if he or she thinks fit, refer the matter for trial.

(5) Acquisition of a control block and sending to holders of ordinary shares the offer to acquire the ordinary shares belonging to them shall be completed within one hundred and twenty days from the date of sending the notice under subsection (2) of the offer of a control block of a company's shares.

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

(1) If within one hundred and twenty days after the date of an offer made under section 237 ("Offer for remaining shares") the offer has been accepted by the holders of at least ninety *per centum* of the target shares, other than any such shares held before the offer by the offeror and its associate or associates—

- (a) the offeror may within sixty days thereafter notify the holders of the remaining target shares that the offer has been accepted to that extent and the offeror wishes to acquire all remaining target shares; and
- (b) after giving such notice the offeror shall be entitled and bound to acquire all such remaining shares on the same terms that applied to shares whose holders accepted the original offer.

(2) If an offer to acquire such remaining shares has not been accepted by all such offerees, the offeror may apply to the magistrates court having jurisdiction in the area where the takeover is being effected, for an order authorising the offeror to give again the notice contemplated by subsection (1)(b) with the effect stated in that subsection. The court shall issue such order if the court finds that—

- (a) the minimum number of acceptances referred to in subsection (1) have been received; and
- (b) the offeror, after making reasonable inquiries, has been unable to trace holders if any of target shares to whom the notice is not given; and
- (c) the court is satisfied that it is just and reasonable to make the order having regard, in particular, to the number of holders of target shares who have been traced and notified but who have not accepted the offer.

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

(1) If an offer made under section 237 ("Offer for remaining shares") has resulted in the offeror's acquisition of at least ninety *per centum* of the target shares, the offeror must inform the holders of the remaining target shares in writing no later than thirty days after acquiring them that the offer has resulted in the acquisition of the target shares to that extent.

(2) Within ninety days of receipt of such information any holder of the remaining target shares may demand by notice in writing that the offeror acquire all of that person's target shares.

(3) After receiving such notice the offeror is bound to acquire all of such person's target shares on the same terms that applied to shares of holders who accepted the original offer.

(4) An offeror who fails to comply with this section is subject to a category 3 civil penalty.

PART IV

FOREIGN COMPANIES

*Sub Part A: General***240 Definitions in Chapter II Part IV (A)**

For the purposes of this Part—

“banking company” means a company which carries on in Zimbabwe banking business as defined in section 2(1) of the Banking Act [*Chapter 24:20*];

“insurance company” means a company which carries on insurance business within the meaning of the Insurance Act [*Chapter 24:07*];

“place of business”, in relation to a company, means any place where the company transacts or holds itself out as transacting business, and includes a share transfer or share registration office;

“principal officer”, in relation to a foreign company, means the person notified in terms of section 241 (“Requirements as to foreign companies”)(3) (b) as the person responsible for the management of the business of that company in Zimbabwe

241 Requirements as to foreign companies

(1) Subject to subsection (16), every foreign company which intends to establish a place of business in Zimbabwe shall submit to the Minister—

- (a) a copy, duly certified to be a true copy of the original by a director residing in Zimbabwe or by a notary public, of its constitutive documents and, if the instrument is in a foreign language, a certified translation thereof;
- (b) a list in the prescribed form of its directors resident or who will upon the establishment of the place of business be resident in Zimbabwe containing in respect of each director similar particulars to those required by section 217 (“Register of directors and secretaries”) to be contained in the register of directors and secretaries referred to in that section;
- (c) if the foreign company is the subsidiary of another company or companies, the name or names of such holding company or companies as the case may be.

(2) Unless the Minister is of the opinion that it would not be in the public interest to do so, he or she shall issue a certificate, subject to such conditions as may be prescribed, authorising the foreign company to establish a place of business in Zimbabwe.

(3) No foreign company shall establish a place of business within Zimbabwe unless it is registered and for such purpose shall lodge with the Registrar—

- (a) the documents referred to in subsection (1) together with the certificate referred to in subsection (2);
- (b) a notice in the prescribed form of the name and residential address of the principal officer who will be the person responsible for the management of its business in Zimbabwe, being a person who is ordinarily resident or a citizen of Zimbabwe and shall accept on its behalf service of process and any notice required to be served on it;
- (c) the address of its principal place of business in Zimbabwe

(4) If any alteration is made in—

- (a) the constitutive documents of a foreign company; or

- (b) the directors resident in Zimbabwe or the principal officer of a foreign company or the particulars contained in the list referred to in subsection (1)(b); or
- (c) the address of the said principal place of business;

the foreign company shall, within one month of such alteration, lodge with the Registrar for registration a return containing particulars of the alteration and, if the alteration is in any instrument referred to in paragraph (a), also a certified copy and certified translation, if need be, of the instrument showing the alteration.

(5) Every foreign company shall, within one month after the date of a request in writing by the Registrar to that effect, lodge with the Registrar particulars of the name, residential address and nationality of every director of that foreign company who is not resident in Zimbabwe.

(6) Any process or notice required to be served on a foreign company shall be sufficiently served if delivered at the address of the principal officer:

Provided that—

- (a) where any such foreign company makes default in filing with the Registrar the name and address of its principal officer; or
- (b) if at any time the principal officer is dead or has ceased to reside in Zimbabwe or for any other reason cannot be served;

any process or notice may be served on the foreign company by leaving it at any place of business established by it in Zimbabwe.

(7) Every foreign company shall in every year make out a statement of financial position and profit or loss and other comprehensive income account, in such form, and containing such particulars and including such documents as under this Act it would, had it been a company within the meaning of this Act, have been required to make out and lay before the company in general meeting and lodge a copy of such statement of financial position, profit or loss and other comprehensive income account with the Registrar. If such statement of financial position and other documents are in a foreign language there shall be annexed a certified translation thereof:

Provided that this subsection shall not apply to a foreign company which is a banking company or an insurance company.

(8) Every foreign company shall, within one month after the 1st January in each year, lodge with the Registrar for registration a return in the prescribed form containing particulars of the nominal and issued share capital of the foreign company as at that date and such other particulars as may be prescribed:

Provided that a foreign company shall not be required to lodge such return in the year following that in which it was registered in Zimbabwe.

(9) If any foreign company ceases to have a place of business within Zimbabwe, it shall, within one month of such cessation, give written notice of the fact to the Registrar, and as from the date on which the notice is so given the obligation of the foreign company to deliver to the Registrar any document, save any document which should have been delivered prior to such cessation, shall cease.

(10) On receipt of a notice from a foreign company that it has ceased to have a place of business in Zimbabwe, the Registrar shall remove the name of that foreign company from the register and shall publish notice thereof in the *Gazette*.

(11) When the Registrar has reasonable cause to believe that a foreign company has ceased to have a place of business in Zimbabwe, section 52 ("Striking off of defunct

business entities from register and remedy for persons aggrieved by striking off”) shall, with such changes as may be necessary, apply.

(12) Where the Minister is of the opinion that it will be in the public interest to do so, he or she may, not later than six months after the registration of the foreign company concerned—

- (a) revoke; or
- (b) amend any conditions of or impose any new conditions upon;

the certificate issued in terms of subsection (2) in respect of any foreign company:

Provided that—

- (i) before exercising any of his or her powers in terms of this subsection, the Minister shall give the foreign company concerned not less than one month’s notice in writing of his or her proposal to do so, and shall afford it an opportunity of making, in writing, such representations to him or her relating to his or her proposal as it may wish;
- (ii) a foreign company whose representations to the Minister are rejected may within fourteen days of receiving notice of rejection have recourse to the High Court in terms of the Administrative Justice Act [Chapter 10:28] (No. 12 of 2004).

(13) If any foreign company—

- (a) establishes a place of business within Zimbabwe without being registered; or
- (b) carries on business in Zimbabwe after the certificate which was issued in respect of the foreign company in terms of subsection (2) has been revoked in terms of subsection (12);

the foreign company and every officer of the foreign company in Zimbabwe who is in default shall be guilty of an offence and liable to a fine not exceeding level eleven.

(14) In addition, the Registrar may serve upon the foreign company and every officer of the foreign company in Zimbabwe who is in default as described in subsection (13) a category 4 civil penalty order.

(15) If any foreign company—

- (a) establishes a place of business within Zimbabwe without being registered the foreign company and every officer of the foreign company in Zimbabwe shall be liable to a category 2 civil penalty; or
- (b) fails to comply with subsection (1), (3) or (7), the foreign company and every officer of the foreign company in Zimbabwe shall be liable to a category 2 civil penalty; or
- (c) fails to comply with any condition imposed upon any certificate which was issued in respect of the foreign company in terms of subsection (2), the foreign company and every officer of the foreign company in Zimbabwe shall be liable to a category 4 civil penalty; or
- (d) fails to comply with subsection (4), (5), (8) or (9), the foreign company and every officer of the foreign company in Zimbabwe shall be liable to a category 3 civil penalty; or
- (e) carries on business in Zimbabwe after the certificate which was issued in respect of the foreign company in terms of subsection (2) has been revoked in terms of subsection (12), the foreign company and every officer of the foreign company in Zimbabwe shall be liable to a category 1 civil penalty.

- (16) This section shall not apply to any foreign company which—
- (a) has obtained an investment licence;
 - (b) has obtained a licence as a bank or an insurer;
 - (c) is operating in a special economic zone in terms of the Special Economic Zones Act [*Chapter 14:34*] (No. 7 of 2016).

242 Further administrative duties of foreign company

- (1) Every foreign company shall—
- (a) continuously display on the outside of every place in which it carries on business in Zimbabwe in a conspicuous position, in letters easily legible, its name and the country in which it is incorporated; and
 - (b) have its name engraved in legible characters on its seal, if any; and
 - (c) have its name mentioned in legible characters in all letterheads, notices, advertisements and other official publications of the company and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company and in all delivery notes, invoices, receipts and letters of credit of the company and additionally, in the case of letterheads, have mentioned in legible characters the name of the foreign country in which the company is incorporated; and
 - (d) in all business letters on or in which the name of the company appears and which are issued or sent by the company to any person, state in legible characters, with respect to every director resident in Zimbabwe or, if there is no such director, the principal officer, his or her present first names or the initials thereof and present surname; and
 - (e) in respect of its transactions within Zimbabwe, comply with section 182 (“Keeping of financial records”).

(2) Section 28 (“Provisions in connection with use of names by companies and private business corporations”) (1)(c) and subsections (2), (3), (4), (5) and (6) of that section and section 31 (“Postal address, registered office and electronic mail address”) (3) shall apply, with such changes as may be necessary, in relation to a foreign company and to the officers or any person acting on behalf of an officer of a foreign company.

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

“business letter” includes any quotation or order form but does not include any invoice, statement, delivery note, packing note or similar document.

243 Exemption in respect of transfer duty

Notwithstanding anything contained in any law, whenever a foreign company satisfies the court that—

- (a) it carries on its principal business within Zimbabwe; and
- (b) the company is about to be or is being wound up voluntarily in its country of incorporation for the purpose of transferring the whole of its business and property wherever situate to a company which will be or has been registered under this Act, hereinafter referred to as the new company, for the purpose of acquiring such business and property; and
- (c) the sole consideration for such transfer is the issue to the members of the foreign company of shares in the new company in proportion to their shareholdings in the foreign company; and
- (d) no shares in the new company will be available for issue to any persons other than the members of the foreign company;

the court may, subject to the certificate of the Registrar that—

- (i) the foreign company is being wound up voluntarily for the said purpose; and
- (ii) a company has been registered under this Act for the said purpose; and
- (iii) the members of the foreign company have had issued to them the shares in the new company to which they are entitled;

order that no duty shall be payable in respect of the transfer of immovable property from the foreign company to the company so registered.

Sub-Part B: Prospectuses of foreign companies

244 Provisions with respect to prospectus of foreign company

(1) No person shall—

- (a) issue, circulate or distribute in Zimbabwe any prospectus offering for subscription shares in or debentures of a foreign company, whether the foreign company has or has not been established or when formed will or will not establish a place of business in Zimbabwe, unless—
 - (i) before the issue, circulation or distribution of the prospectus in Zimbabwe a copy thereof, certified by the chairperson and two other directors of the foreign company or by all directors of the company if the number is certified to be less than three as having been approved by resolution of the managing body, has been delivered for registration to the Registrar; and
 - (ii) the prospectus states on the face of it that the copy has been so delivered; and
 - (iii) the prospectus is dated; and
 - (iv) the prospectus otherwise complies with this section and section 245 (“Contents of prospectus”);

or

- (b) issue to any person in Zimbabwe a form of application for shares in or debentures of such a foreign company or intended foreign company as aforesaid, unless the form is attached to a prospectus which complies with this section and section 245:

Provided that this provision shall not apply if it is shown that the form of application was issued in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

(2) This section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a foreign company or subsequently.

(3) Where any document by which any shares in or debentures of a foreign company are offered for sale to the public would, if the foreign company had been a company within the meaning of this Act, have been deemed by virtue of section 111 (“Document containing offer of shares or debentures for sale to be deemed to be prospectus”) to be a prospectus issued by the foreign company, that document shall be deemed to be, for the purpose of this section, a prospectus issued by the foreign company.

(4) An offer of shares or debentures for subscription or sale to any person whose ordinary business or part of whose ordinary business it is to buy or sell shares

or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this section.

(5) Section 108 (“Civil liability for misstatements in prospectus”) shall extend to every prospectus to which this section applies.

(6) Subsection (1)(a)(iii) and (iv) and (b) and subsections (2) to (4) shall not apply to the issue only to existing members or debenture holders of a foreign company, of a prospectus or form of application relating to shares in or debentures of the foreign company, whether an applicant for such shares or debentures will or will not have the right to renounce in favour of other persons.

(7) Any person who is knowingly responsible for the issue, circulation or distribution of any prospectus or for the issue of a form of application for shares or debentures in contravention of any of this section shall be guilty of an offence and liable to a fine not exceeding level eleven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

245 Contents of prospectus

(1) A prospectus issued, circulated or distributed under section 244 (“Provisions with respect to prospectus of foreign company”) shall—

- (a) contain particulars with respect to the following matters—
 - (i) the instrument constituting or defining the constitution of the foreign company;
 - (ii) the enactments or provisions having the force of an enactment, by or under which the incorporation of the foreign company was effected;
 - (iii) an address in Zimbabwe where the said instrument, enactments or provisions or copies thereof and, if the same are in a foreign language, a certified translation thereof can be inspected;
 - (iv) the date on which and the country in which the foreign company was incorporated;
 - (v) whether the foreign company has established a place of business in Zimbabwe and, if so, the address of its principal office in Zimbabwe:

Provided that subparagraphs (i), (ii) and (iii) shall not apply in the case of a prospectus issued more than two years after the date at which the foreign company commenced business in Zimbabwe;
- (b) subject to this section, state the matters specified in Part I and set out the reports specified in Part II, subject always to Part III, of the Fourth Schedule:

Provided that in paragraph 2 of the said Schedule a reference to the constitution of the company shall be substituted for the reference to the articles.

(2) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him or her with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

- (a) as regards any matter not disclosed, he or she proves that he or she was not cognisant thereof; or

- (b) he or she proves that the non-compliance or contravention arose from an honest mistake of fact on his or her part; or
- (c) the non-compliance or contravention was in respect of matters which, in the opinion of the court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters contained in paragraph 15 of the Fourth Schedule (“Form of annual return of company”), no director or other person shall incur any liability in respect of the failure unless it be proved that he or she had knowledge of the matters not disclosed.

(4) Nothing in this section or section 244 shall limit or diminish any liability which any person may incur under the common law or this Act, apart from this section.

246 Provisions as to expert’s consent and allotment

(1) A prospectus shall be deemed not to comply with sections 244 (“Provisions with respect to prospectus of foreign company”) and 245 (“Contents of prospectus”)—

- (a) if, where it includes or refers to a statement purporting to be made by an expert, he or she has not given or has before delivery of a copy of the prospectus for registration withdrawn his or her written consent to the issue of the prospectus with the statement or reference in the form and context in which it is included and there does not appear in the prospectus a statement that he or she has given and has not withdrawn his or her consent as aforesaid; or
- (b) if it does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by section 120 (“Allotment of shares and debentures to be dealt in on stock exchange”) so far as applicable.

(2) The requirements of section 244(1) for delivery of a copy of the prospectus to the Registrar before the prospectus is issued, circulated or distributed in Zimbabwe shall be deemed not to be satisfied unless there is endorsed on or attached to the copy so delivered—

- (a) any consent required by the foregoing subsection to the issue of the prospectus; and
- (b) the written consent so to act of any person named in the prospectus as the legal practitioner, auditor, banker or broker of the company; and
- (c) a copy of any contract required by section 244(1)(b) and paragraph 14 of the Fourth Schedule to be stated in the prospectus or, in the case of a contract not reduced to writing, a memorandum giving full particulars thereof; and
- (d) where the person making any report required by section 244(1)(b) to be set out in the prospectus has made in the report, or has without giving the reasons indicated in the report any such adjustments as are mentioned in this Act relating to such reports, a written statement signed by that person setting out the adjustments and giving the reasons therefor.

(3) Where any such contract as is mentioned in subsection (2)(c) is wholly or partly in a foreign language, the reference in that paragraph to a copy of the contract shall be taken as a reference to a copy of a certified translation thereof.

CHAPTER IV

PRIVATE BUSINESS CORPORATION AND OTHER BUSINESS ENTITIES

PART I

PRIVATE BUSINESS CORPORATIONS

*Sub-Part A: Incorporation of private business corporations and matters incidental thereto***247 Formation**

Any one or more persons, not exceeding twenty, who qualify for membership of a private business corporation in terms of section 253 (“Requirements for membership”) may, by subscribing their names to an incorporation statement and otherwise complying with the requirements of this Act in respect of registration, form a private business corporation.

248 Incorporation statement, signing thereof and registration of private business corporation

- (1) The incorporation statement shall be in the prescribed form and shall state—
- (a) the name of the private business corporation with “Private Business Corporation” as the last words of the name or the abbreviation “PBC”, in capital letters, at the end of the name; and
 - (b) the postal address of the private business corporation for the purposes of section 31 (“Postal address, registered office and electronic mail address”); and
 - (c) the physical address, not being a post office box or private bag number, of the registered office of the private business corporation for the purposes of section 31; and
 - (d) the full name of each member and his or her national identity number or, if he or she has no such number, the number of any other official identity document he or she may possess and his or her date of birth; and
 - (e) the percentage of each member’s interest in the private business corporation, taking the total of members’ interests as one hundred *per centum*; and
 - (f) the amount of each member’s contribution to the assets of the private business corporation, stating the extent to which each contribution is in cash or in property or in services rendered towards the formation or registration of the private business corporation, and stating the fair value of any contribution that is not in cash; and
 - (g) the name and postal address of an accounting officer to whom the members of the private business corporation intend to submit their financial statements in terms of section 274 (“Examination of financial statements and report thereon”); and
 - (h) the date of the end of the financial year of the private business corporation.

(2) Subject to section 27 (“Statement of objects of registered business entity and effect thereof”), the incorporation statement shall state the objects of the private business corporation.

(3) An incorporation statement shall be signed by—

- (a) every person who is to become a member of the private business corporation upon its incorporation; and

- (b) a person who is qualified to become the accounting officer of the private business corporation upon its incorporation.

(4) The effect of each member's signature on an incorporation statement shall be to acknowledge the correctness of each item in the incorporation statement and the fairness of any valuation included therein in terms of subsection (1) (f), and the effect of the signature of the person referred to in subsection (3)(b) shall be to indicate that he or she has no cause to believe that such valuation is unfair.

(5) The registration of incorporation statements and the issuance of a certificate of incorporation shall be as provided in section 18 ("Registration of constitutive documents").

249 Registration of amended incorporation statement

(1) Subject to the proviso to section 253 ("Requirements for membership") (1), if any change takes place in any of the matters stated in an incorporation statement in accordance with section 248 ("Incorporation statement, signing thereof and registration of Private Business Corporations")(1) (d), (e) or (f), the private business corporation shall within twenty-eight days send to the Registrar—

- (a) an amended incorporation statement complying in every respect with section 248 (1) and incorporating the change that has taken place, signed in accordance with section 248 (3) by every existing and new member, together with the duplicate original or originals or copy or copies required by section 18 ("Registration of Constitutive documents")(3); and
- (b) the private business corporation's copy of its original incorporation statement and any previous amended incorporation statement.

(2) The Registrar shall, upon payment of the prescribed fee, register any amended incorporation statement sent to him or her in terms of subsection (1) if it is in accordance with the provisions of this Act.

(3) On registering an amended incorporation statement the Registrar shall—

- (a) endorse on each copy the date of registration; and
- (b) endorse on each copy of the private business corporation's original incorporation statement and any previous amended incorporation statement the date of registration of the new amendment; and
- (c) return to the private business corporation one copy of the new amended incorporation statement and its own copy of its original incorporation statement and any previous amended incorporation statement if any so endorsed.

(4) If any change takes place in any of the matters stated in an incorporation statement in terms of section 248(1) (a), (b), (c), (g) or (h), the private business corporation and the Registrar shall proceed in terms of subsections (1), (2) and (3), but the change shall not take effect until registration of the amended incorporation statement or any later date specified therein.

(5) If a private business corporation defaults in complying with subsection (1) or (4), the Registrar may, on his or her own motion or on application by a member or creditor, serve on the members individually by registered post or electronic mail a direction that they rectify the default within twenty-eight days.

(6) If the members of a private business corporation fail to comply with any direction given in terms of subsection (5), the Registrar may, by further written notice served on the members individually by registered post or electronic mail, impose on them, or any of them, liability jointly and severally with the private business corporation

for every debt of the private business corporation incurred from the date on which the direction referred to in subsection (5) was sent until the default is rectified.

(7) On application by any member or members the court may relieve the members or any of them from any liability imposed under subsection (6).

250 Conversion of private business corporation into company

(1) A private business corporation that wishes to convert to a company shall deliver to the Registrar—

- (a) an application in the prescribed form signed by all its members; and
- (b) all documents necessary for the formation of a company under this Act.

(2) If the Registrar is satisfied that the private business corporation has complied with subsection (1) and is not in default under this Act, he or she shall—

- (a) cancel its registration as a private business corporation; and
- (b) proceed in accordance with section 18 (“Registration of Constitutive documents”).

(3) A company registered in accordance with this section shall be a company for all purposes under this Act and shall be the same body corporate as the private business corporation from which it was converted.

251 Conversion of company into private business corporation

(1) Any company having not more than twenty members, all of whom qualify for membership of a private business corporation in terms of section 253 (“Requirements for membership”), may apply for conversion to a private business corporation in terms of this section.

(2) A company referred to in subsection (1) shall publish a notice in the *Gazette* and in a newspaper circulating in the district in which its registered office is situated stating that—

- (a) an application is intended to be made, on a date to be specified in the notice, to the Registrar for the conversion of the company to a private business corporation; and
- (b) the application may be inspected at the office of the Registrar; and
- (c) any interested person who wishes to oppose the application may do so by lodging his or her objections and his or her name and address, in writing, with the Registrar within the ten days next following the date on which the application will be made.

(3) Where a company has given notice in terms of subsection (2), it shall lodge with the Registrar, not later than the date specified in the notice—

- (a) an application for conversion in the prescribed form signed by all the members of the company and containing a statement that upon conversion the assets of the private business corporation, fairly valued, will exceed its liabilities and that upon conversion it will be able to pay its debts as they become due in the ordinary course of its business; and
- (b) an incorporation statement which complies with section 248 (“Incorporation statement, signing thereof and registration of private business corporations”) but in which the members’ contributions to the private business corporation are shown as an aggregate amount, which amount shall not be greater than the excess of the fair value of the assets to be acquired by the private business corporation over the liabilities to be assumed by the private business corporation:

Provided that—

- (i) the private business corporation may treat any portion of such excess not reflected as members' contributions as amounts which may be distributed to its members;
- (ii) the members' interests in the private business corporation shall be in the same proportions to each other as their relative shareholdings in the company.

(4) An incorporation statement referred to subsection (3) (b) shall reflect every member of the company as a member of the private business corporation on its incorporation, and shall be signed accordingly by every such member and by an accounting officer in terms of section 248(3).

(5) Upon the expiry of the period of ten days next following the date specified in terms of subsection (2) (a), the Registrar shall, if he or she is satisfied that subsections (2) and (3) have been complied with by the company, consider the application and any objections thereto that may have been lodged and may grant or refuse the application:

Provided that, if any objections have been lodged, the Registrar shall give the objector or objectors and the company an opportunity of being heard in the matter.

(6) The Registrar shall notify the company and any objector of his or her decision on the application for conversion and the company or any objector may, within ten days of the notification of the decision, appeal against it to the High Court, which may confirm, reverse or vary the decision of the Registrar or give such other direction in the matter as it thinks fit.

(7) Where an application for conversion has been granted in terms of this section, the Registrar shall proceed in terms of section 18 ("Registration of constitutive documents") (5) and (6) and shall include in the certificate of incorporation of the private business corporation a statement that the private business corporation has been converted from a company, referring to its previous name and registered number.

(8) When he or she has registered a private business corporation which previously existed as a company, the Registrar shall ensure that the company's registration has been cancelled.

(9) Upon registration of a private business corporation which previously existed as a company, the private business corporation shall forthwith give notice of its conversion in writing to all the creditors of the company at the time of conversion and to all other parties to contracts or legal proceedings in which the company was concerned at the time of conversion.

(10) On the registration of a private business corporation which previously existed as a company, all the assets, rights, obligations and liabilities of the company concerned shall vest in the private business corporation and any legal proceedings instituted by or against the company or other things done or commenced by or against the company shall be deemed to have been instituted, done or commenced, as the case may be, by or against the private business corporation.

(11) The conversion of a company to a private business corporation shall not affect—

- (a) any liability of a director or officer of the company to the company on the ground of breach of trust or negligence, or to any other person pursuant to any provision of this Act; and
- (b) any liability of the company, or of any other person, as surety;

and the juristic person of the company shall continue to exist in the form of the private business corporation to which it has been converted.

(12) Upon the production by a private business corporation, which previously existed as a company, of its certificate of incorporation to any registrar or other officer charged with the custody of any register or record in terms of any law, such registrar or officer shall, free of charge, make all such alterations in his or her registers or records as may be necessary as a result of the conversion of the company to a private business corporation, and no transfer or stamp duty shall be payable in respect thereof.

Sub-Part B: Members

252 Number of members; commencement and termination of membership

(1) A private business corporation shall have a minimum of one member and a maximum of twenty members.

(2) A private business corporation shall not cease to exist solely on account of its having no members or more than twenty members:

Provided that—

- (i) any person who knowingly causes a private business corporation to incur a debt whilst it has no members shall be liable, jointly and severally with the private business corporation, for the debt;
- (ii) if a private business corporation has or purports to have more than twenty members, every member and purported member shall be liable, jointly and severally with the private business corporation, for every debt incurred by the private business corporation whilst the number of its members and purported members exceeds twenty.

(3) Section 20 (“Effect of registration of constitutive documents and limitation of liability of members of companies and private business corporations”)(3)(b) describes how membership in a private business corporation is commenced, evidenced and terminated.

253 Requirements for membership

(1) Subject to this section, only individual natural persons acting in their own right may be members of a private business corporation, and no partnership, association or body corporate or other legal person shall be a member, whether directly or through a nominee:

Provided that, if a member dies or becomes insolvent, mentally challenged or subject to any other legal disability, his or her estate may, without it being necessary to amend the incorporation statement, become a member in his or her place, and he or she or his or her estate shall be represented for all purposes of membership by his or her executor, trustee, curator or other legal representative, whether or not such representative is a partnership, association or body corporate or other legal person.

(2) Subject to this section, a minor or an unrehabilitated insolvent may be a member of a private business corporation:

Provided that in the case of a minor he or she shall be represented or assisted by his or her guardian in the exercise of his or her rights and duties as a member, and, in the case of an unrehabilitated insolvent, he or she must exhibit to the Registrar the written leave of his or her trustee in insolvency to become such member.

(3) Any person, partnership, association or body corporate or other legal person who or which, as the case may be, purports to become a member of a private

business corporation in contravention of subsection (1) or (2) shall, notwithstanding the invalidity of his or her or its purported membership, be liable jointly and severally with the private business corporation for every debt of the private business corporation incurred while such purported membership continues.

254 Members' contributions

(1) Each person who is to become a member of a private business corporation upon its incorporation shall, with the agreement of every other such person, make a contribution to the private business corporation's assets in the form of money or property or services rendered towards its formation or registration, or in a combination of those forms.

(2) Any person becoming a member of an existing private business corporation may, with the agreement of all existing members, make a contribution to the private business corporation's assets similar to that referred to in subsection (1).

(3) Any member's contribution may, with the agreement of all members, be increased or reduced:

Provided that a reduction involving a reduction of the private business corporation's assets shall be subject to section 270 ("Restriction on payments to members").

(4) A private business corporation shall record and secure the registration of any new member's contribution and any increase or reduction in an existing member's contribution by the procedure laid down in section 249 ("Registration of amended incorporation statement")(1).

(5) All money payable or property transferable by any member to the private business corporation as a member's contribution shall be a debt due by him or her to the private business corporation.

255 Cessation of membership by order of court

(1) On application by a private business corporation or by any member or members, a court may order that any member shall cease to be a member of the private business corporation in any of the following cases—

- (a) where the member is shown to the satisfaction of the court to have become permanently of unsound mind;
- (b) where the member is shown to the satisfaction of the court to have become in any other way permanently incapable of performing his or her duties as a member;
- (c) where the member has been guilty of such conduct as, in the opinion of the court, regard being had to the nature of the private business corporation's undertaking, is calculated prejudicially to affect the carrying on of the undertaking;
- (d) where the member has wilfully or persistently committed a breach of the private business corporation's by-laws, or has otherwise so conducted himself or herself in matters relating to the private business corporation's undertaking that it is not reasonably practicable for the other member or members to carry on the undertaking in association with him or her;
- (e) whenever circumstances have arisen which, in the opinion of the court, render it just and equitable that the member should cease to be a member of the private business corporation.

(2) Application to a court on either or both of the grounds specified in subsection (1) (c) and (d) shall not be made by the member whose conduct is alleged to justify the making of an order that he or she shall cease to be a member.

(3) The court making an order in terms of subsection (1) (a) may order for the appointment of a curator who may represent a member in a private business corporation.

(4) The court making an order in terms of subsection (1) may make such consequential orders as appear to it necessary to effect a just settlement between the person it has ordered to cease being a member, the other members and the private business corporation concerned.

Sub-Part C: Members' interests

256 Nature of member's interest

(1) Each member's interest in a private business corporation shall be expressed as a percentage, taking the total of members' interests as one hundred *per centum*, and shall be transferable by the method specified by section 249 ("Registration of amended incorporation statement").

(2) Each member's interest in a private business corporation shall entitle him or her, on the winding up or dissolution of the private business corporation, to a corresponding percentage of the assets of the private business corporation that are then distributable to members.

(3) Each member's interest in a private business corporation shall be held by that member alone, and shall not be capable of joint ownership.

257 Certificate of member's interest

(1) Each member shall be entitled to a certificate showing the percentage of his or her interest in the private business corporation, signed by every member.

(2) Whenever the percentage of a member's interest in a private business corporation changes he or she shall forthwith surrender to the private business corporation for cancellation any certificate previously issued to him or her and he or she shall be entitled to a new certificate reflecting his or her current interest.

(3) If a private business corporation is a registered user of the electronic registry, it may issue membership interests in dematerialised form, subject to the conditions of the issuance of such shares in section 289 ("Use of electronic registry otherwise than for business entity registration").

(4) Any holder of a dematerialised membership interest may demand proof of title to his or her membership interest in the form of a material certificate signed by every member in accordance with subsection (1), and the corporation concerned shall issue such certificate to the member no later than fourteen days after such request is received in writing:

Provided that if there is any lawful restriction on the transfer of such an interest, such certificate shall be clearly endorsed to that effect.

258 Acquisition of member's interest by new member

Subject to the by-laws of the private business corporation concerned, a new member may acquire his or her member's interest in an existing private business corporation either—

- (a) subject to section 259 ("Other disposals of members' interests"), from one or more existing members or their estates; or

- (b) by making a contribution to the assets of the private business corporation in accordance with section 254 (“Members’ contributions”)(2), in which case the percentage of his or her interest shall be agreed between him or her and the existing members.

259 Disposal of interest of insolvent member

(1) On the insolvency of the sole member of a private business corporation his or her trustee in insolvency shall, in the exercise of his or her functions as trustee, have unrestricted power to sell his or her member’s interest.

(2) On the insolvency of a member of a private business corporation having two or more members his or her trustee in insolvency shall, in the exercise of his or her functions as trustee, have power to sell the member’s interest —

- (a) to the private business corporation, subject to section 263 (“Acquisition by private business corporation of members’ interests”); or
- (b) to any or all of the other members *pro rata* or in such proportions as they and the trustee may agree; or
- (c) after giving a right of pre-emption on twenty-eight days’ written notice to the private business corporation and the other members, to any person qualified under section 253 (“Requirements for membership”) to be a member.

(3) The members of a private business corporation shall be obliged to accept as a new member a person who has acquired an insolvent member’s interest in accordance with subsection (2)(c).

(4) No by-laws or agreement to which the private business corporation or any member is a party shall affect the powers conferred on a trustee in insolvency by this section

260 Disposal of interest of deceased member

(1) The executor of the estate of a deceased member of a private business corporation shall give effect to any by-law of the private business corporation which makes provision for the sale or disposal of the member’s interest on his or her death, and any such by-law shall override any provision to the contrary in the deceased member’s will or the law of intestate succession.

(2) If there is no provision to the contrary in the by-laws of the private business corporation concerned, on the death of the sole member of a private business corporation his or her executor shall have unrestricted power, in the exercise of his or her functions as executor, to sell or dispose of the member’s interest.

(3) If there is no provision to the contrary in the by-laws of the private business corporation concerned, on the death of a member of a private business corporation having two or more members, his or her executor shall have power, in the exercise of his or her functions as executor, to sell or dispose of the member’s interest —

- (a) to the private business corporation, subject to section 263 (“Acquisition by private business corporation of members’ interests”); or
- (b) to all or any of the remaining members *pro rata* or in such proportions as they and the executor may agree; or
- (c) after giving a right of pre-emption on twenty-eight days’ written notice to the private business corporation and the other members, to any person qualified under section 253 (“Requirements for membership”) to be a member.

(4) The members of a private business corporation shall be obliged to accept as a new member any person who has acquired a deceased member's interest in accordance with subsection (3)(c).

261 Other disposals of members' interests

Subject to sections 255 ("Cessation of membership by order of court"), 259 ("Disposal of interest of insolvent member") and 260 ("Disposal of interest of deceased member"), a private business corporation's by-laws may restrict the right to dispose of members' interests, but in the absence of such restriction all disposals of members' interests shall require the consent of every member.

262 Maintenance of total members' interests

To maintain the total members' interests at one hundred *per centum*, in conformity with section 248 ("Incorporation statement, signing thereof and registration of private business corporation") (1)(e), and section 256 ("Nature of member's interest")(1) —

- (a) when a person becomes a new member of an existing private business corporation by making a contribution to its assets in accordance with section 254 ("Members' contributions") (2), the interests of all existing members shall be reduced in proportion to their existing percentages, so that the total of those reductions equals the percentage of the interest acquired by the new member in accordance with section 258 ("Acquisition of member's interest by new member")(b); and
- (b) when a private business corporation acquires any member's interest it shall be distributed between the remaining members' interests in proportion to their existing percentages.

263 Acquisition by private business corporation of members' interests

(1) Subject to section 252 ("Number of members; commencement and termination of membership"), a private business corporation may—

- (a) accept the surrender of any member's interest for no consideration; or
- (b) with the consent of all members, acquire any member's interest in exchange for payment or the delivery of property if, immediately after such payment or delivery, the private business corporation's assets, fairly valued, will exceed its liabilities and it will be able to pay its debts as they become due in the ordinary course of its business.

(2) If a private business corporation makes a payment or delivers property in contravention of subsection (1)(b) the purported acquisition of the interest shall be void and every member, including both parties to the purported acquisition, shall be liable, jointly and severally with the private business corporation, for every debt of the private business corporation incurred before the acquisition was given, unless he or she can prove that he or she had no knowledge of the making of the payment or delivery of the property or took all reasonable steps to prevent it.

264 Financial assistance by private business corporation for acquisition of members' interests

(1) A private business corporation may, with the consent of all its members, give financial assistance for the acquisition of a member's interest in the private business corporation if, immediately after such assistance is given, the private business corporation's assets, excluding any claim or security resulting from the giving of assistance, fairly valued, will exceed its liabilities and it will be able to pay its debts as they become due in the ordinary course of its business:

Provided that, where the lending of money is a part of the ordinary business of a private business corporation, nothing in this subsection shall be taken to prohibit the lending of money by the private business corporation in the ordinary course of its business.

(2) If a private business corporation gives financial assistance for the acquisition of a member's interest in the private business corporation in contravention of subsection (1), the purported giving of the assistance and acquisition of the interest shall be void and every member, including both parties to the purported acquisition, shall be liable, jointly and severally with the private business corporation, for every debt of the private business corporation incurred before the assistance was given, unless he or she can prove that he or she had no knowledge of the giving of the assistance or took all reasonable steps to prevent it.

Sub-Part D: Management and administration

265 Power of members to bind private business corporation

(1) Subject to this section, every member who is not a minor shall be an agent of the private business corporation for the purpose of the business of the private business corporation

(2) The acts of every member shall bind the private business corporation if—

- (a) such acts were authorised, expressly or impliedly, by the private business corporation or were subsequently ratified by it; or
- (b) such acts were done for carrying on, in the usual way, business of the kind carried on by the private business corporation, unless the member so acting has in fact no authority to act for the private business corporation in the particular matter and the person with whom he or she is dealing knew or ought reasonably to have known that he or she had no authority.

(3) Where any act of a member is for a purpose apparently not connected with the private business corporation's ordinary business, the private business corporation shall not be bound unless it authorised him or her to do the act or subsequently ratified the act.

(4) If a private business corporation's by-laws or any agreement place any restriction on the authority of any member to bind the private business corporation, no act done in contravention of the restriction shall bind the private business corporation to any person who knew or ought reasonably to have known of the restriction.

(5) The fact that some but not all of the members of a private business corporation are described as directors or executive members shall not of itself be taken as notice, for the purposes of subsection (2) (b) or subsection (4), that any member not so described has no authority or restricted authority to act on behalf of the private business corporation.

266 By laws

(1) A private business corporation shall if it has not adopted the by-laws specified in Table D of the Sixth Schedule —

- (a) as soon as practicable adopt by-laws agreed to by all members regulating the management of its affairs; or
- (b) on the registration of its incorporation statement or at any time thereafter adopt all or any of the by-laws set out in Table D in the Sixth Schedule ("Model Articles and By-laws").

(2) By-laws shall be signed by every member at the time of their adoption, and shall be kept at the registered office of the private business corporation or accounting officer's physical address.

(3) A private business corporation may at a meeting, by the affirmative votes of members whose combined interests total at least seventy-five *per centum*, amend its by-laws, and any amendment so made in the by-laws shall be as valid as if originally contained therein and be subject to amendment by the same method.

(4) Subject to this Act, by-laws shall, when signed by every member at the time of the adoption, bind the private business corporation and the members thereof, including persons becoming members after the time of adoption, to the same extent as if they had been signed by each member and contained undertakings on the part of each member to observe all the by-laws.

(5) All moneys payable or property transferable by any member to the private business corporation under the by-laws shall be a debt due by him or her to the private business corporation.

(6) Every member of a private business corporation shall be entitled to one free copy of the private business corporation's by-laws and of any amendments thereto.

(7) In the absence of by-laws the members of a private business corporation may, subject to section 267 ("Variable rules for management"), regulate the management of its affairs in any manner agreed to by them from time to time.

267 Variable rules for management

(1) Unless otherwise provided in this Act or in the by-laws of the private business corporation concerned or in any agreement between members or between the private business corporation concerned and its members—

- (a) every member may take part in the management of the affairs of the private business corporation;
- (b) no member shall be entitled to remuneration for taking part in the management of the affairs of the private business corporation;
- (c) any difference arising between members in connection with the affairs of the private business corporation shall be decided by majority vote.

(2) Each matter listed below shall require the agreement of all of the private business corporation members, unless provided otherwise in the private business corporation by-laws. The by-laws may reduce such unanimous vote requirement for any or all matters listed below by specifying a smaller vote requirement, but not less than a simple majority of all members' voting power—

- (a) amendment of the private business corporation's incorporation statement or by-laws (but an amendment may not in any event increase a member's obligation to make contributions or eliminate or reduce a member's rights, without that member's consent);
- (b) authorisation or ratification of a conflict of interest transaction under Chapter II Part IV of this Act;
- (c) making of a distribution to members, including a purchase by the private business corporation of a member's interest;
- (d) admission of a new member of the private business corporation, including either a transferee of an existing member's interest or a person who becomes a new member by a payment into the capital of the private business corporation;

- (e) a decision to dissolve the private business corporation;
- (f) a decision to merge the private business corporation with another private business corporation;
- (g) a decision to convert the private business corporation into another form of entity; or
- (h) the sale, lease, pledge, mortgage or other transfer of all or substantially all of the private business corporation's assets.

(3) If the by-laws of the private business corporation so allow the election and responsibilities of managers shall be in accordance with the relevant provisions of the model by-laws in Table D of the Sixth Schedule.

(4) A manager of a private business corporation is an agent of the private business corporation with authority to represent and bind the private business corporation in transactions with third parties. An act of a manager, including signing an agreement in the private business corporation's name, which is for carrying on the usual business of the private business corporation, is binding on the private business corporation, unless the manager had no authority to act for the private business corporation in that particular matter and the person with whom the manager was dealing knew that the manager lacked authority.

(5) An act of a manager which is not apparently for carrying on the usual business of the private business corporation is binding on the private business corporation only if the act was authorised by the members.

(6) A manager or other person who knowingly purports to act for a private business corporation without authority of the private business corporation shall be personally liable for damages caused thereby to the private business corporation and any person with whom he or she has dealt.

268 Meetings of members

(1) Every private business corporation with more than one member shall hold a meeting of its members annually, to be known as its annual meeting, not later than six months after the end of the private business corporation's financial year.

(2) Any member of a private business corporation may at any time convene an additional meeting by giving all members seven days notice, not necessarily in writing, of the time and place and purpose of the meeting:

Provided that the time and place of the meeting shall be convenient for the attendance of members.

(3) Unless otherwise provided in the by-laws, at any meeting of members of a private business corporation—

- (a) to constitute a quorum, there shall be present in person or by proxy, members whose interests exceed fifty *per centum* of the total members' interests;
- (b) the chairperson of the meeting shall be the member elected as chairperson of the private business corporation or, if no member has been so elected or he or she is not present, the meeting shall elect its own chairperson.
- (c) the chairperson shall not have a casting vote;
- (d) each member shall have a vote corresponding with the percentage of his or her interest:

Provided that the appointment of a proxy by a member shall be in writing.

(4) Every private business corporation shall cause minutes of all proceedings of meetings of its members to be kept for that purpose, and any such minutes, signed by the chairperson of the meeting or of the next succeeding meeting, shall be evidence of the proceedings and evidence that the meeting was properly convened and conducted:

Provided that no later than three months after the annual meeting the chairperson or other responsible member of the private business corporation shall submit a signed declaration in accordance with the prescribed form that the annual meeting was held in conformity with this section.

(5) Unless otherwise provided in the by-laws of a private business corporation, a resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at meetings of members shall, with effect from the date of the last signature, which date shall be recorded on the signed document, be as valid and effective as if it had been passed at a meeting of members duly convened and held in terms of this section.

269 Protection against unfair prejudice

(1) A member may apply to a court for an order under this section on the ground that the private business corporation's affairs are being or have been conducted in a manner which is unfairly prejudicial to—

- (a) his or her interests; or
- (b) his or her interests and the interests of one or more of the other members;

or on the ground that any actual or proposed act or omission of the private business corporation, including an act or omission on its behalf, is or would be so prejudicial.

(2) Subsection (1) shall apply to a person who is not a member but is representing or assisting a member or his or her estate in accordance with section 259 ("Disposal of interest of insolvent member")(1) or (2), and references in this section to a member or members shall be construed accordingly.

(3) If the court is satisfied that an application under this section is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.

(4) Without prejudice to the generality of subsection (3), the court's order may—

- (a) regulate the conduct of the private business corporation's affairs in the future;
- (b) require the private business corporation to—
 - (i) refrain from doing or continuing an act complained of by the applicant;
 - (ii) do an act which the applicant has complained it has omitted to do;
- (c) authorise civil proceedings to be brought or defended in the name and on behalf of the private business corporation by such person or persons and on such terms as the court may direct;
- (d) provide for the purchase of the interests of any members of the private business corporation by other members or by the private business corporation itself.

(5) If an order under this section required the private business corporation not to make any, or any specified, amendment in its incorporation statement or by-laws, the private business corporation shall not then have power without leave of the court to make any such amendment in breach of that requirement.

(6) Any amendment in a private business corporation's incorporation statement or by-laws made by virtue of an order under this section shall be of the same effect as if duly made by agreement of all the members, and the provisions of this Act shall apply to the incorporation statement and by-laws as so amended accordingly.

270 Restriction on payments to members

(1) A private business corporation shall not directly or indirectly pay any dividend, make any distribution, repay any contribution, make any other payment or transfer any property to any member by reason only of his or her membership unless, immediately after the payment or transfer, the private business corporation's assets, fairly valued, will exceed its liabilities and it will be able to pay its debts as they become due in the ordinary course of its business.

(2) A member shall repay any money and return any property he or she has received from the private business corporation in contravention of subsection (1), and until he or she does so he or she shall be liable, jointly and severally with the private business corporation, for all its debts.

(3) Nothing in this section shall apply to the discharge by a private business corporation in good faith of —

- (a) an obligation towards a member arising out of contract or enrichment and resulting from the private business corporation—
 - (i) employing the member as an officer or employee; or
 - (ii) buying or hiring property from the member or borrowing money from him or her or otherwise contracting with him or her;
 - (iii) in the ordinary course of its business;
- or
- (b) a statutory obligation towards a member; or
- (c) a delictual obligation towards a member.

(4) A member, manager or other person who causes such a prohibited distribution to be made, and who knew at the time that the distribution was thus prohibited, shall be personally liable to the private business corporation for the return of the amount of all such distributions.

Sub-Part E: Accounting

271 Financial records

(1) Every private business corporation shall cause financial records to be kept in accordance with this section.

(2) The financial records shall be such as are necessary fairly to present the state of affairs and business of the private business corporation and to explain the transactions and financial position of the private business corporation, including—

- (a) records showing its assets and liabilities, members' contributions, undrawn profits, revaluations of fixed assets and amounts of loans to and from members; and
- (b) records containing entries from day to day of all cash received and paid out, in sufficient detail to enable the nature of the transactions and, except in the case of cash sales, the names of the parties to the transactions to be identified; and
- (c) records of all goods purchased and sold on credit, and services received and rendered on credit, in sufficient detail to enable the nature of those goods or services and the parties to the transactions to be identified; and

- (d) statements of the annual stock-taking and records to enable the value of stock at the end of the financial year to be determined; and
 - (e) vouchers supporting entries in the financial records.
- (3) The financial records relating to—
- (a) contributions by members; and
 - (b) loans to and from members; and
 - (c) payments to members;

shall contain sufficient detail of individual transactions to enable the nature and purpose thereof to be clearly identified.

(4) The financial records referred to in subsection (1) shall be kept in such a manner as to provide adequate precautions against falsification and to facilitate the discovery of any falsification.

(5) The financial records referred to in subsection (1) shall be kept at the place or places of business or at the registered office of the private business corporation or accounting officer's physical address concerned and, wherever kept, shall be open at all reasonable times for inspection by any member.

(6) Every private business corporation shall preserve its financial records for six years from the end of the financial year to which they relate.

(7) If any member of a private business corporation fails to take all reasonable steps to secure compliance by the private business corporation with the requirements of this section, or has by his or her own wilful act been the cause of default by the private business corporation in complying with any of those requirements, the Registrar may (unless he or she is satisfied that the member's conduct was fraudulent, reckless or wilful, in which event section 69 ("Fraudulent, reckless or wilful failure of financial accounting; falsification of records")(1)(b) shall apply), subject to subsection (8), serve upon him or her a category 3 civil penalty order

(8) It shall be a partial defence to a civil penalty order or proposed civil penalty under subsection (7) 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).

272 Financial year

(1) The date of the end of the financial year of a private business corporation shall be fixed in accordance with section 248 ("Incorporation statement, signing thereof and registration of private business corporation")(1)(h) and may be changed in accordance with section 249 ("Registration of amended incorporation statement"):

Provided that the change from an old to a new financial year shall be effected by fixing a period of not less than six months and not more than eighteen months as the private business corporation's financial year on the occasion of the change.

(2) For convenience of accounting, a private business corporation may take as the end of its financial year any date not more than fourteen days before or after the date fixed in accordance with subsection (1).