

273 Annual financial statements

(1) The members of a private business corporation shall, within three months after the end of every financial year of the private business corporation, cause financial statements in respect of that financial year to be made out.

(2) The financial statements of a private business corporation—

(a) shall consist of—

(i) a statement of financial position and any notes thereon, where applicable; and

(ii) an income statement, or any similar financial statement where appropriate, and any notes thereon where applicable;

and

(b) shall, in conformity with generally accepted accounting practice appropriate to the business of the private business corporation, fairly present the state of affairs of the private business corporation as at the end of the financial year concerned, and the results of its operations for that year; and

(c) shall disclose separately the aggregate amounts, as at the end of the financial year, of contributions by members, undrawn profits, revaluations of fixed assets and amounts of loans to and from members, and the changes in those amounts during the year; and

(d) shall be in agreement with the financial records, which shall be summarised in such a form that—

(i) compliance with this subsection is made possible; and

(ii) an accounting officer is enabled to report to the corporation in terms of section 275 (“Duties of accounting officer”)(1)(c) without having to refer to any subsidiary financial records and vouchers supporting the entries in the financial records:

Provided that nothing contained in this paragraph shall be construed as preventing an accounting officer, if he or she considers it necessary, from inspecting such subsidiary financial records and vouchers; and

(e) shall contain the report of an accounting officer referred to in section 275(1)(c).

(3) The annual financial statements of a private business corporation shall be approved and signed by or on behalf of one or more members who have an aggregate of more than fifty *per centum* of all the members’ interests.

(4) If any member of a private business corporation fails to take all reasonable steps to comply with the requirements of this section, or has by his or her own act been the cause of any default by the private business corporation or its members 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 (6), serve upon him or her a category 3 civil penalty order.

(5) It shall be a partial defence to a civil penalty order or proposed civil penalty under subsection (4) for a member 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).

274 Examination of financial statements and report thereon

(1) Not later than three months after completion of its annual financial statements in terms of section 273 (“Annual financial statements”), a private business corporation shall submit them to an accounting officer, who shall be a person who is either—

- (a) a member, entitled to practise as such, of a profession approved by the Minister in accordance with regulations made under section 301 (“Regulations”); or
- (b) a person licensed by the Minister in accordance with regulations made under section 301;

for examination, review and report in terms of section 275 (“Duties of accounting officer”).

(2) A private business corporation may submit its financial statements to one of its own members for examination, review and report if the member is qualified under subsection (1) to be an accounting officer and the private business corporation has at least one other member.

(3) If any member of a private business corporation fails to take all reasonable steps to comply with the requirements of this section, or has by his or her own act been the cause of any default by the private business corporation or its members 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 68 (“Fraudulent, reckless or wilful failure of financial accounting; falsification of records”) (1)(b) shall apply), subject to subsection (6), serve upon him or her a category 3 civil penalty order.

(4) It shall be a partial defence to a civil penalty order or proposed civil penalty under subsection (4) for a member 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).

275 Duties of accounting officer

(1) An accounting officer to whom the annual financial statements of a private business corporation have been submitted in terms of section 274 (“Examination of financial statements and report thereon”) shall without delay—

- (a) determine whether the annual financial statements are in agreement with the financial records of the private business corporation as provided in section 273 (“Annual financial statements”)(2)(d); and
- (b) review the appropriateness of the accounting policies applied in the preparation of the annual financial statements; and
- (c) report in respect of paragraphs (a) and (b) to the private business corporation.

(2) If in the performance of his or her duties the accounting officer of a private business corporation becomes aware of any contravention of this Act, he or she shall

describe the nature of such contravention in his or her report made in terms of subsection (1)(c).

(3) If an accounting officer is—

- (a) a member or employee of the private business corporation; or
- (b) a partner of a member or employee of the private business corporation; or
- (c) a member of a partnership or firm which employs a member or employee of the private business corporation;

he or she shall state that fact in his or her report made in terms of subsection (1)(c).

(4) If an accounting officer of a private business corporation—

- (a) at any time knows, or has reason to believe, that the private business corporation is not carrying on business or is not in operation and has no intention of resuming operations in the foreseeable future; or
- (b) in the performance of his or her duties finds—
 - (i) that any change in respect of any particulars mentioned in the private business corporation's incorporation statement has not been registered; or
 - (ii) that the financial statements prepared in terms of section 273 indicate that, as at the end of the financial year concerned, the private business corporation's liabilities exceeded its assets; or
 - (iii) that the financial statements prepared in terms of section 273 incorrectly indicate that, as at the end to the financial year concerned, the assets of the private business corporation exceeded its liabilities, or if he or she has reason to believe that such an incorrect indication is given;

he or she shall forthwith report his or her findings to the Registrar:

Provided that, if the accounting officer subsequently finds that any matter or situation reported on in terms of this section has been amended he or she may report thereon to the Registrar.

(5) Any report submitted to the Registrar in terms of subsection (4), including any subsequent report submitted in terms of the proviso thereto, shall be open for inspection at his or her office in terms of section 14 ("Inspection and copies of documents in Companies Office and production of documents in evidence").

276 Accounting officer's right of access to records, etc., and to convene meetings

An accounting officer to whom the annual financial statements of a private business corporation have been submitted in terms of section 274 ("Examination of financial statements and report thereon") shall—

- (a) have a right of access at all times to the records, accounts, vouchers and securities of the private business corporation; and
- (b) be entitled to require from the members and any manager and employee of the private business corporation such information and explanations as he or she thinks necessary for the performance of his or her duties; and
- (c) have the same right as is conferred on members of the private business corporation by section 268 ("Meetings of members")(2) to convene a meeting of members; and

- (d) be entitled to be heard at any meeting of members of the private business corporation on any matter which concerns him or her as the accounting officer.

277 Termination of accounting officer's mandate

(1) If for any reason a private business corporation terminates the mandate of an accounting officer before he or she has been able to carry out his or her duties in terms of section 275 ("Duties of accounting officer"), the accounting officer shall forthwith report the fact of termination, in writing, to the Registrar.

(2) If an accounting officer has reason to believe that the termination of his or her mandate results from the commission by the private business corporation or any member of any fraud or financial or other irregularity in the conduct of the private business corporation's affairs, he or she shall append to his or her report under subsection (1) a concise statement of the fraud or irregularity.

(3) No action or other proceedings shall lie against an accounting officer in respect of any statement made in terms of subsection (2) unless it is false and malicious.

PART II

OTHER BUSINESS ENTITIES

278 Voluntary registration of partnership agreements, etc.

(1) In this section "constitutive document", means, as the case may be, a partnership agreement, a joint venture agreement or a constitution, or other contract or agreement by which the entity or unregistered association, in question is constituted.

(2) The authorised representative of any partnership, syndicate, consortium, joint venture or unregistered association, may, on payment of the prescribed fee and in the prescribed manner register a copy of the constitutive document relating to the entity in question, and thereupon the document lodged in the Registry shall be deemed for all purposes to be the authentic record of such document.

(3) A certificate by the Registrar that —

- (a) the constitutive document of a partnership, a joint venture or unregistered association is registered with the Office; or
- (b) a copy of the constitutive document of a partnership agreement, a joint venture agreement or unregistered association is an authentic copy of the one registered at the Office;

shall be presumptive proof of the facts thus certified and be admissible as such in all legal proceedings.

(4) Any changes to a constitutive document registered under this section must be notified to the Registrar within the prescribed time and in the prescribed manner, in default of which the party responsible for the registration shall be liable to a category 2 civil penalty.

CHAPTER V

ELECTRONIC REGISTRY

279 Interpretation in Chapter V

In this Part —

- “access”, means gaining entry into, instructing or communicating with the logical, arithmetical or memory function resources of the electronic registry;
- “affixing a digital signature”, in relation to an electronic record or communication, means authenticating the electronic record or communication by means of a digital signature;
- “business entity registration work” means the preparation by a legal practitioner, chartered accountant, chartered secretary, business entity incorporation agent or business entity service provider of any document for registration with the Office or for attestation or execution by the Registrar;
- “computer” means any electronic, magnetic, optical or other high speed data processing device or system which performs logical, arithmetic and memory functions by manipulation of electronic, magnetic or optical impulses and includes all input, output, processing, storage, computer software or communication facilities which are connected or related to the computer in a computer system or a computer network;
- “computer network” means the interconnection of one or more computers through—
- (a) the use of satellite, microwave, terrestrial line or other communication media; and
 - (b) terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained;
- “computer system”, means a device or collection of devices, including input and output devices, capable of being used with external files which contain computer programmes, electronic instructions, input and output data that performs logic, arithmetic, data storage and retrieval, communication control and other functions;
- “digital signature” means an electronic signature created by computer that is intended by the registered user using it and by the Registrar accepting it to have the same effect as a manual signature, and which complies with the requirements for acceptance as a digital signature specified in section 284 (“Digital signatures”)(1);
- “electronic data” means any information, knowledge, fact, concept or instruction stored internally in the memory of the computer or represented in any form (including computer printouts, magnetic optical storage media, punched cards or punched tapes) that is being or has been prepared in a formalised manner and is intended to be or is being or has been processed in a computer system or network;
- “electronic registry” means the computer system or computer network that constitutes the electronic version of the Office for the Registration of Companies and Other Business Entities;
- “electronic record or communication” means electronic data that is recorded, received or sent in an electronic form or in microfilm or computer-generated microfiche;
- “intermediary”, with respect to any particular electronic communication, means any person who on behalf of another person receives, stores or transmits that communication or provides any service with respect to that communication;

“Internet” has the meaning given to that word by the Postal and Telecommunications Act [*Chapter 12:03*];

“notarial practice”, means the work of a notary public;

“originator”, means a person who sends, generates, stores or transmits any electronic communication to be sent, generated, stored or transmitted to any other person, but does not include an intermediary;

“registered user” means a person registered in terms of section 283 (“Registration of registered users and suspension or cancellation of registration”);

“researcher” means a person engaged in research and information gathering for statistical, economic, sociological and similar *bona fide* scientific or academic work;

“self-actor” means a person wishing to register a company (other than a shell company or a shelf company) or private business corporation on his or her own behalf or on behalf of his or her fellow members, that is to say without the assistance of a legal practitioner, chartered accountant or chartered secretary;

“unique electronic document” means a document in electronic form having no contemporaneous material counterpart, or whose material prototype is lost, damaged or destroyed;

“user agreement”, means the agreement between the registered user and the Registrar referred to in section 282 (“User agreements”).

280 Establishment of electronic registry

(1) The Registrar may establish an electronic registry, for which purpose, despite anything to the contrary in this Act, the Registrar may—

- (a) digitise every register, constitutive document or other record under his or her charge; and
- (b) establish and maintain a computer system for the purpose of applying information technology to any process or procedure under this Act, including the despatch and receipt and processing of any return, record, declaration, form, notice, statement or other record or document for the purposes of this Act.

(2) The electronic registry shall become operational from such date as the Registrar, in consultation with the Minister, shall specify by notice in a statutory instrument:

Provided that before such date the Registrar may in terms of sections 282 (“User agreements”) and 284 (“Digital signatures”) register users of the electronic registry to allow them to access the electronic registry for research and information gathering purposes only.

(3) The use of the electronic registry shall be restricted to registered users, but—

- (a) such use shall not interrupt or prejudice the continued use of the paper-based Registry by users who are not so registered; and
- (b) registered users may be required to use concurrently the paper-based deeds registry to such extent and under such conditions or in such circumstances as may be prescribed by regulations under section 301 (“Regulations”).

281 Use of electronic data generally as evidence

(1) In the event of any discrepancy between an electronic copy of a document lodged with the electronic registry and the material version of the same document that is lodged with the paper-based Registry, the latter shall be deemed to be the authentic record of the document.

(2) If a unique electronic document is generated by, stored with or communicated to, from or through the electronic registry, a certificate by the Registrar—

- (a) that the document is a unique electronic document and that is or was so generated, stored and communicated; or
- (b) as to the identity of the originator or recipient of the document; or
- (c) that, to the best of his or her knowledge, the contents of the document are an authentic record of any transaction to which it relates; or
- (d) attesting to all or any combination of the foregoing paragraphs (a), (b) and (c);

shall be presumptive proof of the facts thus certified and be admissible as such in all legal proceedings.

(3) Apart from subsection (2), with respect to the admissibility in evidence of any electronic data for any purpose under this Act, and notwithstanding anything to the contrary contained in any other law, the admissibility in evidence of any electronic data for any purpose under this Act shall not be denied—

- (a) on the sole ground that it is electronic data; or
- (b) if it is the best evidence that the person adducing it can reasonably be expected to obtain, on the grounds that it is not in original form.

(4) Information in the form of electronic data shall be given due evidential weight.

(5) In assessing the evidential weight of electronic data a court shall have regard to such of the following considerations as may be applicable in the circumstances of the case—

- (a) the reliability of the manner in which the data was generated, stored and communicated; and
- (b) the reliability of the manner in which the integrity of the data was maintained; and
- (c) the manner in which its originator was identified.

282 User agreements

The Registrar shall, for the purpose of regulating the use of the electronic registry by registered users, enter into a user agreement with each registered user substantially in the form set out in the Seventh Schedule (“User Agreement”).

283 Registration of registered users and suspension or cancellation of registration

(1) No person shall communicate with the Registrar through the electronic registry unless such person is a registered user.

(2) An application for registration as a registered user shall be made in the prescribed form, and be accompanied by the user agreement completed by the applicant and the prescribed fee, if any, and such other information as the Registrar may reasonably require the applicant to furnish in support of the application.

(3) If, after considering an application in terms of subsection (2) and making such enquiries as he or she may deem necessary, the Registrar is satisfied that the applicant—

- (a) is a person qualified to do business entity registration work or notarial practice, or a researcher, or a self-actor;
 - (b) will introduce adequate measures to—
 - (i) prevent disclosure of the digital signature allocated to him or her by the Registrar to any person not authorised to affix such signature; and
 - (ii) safeguard the integrity of information communicated through the electronic registry, apart from any change which may occur in the normal course of such communication or during storage and display of such information;
- and
- (c) will maintain the standard of reliability of his or her own computer system required in accordance with the user agreement;

the Registrar may approve the application, subject to such reasonable conditions as he or she may impose either generally or in relation to the applicant.

(4) If, at any time after granting an application in terms of subsection (2), the Registrar is satisfied that a registered user—

- (a) has not complied with the requirements of his or her user agreement or with any condition or obligation imposed by the Registrar in respect of such registration; or
- (b) has made a false or misleading statement with respect to any material fact or omits to state any material fact which was required to be stated in the application for registration; or
- (c) has contravened or failed to comply with any provision of this Act; or
- (d) has been convicted of an offence under this Act; or
- (e) has been convicted of an offence involving dishonesty; or
- (f) is an unrehabilitated solvent or liquidated; or
- (g) no longer carries on the business for which the registration was issued;

the Registrar may cancel or suspend for a specified period the registration of the registered user.

(5) Before cancelling or suspending the registration of a registered user in terms of subsection (4) the Registrar shall—

- (a) give notice to the registered user of the proposed cancellation or suspension; and
- (b) provide the reasons for the proposed cancellation or suspension; and
- (c) afford the registered user a reasonable opportunity to respond and make representations as to why the registration should not be cancelled or suspended.

284 Digital signatures

(1) Every digital signature intended for use in connection with the electronic registry shall comply with the following requirements, namely, it must—

- (a) be unique to the registered user and under the sole control of the registered user; and

- (b) be capable of verification; and
 - (c) be linked or attached to electronically transmitted data in such a manner that, if the integrity of the data transmitted is compromised, the digital signature is invalidated; and
 - (d) be in complete conformity with the requirements prescribed by the Registrar and contained in the user agreement.
- (2) The Registrar shall, on registering a user, allocate to the registered user—
- (a) if the user is a natural person, a digital signature or sufficient digital signatures for the user and each employee of the user nominated in the user agreement; or
 - (b) if the user is not a natural person, sufficient digital signatures for each employee of the user nominated in the user agreement.

285 Production and retention of documents

Where any provision of this Act prescribes or requires that documents, records, information or the like should be retained for a specific period, that requirement shall be deemed to have been satisfied by a registered user if such documents, records, information or the like are so retained in electronic form that—

- (a) the information contained therein remains accessible so as to be subsequently usable; and
- (b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received; and
- (c) the details which will facilitate the identity of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record.

286 Sending and receipt of electronic communications

(1) An electronic communication through the electronic registry or the record of such communication shall be attributed to the originator—

- (a) if it was sent by the originator; or
- (b) if it was sent by a person who had the authority to act on behalf of the originator in respect of that communication or record; or
- (c) if it was sent by a computer system programmed by or on behalf of the originator to operate automatically.

(2) Where the Registrar and a registered user have not agreed that an acknowledgment of receipt of electronic communication be given in any particular form or by any particular method, an acknowledgement may be given by—

- (a) any communication by the Registrar, electronic or otherwise; or
- (b) conduct by the Registrar or any officer sufficient to indicate to the registered user that the electronic communication has been received.

(3) Where the Registrar and the registered user have agreed that an electronic communication shall be binding only on the receipt of an acknowledgement of such electronic communication, then, unless such acknowledgement has been so received within such time as agreed upon, such electronic communication shall be deemed not to have been sent.

(4) As between the electronic registry and any other computer system of a registered user, the lodgement of an electronic communication occurs when it enters a computer system outside the control of the originator.

(5) The time of receipt of an electronic communication shall be the time when the electronic communication enters the computer—

- (a) where the electronic communication is by a registered user, at any office of the Registry, or to the Registrar, to whichever it was addressed, and such office shall be the place of receipt; or
- (b) if the electronic communication is sent by the Registry or the Registrar to a registered user, at the place of receipt that is stipulated in the user agreement.

(6) Whenever any registered user is authorised to submit and sign electronically any return, record, declaration, form, notice, statement or the like, which is required to be submitted and signed in terms of this Act, such signature electronically affixed to such electronic communication and communicated to the Registry or the Registrar, shall, for the purposes of this Act, have effect as if it was affixed thereto in manuscript, and acceptance thereof shall not be denied if it is in conformity with the user agreement concluded between the Registrar and the registered user.

(7) The Registrar may, notwithstanding anything to the contrary contained in this section, permit any registered user to submit electronically, any return, record, declaration, form, notice, statement or the like, which is required to be submitted in terms of this Act, by using the Internet, and subject to such exceptions, adaptations or additional requirements as the Registrar may stipulate or prescribe, this section shall apply to the submission of the foregoing documents using the Internet.

287 Obligations, indemnities and presumptions with respect to digital signatures

(1) If the security of a digital signature allocated to a registered user has been compromised in any manner the registered user shall inform the Registrar in writing of that fact without delay.

(2) No liability shall attach to the Registrar, the Registry or any officer or employee thereof for any failure on the part of a registered user to ensure the security of the digital signature allocated to him or her and, in particular, where electronic data authenticated by a digital signature is received by the Registry or the Registrar—

- (a) without the authority of the registered user to whom such signature was allocated; and
- (b) before notification to the Registry or the Registrar by the registered user that the security of the digital signature allocated to him or her has been compromised;

the Registry or the Registrar shall be entitled to assume that such data has been communicated by, or with the authority of, the registered user of that digital signature.

(3) Where in any proceedings or prosecution under this Act or in any dispute to which the Registry is a party, the question arises whether a digital signature affixed to any electronic communication to the Registry or the Registrar was used in such communication with or without the consent and authority of the registered user, it shall be presumed, in the absence of proof to the contrary, that such signature was so used with the consent and authority of the registered user.

288 Alternatives to electronic communication in certain cases

(1) Whenever the electronic registry or a computer system of a registered user is inoperative, the registered user and the Registrar shall communicate with each other in writing in the manner prescribed in this Act.

(2) The Registrar may at any time require from any registered user the submission of any original document required to be produced under any of the provisions of this Act.

289 Use of electronic registry otherwise than for business entity registration

(1) The Registrar may, in accordance with the prescribed conditions and subject to payment of the prescribed fee, if any, permit any company or private business corporation to become a registered user of electronic registry for any or all of the following purposes—

- (a) the keeping and rendering of documents and returns in electronic form for the purposes of sections 9 (“Form of registers and other documents”) and 15 (“Additional copies of returns or records”);
- (b) the electronic service of process and documents as between the company or private business corporation and the Office in terms of section 64 (“Service of documents”);
- (c) the issuance of uncertificated shares or of dematerialised membership interests in terms of section 153 (“Evidence of title to shares”) or 257 (“Certificate of member’s interest”)(3);
- (d) the issuance of debentures in dematerialised form in terms of section 154 (“Creation and registration of debentures; contracts to subscribe for debentures”);
- (e) the keeping of an electronic register of members in terms of section 159 (“Register and index of members and use of register as presumptive proof of membership”).

(2) For the avoidance of doubt it is declared that nothing in this section prohibits registered business entities that are not registered users from transacting their internal or external business electronically, but unless and until they become registered users they must continue to comply fully with the paper-based requirements of the sections of this Act mentioned in subsection (1).

290 Unlawful uses of computer systems

(1) A person who, not being the registered user of a digital signature to whom it is allocated, uses such a signature in any electronic communication to the Registry or the Registrar without the authority of such registered user, commits an offence and is liable to a fine not exceeding level 12 or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

(2) A person who—

- (a) makes a false electronic record or falsifies an electronic record; or
- (b) dishonestly or fraudulently—
 - (i) makes, affixes any digital signature to, transmits or executes an electronic record or communication; or
 - (ii) causes any other person to make, affix any digital signature to, execute, transmit or execute an electronic record or communication;

commits an offence and is liable to a fine not exceeding level 12 or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

291 Restrictions on disclosure of information

(1) Except for the purposes of a prosecution in respect of an offence under this Act, no user of the electronic registry who is registered to use it for purposes other than business entity registration work, business entity service provision, or notarial practice shall—

- (a) disclose to any other person any information relating to an individual without the consent of the individual concerned; or
- (b) put any information obtained from the electronic registry into the public domain unless such information is sufficiently anonymised, that is to say it must only be presented in bulk for statistical purposes and so presented as not to name any individual to which such information relates.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level 6 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

CHAPTER VI

BUSINESS ENTITY INCORPORATION AGENTS AND BUSINESS ENTITY SERVICE PROVIDERS, AND SHELL AND SHELF COMPANIES

292 Business entity incorporation agents and business entity service providers

(1) In this section—

“business entity incorporation agent” means a person licensed under this section to do business entity registration work;

“business entity registration work” means the preparation by any person for profit, or otherwise than on his or her own behalf, of any document for registration with the Companies Office or for attestation or execution by the Registrar;

“business entity service provision” means the business of providing any one or more of the following services for profit, and otherwise than on his or her own behalf or on behalf of more than three registrable business entities (whether or not in addition to doing business entity registration work)—

- (a) acting as, or arranging for another person to act as, a director or secretary of a company or a partner of a partnership, or to hold a similar position in relation to other legal persons;
- (b) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
- (c) managing the share registers of other companies and providing services pertinent thereto such as the issuance of share certificates and the payments of dividends to shareholders on behalf of the companies in question;
- (d) acting as, or arranging for another person to act as, a nominee shareholder for another person;

and “business entity service provider” shall be construed accordingly.

(2) No person other than a legal practitioner, chartered accountant, person registered under the Public Accountants and Auditors Act [*Chapter 27:12*] or chartered secretary may engage in business entity registration work or business entity service provision unless he or she is licensed in terms of this section.

(3) Any individual who—

- (a) is not a legal practitioner, chartered accountant, person registered under the Public Accountants and Auditors Act [*Chapter 27:12*] or chartered secretary; but
- (b) is an individual who has either or both of the following qualifications—
 - (i) is registered as a public accountant or auditor in terms of the Public Accountants and Auditors Act [*Chapter 27:12*]; or
 - (ii) has a Bachelor in Business Administration degree from a recognised university or an equivalent prescribed qualification;

may apply to the Registrar in the prescribed form and manner and on payment of the prescribed fee to be licensed as a business entity incorporation agent or business entity service provider.

(4) Any person who—

- (a) is not a legal practitioner, chartered accountant or chartered secretary; and
- (b) is incorporated as a company under this Act;

may apply to the Registrar in the prescribed form and manner and on payment of the prescribed fee to be licensed as a business entity incorporation agent or a business entity service provider.

(5) If the Registrar is satisfied that the applicant is qualified to be a business entity incorporation agent or business entity service provider, the Registrar shall issue him, her or it with a licence in the prescribed form with or without such conditions as may be specified in the licence:

Provided that it shall not be necessary for a person licensed as a business entity service provider whose services include the incorporation of business entities to be also licensed as a business entity incorporation agent.

(6) A business entity incorporation agent’s licence or a business entity service provider’s licence shall not be transferable

(7) A business entity incorporation agent’s licence or a business entity service provider’s licence shall expire on the 31st December following the year in which it was issued, and may be renewed in accordance with the provisions of this section for obtaining a first licence.

(8) The Registrar may refuse an application for a licence or the renewal thereof, or cancel or suspend a licence if the applicant or licensee has—

- (a) given false or misleading information in an application to be licensed; or
- (b) persistently failed to comply with any provision of this Act; or
- (c) been convicted of an offence under this Act, or any other offence involving fraud, forgery, or money laundering, or an offence referred to in Chapter IX (“bribery and corruption”) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*].

(9) Any person other than a legal practitioner, chartered accountant, chartered secretary, licensed business entity incorporation agent or licensed business entity service provider who engages in or offers services in connection with business entity registration work or business entity service provision shall be guilty of an offence and is liable to a fine of level 7 or imprisonment for a period of two years or both.

(10) A person who, having been licensed to engage in business entity registration work or business entity service provision, continues to engage in such work after the expiry of his or her licence, shall be in default and liable to category 4 civil penalty.

(11) Any person who, at the effective date, is engaged in business entity registration work or business entity service provision at the date of commencement of this Act shall have six months within which to become licensed in terms of this section

293 Shell and shelf companies

(1) In this section—

“active business entity” means a company or private business corporation that, in addition to submitting regular statutory returns and notices to the Registrar, is being operated in accordance with its stated objects, and is otherwise active in business;

“shelf company” means a shell company incorporated or registered in the name of a person who intends to sell or otherwise transfer it to another person or persons, who in turn may operate it as an active business entity, a shell company or a shelf company;

“shell company” means a company that, apart from submitting regular statutory returns and notices to the Registrar, is not being operated in accordance with its stated objects, or is not otherwise active in business for more than twelve (12) months after its registration.

(2) Any person engaging in business entity registration work or business entity service provision who wishes to incorporate any shelf company or shell company whether singly or in bulk—

- (a) must lodge together with the constitutive documents of the shelf company or shell company in question a declaration to the effect that the constitutive documents relate to such shelf company or shell company; and
- (b) shall (subject to a prescribed discount for bulk lodgements) pay double the fees for the registration of each set of constitutive documents relating to each such company.

(3) If it comes to the notice of the Registrar that any person engaging in business entity registration work or business entity service provision has incorporated any shelf company or shell company without making the declaration required by subsection (2) (a), the Registrar shall serve on that person a category 2 civil penalty order, whose remediation clause shall require the payment of the fees outstanding for each named shelf company or shell company dealt with in contravention of subsection (2).

CHAPTER VII

GENERAL

PART I

CIVIL PENALTY ORDERS

294 Power of Registrar to issue civil penalty orders and categories thereof

(1) Where default is made in complying with any provision of this Act or of regulations made under this Act for which a civil penalty is specified to be leviable, the Registrar may, in addition to, and without derogating from, any criminal or non-criminal penalty that may be imposed by this Act, or any other law for the conduct constituting the default, serve upon the defaulter a civil penalty order of the appropriate category specified in subsection (2), (3), (4), (5) or (6) or any combination of such orders as the provision in question may allow.

(2) A category 1 civil penalty order provides for a combination of a fixed penalty and a cumulative penalty over a period not exceeding ninety days for a specified completed and irremediable default (that is to say a default in respect of which no remediation is sought by the Registrar or is possible), of which—

- (a) the fixed penalty shall be the maximum amount specified for level ten; and
- (b) the cumulative penalty shall be a penalty of the maximum amount of level three for each day (beginning on the day after the service of a civil penalty order) during which the defaulter fails to pay the civil penalty under paragraph (a).

(3) A category 2 civil penalty order provides for a cumulative civil penalty for a specified completed but remediable default which—

- (a) must be suspended conditionally upon the defaulter taking the remedial action specified in the civil penalty order within the specified period; and
- (b) upon the civil penalty becoming operative because of non-compliance with the requested remedial action, shall provide for a penalty of the maximum amount of level three for each day, not exceeding ninety days, during which the defaulter continues to be in default (beginning on the day after the last day on which the defaulter fails to take the remedial action).

(4) A category 3 civil penalty order provides for a combination of a fixed penalty and potentially two cumulative penalties for a specified completed but partially remediable default, of which—

- (a) the fixed penalty shall be the maximum amount specified for level five; and
- (b) the cumulative penalty—
 - (i) relating to paragraph (a) shall be a penalty of the maximum amount of level three for each day (beginning on the day after the service of a civil penalty order) during which the defaulter fails to pay the civil penalty under paragraph (a); and
 - (ii) relating to the taking of the specified remedial action—
 - A. shall be the maximum amount of level three for each day, not exceeding ninety days, that the defaulter fails to take the specified remedial action with effect from a specified date;

and

- B. must be suspended conditionally upon the defaulter taking the remedial action specified in the civil penalty order within the time specified in the order.

(5) A category 4 civil penalty order provides for a cumulative penalty for a continuing default which—

- (a) must be suspended conditionally upon the defaulter immediately (that is to say, on the day after the civil penalty is served on him or her or such longer period not exceeding seven days as may be specified in the provision or in the order in question) ceasing the default; and
- (b) upon the civil penalty becoming operative because of failure to cease the default immediately, shall be the maximum amount fixed for level one for each day during which the default continues, not exceeding a period of ninety days.

(6) A category 5 civil penalty order provides for a combination of a fixed penalty and a cumulative penalty for a specified continuing default where the time of compliance is of the essence—

- (a) both of which penalties must be suspended conditionally upon the defaulter taking the remedial action specified in the civil penalty order within the time specified in the order; and
- (b) which, upon the civil penalty becoming operative because of non-compliance with the requested remedial action, shall provide—
 - (i) a fixed penalty of the maximum amount for level ten for not meeting the specified deadline; and
 - (ii) a cumulative penalty of the maximum amount of level three for each day, not exceeding ninety days, for which the defaulter fails to pay the amount specified in subparagraph (i).

(7) References in this Act to—

- (a) the “citation clause” of a civil penalty order are references to the part of the order in which the Registrar names the defaulter and cites the provision of the Act in respect of which the default was made or is alleged, together with (if necessary) a brief statement of the facts constituting the default; or
- (b) the “penalty clause” of a civil penalty order are references to the part of the order that fixes the penalty to be paid by the defaulter, and “fixed penalty clause” and “cumulative penalty clause” shall be construed accordingly; or
- (c) the “remediation clause” of a civil penalty order are references to the part of the order that stipulates the remedial action to be taken by the defaulter.

295 Service and enforcement of civil penalties and destination of proceeds thereof

(1) References to the Registrar serving upon a defaulter any civil penalty order in terms of this Act (or serving upon an alleged defaulter a show cause notice referred to in section 296 (“Additional due process requirements before service of certain civil penalty orders”), are to be interpreted as requiring the Registrar to deliver such order (or such notice) in writing to the defaulter (or alleged defaulter) concerned in any of the following ways—

- (a) by registered post addressed to the defaulter's (or alleged defaulter's) principal office in Zimbabwe or other place of business of the defaulter (or alleged defaulter); or
- (b) by hand delivery to the director, manager, secretary or accounting officer of the defaulter (or alleged defaulter) in person (or through an inspector or other person employed in the Office, or a police officer), or to a responsible individual at the place of business of the defaulter; or
- (c) by delivery through a commercial courier service to the defaulter's (or alleged defaulter's) principal office in Zimbabwe or other place of business of the defaulter (or alleged defaulter); or
- (d) by electronic mail or telefacsimile at the electronic mail or telefacsimile address furnished by the defaulter (or alleged defaulter) to the Registrar:

Provided that in this case a copy of the order or notice shall also be sent to the electronic mail or telefacsimile address of the defaulter's (or alleged defaulter's) legal practitioner in Zimbabwe.

(2) The Registrar shall not extend the period specified in a civil penalty order for compliance therewith except upon good cause shown to him or her by the defaulter, and any extension of time so granted shall be noted by the Registrar in the civil penalty enforcement register referred to in section 297 ("Evidentiary provisions in connection with civil penalty orders").

(3) If in this Act both the defaulting company and every officer of the company who is in default are said to be liable to a civil penalty order, the Registrar may—

- (a) in the same civil penalty order, name the defaulting company and every officer concerned as being so liable separately, or issue separate civil penalty orders in respect of the defaulting company and each of the officers concerned;
- (b) may choose to serve the order only upon the defaulting company if, in his or her opinion (which opinion the Registrar shall note in the civil penalty enforcement register referred to in section 297, there may be a substantial dispute of fact about the identity of the particular officer or officers who may be in default:

Provided that nothing in this section affects the default liability of officers of the company mentioned in subsection (8).

(4) The Registrar may, in the citation clause of a single civil penalty order, cite two or more defaults relating to different provisions of this Act if the defaults in question —

- (a) occurred concurrently or within a period not exceeding six months from the first default or defaults to the last default or defaults; or
- (b) arose in connection with the same set of facts.

(5) Where in this Act the same acts or omissions are liable to both criminal and civil penalty proceedings, the Registrar may serve a civil penalty order at any time before the commencement of the criminal proceedings in relation to that default, that is to say at any time before—

- (a) summons is issued to the accused person for the prosecution of the offence; or
- (b) a statement of the charge is lodged with the clerk of the magistrates court before which the accused is to be tried, where the offence is to be tried summarily; or

- (c) an indictment has been served upon the accused person, where the person is to be tried before the High Court;

as the case may be, but may not serve any civil penalty order after the commencement of the criminal proceedings until after those proceedings are concluded (the criminal proceedings are deemed for this purpose to be concluded even if they are appealed or taken on review). (For the avoidance of doubt it is declared that the acquittal of an alleged defaulter in criminal proceedings does not excuse the defaulter from liability for civil penalty proceedings).

(6) Upon the expiry of the ninety day period within which any civil penalty order of any category must be paid, the defaulter shall be guilty of an offence and liable to a fine not exceeding level 6 or to imprisonment for a period not exceeding one year or to both.

(7) The amount of any civil penalty shall—

- (a) be payable to the Registrar and shall form part of the funds of the Office; and
- (b) be a debt due to the Office and may be sued for in any proceedings in the name of the Registrar in any court of competent civil jurisdiction.

(8) If the defaulter is a company, private business corporation or other body corporate, every officer of the company, corporation or body corporate, mentioned in the civil penalty order by name or by office, is deemed to be in default and any one of them can, on the basis of joint and several liability, be made by the Registrar to pay the civil penalty in the event that the company, corporation or body corporate does not pay.

(9) If the Registrar in terms of subsection (7)(b) desires to institute proceedings to recover the amounts of two or more civil penalties in any court of competent civil jurisdiction, he or she may, after notice to all interested parties, bring a single action in relation to the recovery of those penalties if the orders relating to those penalties —

- (a) were all served within the period of twelve months preceding the institution of the proceedings; and
- (b) were served—
- (i) on the same company or private business corporation; or
- (ii) in relation to the same default or set of defaults, whether committed by the same company or private business corporation or different companies or private business corporations; or
- (iii) on two or more companies or private business corporations whose registered offices are in the same area of jurisdiction of the court before which the proceedings are instituted.

(10) Unless the Registrar has earlier recovered in civil court the amount outstanding under a civil penalty order, a court convicting a person of an offence against subsection (6), may on its own motion or on the application of the prosecutor and in addition to any penalty which it may impose give summary judgement in favour of the Registrar for the amount of any outstanding civil penalty due from the convicted defaulter.

296 Additional due process requirements before service of certain civil penalty orders

(1) Except in relation to any civil penalty order which the Registrar is satisfied concerns a strictly administrative default that does not involve any substantive dispute of fact, the Registrar must notify the alleged defaulter in writing of the Registrar's intention to serve the civil penalty order (which notice shall hereafter be called a "show cause notice") and the Registrar's reasons for doing so and shall call upon the alleged defaulter to show cause within the period specified in the notice (which period shall not be less than forty-eight hours or more than seven days from the date of service of the notice) why the civil penalty order should not be served upon him or her, and, if the alleged defaulter—

- (a) makes no representations thereto within the notice period, the Registrar shall proceed to serve the civil penalty order, or
- (b) makes representations showing that the alleged default in question was not wilful or was due to circumstances beyond the alleged defaulter's control or for any other reason specified in the civil penalty provision in question, the Registrar shall not proceed to serve the civil penalty order; or
- (c) makes no representations of the kind referred to in paragraph (b) the Registrar shall proceed to serve the civil penalty order.

(2) In addition, where it appears to the Registrar from written representations received under subsection (1) that there may be a material dispute of fact concerning the existence or any salient aspect of the alleged default, the Registrar must afford the alleged defaulter an opportunity to be heard by making oral representations before the Registrar, for which purpose the Registrar shall have the same powers, rights and privileges as are conferred upon a commissioner by the Commissions of Inquiry Act [*Chapter 10:07*], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 19 of that Act shall apply with necessary changes in relation to the hearing and determination before the Registrar of the alleged default in question, and to any person summoned to give evidence or giving evidence before the Registrar.

(3) Any person who is aggrieved by a civil penalty order made after the making of representations in terms of this section may appeal against the order to a Magistrate's Court or a judge of the High Court, and the magistrate or the judge may make such order as he or she thinks fit

297 Evidentiary provisions in connection with civil penalty orders

(1) For the purposes of this Sub-Part the Registrar shall keep a civil penalty enforcement register wherein shall be recorded—

- (a) the date of service of every show cause notice, the name and the physical or registered office address of the person upon whom it was served, the civil penalty provision in relation to which the alleged defaulter was alleged to be in default, and whether or not the show cause notice was followed by the service of a civil penalty order:

Provided that a record or an adequate summary of any representations made in response to a show cause notice shall be made by way of an entry or cross-reference in, or annexure to, the register, and if recorded by way of annexure or cross-reference, the representations must be preserved for a period of at least three years from the date when they were made to the Registrar;

- (b) the date of service of every civil penalty order, the name and the physical or registered office address of the person upon whom it was served, the civil penalty provision in relation to which the defaulter was in default, and the date on which the civil penalty order was complied with or the penalty thereunder was recovered as the case may be.
- (2) A copy of—
- (a) any entry in the civil penalty enforcement register, and of any annexure thereto or record cross-referenced therein, authenticated by the Registrar as a true copy of the original, shall on its mere production in any civil or criminal proceedings by any person, be *prima facie* proof of the contents therein; or
 - (b) any civil penalty order that has been served in terms of this Act, authenticated by the Registrar as a true copy of the original, shall on its mere production in any civil or criminal proceedings by any person, be *prima facie* proof of the service of the order on the date stated therein upon the defaulter named therein, and of the contents of the order.

PART II

FURTHER GENERAL PROVISIONS

298 Enforcement of duty to make returns

If a registered business entity, having made default in complying with any provision of this Act which requires it to file with, deliver or send to the Registrar any return, account or other record, or to give notice to him or her of any matter, fails to make good the default within fourteen days after the service of a notice on the registered business entity requiring it to do so, the Registrar may serve a category 2 civil penalty order upon the defaulting registered business entity.

299 Co-operation with foreign company registries

(1) The President, or the Minister with the President's authority, may enter into agreements with the government of any other country or territory with a view to the rendering of reciprocal assistance in any or all of the following—

- (a) the incorporation or registration of companies and other business entities and the exchange of information related thereto;
- (b) the exchange of information and the rendering of mutual assistance related to the combating of the transnational abuse of the company form for criminal purposes, the monitoring of the quality of the assistance given and the keeping of records of requests for information or assistance and of the responses thereto;
- (c) the administration of any office or offices that are a counterpart to the Office for the Registration of Companies and Other Business Entities, including the mutual secondment and training of the staff of the Office and such offices.

(2) In particular, an agreement referred to in subsection (1) may empower the Registrar or the financial intelligence unit of the Reserve Bank, on his or her or its own behalf or on behalf of any law enforcement agency, to seek beneficial ownership or other information in respect of any company from the foreign counterpart, and, likewise, may provide beneficial ownership or other information in respect of any company to the foreign counterpart.

(3) As soon as may be after the conclusion of any such agreement the terms thereof shall be notified by the President by proclamation in the *Gazette*, whereupon until such proclamation is revoked by the President the agreement shall have effect

as if enacted in this Act but only if, and for so long as, the agreement has the effect of law in such country or territory.

(4) The President may at any time revoke any such proclamation by a further proclamation in the *Gazette*, and the agreement shall cease to have effect upon the date fixed in such latter proclamation, but the revocation of any proclamation shall not affect the validity of anything previously done thereunder.

(5) Any agreement referred to in subsection (1) may be made with retrospective effect if the President considers it expedient so to do.

300 Minister may give policy directions to Registrar

(1) Subject to subsection (2), the Minister may, on his or her own motion or at the written request of the Registrar in any specific or general case, give the Registrar such general directions relating to the policy the Registrar is to observe in the exercise of his or her functions referred to in sections 25 (“Prohibition of undesirable name”), 39 (“Investigation by Registrar”), 41 (“Investigation to determine ownership or control”), 142 (“Payment of interest out of capital”) (b), (c) and (d), 184 (“General provision as to contents and form of financial statements”) (4), 186 (“Obligation to lay group accounts before holding company”) (2)(c)(ii), 187 (“Form and contents of group accounts”) (5) and (6)(proviso), 191 (“Appointment remuneration, duties, powers and removal of auditors”) (1) (proviso (iii)) and (3), 211 (“Duty of director to disclose payments for loss of office, made in connection with transfer of shares in company”) (4), 213 (“Register of directors’ share holdings”) (4)(b), 224 (“Order on application of Registrar”) and 299 (“Co-operation with foreign company registries”), or generally in the exercise of his or her functions as the Minister considers to be necessary in the national interest

(2) Before giving the Registrar a direction in terms of subsection (1), the Minister shall (unless the Registrar requested the direction) inform the Registrar, in writing, of the proposed direction and the Registrar shall, within thirty days or such further period as the Minister may allow, submit to the Minister, in writing, his or her views on the proposal.

(3) The Registrar shall take all necessary steps to comply with any direction given to him or her in terms of subsection (1).

(4) When any direction has been given to the Registrar in terms of subsection (1), the Registrar shall ensure that the direction is set out in the Office’s annual report.

301 Regulations

(1) The Minister may, after consultation with the Companies Office, from time to time make—

- (a) regulations providing for anything required by this Act to be prescribed by regulations; and
- (b) regulations altering any amount referred to in section 40 (“Investigation on request of minority stakeholders”) (3), 155 (“Register of mortgages and debentures and register of debenture holders”) (5), (6) and (7), 160 (“Inspection of register and index”) (1) and (2), 170 (“General provisions as to meetings and votes and power of court to order meeting”) (1), 174 (“Circulation of members’ resolutions”) (2)(b), 181 (“Inspection of minutes”) (2), 215 (“Particulars in accounts of loans to officers”) (2)(b) or 217 (“Register of directors and secretaries”) (8) and (9);
- (c) such other regulations as he or she may deem expedient or necessary for the carrying out of the purposes of this Act.

(2) When making regulations for the purpose of section 184 (“General provisions as to contents and form of financial statements”) (2), the Minister shall have regard to generally accepted accounting practices.

302 Alteration of fees, tables, forms and certain provisions of this Act.

(1) The Minister may, from time to time—

- (a) alter or add to the tables in the Third Schedule (“Form of statement in lieu of prospectus to be delivered to Registrar by a company which does not issue prospectus or which does not go to allotment on a prospectus issues and reports to be set out therein”);
- (b) alter any of the Tables in the Sixth Schedule (“model articles”) or any of the forms in the First, Second, Third and Fourth Schedules but no such alteration in or addition to Sixth Schedule shall, as respects any company or private business corporation registered before the publication of the alteration or addition, repeal any portion of Sixth Schedule which at the date of such publication applies to it;
- (c) subject to subsection (3), amend any provisions concerned with the electronic Registry in Chapter V or the Seventh Schedule (“User Agreement”).

(2) Any alteration, addition or amendment made in terms of subsection (1) shall be by statutory instrument and from the date of publication of a statutory instrument made under subsection (1) (a) or (b) any reference in this Act to any Schedule or Table shall be construed as a reference to that Schedule or Table with any alterations or additions made and in force in terms of subsection (1):

Provided that no alteration or addition made in terms of subsection (1)(b) shall apply to a foreign company which is a banking company as defined in section 240 (Definitions in Chapter II Part IV (A)).

(3) The Minister shall on the next sitting day of the National Assembly after he or she publishes a statutory instrument in terms of subsection (1) (c), lay it before the National Assembly and, unless the National Assembly by a negative resolution earlier resolves not to approve it, the statutory instrument shall come in to effect on the thirtieth day after the date on which it was laid before the National Assembly.

303 Repeals, re-registration of companies and PBCs, general transitional provisions and savings

(1) In this Part—

“repealed Companies Act” means the Companies Act [*Chapter 24:03*];

“repealed Private Business Corporations Act” means the Public Business Corporations Act [*Chapter 24:11*];

“transfer date” means the date fixed by the Minister in terms of subsection (4) (b) or, where two or more such dates are so fixed, the first such date.

(2) Subject to this section, the Companies Act [*Chapter 24:03*] and the Private Business Corporations Act [*Chapter 24:11*] are repealed.

(3) The establishment for which the Chief Registrar of Companies was responsible under the repealed Companies Act (the “Companies Registration Office”) shall continue in existence after the effective date as the Office for the Registration of Companies and Other Business Entities (the “Companies Office”).

(4) The assets and rights of the State which—

- (a) before the effective date, were used or otherwise connected with the Companies Registration Office ; and
- (b) are specified by the Minister by notice in a statutory instrument;

together with any liabilities or obligations attaching to them shall be transferred with effect from the transfer date to the Companies Office .

(5) On the relevant transfer date, every asset and liability of the State which the Minister has directed shall be transferred to the Companies Office shall vest in the Companies Office.

(6) All contracts, instruments, documents, banking accounts and working arrangements that subsisted immediately before the relevant transfer date and to which the State on behalf of the Companies Registration Office was a party shall, on and after that date, be as fully effective and enforceable against or in favour of the Companies Office.

(7) It shall not be necessary for the Registrar of Deeds to make any endorsement on title deeds or other documents or in his or her registers in respect of any immovable property, right or obligation which passes to the Companies Office under this section, but the Registrar of Deeds, when so requested in writing by the Registrar in relation to any particular such property, right or obligation, shall cause the name of the Office to be substituted, free of charge, for that of the State on the appropriate title deed or other document or in the appropriate register.

(8) Subject to subsection (9), every domestic company or private business corporation incorporated, and every foreign company registered under the repealed Companies Act or repealed Private Business Corporations Act, as the case maybe, that appears in the registers of the Companies Registration Office on the effective date shall continue to be incorporated or registered under the same name and registration number previously assigned to it as if incorporated or registered under the appropriate provisions of this Act.

(9) A company or private business corporation referred to subsection (8) must within a period of twelve months from the effective date re-register under this Act by submitting the form in the Tenth Schedule as may be appropriate, together with the fee and other documentation as maybe required in terms of that form. A company or private business corporation must re-register under its existing name, without prejudice to its right after re-registration to change its name under section 26.

(10) The object of re-registration under subsection (9) is twofold, namely—

- (a) to establish a new and updated register of companies and private business corporations;
- (b) to expunge apparently defunct business entities from the register, that is to say a company or private business corporation which appears to the Registrar to be defunct because—
 - (i) it is not submitting to the Registrar the statutory returns and notices required by the repealed Acts and this Act; and
 - (ii) it appears to the Registrar to be inactive, that is to say it is not being operated or is not active in business.

(11) Accordingly under subsection (10) no company or private business corporation may change its name, address, registered office, directorship or its share structure or do any other thing affecting its rights and liabilities and those of its members under the guise of re-registration, without prejudice however to its right to

make such changes in accordance with the formalities prescribed in this Act, before, after or together with re-registration.

(12) The effect of failing to re-register in terms of subsection (9) is that the existing company or private business corporation will be struck off the register with effect from the expiry of the period of twelve months referred to in that subsection, and subject to this section, will no longer be able to carry on business as a company or private business corporation unless it registers as a new company or private business corporation under Part I of Chapter II after that date.

(13) For the avoidance of doubt it is declared that the re-registration in terms of subsection (9) or of an existing company or private business corporation does not—

- (a) create a new legal entity; or
- (b) prejudice or affect the identity of the body corporate constituted by the company or private business corporation its continuity as a legal entity; or
- (c) affect the property, rights or obligations of the company or private business corporation; or
- (d) affect legal or other proceedings by or against the company or private business corporation.

(14) For the avoidance of doubt it is declared that the failure by an existing company or private business corporation to re-register in terms of subsection (9) does not –

- (a) affect the property, rights or obligations of the company or private business corporation in relation to its members or third parties; or
- (b) affect legal or other proceedings by or against the company or private business corporation in relation to its members or third parties.

(15) Subject to this section, every licence issued and in force under section 82 (“Power to dispense with “Limited” in certain cases”) of the repealed Companies Act, shall continue in force after the effective date.

(16) Any cause of action or proceeding which existed or was pending by or against the Registrar immediately before the effective date may be enforced or continued, as the case may be, on and after that date by or against the Registrar in the same way that it might have been enforced or continued by or against the Registrar had this Act not been passed.

(17) Any guarantee or suretyship which was given or made by the Government or any other person in respect of any debt or obligation of the Companies Office or the Registrar and which was effective immediately before the effective date shall remain fully effective against the guarantor or surety on and after that date in relation to the repayment of the debt or the performance of the obligation, as the case may be, by the Companies Office or the Registrar to which it was transferred.

(18) The Registrar, every assistant Registrar and other civil servant employed in the Companies Registration Office before the effective date shall continue in such office or employment after the effective date as members of the Civil Service.

(19) The portion of the proceeds of fees and other revenues that accrued to the Deeds Retention Fund before the effective date shall continue to so accrue after the effective date until such time, if any, as a separate retention Fund is established for the Office under section 18 of the Public Finance Management Act [*Chapter 22:19*] (No. 11 of 2009).

(20) For the avoidance of doubt, if on the effective date—

- (a) there were any disciplinary proceedings in terms of the Public Service Act [Chapter 16:04] pending against a person who is employed in the Companies Registration Office, such proceedings shall continue after the effective date;
- (b) any promotion or advancement was being processed in terms of the Public Service Act [Chapter 16:04] in relation to any person employed in the Companies Registration office such promotion or advancement shall be processed and completed after the effective date.

(21) All regulations and other statutory instruments and general notices in force or having effect immediately before the effective date, shall continue in force or have effect after the effective date until repealed or replaced under this Act.

(22) At any time within a period of twenty-four months from the effective date, the Minister, after consultation with the Minister responsible for Finance and the Companies Office, may make any regulations for the purpose of this section and section 301 ("Regulations") that he or she deems necessary or expedient to manage the transition from the repealed Acts to this Act.

304 Transitional Provisions in relation to par value of shares, treasury shares, capital accounts and share certificates

(1) Despite section 93 ("Legal nature of company shares and requirement to have shareholders") (2) any shares of a company existing on the effective date (in this section called a "pre-existing company") that have been issued with a nominal or par value, and are held by a shareholder immediately before the effective date, continue to have the nominal or par value assigned to them when issued, subject to any regulations made in terms of section 303 (22).

(2) A failure of any share certificate issued by a pre-existing company to satisfy the requirements of section 153 ("Evidence of title to shares") (2) —

- (a) is not a contravention of that section; and
- (b) does not invalidate that share certificate.

FIRST SCHEDULE (Section 10)

FORM OF MEMORANDUM OF ASSOCIATION OF A COMPANY

1st. The name of the company is "The Zimbabwe Transport Company Limited".

2nd. The objects for which the company is established are, "the conveyance of passengers and goods in motor vehicles between such places as the company may from time to time determine and the doing of all such other things as are incidental or conducive to the attainment of the above object".

3rd. The liability of the members is limited.

4th. The share capital of the company is four hundred thousand dollars divided into one thousand shares of four hundred dollars each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

*Names, Addresses, and Descriptions of
Subscribers:*

*Number of shares taken by
each subscriber:*

Total shares taken

Dated the day of
20.....

Witness to the above signatures,	Address
.....

SECOND SCHEDULE (Section 9)

FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE DELIVERED TO
 REGISTRAR BY PRIVATE COMPANY ON CEASING TO BE PRIVATE
 COMPANY AND REPORTS TO BE SET OUT THEREIN

PART I

FORM OF STATEMENT AND PARTICULARS TO BE CONTAINED THEREIN

Companies Act [*Chapter 24:03*]

Statement in lieu of Prospectus delivered for registration by

(Insert the name of the company).

Pursuant to section 35 of the Companies Act [*Chapter 24:03*].

Delivered for registration by

1. Names, descriptions and addresses of directors or proposed directors.
2. (a) The nominal share capital of the company..... \$
 Divided into..... Shares of \$ each
 Shares of \$ each
 Shares of \$ each
 (b) Amount, if any, of above capital which consists of
 redeemable preference shares. Shares of \$ each
 (c) The earliest date on which the company has power to
 redeem these shares
3. (a) Amount of shares issued..... Shares of \$ each
 Divided into..... Shares of \$ each
 Shares of \$ each
 Shares of \$ each
 (b) Amount of commissions paid in connection therewith
4. Unless more than one year has elapsed since the date on which
 the Company was entitled to commence business—
 (a) Amount of preliminary expenses..... \$
 By whom those expenses have been paid or are payable. \$
 (b) Amount paid to any promoter.....Name of promoter:
 Amount \$
 (c) Consideration for the payment..... Consideration:
 (d) Any other benefit given to any promoter.....Nature and value
 of benefit
 (e) Consideration for giving of benefit..... Consideration:

- 5. If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively

THIRD SCHEDULE (Section 86)

FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE DELIVERED TO REGISTRAR BY A COMPANY WHICH DOES NOT ISSUE A PROSPECTUS OR WHICH DOES NOT GO TO ALLOTMENT ON A PROSPECTUS ISSUED, AND REPORTS TO BE SET OUT THEREIN

PART I

FORM OF STATEMENT AND PARTICULARS TO BE CONTAINED THEREIN

COMPANIES ACT [CHAPTER 24:31]

Statement in lieu of Prospectus delivered for registration by

.....
(Insert the name of the Company)

Pursuant to section 66 of the Companies Act [Chapter 24:31].

Delivered for registration by

(I) Names, descriptions and addresses of directors or proposed directors.

(II) —

- (a) The nominal share capital of the company. \$
Divided into Shares of \$ each
Shares of \$ each
Shares of \$ each
- (b) Amount, if any, of above capital which consists of redeemable preference shares..... Shares of \$ each
- (c) The earliest date on which the company has power to redeem these shares.

III. If the share capital of the company is divided into different classes of shares the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

IV. —

- (a) Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash. 1.shares of \$ fully paid.
2. ...shares upon which \$ per share credited as paid.
- (b) The consideration for the intended issue of those shares and debentures. 3.debenture \$
4. Consideration:

V. The substance of any contract or arrangement or proposed contract or arrangement, whereby any option or preferential

right of any kind has been or is proposed to be given to any person to subscribe for any shares in or debentures of a company or to acquire them from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale; giving the number, description and amount of any such shares or debentures and including the following particulars of the option or right—

- (a) The period during which it is exercisable. 3. Until
- (b) The price to be paid for shares or debentures subscribed for under it. 4.
- (c) The consideration, if any, given or to be given for it or for the right to it. 5. Consideration:
- (d) The names and addresses of the person to whom it or the right to it was given or if given to existing members or debenture holders as such, the relevant shares or debentures. 6. Names and Addresses:
- (e) Any other material fact or circumstances relevant to the grant of such option or right. 7.

VI. —

- (a) Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired, by the company except where the contract for its purchase or acquisition was entered into in the ordinary course of the business intended to be carried on by the company or the amount of the purchase money is not material.
- (b) Amount (in cash, shares or debentures) payable to each separate vendor.
- (c) The amount payable by way of premium, if any, on each share which has been or is to be issued stating the reasons for any such premium and where some shares have been or are to be issued at a premium and other shares at a lesser or no premium, also the reasons for the differentiation, and how any premium is to be or has been disposed of.
- (d) Amount, if any, paid or payable (in cash or shares or debentures) for any such property, specifying amount, if any, paid or payable for goodwill.

Total purchase price	\$
Cash.....	\$
Shares.....	\$
Debentures.....	\$
Goodwill.....	\$
- (e) Short particulars of any transaction relating to any such property which was completed within the two preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director or proposed director of the company had any interest, direct or indirect, with particulars of such interest.

VII. —

- (a) Amount, if any, paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company; or

Amount paid
Amount payable

- (b) Rate of commission Rate per centum.
- (c) The number of shares, if any, which persons have agreed for a commission to subscribe absolutely.

VIII. —

- (a) Estimated amount of preliminary expenses
- (b) By whom those expenses have been paid or are payable \$
- (c) Amount paid or intended to be paid to any promoter Name of promoter:
 Consideration for the payment Amount \$
Consideration:
- (d) Any other benefit given or intended to be given to any promoter Name of promoter:
Nature and value of benefit:
 Consideration for giving of benefit Consideration:

IX. —

- (a) Dates of, parties to and general nature of every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the delivery of this statement).
- (b) Time and place at which the contracts or copies thereof may be inspected or (1) in the case of a contract not reduced to writing, a memorandum giving full particulars thereof, and (2) in the case of a contract wholly or partly in a foreign language, a copy of a translation thereof in English or embodying a translation in English of the parts in a foreign language, as the case may be, being a translation certified in the prescribed manner.

X. Names and addresses of the auditors of the company, if any

XI. Full particulars of the nature and extent of the interest, if any, of every director or promoter in the promotion of, or in the property acquired within two years of the date of the prospectus or proposed to be acquired by, the company, or where the interest of such director or promoter consists in being a member of a partnership, company, syndicate or other association of persons, the nature and extent of the interest of such partnership, company, syndicate or other association and the nature and extent of such director's or promoter's interest in the partnership company, syndicate or other association, with a statement of all sums paid or agreed to be paid to him or her or to it in cash or shares or otherwise by any person either to induce him or her to become, or to qualify him or her as, a director or otherwise for services rendered by him or her or by it in connection with the promotion or formation of the company.

(Signatures of the persons above named as directors or proposed directors or of their agents authorised in writing).

.....

Date

PART II

REPORTS TO BE SET OUT

1. Where it is proposed to acquire a business, a report made by accountants, who shall be named in the statement, upon—

- (a) the profits or losses of the business in respect of each of the five financial years immediately preceding the delivery of the statement to the Registrar; and
- (b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

2. (1) where it is proposed to acquire shares in a body corporate which by reason of the acquisition or anything to be done in consequence thereof or in connection therewith will become a subsidiary of the company, a report made by accountants, who shall be named in the statement, with respect to the profits and losses and assets and liabilities of the other body corporate in accordance with subparagraph (2) or (3) as the case requires, indicating how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company, and what allowance would have fallen to be made in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired.

(2) If the other body corporate has no subsidiaries, the report referred to in subparagraph (1) shall—

- (a) so far as regards profits and losses, deal with the profits or losses of the body corporate in respect of each of the five financial years immediately preceding the delivery of the statement to the Registrar;
- (b) so far as regards assets and liabilities, deal with the assets and liabilities of the body corporate at the last date to which the accounts of the body corporate were made up.

(3) If the other body corporate has subsidiaries, the report referred to in subparagraph (1) shall—

- (a) so far as regards profits and losses, deal separately with the other body corporate's profits or losses as provided by subparagraph (2), and in addition deal—
 - (i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the other body corporate; or
 - (ii) individually with the profits or losses of each subsidiary, so far as they concern members of the other body corporate;

or, instead of dealing separately with the other body corporate's profits or losses, deal as a whole with the profits or losses of the other body corporate and, so far as they concern members of the other body corporate, with the combined profits or losses of its subsidiaries;

- (b) so far as regards assets and liabilities, deal separately with the other body corporate's assets and liabilities as provided by subparagraph (2) and, in addition, deal either—
 - (i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the other body corporate's assets and liabilities; or
 - (ii) individually with the assets and liabilities of each subsidiary;

and shall indicate as respects the assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.

PART III

PROVISIONS APPLYING TO PARTS I AND II OF THIS SCHEDULE

3. In this Schedule the expression “vendor” includes a vendor as defined in Part III of the Eighth Schedule and the expression “financial year” has the meaning assigned to it in that Part of that Schedule.

4. If in the case of a business which has been carried on, or of a body corporate which has been carrying on business, for less than five years, the accounts of the business or body corporate have only been made up in respect of four years, three years, two years or one year, Part II of this Schedule shall have effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.

5. Any report required by Part II of this Schedule shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the person making the report necessary or shall make those adjustments and indicate that adjustments have been made.

6. Any report by accountants required by Part II of this Schedule shall not be made by any accountant who is an officer or servant, or a partner or employer of or in the employment of an officer or servant, of the company or of the company’s subsidiary or holding company or of a subsidiary of the company’s holding company; and for the purposes of this paragraph the expression “officer” shall include a proposed director but not an auditor.

FOURTH SCHEDULE (Section 165)

FORM OF ANNUAL RETURN OF A COMPANY

THE COMPANIES ACT [*Chapter 24:03*]

FORM OF ANNUAL RETURN OF A COMPANY

Annual Return of the Company,
Limited, made up to the date of the Annual General Meeting.

Date of Meeting (Adjourned to

The address of the registered office of the company is: —

.....
.....

The address at which the register of members is kept (if not kept at the registered office): —

.....
.....
.....

A. Summary of Shares and Debentures

(a) Number of shares

Number of sharesdivided into:

(Insert number and class)

..... shares

..... shares
 shares
 shares

(b) Issued Shares and Debentures

	<i>Number</i>	<i>Class</i>
Number of shares of each class taken up to the date of this return.	shares
	shares
	shares
	shares
Number of shares of each class fully paid up	shares
	shares
	shares
	shares

B. Particulars of Directors, Auditors and Secretaries

Names and Addresses of the Directors, Auditors and Secretaries of the, Limited, on the day of, 20.....

Directors		
Names	Addresses	Other Directorships
Auditors		
Names	Addresses	
Secretary		
Names	Addresses	

.....Director
Secretary

Copy of Last Audited Balance Sheet and Accounts of the Company (where required in terms of section 165 of the Act.)

Note: This return must include a copy, certified both by a Director and by the Secretary of the Company to be a true copy, of every balance sheet (including every document required by law to be annexed to the balance sheet) laid before the company in general meeting during the period to which the summary relates, and, in addition, a copy, certified as aforesaid, of the report of the auditors on, and of the report of the directors accompanying, such balance sheet.

Certificates to be given by a Private Company

A. — We certify —

- (i) that the Company has not since the date of the incorporation of the Company/the last Annual Return* issued any invitation to the public to subscribe for any shares or debentures of the Company;

*Delete whichever is inappropriate.

- (ii) the number of members of the company is

.....
Director

.....
Secretary

B.—Should the number of members of the Company exceed fifty, the following certificate is required:—

We certify that the excess of members of the Company above fifty consists wholly of persons who are in the employment of the Company and/or of persons who, having been formerly in the employment of the Company, were while in such employment, and have continued after the determination of such employment to be, members of the Company.

.....
Director

FIFTH SCHEDULE (Section 10, 18 (1)(b), 69(2))

FEES

FIRST TABLE

Table of fees to be paid by a company (other than a foreign company) under this Act

1. For registration of a company—
fifty cents for every \$100 or portion of \$100 of the nominal capital of the company, with a minimum fee of—
 - (a) in the case of a private company or a non-profit company 100,00
 - (b) in the case of any other company 500,00
2. For registration of any increase of capital made after the first registration of the company—
fifty cents for every \$100 or portion of \$100 of such additional capital
3. For registration of any statement in lieu of the prospectus pursuant to section 86 to 116 75,00
4. For registration of any prospectus pursuant to section 56 75,00
5. On each application for search as to availability of a name or names proposed to be adopted by or for a company, including a reservation of such name or names 30,00

SECOND TABLE

Table of fees to be paid by a foreign company under this Act

1. For the registration of the charter, statutes or memorandum and articles of the company or other instrument consisting or defining the constitution of the company 300,00

- | | |
|--|-------|
| 2. For the registration of the prospectus of the company | 75,00 |
|--|-------|

THIRD TABLE

Table of fees to be paid in respect of any company or foreign company under this Act

- | | |
|---|-------|
| 1. For delivery to the Registrar of any annual return pursuant to section 165 or section 241 (8) of this Act— | |
| (a) where the share capital of the company does not exceed \$20 000 | 50,00 |
| (b) where the share capital of the company exceeds \$20 000 | 50,00 |
| plus an additional \$10 for each \$10 000 or part thereof of the share capital in excess of \$20 000, subject to a maximum fee of \$500. | |
| For the purposes of this item, the share capital of a company means the share capital subscribed for or issued in payment for services rendered or rights acquired or otherwise allotted, whether fully paid-up or not. | |
| 2. For the delivery to the Registrar of any return, document or notice required to be lodged with the Registrar pursuant to this Act and not otherwise provided for: | 5,00 |
| Provided that this fee shall not be payable if the return, document or notice is lodged within the time prescribed by the Act | |
| 3. For every report prepared for the court by the Registrar | 15,00 |
| 4. For any certificate issued by the Registrar | 10,00 |
| 5. For each entry extracted from any register for publication in a newspaper or periodical | 0,50 |
| 6. For a copy of any document, per page | 1,00 |

SIXTH SCHEDULE (Section 18 (1)(b), 170(7)(a) and 266(1)(b))

MODEL ARTICLES AND BY-LAWS

[Explanatory note: in this Schedule annotations in square brackets and italics do not form part of the articles but are inserted to draw the attention of potential adopters or adapters of these articles to relevant provisions of this Act]

TABLE A: MODEL ARTICLES FOR PUBLIC COMPANIES

INDEX TO THE ARTICLES

PART 1: INTERPRETATION AND LIMITATION OF LIABILITY

Article

1. Definitions.
2. Liability of members.

PART 2: DIRECTORS

DIRECTORS' POWERS AND RESPONSIBILITIES

3. Directors' general authority.
4. Members' reserve power.
5. Directors may delegate.
6. Committees.

DECISION-MAKING BY DIRECTORS

7. Directors to take decisions collectively
8. Calling a directors' meeting
9. Participation in directors' meetings
10. Quorum for directors' meetings
11. Meetings where total number of directors less than quorum
12. Chairing directors' meetings
13. Voting at directors' meetings: general rules
14. Chairperson's casting vote at directors' meetings
15. Alternates voting at directors' meetings
16. Conflicts of interest
17. Proposing directors' written resolutions
18. Adoption of directors' written resolutions
19. Directors' discretion to make further rules.

APPOINTMENT OF DIRECTORS

20. Methods of appointing directors
21. Retirement of directors by rotation
22. Termination of director's appointment
23. Directors' remuneration
24. Directors' expenses.

ALTERNATE DIRECTORS

25. Appointment and removal of alternates
26. Rights and responsibilities of alternate directors
27. Termination of alternate directorship.

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ORGANISATION OF GENERAL MEETINGS

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29. Attendance and speaking at general meetings
30. Quorum for general meetings
31. Chairing general meetings
32. Attendance and speaking by directors and non-members
33. Adjournment.

VOTING AT GENERAL MEETINGS

34. Voting: general
35. Errors and disputes
36. Demanding a poll
37. Procedure on a poll
38. Content of proxy notices

Article

39. Delivery of proxy notices
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41. No voting of shares on which money owed to company

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51. Share warrants.

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54. Call notices
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57. Failure to comply with call notice: automatic consequences
58. Notice of intended forfeiture
59. Directors' power to forfeit shares
60. Effect of forfeiture
61. Procedure following forfeiture
62. Surrender of shares.

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63. Transfers of certificated shares
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65. Transmission of shares
66. Transmittees' rights

Article

67. Exercise of transmitters' rights

68. Transmitters bound by prior notices

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69. Procedure for disposing of fractions of shares.

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70. Procedure for declaring dividends.

71. Calculation of dividends.

72. Payment of dividends and other distributions.

73. Deductions from distributions in respect of sums owed to the company.

74. No interest on distributions.

75. Unclaimed distributions.

76. Non-cash distributions.

77. Waiver of distributions.

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78. Authority to capitalise and appropriation of capitalised sums

*PART 5: MISCELLANEOUS PROVISIONS**COMMUNICATIONS*

79. Means of communication to be used.

80. Failure to notify contact details.

ADMINISTRATIVE ARRANGEMENTS

81. Company seals.

82. Destruction of documents.

83. No right to inspect accounts and other records.

84. Provision for employees on cessation of business.

DIRECTORS' INDEMNITY AND INSURANCE

85. Indemnity

86. Insurance

*PART 1: INTERPRETATION AND LIMITATION OF LIABILITY**Definitions*

1. (1) In the articles, unless the context requires otherwise—

“alternate” or “alternate director” has the meaning given in article 25;

“appointor” has the meaning given in article 25;

“articles” means the company’s articles of association;

“call” has the meaning given in article 54;

“call notice” has the meaning given in article 54;

“certificate” means a paper certificate (other than a share warrant) evidencing a person’s title to specified shares or other securities;

“certificated” in relation to a share, means that it is not an uncertificated share or a share in respect of which a share warrant has been issued and is current;

- “chairperson” has the meaning given in article 12;
- “chairperson of the meeting” has the meaning given in article 31;
- “Act” means the Companies and Other Business Entities Act [*Chapter 24:31*];
- “company’s lien” has the meaning given in article 52;
- “director” means a director of the company, and includes any person occupying the position of director, by whatever name called;
- “distribution recipient” has the meaning given in article 72;
- “document” includes, unless otherwise specified, any document sent or supplied in electronic form;
- “fully paid” in relation to a share, means that the nominal value and any premium to be paid to the company in respect of that share have been paid to the company;
- “holder” in relation to shares means the person whose name is entered in the register of members as the holder of the shares, or, in the case of a share in respect of which a share warrant has been issued (and not cancelled), the person in possession of that warrant;
- “insolvency” includes individual insolvency proceedings in a jurisdiction other than Zimbabwe which have an effect similar to that of insolvency;
- “instrument” means a document in hard copy form;
- “lien enforcement notice” has the meaning given in article 53;
- “member” has the meaning given in section 83 of the Companies Act;
- “ordinary resolution” has the meaning given in section 175(4) of the Act;
- “paid” means paid or credited as paid;
- “participate”, in relation to a directors’ meeting, has the meaning given in article 9;
- “partly paid” in relation to a share means that part of that share’s nominal value or any premium at which it was issued has not been paid to the company;
- “prescribed rate of interest” means the maximum rate of interest prescribed in terms of the Prescribed Rate of Interest Act [*Chapter 8:10*] or any other law that may be substituted for that Act;
- “proxy notice” has the meaning given in article 38;
- “securities seal” has the meaning given in article 47;
- “shares” means shares in the company;
- “special resolution” has the meaning given in section 175 of the Act;;
- “subsidiary” has the meaning given in section 185 of the Act;
- “transmittee” means a person entitled to a share by reason of the death or insolvency of a shareholder or otherwise by operation of law;
- “uncertificated” has the meaning given in section 2(1) of the Act;
- “writing” means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

(2) Unless the context otherwise requires, other words or expressions contained in these articles bear the same meaning as in the Act as in force on the date when these articles become binding on the company.

Liability of members

2. The liability of the members is limited to the amount, if any, unpaid on the shares held by them.

PART 2: DIRECTORS

*DIRECTORS' POWERS AND RESPONSIBILITIES**Directors' general authority*

3. Subject to the articles, the directors are responsible for the management of the company's business, for which purpose they may exercise all the powers of the company.

Members' reserve power

4. (1) The members may, by special resolution, direct the directors to take, or refrain from taking, specified action.

(2) No such special resolution invalidates anything which the directors have done before the passing of the resolution.

Directors may delegate

5. (1) Subject to the articles, the directors may delegate any of the powers which are conferred on them under the articles—

- (a) to such person or committee; and
- (b) by such means (including by power of attorney); and
- (c) to such an extent; and
- (d) in relation to such matters or territories; and
- (e) on such terms and conditions;

as they think fit.

(2) If the directors so specify, any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.

(3) The directors may revoke any delegation in whole or part, or alter its terms and conditions.

Committees

6. (1) Committees to which the directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of the articles which govern the taking of decisions by directors.

(2) The directors may make rules of procedure for all or any committees, which prevail over rules derived from the articles if they are not consistent with them.

*DECISION-MAKING BY DIRECTORS**Directors to take decisions collectively*

7. Decisions of the directors may be taken—

- (a) at a directors' meeting; or
- (b) in the form of a directors' written resolution.

Calling a directors' meeting

8. (1) Any director may call a directors' meeting.

(2) The company secretary must call a directors' meeting if a director so requests.

(3) A directors' meeting is called by giving notice of the meeting to the directors.

(4) Notice of any directors' meeting must indicate—

- (a) its proposed date and time; and
- (b) where it is to take place; and
- (c) if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.

(5) Notice of a directors' meeting must be given to each director, but need not be in writing.

(6) Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the company not more than 7 days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

Participation in directors' meetings

9. (1) Subject to the articles, directors participate in a directors' meeting, or part of a directors' meeting, when—

- (a) the meeting has been called and takes place in accordance with the articles; and
- (b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.

(2) In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other.

(3) If all the directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

Quorum for directors' meetings

10. (1) At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.

(2) The quorum for directors' meetings may be fixed from time to time by a decision of the directors, but it must never be less than two, and unless otherwise fixed it is two.

Meetings where total number of directors less than quorum

11. (1) This article applies where the total number of directors for the time being is less than the quorum for directors' meetings.

(2) If there is only one director, that director may appoint sufficient directors to make up a quorum or call a general meeting to do so.

(3) If there is more than one director—

- (a) a directors' meeting may take place, if it is called in accordance with the articles and at least two directors participate in it, with a view to appointing sufficient directors to make up a quorum or calling a general meeting to do so; and
- (b) if a directors' meeting is called but only one director attends at the appointed date and time to participate in it, that director may appoint sufficient directors to make up a quorum or call a general meeting to do so.

Chairing directors' meetings

12. (1) The directors may appoint a director to chair their meetings.

(2) The person so appointed for the time being is known as the chairperson.

(3) The directors may appoint other directors as deputy or assistant chairperson to chair directors' meetings in the chairperson's absence.

(4) The directors may terminate the appointment of the chairperson, deputy or assistant chairperson at any time.

(5) If neither the chairperson nor any director appointed generally to chair directors' meetings in the chairperson's absence is participating in a meeting within ten minutes of the time at which it was to start, the participating directors must appoint one of themselves to chair it.

Voting at directors' meetings: general rules

13. (1) Subject to the articles, a decision is taken at a directors' meeting by a majority of the votes of the participating directors.

(2) Subject to the articles, each director participating in a directors' meeting has one vote.

(3) Subject to the articles, if a director has an interest in an actual or proposed transaction or arrangement with the company—

(a) that director and that director's alternate may not vote on any proposal relating to it; but

(b) this does not preclude the alternate from voting in relation to that transaction or arrangement on behalf of another appointor who does not have such an interest.

Chairperson's casting vote at directors' meetings

14. (1) If the numbers of votes for and against a proposal are equal, the chairperson or other director chairing the meeting has a casting vote.

(2) But this does not apply if, in accordance with the articles, the chairperson or other director is not to be counted as participating in the decision-making process for quorum or voting purposes.

Alternates voting at directors' meetings

15. A director who is also an alternate director has an additional vote on behalf of each appointor who is—

(a) not participating in a directors' meeting; and

(b) would have been entitled to vote if they were participating in it.

Conflicts of interest

16. (1) If a directors' meeting, or part of a directors' meeting, is concerned with an actual or proposed transaction or arrangement with the company in which a director is interested, that director is not to be counted as participating in that meeting, or part of a meeting, for quorum or voting purposes.

(2) But if sub-article (3) applies, a director who is interested in an actual or proposed transaction or arrangement with the company is to be counted as participating in a decision at a directors' meeting, or part of a directors' meeting, relating to it for quorum and voting purposes.

- (3) This sub-article applies when—
- (a) the company by ordinary resolution disappplies the provision of the articles which would otherwise prevent a director from being counted as participating in, or voting at, a directors' meeting; or
 - (b) the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - (c) the director's conflict of interest arises from a permitted cause.

(4) For the purposes of this article, the following are permitted causes—

- (a) a guarantee given, or to be given, by or to a director in respect of an obligation incurred by or on behalf of the company or any of its subsidiaries;
- (b) subscription, or an agreement to subscribe, for shares or other securities of the company or any of its subsidiaries, or to underwrite, sub-underwrite, or guarantee subscription for any such shares or securities;
- (c) arrangements pursuant to which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries which do not provide special benefits for directors or former directors.

(5) Subject to sub-article (6), if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the chairperson whose ruling in relation to any director other than the chairperson is to be final and conclusive.

(6) If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the chairperson, the question is to be decided by a decision of the directors at that meeting, for which purpose the chairperson is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

Proposing directors' written resolutions

17. (1) Any director may propose a directors' written resolution.

(2) The company secretary must propose a directors' written resolution if a director so requests.

(3) A directors' written resolution is proposed by giving notice of the proposed resolution to the directors.

(4) Notice of a proposed directors' written resolution must indicate—

- (a) the proposed resolution; and
- (b) the time by which it is proposed that the directors should adopt it.

(5) Notice of a proposed directors' written resolution must be given in writing to each director.

(6) Any decision which a person giving notice of a proposed directors' written resolution takes regarding the process of adopting that resolution must be taken reasonably in good faith.

Adoption of directors' written resolutions

18. (1) A proposed directors' written resolution is adopted when all the directors who would have been entitled to vote on the resolution at a directors' meeting have

signed one or more copies of it, provided that those directors would have formed a quorum at such a meeting.

(2) It is immaterial whether any director signs the resolution before or after the time by which the notice proposed that it should be adopted.

(3) Once a directors' written resolution has been adopted, it must be treated as if it had been a decision taken at a directors' meeting in accordance with the articles.

(4) The company secretary must ensure that the company keeps a record, in writing, of all directors' written resolutions for at least ten years from the date of their adoption.

Directors' discretion to make further rules

19. Subject to the articles, the directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to directors.

APPOINTMENT OF DIRECTORS

Methods of appointing directors

20. Any person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director—

- (a) by ordinary resolution; or
- (b) by a decision of the directors.

Retirement of directors by rotation

21. (1) At the first annual general meeting all the directors must retire from office.

(2) At every subsequent annual general meeting any directors—

- (a) who have been appointed by the directors since the last annual general meeting; or
- (b) who were not appointed or reappointed at one of the preceding two annual general meetings, must retire from office and may offer themselves for reappointment by the members.

Termination of director's appointment

22. A person ceases to be a director as soon as—

- (a) that person ceases to be a director by virtue of any provision of the Act or is prohibited from being a director by law;
- (b) a liquidation order is made against that person;
- (c) a composition is made with that person's creditors generally in satisfaction of that person's debts;
- (d) a registered medical practitioner who is treating that person gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months;
- (e) by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have;
- (f) notification is received by the company from the director that the director is resigning from office as director, and such resignation has taken effect in accordance with its terms.

Directors' remuneration

23. (1) Directors may undertake any services for the company that the directors decide.

(2) Directors are entitled to such remuneration as the directors determine—

- (a) for their services to the company as directors; and
- (b) for any other service which they undertake for the company.

(3) Subject to the articles, a director's remuneration may—

- (a) take any form; and
- (b) include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director.

(4) Unless the directors decide otherwise, directors' remuneration accrues from day to day.

(5) Unless the directors decide otherwise, directors are not accountable to the company for any remuneration which they receive as directors or other officers or employees of the company's subsidiaries or of any other body corporate in which the company is interested.

Directors' expenses

24. The company may pay any reasonable expenses which the directors properly incur in connection with their attendance at—

- (a) meetings of directors or committees of directors; or
- (b) general meetings; or
- (c) separate meetings of the holders of any class of shares or of debentures of the company, or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company.

*ALTERNATE DIRECTORS**Appointment and removal of alternates*

25. (1) Any director (the "appointor") may appoint as an alternate any other director, or any other person approved by resolution of the directors, to—

- (a) exercise that director's powers; and
- (b) carry out that director's responsibilities;

in relation to the taking of decisions by the directors in the absence of the alternate's appointor.

(2) Any appointment or removal of an alternate must be effected by notice in writing to the company signed by the appointor, or in any other manner approved by the directors.

(3) The notice must—

- (a) identify the proposed alternate; and
- (b) in the case of a notice of appointment, contain a statement signed by the proposed alternate that the proposed alternate is willing to act as the alternate of the director giving the notice.

Rights and responsibilities of alternate directors

26. (1) An alternate director has the same rights, in relation to any directors' meeting or directors' written resolution, as the alternate's appointor.

- (2) Except as the articles specify otherwise, alternate directors—
 - (a) are deemed for all purposes to be directors; and
 - (b) are liable for their own acts and omissions; and
 - (c) are subject to the same restrictions as their appointors; and
 - (d) are not deemed to be agents of or for their appointors.
- (3) A person who is an alternate director but not a director—
 - (a) may be counted as participating for the purposes of determining whether a quorum is participating (but only if that person's appointor is not participating); and
 - (b) may sign a written resolution (but only if it is not signed or to be signed by that person's appointor).

No alternate may be counted as more than one director for such purposes.

(4) An alternate director is not entitled to receive any remuneration from the company for serving as an alternate director except such part of the alternate's appointor's remuneration as the appointor may direct by notice in writing made to the company.

Termination of alternate directorship

27. An alternate director's appointment as an alternate terminates—
- (a) when the alternate's appointor revokes the appointment by notice to the company in writing specifying when it is to terminate; or
 - (b) on the occurrence in relation to the alternate of any event which, if it occurred in relation to the alternate's appointor, would result in the termination of the appointor's appointment as a director; or
 - (c) on the death of the alternate's appointor; or
 - (d) when the alternate's appointor's appointment as a director terminates, except that an alternate's appointment as an alternate does not terminate when the appointor retires by rotation at a general meeting and is then re-appointed as a director at the same general meeting.

PART 3: DECISION-MAKING BY MEMBERS

ORGANISATION OF GENERAL MEETINGS

Members can call general meeting if not enough directors

28. If—
- (a) the company has fewer than two directors; and
 - (b) the director (if any) is unable or unwilling to appoint sufficient directors to make up a quorum or to call a general meeting to do so;

then two or more members may call a general meeting (or instruct the company secretary to do so) for the purpose of appointing one or more directors.

Attendance and speaking at general meetings

29. (1) A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.

- (2) A person is able to exercise the right to vote at a general meeting when—
 - (a) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and

(b) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(3) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.

(4) In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other.

(5) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.

Quorum for general meetings

30. No business other than the appointment of the chairman of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

Chairing general meetings

31. (1) If the directors have appointed a chairperson, the chairperson shall chair general meetings if present and willing to do so.

(2) If the directors have not appointed a chairperson, or if the chairperson is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start—

- (a) the directors present; or
- (b) (if no directors are present), the meeting;

must appoint a director or member to chair the meeting, and the appointment of the chairperson of the meeting must be the first business of the meeting.

(3) The person chairing a meeting in accordance with this article is referred to as "the chairperson of the meeting".

Attendance and speaking by directors and non-members

32. (1) Directors may attend and speak at general meetings, whether or not they are members.

- (2) The chairperson of the meeting may permit other persons who are not—
- (a) members of the company; or
 - (b) otherwise entitled to exercise the rights of members in relation to general meetings;

to attend and speak at a general meeting.

Adjournment

33. (1) If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the chairperson of the meeting must adjourn it.

(2) The chairperson of the meeting may adjourn a general meeting at which a quorum is present if—

- (a) the meeting consents to an adjournment; or
- (b) it appears to the chairperson of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.

- (3) The chairperson of the meeting must adjourn a general meeting if directed to do so by the meeting.
- (4) When adjourning a general meeting, the chairperson of the meeting must—
- either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the directors, and
 - have regard to any directions as to the time and place of any adjournment which have been given by the meeting.
- (5) If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the company must give at least 7 clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given)—
- to the same persons to whom notice of the company's general meetings is required to be given; and
 - containing the same information which such notice is required to contain.
- (6) No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

VOTING AT GENERAL MEETINGS

Voting: general

34. A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the articles.

Errors and disputes

35. (1) No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.

- (2) Any such objection must be referred to the chairperson of the meeting whose decision is final.

Demanding a poll

36. (1) A poll on a resolution may be demanded—
- in advance of the general meeting where it is to be put to the vote; or
 - at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.
- (2) A poll may be demanded by—
- the chairperson of the meeting; or
 - the directors; or
 - two or more persons having the right to vote on the resolution; or
 - a person or persons representing not less than one tenth of the total voting rights of all the members having the right to vote on the resolution.
- (3) A demand for a poll may be withdrawn if—
- the poll has not yet been taken, and
 - the chairperson of the meeting consents to the withdrawal.

Procedure on a poll

37. (1) Subject to the articles, polls at general meetings must be taken when, where and in such manner as the chairperson of the meeting directs.

(2) The chairperson of the meeting may appoint scrutineers (who need not be members) and decide how and when the result of the poll is to be declared.

(3) The result of a poll shall be the decision of the meeting in respect of the resolution on which the poll was demanded.

(4) A poll on—

- (a) the election of the chairperson of the meeting; or
- (b) a question of adjournment;

must be taken immediately.

(5) Other polls must be taken within 30 days of their being demanded.

(6) A demand for a poll does not prevent a general meeting from continuing, except as regards the question on which the poll was demanded.

(7) No notice need be given of a poll not taken immediately if the time and place at which it is to be taken are announced at the meeting at which it is demanded.

(8) In any other case, at least 7 days' notice must be given specifying the time and place at which the poll is to be taken.

Content of proxy notices

38. (1) Proxies may only validly be appointed by a notice in writing (a "proxy notice") which—

- (a) states the name and address of the member appointing the proxy; and
- (b) identifies the person appointed to be that member's proxy and the general meeting in relation to which that person is appointed; and
- (c) is signed by or on behalf of the member appointing the proxy, or is authenticated in such manner as the directors may determine; and
- (d) is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate.

(2) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.

(3) Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.

(4) Unless a proxy notice indicates otherwise, it must be treated as—

- (a) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting, and
- (b) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

Delivery of proxy notices

39. (1) Any notice of a general meeting must specify the address or addresses ("proxy notification address") at which the company or its agents will receive proxy notices relating to that meeting, or any adjournment of it, delivered in hard copy or electronic form.

(2) A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that person.

(3) Subject to sub-articles (4) and (5), a proxy notice must be delivered to a proxy notification address not less than 48 hours before the general meeting or adjourned meeting to which it relates.

(4) In the case of a poll taken more than 48 hours after it is demanded, the proxy notice must be delivered to a proxy notification address not less than 24 hours before the meeting or adjourned meeting to which it relates.

(5) In the case of a poll not taken during the meeting but taken not more than 48 hours after it was demanded, the proxy notice must be delivered—

- (a) in accordance with sub-article (3); or
- (b) at the meeting at which the poll was demanded to the chairperson, secretary or any director.

(6) An appointment under a proxy notice may be revoked by delivering a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given to a proxy notification address.

(7) A notice revoking a proxy appointment only takes effect if it is delivered—

- (a) the start of the meeting or adjourned meeting to which it relates, or
- (b) (in the case of a poll not taken on the same day as the meeting or adjourned meeting) the time appointed for taking the poll to which it relates.

(8) If a proxy notice is not signed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf.

Amendments to resolutions

(1) An ordinary resolution to be proposed at a general meeting may be amended by a secondary resolution if—

- (a) notice of the proposed amendment is given to the company secretary in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the chairperson of the meeting may determine), and
- (b) the proposed amendment does not, in the reasonable opinion of the chairperson of the meeting, materially alter the scope of the resolution.

(2) A special resolution to be proposed at a general meeting may be amended by a secondary resolution, if—

- (a) the chairperson of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed, and
- (b) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

(3) If the chairperson of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairperson's error does not invalidate the resolution on that resolution.

RESTRICTIONS ON MEMBERS' RIGHTS

No voting of shares on which money owed to company

No voting rights attached to a share may be exercised at any general meeting, adjournment of it, or on any poll called at or in relation to it, unless all amounts due to the company in respect of that share have been paid.

*APPLICATION OF RULES TO CLASS MEETINGS**Class meetings*

42. The provisions of the articles relating to general meetings apply, with any necessary modifications, to meetings of the holders of any class of shares.

PART 4: SHARES AND DISTRIBUTIONS

ISSUE OF SHARES

Powers to issue different classes of share

43. (1) Subject to the articles, but without prejudice to the rights attached to any existing share, the company may issue shares with such rights or restrictions as may be determined by ordinary resolution.

(2) The company may issue shares which are to be redeemed, or are liable to be redeemed at the option of the company or the holder, and the directors may determine the terms, conditions and manner of redemption of any such shares.

Payment of commissions on subscription for shares

44. (1) The company may pay any person a commission in consideration for that person—

- (a) subscribing, or agreeing to subscribe, for shares; or
- (b) procuring, or agreeing to procure, subscriptions for shares.

(2) Any such commission may be paid—

- (a) in cash, or in fully paid or partly paid shares or other securities, or partly in one way and partly in the other; and
- (b) in respect of a conditional or an absolute subscription.

*INTERESTS IN SHARES**Company not bound by less than absolute interests*

45. Except as required by law, no person is to be recognised by the company as holding any share upon any trust, and except as otherwise required by law or the articles, the company is not in any way to be bound by or recognise any interest in a share other than the holder's absolute ownership of it and all the rights attaching to it.

*SHARE CERTIFICATES**Certificates to be issued except in certain cases*

46. (1) The company must issue each member with one or more certificates in respect of the shares which that member holds.

(2) This article does not apply to—

- (a) uncertificated shares; or
- (b) shares in respect of which a share warrant has been issued; or
- (c) shares in respect of which the Act permits the company not to issue a certificate.

(3) Except as otherwise specified in the articles, all certificates must be issued free of charge.

(4) No certificate may be issued in respect of shares of more than one class.

(5) If more than one person holds a share, only one certificate may be issued in respect of it.